

(2006) 02 AHC CK 0119

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 3812 of 1999

Syed Hasan Shaukat Abidi

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision: Feb. 20, 2006

Hon'ble Judges: R.K.Agrawal, J and Saroj Bala, J

Final Decision: Dismissed

Judgement

Mrs. Saroj Bala, J.

This writ petition under Article 226 of the Constitution of India, has been filed for issuance of a writ, order or direction in the nature of certiorari for quashing the impugned order dated December 24, 1998 (Annexure1 to the writ petition) including the valuer's report. The petitioner also seeks a writ, order or direction in the nature of mandamus commanding the respondents not to auction the petrol pump in question without proper valuation of the complex including solatium, goodwill and interest.

The controversy involved in the present writ petition arises in the following background:

2. The petitioner submitted an application on 13101994 to the Minister for Petroleum and Natural Gas, Government of India for allotment of a retail outlet. After proper scrutiny, the application was put up for orders before the Minister for Petroleum and Natural Gas. The Government Order awarding a retail outlet dealership at Fatehpur (80 km.) was communicated to the Director (Marketing), Indian Oil Corporation Ltd., Bombay, vide letter dated January 10th, 1995 (Annexure3 to the writ petition). In pursuance of the said letter, a letter of intent dated 1431995 was issued to the petitioner. The petitioner purchased land measuring 2375 sq. ft. from M/s. Devi Prasad Gupta in village Bakbanda, Tehsil and District Fatehpur for a consideration of Rs. 1,43,000/ and the same was leased out to Indian Oil Corporation. According to the petitioner the said land is adjacent to G.T. Road passing through Fatehpur and, the level of the land being quite low he got it

raised by filling it with heavy mud upto 12 ft and spent a huge amount in the construction of godown, room toilets and other buildings as required under the rules and guidelines of the Indian Oil Corporation for installation of a retail outlet. The petitioner states that due to constructions and development of the land its value enhanced. Common Cause, a Registered Society filed a writ petition before the Supreme Court against the orders of allotment of retail outlet dealership and petrol pumps to the petitioner and fourteen other persons. The allotments of petrol pumps/retail outlets of fifteen persons, including the petitioner, were cancelled by the apex Court vide judgment and order dated 2591996 (reported in AIR 1996 SC 3538). The apex Court while quashing the allotment orders directed the Government of India/Oil Corporation to take over the petrol pump premises from the petitioner and other persons within 10 days. The Oil Corporation was directed to get the market value of the site and construction determined in a fair and just manner. Each of the commissioned petrol pump taken over by the Government/Oil Corporation concerned and the built up area alongwith the site was to be disposed of by way of public auction. The original allottees were eligible to participate in the auction. A notice was published for the auction of the retail outlet of petitioner in pursuance of the direction of the Supreme Court showing the reserved price as Rs. 15.23 lacs. The valuation reports were submitted by the valuers at the request of respondent No. 5. The valuer's report (Annexure8 to the writ petition) described the land as 1591 sq. meter and its market value at the rate of Rs. 550/ per sq. M. was assessed at Rs. 8,75,050/ and the total cost of property was assessed at Rs. 18,36,600/. The petitioner states that, according to the report (Annexure9 to the writ petition) area of land was 2375 square yards and the land was valued at Rs. 2,42,500/ and the total market value, including the constructions, was assessed at Rs. 13.59 lacs. The contention of the petitioner is that the Government for stamp duty purpose having fixed the rate of land at Rs. 1,000/ per sq. metre, the market value assessed by the valuers is arbitrary and erroneous. The petitioner filed Writ Petition No. 33237 of 1998 for quashing the auction notice published in the newspapers Hindustan Times, New Delhi and The Times of India, Lucknow. The said writ petition was allowed by an order dated 24111998 and the petitioner was directed to appear personally or through his representative and to file objections before the respondent No. 4, i.e. Managing Director (Marketing Division), Indian Oil Corporation. The objections were to be disposed of by the respondent No. 4 preferably within two weeks by a reasoned order. In compliance of the said order the petitioner filed objections. The fresh reports from the valuers J.N. Dubey and Associates and S.S. Dash and Associates were called for by the Chief Divisional Manager, the respondent No. 5. After taking into consideration the valuer's reports, objections and documents submitted by the petitioner, the value of site and built up area of the petitioner's retail outlet has been fixed at Rs. 12,84,917/. The petitioner being aggrieved with the valuation has challenged the impugned order on the grounds that J.N. Dubey and Associates arbitrarily reduced the market value assessed in the earlier report without assigning any reason. According to the petitioner the constructions with

installation of retail outlet have enhanced the value of the land. The petitioner states that the installation of petrol pump is purely a commercial activity and the land covered by it is to be valued on the basis of commercial potential. According to the petitioner the date on which valuation is to be determined, the complex was a commercial building running in full swing situated at G.T. Road, therefore, the value of the land was not less than Rs. 1,000/ per square yard. The contention of the petitioner is that the proceedings, initiated by the respondents in compliance of the judgment of the apex Court, are in the nature of land acquisition proceedings and principles of grant of solatium and interest are applicable. The petitioner has stated that goodwill is a valuable asset in commercial transactions and for goodwill some value is to be added. The contention of the petitioner is that there is nothing wrong in taking circle rate as reasonable market value in the present case. According to the petitioner the directions of the apex Court for fixation of just and fair market value have been flouted by the respondent No. 5 while passing the impugned order. The petitioner states that the retail outlet in question, being situated near Polytechnique, Civil Court, Circuit House and other commercial and industrial units, its valuation could not be less than Rs. 34.24 lacs at the relevant time and not less than Rs. 43.5 lacs at present. The petitioner states that the authority concerned has not taken into consideration this aspect that the valuer has illegally left out 200 sq. M. area, while submitting his report. The petitioner claims that he not being responsible for delay in auction, is entitled to maximum rate of rent, i.e. 20% per annum for the period during which he was deprived of the use of the petrol pump. The petitioner asserts that the valuer's report, on which the impugned order is grounded, is without any basis. According to the petitioner he was not offered an opportunity to bring his valuer on the spot at the time of inspection nor the report of his valuer has been taken into consideration. The contention of the petitioner is that valuation assessed by the authority concerned is inadequate and the impugned order is violative of Articles 14, 19 (1) (g) and 300A of the Constitution of India. The petitioner has stated that the respondents and their valuers have completely ignored the directions given by this Court in its judgment and order dated 24111998. According to the petitioner the respondent No. 5, without taking into consideration the material placed before him, has passed the impugned order. According to the petitioner the reduction in market value after the setting aside of previous report is unreasonable. The petitioner states that B.C. Mittal and Associates had submitted the report dated 31121998 valuing the property in question around Rs. 43 lacs, which has not been taken into consideration by the respondent No. 5. 3. The counteraffidavit of Sri G.D.S. Sodhi, Assistant Manager, Indian Oil Corporation has been filed on behalf of the respondent Nos. 2 to 5. The contention of the respondents is that the advertisement for auction was issued pursuant to the directions of the apex Court, Delhi High Court and this Court. The contention of the respondents is that the fair market value has been fixed on the basis of the reports submitted by the two Government approved valuers. The respondents have stated

that for retail outlet, dealership holder is required to develop the land and construct the superstructure and outlet. The respondents have contended that underground tanks and dispensing pumps alone are provided by the corporation. The contention of the respondents is that the weighing machine and underground tanks are the property of the Corporation. According to the respondents the circle rates have been issued by the District Magistrate for the purpose of calculation of stamp duty and registration charges for the transactions of sale and transfer of immovable property. The respondents have stated that the valuer's have taken into account the entire piece of land measuring 2375 square yards. The respondents stated that the area in front of retail outlet, bathrooms, unroofed sheds are not the part of the licensed premises, but value of bathrooms and sheds, has been taken into account while assessing the market value of the retail outlet in question. Development cost including earth filling, brick patching, boundary walls fixtures etc. have been taken into account. The respondents have contended that fresh valuation was done by two approved valuers; namely, J.N. Dubey and Associates and S.S. Dash and Associates and the report valuing the retail outlet in question on the higher side has been accepted. The contention of the respondents is that B.C. Mittal and Associates having, exaggeratedly valued the retail outlet, his report was not acted upon. The respondents have contended that due information was given to the petitioner to remain present alongwith his valuers on 10121998, but he did not bring his valuer. The contention of the respondents is that the valuation of the retail outlet has been determined in a just and fair manner.

4. The petitioner has filed rejoinder affidavit against the counteraffidavit of respondent Nos. 2 to 5 stating that the total area of the land is 1804 square metre out of which 1604 square metre was leased out to the Indian Oil Corporation but the remaining 200 square metre land and constructions, connected with retail outlet were being used for the purpose of retail outlet and the same has been taken over by the Indian Oil Corporation under the orders of the Supreme Court dated September 25th, 1996. The contention of the petitioner is that 200 square metres area situated on the backside of licensed area is part and parcel of the retail outlet. According to the petitioner, M/s. Dubey and Associates in the report dated 19121999 has given lesser area leaving the back portion; whereas M/s. R.S. Dash has found the total area as 1778.94 sq. metre. According to the petitioner, both the valuers have not included the valuation of the back portion of the retail outlet in their reports. The petitioner states that there is a difference in the valuation assessed by the valuers and the reserve price mentioned in the advertisement dated 1221999. The petitioner claims that the land in question is not agricultural land and after the installation of commercial retail outlet it cannot be treated as agricultural land. The contention of the petitioner is that in the earlier advertisement for public auction, which was scheduled to be held on 10101998 the total area for sale was shown as 2375 square yards and M/s. J.N. Dubey and Associates in the report dated 24101996 gave out the area of land as 2375 square yards, but in the report dated 19121998

the area of land has been shown as 1906 square yards and the additional land as 222.56 square yards. According to the petitioner, the earlier valuation for 2375 sq. yards was Rs. 1,35,990/ but in the valuation report dated 19121998 the valuation of land has been given as Rs. 12,84,917/ for licensed area 1906 sq. yards and additional land measuring 222.56 sq. yards with constructions at Rs. 1.70 lacs and in this manner the total valuation at Rs. 14,54,917/. The petitioner has stated that the Indian Oil Corporation has mentioned the reserve price for public auction of various retail outlets and S.K.O. dealerships on the higher side. The petitioner states that the valuers of the respondents have taken the rate of agricultural land, though it is a commercial piece of land with a filling pump station. According to the petitioner the valuers are not competent to submit valuation report about the agricultural land. The petitioner has stated that retail outlet having been constructed over 1804 sq. metre land, the entire area with all constructions and fixtures should have been valued. The contention of the petitioner is that he has been discriminated as the other valuers of Indian Oil Corporation have valued the retail outlets at Rai Bareilly and other Districts at a higher price. According to the petitioner the adjoining land situated towards the western side of retail outlet of the petitioner was sold for Rs. 3,500/ per sq. M. vide registered sale deed dated 2991999.

5. The petitioner has filed supplementary affidavit stating that in the advertisement for auction of various retail outlets and L.P.G. distributorships, the reserve price has been fixed on higher side as evidenced from Annexures 1, 2, 3, 4, 5 and 6, but the reserve price of petitioner's retail outlet has been shown as Rs. 15.23 lacs.

6. We have heard Sri V.B. Upadhyay, learned senior Counsel assisted by Sri S.F.A. Naqvi, Advocate, appearing on behalf of the petitioner and Sri Prakash Padia, learned Counsel for the respondents and have thoroughly scrutinized the record of the writ petition.

7. The learned Counsel for the petitioner argued that the cut off date was October 23, 1996 and at that time the circle rate being Rs. 1,000/ per sq. M., the market value of the land should have been assessed at the said rate. The learned Counsel for the petitioner submitted that the petrol retail outlet being situated on State highway, the valuation should have been assessed at per sq. M. and not at the rate of per Bigha. The learned Counsel canvassed that the expert valuers of the respondents have adopted double standard while valuing the petrol outlet of the petitioner. It was argued that revaluation can never be below the previous market value assessed by the experts. The learned Counsel submitted that the value of the property does not depreciate. The learned Counsel for the petitioner vehemently submitted that two different norms and methods for valuation cannot be adopted and uniformity is to be maintained. The learned Counsel pointed out that the valuer, M/s. United Builders had valued the land, constructions and fixtures at Rs. 18,36,600/ whereas M/s. J.N. Dubey and Associates have valued it at Rs. 13,59,900/ and both these reports were set aside by this Court vide order dated November 24, 1998

passed in Writ Petition No. 33237 of 1998, Sayed Hasan Shaukat Abidi v. The Union of India & Ors. The learned Counsel vehemently urged that this Court in the said writ petition had directed the respondents to get the valuation of land and building determined afresh in a fair and just manner but the valuers have assessed the market value of the site and constructions at a lesser rate than the previous valuation. The contention of the learned Counsel for the petitioner was that the reserved price of land and building of other petrol pumps/retail outlet dealerships have been mentioned at a higher rate in the advertisement published for public auction. The learned Counsel for the petitioner urged that the petitioner has been discriminated by the respondents as the reserved price of his land and building of his retail outlet has been mentioned in the auction notice as Rs. 15.23 lacs. The learned Counsel for the petitioner submitted that the report of his valuer M/s. B.C. Mittal and Associates has not been taken into consideration by the authority concerned while passing the impugned order. The submission of the learned Counsel for the petitioner was that petitioner's valuer had valued the land and constructions at Rs. 22,27,100/- before it was taken over by the Indian Oil Corporation. The argument of the learned Counsel for the petitioner was that the retail outlet, other constructions and fixtures connected with it exist over the entire plot of land measuring 2375 sq. yard, but the valuers of the respondents have left out 200 sq. M. land and constructions standing thereon while submitting the valuation report. The learned Counsel for the petitioner pointed out that a sale deed of land measuring 9.30 sq. M. situated in the same village and area was sold at the rate of Rs. 3,500/- per sq. M. vide sale deed dated September 29, 1999 (Annexure No. 4 to R.A.). The learned Counsel for the petitioner submitted that the apex Court having directed to determine the fair and just market value, the petitioner is entitled to the benefit of solatium and interest from 1111996 as admissible in the Land Acquisition Cases. The submission of the learned Counsel for the petitioner was that the valuation report of M/s. J.N. Dubey and Associates having been set aside by the order dated 24111998, he has submitted that fresh report underestimating the land and construction being prejudiced with the petitioner. The learned Counsel for the petitioner argued that the land in question has to be valued at commercial rate because commercial activity of sale of petroleum products is being transacted from the said premises and the premises in question is being used for commercial purpose. The learned Counsel for the petitioner pointed out that the disputed land and constructions are situated within the limits of Nagar Palika Parishad and District Fatehpur is at a distance of three km. from the said place. It was submitted that the disputed land and constructions are situated on the main G.T. Road and the Polytechnic, Civil Court and Circuit House are at a short distance from the said place. The learned Counsel for the respondents submitted that the land in question was purchased by the petitioner for a consideration of Rs. 1,43,000/- in June, 1995 and the possession of the land and constructions was taken over by the Corporation on 8111996 in compliance of the directions of the apex Court. It was argued that before

taking over possession of the premises its valuation was got assessed by the expert valuers namely, M/s. United Builders and M/s. J.N. Dubey and Associates. In compliance of the order of this Court passed in Writ Petition No. 33237 of 1998 the market value of the land and constructions of the petitioner's retail outlet as got assessed again by the valuers namely J.N. Dubey and Associates and S.S. Dash and Associates. The learned Counsel for the petitioner submitted that the petitioner's retail outlet being a B. site outlet, he was required to develop and build the outlet and superstructures for operating the sale of petroleum products. The submission of the learned Counsel for the respondents was that underground tanks, dispensing pumps and weighing machine were provided by the Corporation and they are its property. It was submitted that the Circle rate issued by the District Magistrate is fixed for the purpose of calculation of stamp duty and registration charges in respect of sale and other transfer deeds relating to immovable property. The learned Counsel for the respondents urged that the value assessed by the valuers is the just and fair market value of the land and constructions of the petitioner.

9. Indubitably, a letter of intent dated 1431995 (Annexure 4 to the writ petition) for allotment of retail outlet dealership at Bakbanda, District Fatehpur was issued in favour of the petitioner by the Indian Oil Corporation Ltd., Northern Region World Trade Centre, Babar Road, New Delhi on the recommendation of Union Minister of Petroleum and Natural Gas. In June, 1995 the petitioner purchased the land measuring 2375 sq. yard in village Bakbanda, District Fatehpur situated outside the municipal limits for a consideration of Rs. 1,43,000/ for the installation of retail outlet of petrol and diesel. The petitioner developed the site by raising the level of land. The constructions for the purpose of establishing the retail outlet were made over the said land. Common Cause, a Registered Society filed Writ Petition No. 26 of 1995 against the Union of India and others for the cancellation of allotments of petrol pumps/retail outlet dealerships of the petitioner and fourteen others before the Supreme Court. The apex Court vide judgment and order dated 2591996 (AIR 1996 SC 3538) quashing the orders of allotment of retail outlet dealerships/petrol pumps of the petitioner and fourteen others, in para 27 of the decision directed as hereunder:

- ❖(1) The orders reproduced in earlier part of this judgment allotting petrol pumps to the abovementioned fifteen persons are hereby quashed.
- (2) The allocation, allotment of the petrol pumps/retail outlet dealerships by the Government of India, Indian Oil Corporation Ltd. or any other corporation in the names of the above said fifteen persons shall stand cancelled with immediate effect.
- (3) Most of these 15 persons have not as yet commissioned the petrol pumps. Those who have commissioned the petrol pumps and are running the same shall stop operating the petrol pumps and running the said business with effect from October 31, 1996. The Government of India/Oil Corporation (concerned) shall take over the petrol pumps premises from these persons within ten days thereafter. The Oil

Corporation shall have the market value of the site and the construction thereon, determined in a fair and just manner before October 31, 1996.

(4) Each of the commissioned petrol pumps taken over by the Government/Oil Corporation (concerned) and the buildup area alongwith the site (whether leaseholder owned by the original allottee) shall be disposed of by way of public auction. The original allottee may also participate in the auction. The petrol pump shall be allotted to the highest bidder. The said allottee shall run the petrol pump on the original terms and conditions. He shall have all the rights in respect of the site and construction thereon as the original allottee had on the date of auction. Out of the auction money the value of the site and the construction as determined by the oil corporation shall be paid to the original allottee and the remaining money shall go to the Government coffer. On receipt of the said amount the original allottee shall cease to have any right or interest in the site and the construction thereon. If the successful bidder is the original allottee, he shall pay the difference between the auction money and the value of the site and construction as determined by the Oil Corporation.◆

10. In compliance of the directions of the apex Court the respondent No. 5 got the fair market value of the site and constructions assessed by the valuers United Builders Moran Tola, Fetahpur and M/s. J.N. Dubey and Associates who submitted their reports on 23101996 and 24101996 respectively (Annexures 9 and 10 to the writ petition). The valuer M/s. B.C. Mittal and Associates was engaged by the petitioner and he assessed the market value of land, constructions and fixtures at Rs. 22,27,100/ vide report dated 29101996 (Annexure 7 to the writ petition). On October 10, 1998 an advertisement for the auction of land, construction and fixtures of the retail outlet of petitioner was published in pursuance of the directions of the apex Court. The petitioner filed Writ Petition No. 33237 of 1998 to quash the said auction notice. This Court vide order dated 24111998 allowing the petition quashed the impugned auction notice and directed the petitioner to make a representation together with objections supported with material before the respondent which was to be decided preferably within two weeks with a reasoned order. After the disposal of the objections the Indian Oil Corporation was entitled to publish a fresh auction notice giving full particulars of the land and constructions and the reserved price determined afresh. In compliance of the said order the market value of the land and construction was got assessed afresh by M/s. J.N. Dubey and Associates and S.S. Dash and Associates. M/s. J.N. Dubey and Associates have valued the land and constructions at Rs. 12.85 lacs whereas M/s. S.S. Dash and Associates has valued it at Rs. 12.65 lacs. The land, constructions and fixtures in question were valued at Rs. 22,27,100/ by the petitioner's valuer M/s. B.C. Mittal and Associates vide a report dated 29101996 (Annexure No. 7), at Rs. 34,23,600/ by report dated 631997 (Annexure No. 14) and at Rs. 43,53,560 vide a report dated 2211999 (Annexure No. 21). The respondent No. 5 has fixed the market value of the immovable properties of the petitioner's outlet at Rs. 12,84,917/ on the basis of valuer's report.

11. The market value is ordinarily the price which a property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. The market value of property is to be determined on the same principles, which are applicable for determination of market value in the Land Acquisition Cases. The apex Court in the case of Shaji Kuriakose & Anr. v. Indian Oil Corporation Ltd., 2001 (4) AWC 2884, as laid down the basic principles for assessing the market value as below:

❖ It is no doubt true that Courts adopt Comparable Sales Method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as, capitalization of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired and is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors, the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are : (1) the sale must be a genuine transaction; that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, that (3) the land covered by the sale must be in the vicinity of the acquired land, that (4) the land covered by the sales must be similar to the acquired land and that (5) the size of plot of the land covered by the sales by comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.❖ In the case of Viluben Jhalejar Contractor v. State of Gujarat, 2005(3) JCLR 1003 (SC) : (2005) 4 SCC 789, the apex Court has enunciated the guidelines for the assessment of market value as hereunder:

❖ 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.❖

It was further held in the said decision as below:

◆ 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 visavis the land under acquisition by placing the two in juxtaposition.◆

◆ Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a lay out 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.◆

12. In the case of G.M., O.N.G.C. v. Sendhahai Vastram Patel & Ors., 2006(1) JCLR 254 (SC) : 2005 (3) AWC 2791 (SC), the apex Court has held that while determining the amount of compensation payable in respect of lands acquired by the State undisputedly the market value therefor, has to be ascertained. Although there exist different methods for arriving at market value while determining the amount of compensation payable in respect of the lands acquired by the State. Indisputably, the market value therefor has to be ascertained. Although, there exists different modes for arriving at market value for the land acquired; the best method, however, as is wellknown, would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by deeds of sale. In the absence of any direct evidence on the said point, the Court may take recourse to other methods viz., judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighbouring villages. Such a judgment and award in absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.

13. The principles laid down by the apex Court for the determination of just and fair market price of immovable property bring out that Comparable Sales, Capitalization of Net Income or Expert Opinion and judgment and awards passed in respect of acquisition of lands made in the same village or neighbouring villages are the well known methods for the valuation of land and constructions. In the present case, the expert opinion method has been adopted for the assessment of fair market value of the land, constructions and fixtures of petitioner's retail outlet.

14. The land over which the constructions and fixtures of the retail outlet in question exist was purchased by the petitioner by virtue of a saledeed in June 1995 for a consideration of Rs. 1,43,000/. The retail outlet with constructions etc. was taken over by the Indian Oil Corporation on 8/11/1996. Before taking over of the retail outlet the petitioner's valuer assessed the market value at Rs. 22,27,100/. The petitioner has admitted in para 11 of the writ petition that the land leased out to the Indian Oil Corporation was situated in village Bakbanda and was outside the municipal limits. The saledeed dated 29/9/1999 relied on by the petitioner relates to transfer of a small tract of land measuring 9.30 sq. M. whereas the petitioner's land

over which the retail outlet exists is 1604 sq. M. The sale deed in question is not proximate to the time as it was executed in September 29, 1999 that is three years after the cut off date. It is well settled that a small tract of land is within the reach of many persons whereas there may not be many buyers for a large piece of land. The land under the sale deed relied on by the petitioner as a comparable sale exemplar being of a very small piece of land and not being proximate in time, it cannot be relied on for the purpose of valuation of the market value of the land, constructions and fixtures of the retail outlet of the petitioner. The petitioner had purchased the land in June 1995 for a consideration of Rs. 1,43,000/- and the possession of retail outlet having been taken over by the Corporation on 8/11/1996, there could not be much increase in the price of land within a span of one year. The auction notice relating to petrol pumps/retail outlet dealerships situated in other districts cannot be taken as exemplar for the ascertainment of the market value of petitioner's retail outlet, land and building. In the audit report under Section 44AB of I.T. Act for the year ending March 31, 1996 (Annexure SA1) relating to petitioner's retail outlet dealership M/s. A.H. Auto Mobiles, Bakbanda, G.T. Road, Fatahpur, the value of fixed assets i.e. land, building, furniture, fixtures and generators has been mentioned as Rs. 6,24,075/. According to the petitioner's own showing in the Income Tax return filed on 12/10/1996, the value of land, building, furniture, fixtures and generator of the retail outlet at the relevant time was Rs. 6,24,075/. In view of these facts market value of the retail outlet, land and constructions assessed by the valuers of the respondents at Rs. 12,84,917/- cannot be said to be on the lower side.

15. In view of what has been discussed above, we find that the decision of the respondent No. 5 in determining the market of land, constructions and fixtures of petitioner's retail outlet at Rs. 12,84,917/- is not arbitrary, unreasonable or unjust.

16. In the result, the writ petition lacks merit and is hereby dismissed with no orders as to costs.

17. The stay order dated 29/11/1999 passed by this Court stands vacated.