(2013) 07 TP CK 0006

Tripura High Court

Case No: L.A. APP. No. 16 of 2005

Ramendra Kumar Bhattacharjee and Others VsLand Acquisition Collector and Another		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: July 31, 2013

Hon'ble Judges: S.C. Das, J

Bench: Single Bench

Advocate: A.K. Bhowmik, Mr. A.K. Deb and Ms. K. Deb, for the Appellant; J. Majumder and Mr. P.K. Biswas, Asstt. S.G., for the Respondent

Judgement

S.C. Das, J.

This appeal u/s 54 of the Land Acquisition Act, 1894 (for short, LA Act) is directed against the judgment and order dated 23.04.2005 passed by learned Land Acquisition Judge (for short, LA Judge), Dharmanagar, North Tripura, in case No. Misc. 01(LA) of 2004. Heard learned senior counsel, Mr. A.K. Bhowmik for the appellants. None appeared for the respondents though the case appeared for hearing in the cause list.

2. Land measuring 1.000(one) acre classified as bastu, viti, pukur/pukur par belonged to the appellants recorded in Khatian No. 3803, plot Nos. 6595, 6596, 6597, 6598, 6599 and 6601(Part) of Mouja-Dharmanagar town was acquired for the purpose of construction of departmental quarters, store, godown, etc. of the Telecom Department. Notification u/s 4 of the LA Act was issued on 01.03.1998 which was followed by declaration u/s 6 made on 25.05.1998. In the process of acquisition L.A. Collector by his assessment order dated 26.06.1998 determined value of the acquired land at the rate of Rs. 12,00,000/- (rupees twelve lakh) per kani and awarded compensation accordingly with other statutory benefits totaling Rs. 48,17,988/- (rupees forty eight lakh seventeen thousand nine hundred eighty eight). The appellants received the compensation under protest and requested the L. A.

Collector to have a reference u/s 18 of the LA Act but the L.A. Collector did not make the reference and thereafter the appellants approached the High Court and pursuant to order dated 18.03.2004 passed by Division Bench of the Gauhati High Court in WA No. 74 of 1999, LA Collector referred the case to the Court of LA Judge, Dharmanagar and on such reference, made by the LA Collector, case No. Misc. 1(LA) of 2004 was registered in the Court of LA Judge, Dharmanagar.

3. The appellants/claimants submitted claim statement inter alia stating that the acquired land was a compact area of land situated in the heart of Dharmanagar town of North Tripura District in a commercial area having high potentials and importance with commercial values. The land was attached to Dinanath Narayani Vidyamandir Road(for short, DNV Road) in its southern side from where the crossing of DNV Road and Vivekananda Road, prime business location, was only 300 cubits away. Dharmanagar main market, dry fish market, vegetables market were situated within 700 to 800 ft radius of the acquired land. Many shops and establishments, important government offices, business centers, all located in and around the acquired land. Dinanath Narayani Vidyamandir, a renowned institution of Dharmanagar town also situated around 100 meter away. The acquired land was fit for utilization as a trade centre for all commercial purpose and it was therefore a highly potential land and the value of the land at that time was more than Rs. 40,00,000/- (rupees forty lakh) per kani.

3.1. A plot of land measuring 0.018 acre at the crossing of DNV Road and Vivekananda Road at a distance about 300 cubits from the acquired land was sold at a price of Rs. 7,00,000/- (rupees seven lakh) on 01.03.1996 vide Deed No. 1-762 of 1996. The seller and purchaser intended to execute the sale deed showing the price at Rs. 1,00,000/- (rupees one lakh) but the Collector initiated a proceeding u/s 47A of the Indian Stamp Act vide case No. REV/DR/14/96 and by order dated 27.03.1996 the Collector fixed the value of the sold out land at the rate of Rs. 7,00,000/- (rupees seven lakh). Taking into account the said sale transaction, price of the land at the relevant point of time, according to the appellants, stood at Rs. 88,88,888/- (rupees eighty eight lakh eighty eight thousand eight hundred eighty eight) and therefore excluding the price of the building standing thereon, they claimed compensation at the rate of Rs. 4,00,000/- (rupees four lakh) per kani.

3.2. They also relied on a Sale Deed No. 1-3859 of 1995 dated 19.12.1995 of a plot of land measuring 0,009 acre and the same transaction was held for Rs. 90,000/- (rupees ninety thousand) and the land was located in the southern side of Vivekananda Road, a little away from the crossing of DNV Road and Vivekananda Road and that sale transaction also shows the price at the relevant point of time, according to the claimants, was Rs. 40,00,000/- (rupees forty lakh) per kani.

3.3. It is also stated by the claimants that on 27.08.1997 a valuation certificate of a part of acquired land was issued by Sub-Divisional Magistrate, Dharmanagar showing Rs. 25,00,000/- (rupees twenty five thousand) per kani and since the price

of the land has been increased during ten years, i.e. on the date of acquisition, after the issue of the valuation certificate, the claimants reasonably claimed Rs. 40,00,000/- (rupees forty lakh) per kani.

3.4. It is also stated that plot No. 6601 (Part) of the Khatian was located in the southern end of the acquired land and that plot was partially acquired and the rest part of that plot of land became useless since it was in the rear portion of the acquired land and for that severance of plot no compensation was awarded. The claimants, therefore claimed compensation at the rate of Rs. 40,00,000/- (rupees forty lakh) per kani.

4. Respondent No. 1, the LA Collector, North Tripura, Kailashahar (for short, LA Collector) contested the case by filing written objection inter alia stating that the price of the acquired land was determined taking into account the locational advantage of the acquired land coupled with other relevant factors most judiciously and in the course of assessment several sale transactions were taken into consideration and ultimately taking into account a sale transaction dated 11.11.1997 vide Deed No. 1-3258, wherein land measuring 0.0565 acres were sold at a price of Rs. 1,50,000/- (rupees one lakh fifty thousand), and taking into consideration that sale instance, the price of acquired land was determined at the rate of Rs. 12,00,000/- per kani. The price of the acquired land determined, was appropriate and proper.

4.1. It is also contended by the LA Collector that the sale deeds referred by the claimants cannot be taken into consideration as of comparable lands since those two sale deeds relates to dokan viti class of land whereas the land of the claimants though situated within the market area of Dharmanagar town but still the acquired land was classified as bastu, viti and pukur/pukur par class of land. The potentiality of the land so far claimed by the claimants was not justified and therefore the LA Collector prayed for dismissal of the claim of the claimants-appellants.

5. In course of trial, the claimant-appellant No. 1 examined himself as P.W. 1 and also examined two more witnesses, namely P.W. 2 Samaresh Datta and P.W. 3 Ratish Chandra Paul.

5.1. In support of their claim the claimant-appellants proved the following documents:

Exbt. 1 Land Acquisition Form No. 9

Exbt. 2 Claim statement for payment of compensation

Exbt. 3(series) Registration slip of letter along with it''s A/D card.

Exbt. 4 Land Acquisition Notice.

Exbt. 5 Objection claims.

Exbt. 6(series) Khatian No. 3803/1 and Khatian No. 3803/2.

Exbt. 7 Certified copy of Judgment and Order (CAV) in writ appeal No. 74/99 delivered by the Ld. High Court Judge, Agartala Bench.

Exbt. 8 Maps

Exbt. 9 Maps

Exbt. 10 Land Valuation certificate

Exbt. 11 Sale deed bearing No. 1-762 of 1996.

Exbt. 12 An order dated 27.03.96

Exbt. 13 Sale deed bearing No. 1-3859 of 1995.

5.2. On behalf of LA Collector one witness, namely Pradip Biswas, an Amin of the office of the LA Collector, was examined as D.W. 1 and in support of their case the following documents were proved:

Exbt. A Sale deed bearing No. 1-49 of 1998

Exbt. B Sale deed bearing No. 1-3288 of 1997

Exbt. C Assessment Note.

5.3. There is no reflection in the LC records that the requiring department submitted any written objection or adduced any evidence at the time of trial before the LA Judge.

6. Learned LA Judge by impugned judgment held that the award made by the LA Collector was justified and accordingly dismissed the claim of the claimant-appellants.

7. Having felt aggrieved the present appeal is filed.

8. Learned senior counsel, Mr. Bhowmik appearing on behalf of the appellants strenuously argued that learned LA Judge did not at all apply his mind to the materials and evidence on record. In the assessment order the LA Collector awarded compensation at the rate of Rs. 12,00,000/- (rupees twelve lakh) per kani but the learned LA Judge observed that award was made at the rate of Rs. 16,00,000/- (rupees sixteen lakh) per kani. Such mention made by the learned LA Judge in the judgment makes it clear that he was totally unmindful while deciding the claim of the claimants.

8.1. It is also submitted that learned LA Judge failed to consider the evidence and materials on record. Learned LA Judge was supposed to decide the claim taking into consideration the evidence and materials on record but he has utterly failed to do so.

8.2. It is contended by learned senior counsel that indisputably the acquired land is situated in the heart of Dharmanagar town and Dharmanagar is the gateway of Tripura nearing Assam Border and it is the most important business centre. The acquired land is located in the market area of Dharmanagar town. Cinema hall, several government offices, vegetables market, fish market and all other big business establishments are Located in and around the acquired land.

8.3. The claimants were using the acquired land as a bastu viti class of land. At the time of acquisition there was no pukur or pukur par class of land since the pukur or pukur par was already filled up and it was converted as bastu and viti class of land but the record of right was not changed and it remained as before.

8.4. It is strenuously argued that in the year 1967 a valuation certificate was issued by the Sub-Divisional Officer for a part of the acquired land and the value was given Rs. 25,00,000/- (rupees twenty five lakh) per kani. After ten years the land was acquired by the LA Collector but surprisingly compensation was given at the rate of Rs. 12,00,000/- (rupees twelve lakh) per kani.

8.5. Referring to Exbts. 8 and 9 learned senior counsel, Mr. Bhowmik has shown the location of the acquired land and the crossing of DNV Road and Vivekananda Road. He has also referred that the Sale Deed marked as Exbt. 11 is located only about 300 cubits away from the acquired land and Sale Deed marked as Exbt. 13 is located only a little away from the crossing towards southern direction and both the sale deeds relate to dokan viti class of land.

8.6. In course of hearing learned counsel placed before this Court a map of Mouja-Dharmanagar No. 19, Sheet No. 8 and with coloured indication has shown the acquired land as well as the lands of two sale deeds relied by the claimants and also the lands of the two sale deeds relied by the LA Collector. According to learned counsel the sale transaction on behalf of the LA Collector and marked as Exbt. A and Exbt. B cannot be considered as a sale transaction of a comparable land since those sale deeds does not belonged to the land situated by the side of important roads, like DNB road and Vivekananda road. Since the acquired land is a bastu and viti class of land and facing the most important road of Dharmanagar town situated in the commercial areas, it should be compared with the sale transaction, marked as Exbt. 11. The acquired land is a compact area of land running from north to south having its face with DNV road and the entire land can be used as a trade center and/or would be converted into a commercial hub and such potential factor has not been considered neither by the LA Collector nor by the LA Judge. Learned senior counsel, therefore prayed for fixing the price of the acquired land at the rate of Rs. 40,00,000/- (rupees forty lakh) per kani taking into account the sale transactions proved as Exbts. 11 and 13.

9. None appeared on behalf of the respondents to counter the argument advanced by learned counsel, Mr. Bhowmik. However, I have meticulously gone through the

claim statement filed by the claimants, written objection filed on behalf of respondent No. 1, the LA Collector and the evidence adduced by both side.

10. The assessment order reflects the description of the acquired land thus:

11. Indisputably, the acquired land is located in the heart of Dharmanagar town and the shops and establishments, markets, government offices, cinema hall, etc., all are located in the close vicinity of the acquired land. It is common knowledge in the State that the price of urban land is increasing arithmetically. There is nothing to deny the potentiality of the acquired land. After acquisition, the Bharat Sanchar Nigam Limited (BSNL) set up its establishment with staff quarters, store, office, etc., which is reflected in the evidence of D.W. 1. The acquired land, as it appears in the map placed on record, is located in the southern side of DNV Road and it is running north to south. The breadth of the acquired land in the road side is a bit smaller than the length. The length from north to south, as it appears, is about five times than the breadth in the road side. Indisputably, the land of plot Nos. 6595 and 6596 are attached to DNV road. The respondent, LA Collector has also admitted that those two plots would be used as commercial land in future but the rest three plots since located in the backside cannot be used for any commercial purpose. This plea of the respondents cannot be accepted since the land was in a compact area and the entire land could be used for a single purpose, i.e. for a commercial trade centre or otherwise. But it can be said without hesitation that road sides plots would carry much more value than that of the backside plots if the land is disposed in smaller tracks.

12. Law in respect of determination of market value of the land acquired under the provisions of LA Act, is fairly sell settled and the best method to determine the same is to consider the prices obtained by contemporaneous sale deeds whether of the same land or of lands in the vicinity. Various factors may be taken into consideration, namely the size and shape of land, the locality and its situation, the tenure of the property, the user, the potential value and the rise or depreciation of valuation of the land in the locality. Where sale instances of comparable lands are available on record the court can safely take it into consideration and make the award relying on such sale transaction. It is a settled law that example of sale transactions of small plot of Land cannot be accepted as a sale instance for a bigger plot of land but such sale transactions can be considered after giving a reasonable deduction therefrom. It is also a settled law that where there are several exemplars with reference to similar lands, the highest exemplars should be taken into consideration for determination of compensation.

13. Normally, sale transactions are held after vigorous bargain between the seller and purchaser. When such a genuine transaction is found to have held it may be taken safely as an instance of reasonable price but it must be found that such sale transaction is of a comparable land. It is, however, a very difficult task. Some sort of guess work, assumption and presumption always takes place in determining the

market price of an acquired land. Since the land loser had no opportunity to bargain the evidence led by him deserved to be considered carefully. The Supreme Court in the case of Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr., reported in (1988) 3 SCC 751 , has held:

4. The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as ah original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for mis purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act(dates of Notifications under Sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development

prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-�-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

14. In the case at hand, LA Collector determined the market price of the acquired land considering the prices appeared in Exbt. A and Exbt. B, the two sale deeds, holding that the exemplars are of comparable land. The claimants, on the contrary claimed compensation relying on the sale deeds marked as Exbts. 11 and 13. The claimants put emphasis on Exbt. 11 since the land under transaction of Exbt. 11 sale deed located on DNV Road about 300 cubits away from the acquired land. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner.

15. The Supreme Court in the case of Ravinder Narain & Anr. v. Union of India reported in (2003) 4 SCC 481 held thus--

8. In the case of Suresh Kumar v. Town Improvement Trust Bhopal: (1989) 1 SVLR (C) 399 in a case under the Madhya Pradesh Town improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of

Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer : AIR 1939 PC 98 : 66 IA 104 that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded, neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification u/s 4(1) . Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector u/s 11 . Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality.

16. In the present case, indisputably the acquired land is situated in the heart of Dharmanagar town and all business establishments, important Government offices, entertainment centres, etc. are located almost around the acquired land. It is also brought on record that the acquired land was not used for commercial purpose at the time of acquisition but was used as a bastu viti class of land. The claimants contended that the plot Nos. 6598 and 6599 were recorded as pukur par and pukur(bank of pond and pond) in the record of rights but it was actually filled up and was viti class of land at the time of acquisition. Simply classification of land entered in the record of rights was not changed Such contention of the claimants was not disputed. We may arrive at a conclusion that the entire acquired land was bastu viti class of land at the time of acquisition. The exact width of the acquired land touching DNV Road has not been brought on record. Exbts. 8 and 9, the maps clearly indicate that the width of the land(east to west) by the side of the DNV Road is smaller than the length of the land(north to south) and the length is likely to be five times than the width. Though the roadside land was smaller in size but since it was a compact area of 1 (one) acre having DNV Road in the front side it may be easily held that the entire land could be used for commercial as well as residential and other purposes.

17. Admittedly, in the crossing of DNV Road and Vivekananda Road there are shops and other establishments and it is within the market area which is about 300 cubits away from the acquired land. The exemplar, Exbt. 11 is located just in the comer of

DNV Road and Vivekananda Road touching DNV Road in the southern side, i.e. in the same line of the acquired land. The exemplar, Exbt. 13 is located at a little southern side of Vivekananda Road from the crossing. Both the exemplars are dokan viti class of land. The exemplars, Exbts. A and B are located almost at a same distance from the acquired land and located at the southern direction of the acquired land. Indisputably there is no big road by the side of exemplars, A & B, whereas exemplars 11 and 13 are located by the side of big road like that of the acquired land. All the sale instances, i.e. the four exemplars, brought on record are found to be genuine since genuinity was not disputed by either side. The transaction in all the exemplars held before acquisition.

18. Let us now have a glimpse to the rates appeared in those exemplars.

18.1. Exemplar 11 has a special character. It was for 0.018 acre of land has a two storied building thereon and a dukan viti class of land (shop). The seller and purchaser presented the sale deed showing a value of Rs. 1,00,000/- (one lakh). Exbt. 12 shows that the price shown in the deed (Exbt. 1l) was not accepted by the Collector and a proceeding u/s 47A of the Indian Stamp Act was initiated by the DM & Collector and vide order dated 27.03.1996 (Exbt. 12) the Collector determined the price of land with building at Rs. 7,00,000/- (rupees seven lakh) and pursuant to that order the sale deed was registered on payment of stamp duty. Since the price of 0.018 acre of land was determined as Rs. 7,00,000/- (rupees seven lakh), price of per kani of land stands at Rs. 1,55,55,556/- (rupees one crore fifty five lakh fifty five thousand five hundred fifty six), i.e. per acre stands at Rs. 3,88,88,889/- (rupees three crore eighty eight lakh eighty eight thousand eight hundred eighty nine).

18.2. The exemplar, Exbt. 13 is a sale deed for an area of 0.009 acre of shop-hut class of land with a measurement of five cubits in the road side and twenty eight cubits in length and the said transaction held for a price of Rs. 90,000/- (rupees ninety thousand). The rate, therefore stood to Rs. 40,00,000/- (rupees forty lakh) per kani and one crore per acre.

18.3. The Exemplar, Exbt. A shows that it was a sale transaction of 0.023 acres of bastu/shop class of land at a price of Rs. 90,000/- (rupees ninety thousand), i.e. Rs. 15,65,217/- (rupees fifteen lakh sixty five thousand two hundred seventeen) per kani which corresponds to Rs. 39,13,043/- (rupees thirty nine lakh thirteen thousand forty three) per acre.

18.4. The Exemplar, Exbt. B shows that it was a sale transaction of 0.565(56 1/2 decimal) of bastu/shop/viti class of land and was sold at a price of Rs. 1,50,000/- (rupees one lakh fifty thousand) i.e. Rs. 10,61,947/- (rupees ten lakh sixty one thousand nine hundred forty seven) per kani which corresponds to Rs. 26,54,867/- (rupees twenty six lakh fifty four thousand eight hundred sixty seven) per acre.

19. All the four sale transactions reflecting different prices definitely based on locational advantage in the market area of Dharmanagar town.

20. The Supreme Court in the case of Mehrawal Khewaji Trust (Regd) v. State Of Punjab & Ors. reported in : AIR 2012 SC 2721 has held that where there are several exemplars with reference to similar lands it is a general rule that the highest of the exemplar should be accepted for determination of market price of the acquired land. The principle may be applied here in this case subject to a reasonable deduction. In para 15 of the judgment the Apex Court observed--

15. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale-deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale-deeds placed before the authority/court for fixing fair compensation.

21. While considering the exemplars, I think it would be appropriate to consider the valuation certificate issued by Sub- Divisional Magistrate, Dharmanagar in respect of two plots of the acquired land. The valuation certificate has been proved as Exbt. 10 issued on 27.08.1967, i.e. more than ten years before the acquisition. The certificate shows a valuation of Rs. 25,00,000/- (rupees twenty five lakh) per kani. It is common knowledge that the price of land in the urban area has been increasing arithmetically and after ten years the valuation has been increased almost hundred percent. In that event, if Exbt. 10 is taken to consideration the two front-road side plots at the date of acquisition would be valued at least Rs. 50,00,000/- (rupees fifty lakh) per kani. However, for the backside plots valuation would have been less than the front side plots.

22. Let us now have a glimpse to the ''plus minus'' factors of the acquired land.

23. Keeping in mind the above plus and minus factors and particularly taking into consideration the exemplars let us now determine how far those exemplars may be used for determination of the market price of the acquired land at the date of Notification u/s 4 of the LA Act. Admittedly, all the exemplars were of smaller plots of land with shop huts, whereas the acquired land was comparatively bigger in size, i.e. one acre in a compact area. It is a settled proposition of law that when large tracks of land are acquired the transactions in respect of smaller plots do not offer a proper guideline to ascertain the market price. There is no straightjacket formula that the exemplars of smaller plots of land cannot be taken into consideration at all.

The exemplars of smaller plots of land also may be taken into consideration subject to a reasonable deduction therefrom. The exact price of exemplars of smaller plots of land cannot be readily applied in case of bigger plots of land. The Supreme Court in the case of Ravinder Narain (supra) in paragraph 7 has observed--

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.

24. In the case of Special Land Acquisition Officer & Anr. v. M.K. Rafiq Saheb reported in (2011) 7 SCC 714 , the Apex Court has observed--

20. It has been held in the case of Land Acquisition Officer v. Nookala Rajamallu: (2003) 12 SCC 334 that: (SCC p.337, paras 6-7)

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 v. Bhuban Chandra Dutta: (1972) 4 SCC 236 , Prithvi Rai Taneja v. State of M.P. : (1977) 1 SCC 684 and Kausalya Devi Bogra v. Land Acquisition Officer: (1984) 2 SCC 324 .

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.

21. In the case of Bhagwathula Samanna v. Special Tahsildar and Land Acquisition Officer: (1991) 4 SCC 506, it was held: 9 SCC p.511, para 13)

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.

22. In Land Acquisition Officer v. L. Kamalamma: (1998) 2 SCC 385 , this Court held as under: (SCC p.387, para 6)

6....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.

23. Further, it has also been held in Basavva and Ors. v. Land Acquisition Officer: (1996) 9 SCC 640 that the court has to consider whether sales relating to smaller pieces of land are genuine and reliable and whether they are in respect of comparable lands. In case the said requirements are met, sufficient deduction should be made to arrive at a just and fair market value of large tracks of land. Further, the court stated that the time lag for real development and the waiting period for development were also relevant factors to be considered in determining compensation. The court added that each case depended upon its own facts. In the said case, based on the particular facts and circumstances, this Court made a total deduction of 65% in determination of compensation.

24. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracks of land. The sale of land containing large tracks are generally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction.

25. In the case of Viluben Jhalejar Contractor v. State of Gujarat, as reported in (2005) 4 SCC 789 , the Apex Court held:

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-�-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

22. Certain peculiar features of this case may, at this juncture, be noticed. Due to construction of Kadana Dam and due to water logging causing submergence, the development of Pratappura even according to the Claimants had practically

stopped. Development shifted to the area known as Godhra Bhagal. The finding of the Reference Court to the effect that the acquired lands had potentiality for more development is, thus, not correct.

23. A river known as Suki intervened between the Santrampur town and Godhra Bhagal. In a case of this nature, it is difficult to evolve a principle which would apply to all situations. Some amount of rational guess work, in our opinion, is inevitable.

24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In Basavva v. Spl. Land Acquisition Officer: (1996) 9 SCC 640 , deduction to the extent of 65% was made towards development charges.

26. In the case of Administrator General of West Bengal v. Collector, Varanasi, reported in (1988) 2 SCC 150 , the Apex Court held:

12. It is trite proposition that prices fetched for small plots can not form safe-bases for valuation of large tracts of land as the two are not comparable properties. (See Collector of Lakhimpur v. B.C. Dutta: : AIR 1971 SC 2015 ; Mirza Nausherwan Khan v. Collector (Land Acquisition), Hyderabad : (1975) 2 SCR 184 ; Padma Uppal v. State of Punjab: (1977) 1 SCR 329 ; Smt. Kaushalya Devi Bogra v. Land Acquisition Officer Aurangabad: (1984) 2 SCR 900 . The principle that evidence of market-value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires mat prices fetched for small developed plots can not directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building-lots that could be laid-out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant in such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying-out roads, drains, sewers, water and electricity lines, and the interest on the outlays for, the period of deferment of the realisation of the price; the profits on the venture etc. are to be made.
In Sahib Singh Kalha and Ors. v. Amritsar Improvement Trust: (1982) 1 SCC 940 , this Court indicated that deductions for land required for roads and other developmental expenses can, together, come-up to as much as 53%. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the ''retail'' price of land and the latter the ''wholesale'' price.

14. It appears to us that even if the value at Rs. 1250 as on 27.8.1958 indicated by Ext. 2 is adopted and something is added thereto for the possible appreciation for the period till the preliminary notification, also taking into account the trend of

appreciation in the prices in the area as indicated by Ext. 24 and the value of small developed sites is estimated somewhere between Rs. 1400 and Rs. 1600 per biswa or Rs. 450/- to Rs. 500/- per decimal, yet, the valuation made in the present case does not call for or justify any upward revision at all. There is a simple way of cross checking these results. The value of small plots --Rs. 500 per decimal as now estimated - represents what may be called the "retail" price of the land. What is to be estimated therefrom is the "wholesale" price of land. In Bombay Improvement Trust v. Mervanji Manekji Mistry: : AIR 1926 Bom 420 , Macleod CJ suggested a simple rule:

Valuation cases must be dealt with just as much from the point of view of the hypothetical purchase as of the claimant. The valuation itself must often be more or less a matter of guesswork. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give.,..

...I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than far simpler methods. But, in any event, no harm can be done by testing a conclusion arrived at in one way by a conclusion arrived at in another....

...A very simple method of valuing land wholesale from retail prices is to take anything between one and half one-third, according to circumstances of the expected gross valuation, as the wholesale price....

(emphasis supplied)

27. In the case of Kasturi & Ors. v. State of Haryana, reported in (2003) 1 SCC 354 , the Apex Court held:

8. This Court in Administrator General of W.B. v. Collector. Varanasi: (1988) 2 SCC 150 , referring to earlier decisions has held that prices fetched for small plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Para 12 of the said judgment reads: (SCC pp. 157-58, para 12)

12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. (See Collector of Lakhimpur v. Bhuban Chandra Dutta: (1972) 4 SCC 236 : Mirza Nausherwan Khan v. Collector (Land Acquisition). Hyderabad: (1975) 1 SCC 238 : Padma Uppal v. State of Punjab : (1977) 1 SCC 330 : Kausalya Devi Bogra v. Land Acquisition Officer, Aurangabad: (1984) 2 SCC 324) . The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its property perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the

basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses or development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest of the cut lays for the period of deferment of the realization of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha v. Amritsar Improvement Trust: (1982) 1 SCC 419 , this Court-indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the ''retail'' price of the land the latter the ''wholesale'' price.

9. In Gulzar Singh v. State of Punjab and Ors. (1993) 4 SCC 245 , referring to the case of Administrator of West Bengal (supra) and other cases, this Court upheld the deduction of 1/3rd of the undeveloped land towards developmental charges. In that case, 90 acres of undeveloped land was acquired which required development by laying road, parks, drainages, lighting and other civic amenities. It may also be noted that in the said judgment, this Court distinguished the case of Bhagwathula Samanna (supra) on which the appellants strongly relied.

10. Yet again in K. Vasundara Devi v. Revenue Divisional Officer (LAO): (1995) 5 SCC 426 this Court reiterated that when genuine and reliable sale deeds of small extents were considered to determine market value, the same will not form sole basis to determine market value of large tracts of land. Sufficient deduction should be made to arrive at a just and fair market value of large tracts of land. Again, in this case also Bhagwathula Samanna(supra) was distinguished while upholding the deduction as to developmental charges.

11. This Court again in Special Land Acquisition Officer v. V.T. Velu: (1996) 2 SCC 538 in a similar situation as in the case on hand has held that at least 1/3rd of the land acquired is to be set apart for road purpose, developmental purpose and other civic amenities. It is also observed: (SCC p.540, para 6)

the mere fact that there is a connection road to the land, by itself is not a correct principle of law in refusing to deduct towards development charges".

(emphasis supplied)

12. In U.P. Jal Nigam v. Kalra Properties (P) Ltd.: (1996) 3 SCC 124 , this Court has stated thus:--

Therefore, it should be determined only on the basis of yardage. If the principle of determination of compensation on yardage basis is adopted, it is equally settled law that at least 1/3rd of the land required should be deducted towards developmental

purposes, namely, providing roads, electricity, drainage facilities and other betterment development.

13. A Bench of three learned Judges of this Court, in similar circumstances in U.P. Avas Evam Vikas Parishad v. Jainul Islam: (1998) 2 SCC 467 upheld the deduction of 1/3 of the price towards cost of development for the housing scheme involving construction of roads and other amenities after agreeing with the earlier decisions of this Court even after referring to the case of Bhagwathula Samanna aforementioned. In the said judgment, it is observed that: (SCC p.490, para 33)

The High Court has also held that the exemplar submitted by the Parishad could not be accepted for the reason that therein it was categorically provided that the purchaser would take the risk of statutory prohibitions, if any, on the transfer and that the vendor would not be responsible and that for covering the risk, the purchaser will normally demand reduction in the rate. Referring to the exemplars produced by the landowners the High Court observed that in respect of land covered in most of the exemplars no evidence of any deficiency had been brought to its notice. The High Court has pointed out that admittedly, the acquired land was not developed and it may only have the potentiality of development to be used as building sites and while facilities for drainage, electricity supply, water supply and pucca road are available in those developed areas, the land which is acquired measuring more than 200 acres does not have such advantages. The High Court was however, of the view that as the acquired land is within the municipal limits and is surrounded by developed area with buildings and pucca roads and other facilities and has the advantage of road passing by the side, it has potentiality of developing though it cannot be treated to have similar advantages as the land in the developed areas. The High court has also taken note of the fact that the entire acquired area was used for the purpose of agriculture even in 1983 when the surrounding areas had already developed. In the light of the aforesaid circumstances, the High Court held that the rates available for land in developed area could not be adopted for determination of market value of the acquired land though they can be used for guidance to determine the market value by taking note of other circumstances as available on record.

.....

17. In the present case the situation is entirely different. The area acquired is not a small area; it was not developed; may be it had some advantages; a small portion of the large tract was abutting the main road; it was also not the case that any smaller area within the large tract of land acquired was fully developed having all facilities as in the case of Bhagwathula Samanna (supra). The appellants herein did not establish that the entire area of 84 acres of land acquired was fully developed having all the facilities such as roads, drains, sewers, water, electricity lines and civic amenities. In order to convert the land into plots for the purpose of construction of residential and commercial buildings certain area was to be earmarked for the

abovementioned purposes in accordance with the law governing in the matter of creating layouts in addition to incurring of expenditure for the development area. Hence the claim of the appellants that there should have been no deduction out of the compensation amount determined for the entire area acquired is unsustainable. May be the acquired land with potentiality for construction of residential and commercial buildings had some advantages, which aspect is taken note of by the High Court in giving cut of only 20% as against 1/3rd normal deduction.

28. In the case of Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. v. Nookala Rajamallu & Ors., reported in (2003) 12 SCC 334, the Apex Court 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 criteria. Reference in this context may be made to few decisions of this Court in The Collector of Lakhimour v. : (1972) 4 SCC 236 : Prithvi Rai Taneja v. State of M.P.: (1977) 1 SCC 684 and Kausalya Devi Bogra v. Land Acquisition Officer: (1984) 2 SCC 324 .

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.

29. In the case of Andhra Pradesh Housing Board v. K. Manohar Reddy & Ors., reported in (2010) 12 SCC 707 , the Supreme Court referring to its earlier decisions reported in Rishi Pal Singh v. Meerut Development Authority: (2004) 8 SCC 270 , Administrator General of W.B. v. Collector: (1988) 2 SCC 150 , Brig. Sahib Singh Kalha v. Amritsar Improvement Trust: (1982) 1 SCC 419 , Union of India & Am v. Ram Phool: (2003) 10 SCC 166, Kasturi v. State of Haryana: (2003) I SCC 354 , Shaji Kuriakose v. Indian Oil Corpn. Ltd.: (2001) 7 SCC 650, Lal Chand v. Union of India: (2009) 15 SCC 769 has observed--

This Court in a catena of decisions has laid down that when a large tract of land is acquired and sale instances produced for small plots as exemplar, the best course for the court to arrive at a reasonable and fare valuation is to deduct a reasonable percentage from the valuation shown in the exemplar land and on the basis thereof to arrive at a just and fair valuation

30. In the case of Chandrashekar (D) & Ors. v. Land Acquisition Officer & Anr., reported in : 2012 AIR SCW 73 , the Supreme Court in para 18 of the judgment observed:

18. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no

discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33-1/3 percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33-1/3 percent, the two components under the head of "development" put together, should not exceed the upper benchmark.

31. It has now been well settled that sale instances of smaller plots of land also may be taken into consideration for determining the price of acquired land of a comparatively bigger plot. To arrive at a reasonable benchmark a reduction should be made and the upper benchmark should be upto 75 percent. In the exemplars at hand, all the sale instances produced by the parties relate to dukan viti as well as bastu, etc. class of lands and out of those exemplars, Exbt. 11 carries the highest which is the nearest plot of the acquired land. But it appears that the said plot of land of Exbt. 11 is located in the crossing of two main roads of the town with a double storied building used as shop. So, to apply sale instance of Exbt. 11 a reasonable deduction has to be made. Since Exbt. 11 is located in the crossing of two roads and is a double storied building with running shops, and since the acquired land though situated by the side of the same road at a distance of 300 cubits away but was used as a bastu viti class of land and since it is a bigger plot and the backside land cannot fetch the similar price to that of the front side plots of land, I think 75 percent deduction from the price of the exemplar to determine the reasonable market price at the date of acquisition may be appropriate. If 75% is deducted from the price ascertained in respect of Exbt. 11 exemplar, the price arrives at Rs. 38,88,889/- (rupees thirty eight lakh eighty eight thousand eight hundred eighty nine) per kani. As already held hereinbefore Exbt. 10 also having taking into consideration giving a price of around Rs. 50,00,000/- (rupees fifty lakh) per kani, I think a valuation of Rs. 38,88,889/- (rupees thirty eight lakh eighty eight thousand eight hundred eighty nine) per kani of the acquired land at the date of acquisition would be the appropriate market price which the claimant-appellants were entitled to get

Further, as I find, the total land of plot No. 6601 has not been acquired in full. It is the extreme southern side plot i.e. back side plot. Out of total area of 0.210 acre of that plot only 0.058 acre has been acquired and the rest has been left over which has become useless to the claimants for all practical purpose. For severance of that plot, I think the claimants shall get compensation for the residue land at the rate of 50% of the rate as determined above.

32. Accordingly, I determine the compensation of the acquired land at the date of acquisition at a rate of Rs. 38,88,889/- (rupees thirty eight lakh eighty eight thousand eight hundred eighty nine) per kani and the respondents are to pay compensation to the claimants at such rate with all other benefits according to law. For the severed part of plot No. 6601 the respondents shall pay compensation @ 50% of the rate determined above. Send back the LC records along with a copy of the judgment.