

(2013) 08 AHC CK 0187

Allahabad High Court

Case No: First Appeal No's. - 454 and 453 of 2003 and First Appeal Defective No. - 311 of 2003

Meerut Development Authority

APPELLANT

Vs

Basheshwar Dayal (Since
Deceased) Thru" His L.R.S. and
Another
Meerut
Development Authority Vs Om
Prakash
Raj Pal Singh and
Others Vs State Of U.P. and
Another

RESPONDENT

Date of Decision: Aug. 1, 2013

Citation: (2013) 7 ADJ 401 : (2013) 101 ALR 20 : (2014) 1 AWC 286 : (2013) 121 RD 389 :
(2013) 3 UPLBEC 2469

Hon'ble Judges: Surya Prakash Kesarwani, J; Ashok Bhushan, J

Bench: Division Bench

Advocate: B. Dayal in First Appeal No. - 454, 444, 453, 450, 455, 291, 292, 293, 294, 295, 354, 355, 356, 357, 364, 386, 388, 390, 391, 392, 394, 395, 396, 397, 398, 399, 401, 402, 403, 404, 405, 406, 445, 387 of 2003, V. Sahai in First Appeal No. - 454, 292, 293, 294, 295, 354, 355 of 2003, A.K. Mishra and Rahul Sahai in First Appeal No. - 455 of 2003, Vivek Chaudhary and M.K. Pandey in First Appeal Defective No. - 311 of 2003, for the Appellant; P. Ojha in First Appeal No. - 454, 444, 453, 450 of 2003, A.K. Gupta in First Appeal No. - 454, 453, 455, 291, 292, 293, 294, 295, 354, 357, 388, 399, 402, 404, 406, 407 of 2003, M.K. Pandey in First Appeal No. - 444, 450, 386, 390, 392, 394, 395, 396, 397, 398 of 2003, Vivek Chaudhary in First Appeal No. - 450 of 2003, Anuraga Asthana and Pawan Agrawal in First Appeal No. - 391, 401, 403, 445 of 2003, for the Respondent

Final Decision: Dismissed

Judgement

Surya Prakash Kesarwani, J.

Out of these 36 appeals, 25 appeals arise out of the common judgment dated 23.11.2002 passed by the District Judge, Meerut in Land Acquisition Reference No.

39 of 1991 Basheshwar Dayal and others Vs. State of U.P. & M.D.A. and other connected references. Eleven appeals arise out of the common judgment dated 23.11.2002 passed by the District Judge, Meerut in land acquisition reference No. 88 of 1990 (Sri Sher Singh Vs. State of U.P. and M.D.A.) and other connected references. Out of these 36 appeals, 35 appeals have been filed by the Meerut Development Authority through its Secretary (hereinafter referred to as "MDA") challenging the two judgments and order both dated 23.11.2002 passed by District Judge, Meerut. One appeal No. 311(D) of 2003 has been filed by the claimant, i.e., Sri Rajpal Singh and four others. Various claimants have filed cross objections for enhancement of compensation by Rs. 49/- per square yard in addition to the compensation awarded by the reference court at Rs. 126/- per square yard. One of the claimant Sri Rajpal Singh and four others have filed Cross Appeal No. 311 (D) of 2003 seeking enhancement in compensation from Rs. 126/- to Rs. 175/- per square yard. The status of appeals, cross objections and cross appeals arising out of the aforesaid two judgments both dated 23.11.2002 passed in land acquisition references are as under: -

Brief facts of the case

2. Since the facts in these 36 appeals are common and arises out of one and the same acquisition notification, award and two similar reference judgments and as such with the consent of the parties the First Appeal No. 454/03 (arising from L.A.R. No. 39 of 1991) and First Appeal No. 444 of 2003 (arising from L.A.R. No. 88 of 1990) are treated as the leading appeal and accordingly the facts and evidences as brought on record in these appeals are being noted.

3. Briefly stated undisputed facts of the present case are that certain plots of land of village Kaseru Buxer and village Amheda Adipura, Pargana, Tehsil and district Meerut were acquired under the Land Acquisition Act, 1894 (hereinafter referred as the "Act") for MDA for integrated development of residential/commercial buildings for "Raksha Puram Scheme". The Notification No. 4259/11-5-87-11-I.L.A./87 dated 14.8.1987 u/s 4 of the Act and Notification No. 4446/11-5-87/18 I.L.A./87 dated 4.9.1987 u/s 6 of the Act were published in the gazette. The notices u/s 9 in both the villages were issued on 27.2.1988. Objections were filed by the land owners who claimed that the market value of land in question is between Rs. 315/- to Rs. 500/- per square yard. While considering the matters for determination of compensation u/s 23 of the Act, the Special Land Acquisition Officer, Meerut has recorded in the award dated 22.2.1990, the location of the acquired land which fall within the limits of the N.C.R. Under the National Capital Region Board Act, 1985, as under: -

4. Out of several deeds filed as exemplar, the Special Land Acquisition Officer found only one exemplar to be relevant for valuation of land of village Kaseru Buxer and accordingly determined the compensation @ Rs. 90,750/- per beegha which comes to about Rs. 30/- per square yard. He also applied the same rate for valuation of land of village Amheda Adipura. He awarded solatium of 30% and statutory additional compensation @ 12%.

5. Aggrieved with the aforesaid award, the claimants moved application for reference u/s 18 of the Act objecting to the rate of land for compensation before the competent authority which were forwarded alongwith records to the District Judge, Meerut. The learned District Judge, Meerut heard the references and decided the same vide two separate judgments both dated 23.11.2002 determining the compensation @ Rs. 126/- per square yard alongwith other statutory amount and interest @ Rs. 9%. Aggrieved with the aforesaid two judgments both dated 23.11.2002 passed by the learned District Judge, Meerut, the present 35 first appeals have been filed by MDA and one appeal has been filed by the claimant. As aforementioned in the appeals filed by the MDA, the claimants have filed cross objections praying for enhancement of compensation by Rs. 49/- per square yard i.e. enhancement from Rs. 126/- to Rs. 175/- per square yard. Some of the claimants have not filed cross objection and some of the claimants have not paid court fee, although they have filed cross objection as indicated in para 2 above. Initially these appeals were heard by this Court and the appeals of MDA were allowed by a brief judgment dated 5.2.2004 and the matter was remanded to the court below for determination of the market value of the land acquired. The judgment of this Court was challenged by the claimants before the Hon"ble Supreme Court in Civil Appeal No. 1288 of 2006 and other connected appeals. Vide judgment dated 24.2.2006 the Hon"ble Supreme Court allowed the civil appeals and set aside the judgment dated 5.4.2004 and remanded the matter to this Court for decision on merit observing that any observation made in the judgment need not influence the judgment of the High Court on merits. In the said judgment the Hon"ble Supreme Court observed as under: -

On merits the learned counsel submits with reference to the impugned judgment of the High Court that only two reasons have been given by the High Court for setting aside the order of the Reference Court and remanding the case back to it. First reason is that exemplars relied upon, by the Reference Court are of small plots of land whereas the acquisition is of a large tracts of land i.e. about 180 acres. The second reason given in the impugned judgment for remand is that exemplars filed by the acquiring authority i.e. appellants before us, were not considered by the Reference Court. The learned counsel for the appellants has taken us through the judgment of the Reference Court to show that both the reasons given by the High Court in its impugned order are factually incorrect. With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments

of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf.

Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of smaller plots into consideration. It appears that the attention of the High Court was not drawn to this part of the judgment of the Reference Court which has resulted in the High Court completely overlooking the relevant discussion in the judgment of the Reference Court.

Regarding the second point that exemplars of the appellant before us were not taken into consideration, again, the High Court is factually wrong and this mistake appears to have resulted from the fact that the judgment of the Reference Court was not properly brought to the notice of the High Court. The Reference Court has referred to the exemplars of the acquiring authority but has observed that since they have not been proved on record, they cannot be looked into. The learned counsel for the acquiring authority was unable to say that this observation of the Reference Court was factually incorrect nor he could show that the exemplars filed by his client had been proved on record. In fact we requested him to show these exemplars to us. He completely ignored our request. Therefore, we find nothing wrong in the Reference Court ignoring the exemplars said to have been filed by the acquiring authority.

6. We have heard Sri Bhupeshwar Dayal, learned counsel for the Meerut Development Authority, Sri A.K. Gupta, Advocate, Sri M.K. Pandey, Advocate and Sri Udayan Nandan holding brief of Sri Shashi Nandan appearing for the claimants and the learned Standing counsel appearing for the State.

Submission on behalf of MDA

7. Sri Bhupeshwar Dayal, learned counsel for the Meerut Development Authority submits that: -

(i) Small piece of land could not be the comparable exemplars in acquisition of about 180 acres land of village Kaseru Buxer and village Amheda Adipura which was acquired for Raksha Puram Housing Colony of the appellant MDA,

(ii) Exemplars of constructed houses on the small piece of land could not determine the market value of the large undeveloped agricultural land, in view of the judgment of Hon"ble Supreme Court in the case of [The Collector of Lakhimpur Vs. Bhuban Chandra Dutta](#), , [Prithvi Raj Taneja \(Dead\) by Lrs. Vs. The State of Madhya Pradesh and Another](#), , [Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another](#), and [Land Acquisition Officer Vs. Nookala Rajamallu and Others](#) ,

(iii) The reference Court erred in not relying upon the exemplars of agricultural land filed by the MDA and awarded compensation on the basis of small pieces of developed plots of land with construction,

(iv) The reference Court erred in holding the certified copies of sale deeds filed in evidence by the MDA to be not proved on record, despite the specific provisions of Section 51A of the Act,

(v) The increase in price after acquisition and developing the acquired area can not be taken into account for determining compensation of the land in view of Section 24 (fifthly) of the Act,

(vi) Even if the acquired land possess potential value of building sites no development had taken place, deduction is required to be made for making construction of roads and other amenities for developing land for colony. He relied on the following judgments: -

(a) [K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another](#), ,

(b) JT 2012 (2) AWC 1579 Chandra Shekha Vs. LKAO.

Submission on behalf of the respondents/claimants

8. Learned counsel appearing on behalf of the claimants have submitted as under:-

(a) The acquired land falling in village Kaseru Buxer and village Amheda Adipura is only 2.5 Km. From zero point of Meerut city as is evident from the map filed alongwith application dated 13.8.2012.

(b) The acquired land is in close vicinity of Defence colony, Post and Telegraph colony, Radha Garden Colony and Meenakashi Puram Colony.

(c) District Court is at a distance of 2.5 Km. and Commissioner's Bungalow is at a distance of 1.5 Km. which all are within the limits of Nagar Maha Palika area.

(d) The acquired land is surrounded by developed residential areas as under: -

(i) South:- sixth Light Regiment Centre and Commissioner's Bungalow,

(ii) North:- Electra Vidyapeeth Green Park and Amar Colony,

(iii) West:- Defence Colony, Rajendra Puram City Post and Telegraph Office,

(iv) East:- Abdullahpur Nagar and Abadi of Meerut City.

(e) The acquired land is situated at Mawana Road, Meerut and fall within the limits of Meerut Mahapalika. Bus stand is merely at a distance of 2 Km. The acquired land is adjoining inhabited Meerut city and surrounded by various developed residential colonies.

(f) The acquired land has high potential being in close proximity of developed areas and surrounded by developed areas.

(g) The reference court has committed error in awarding the compensation merely @ RS. 126/- per square yard despite the aforesaid undisputed facts, the judgment of Hon"ble Supreme Court determining compensation of Rs. 175/- per square yard for nearby acquired land, in the case of [Meharban and others etc. etc. Vs. State of U.P. and others](#), which arose from the land acquisition notification of the same date as involved in the present case. The reference court has also not properly considered the following exemplars of sale of land of the village Kaseru Buxer and circle rate list as filed in Reference Case No. 39 of 1991: -

(h) This Court may take judicial notice of the facts and evidences noticed in the judgment of Hon"ble Supreme Court in the Meharban's case (supra) in which the Hon"ble Supreme Court was considering another land acquisition Notification of the same date i.e. 14.8.1987 for the same authority i.e. Meerut Development Authority (Appellants herein) for the same purposes and fixed the net market value @ Rs. 175/- per Sq. Yard after observing in paragraph 13 as under:-

In view of the fact that Meerut city is a fast-growing industrial and commercial city and in many a part it is already developed, there is pressure on the land for the developmental activities, viz., for building and commercial purposes. In fact, under these circumstances, we think that we should take into account reasonable rise in prices, particularly in view of the gap of several years, we think that the approximate net market value would be Rs. 175 per sq. yard after giving deduction for developmental charges for the lands situated in Quasimpur Nagla Tashi and the claimants are entitled to solatium at 30% on enhanced compensation. They are also entitled to interest at the rate of 9% per annum for one year and 15% per annum on enhanced compensation from the date of taking possession till the date of deposit in the Court. In case the landowners are still in possession, they are not entitled to the payment of the interest. Similarly, they are entitled to additional amount u/s 23(1-A) from the date of the notification till the date of the award or date of taking the possession, whichever is earlier.

(i) The appeals of the appellants are liable dismissed, in view of the facts and evidences on record. The cross objections of the claimants and an appeal filed by the claimants are liable to be allowed awarding compensation at the minimum rate of Rs. 175/- per square yard.

(j) The cross objections deserves to be allowed in view of the fact and evidences on record and the judgments of Hon"ble Supreme Court in the following cases: -

- (i) [Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others](#), Para 14, 19, 22, 23, 24, 25 and 28,
- (ii) [Mohan Kumar Rayana Vs. Komal Mohan Rayana](#), paragraph 6, 12, 13, 17, 31, 37 and 38),
- (iii) [Special Land Acquisition Officer Vs. Karigowda and Others](#), paragraph nos. 83, 91 and 95
- (iv) [Udho Dass Vs. State of Haryana and Others](#), paras 4, 8, 9, 12, 13, 14, 15, 16, 19 and 22.

Our Findings

9. Having heard and considered the contentions of the learned counsel for the parties and perused the material available on record including the impugned judgments of the reference Court, we now first proceed to summarize the legal principles settled by Hon"ble Supreme Court in various judgments relevant for determination of market value, as under: -

(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification u/s 4(1),

(ii) The method for determination of market value may be: -

(a) Opinion of experts,

(b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

(Ref. [Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others](#),

(iii) 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 capitalisation 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 at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification u/s 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:-

(a) Sale must be a genuine transaction,

(b) the sale deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act,

- (c) the land covered by the sale must be in the vicinity of the acquired land,
- (d) the land covered by the sales must be similar to the acquired land
- (e) the size of plot of the land covered by the sales be comparable to the land acquired.
- (f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land.
- (iv) 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 which are as under: -

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. (Ref. [Valliyammal and Another Vs. Special Tahsildar \(Land Acquisition\) and Another etc. etc.](#), paras 13, 14, 15, 16, 17, 18 and 19).

(viii) 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 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.

(Ref. [Mehrawal Khewaji Trust \(Regd.\), Faridkot and Others Vs. State of Punjab and Others](#), .

(ix) In view of Section 51A of the Act certified copy of sale deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of

the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word "may". A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale.

(Ref. [Cement Corporation of India Ltd. Vs. Purya and Others](#), .

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors: -

(a) Existing geographical situation of the land.

(b) Existing use of the land.

(c) Already available advantages, like proximity to National or State Highway or road and/or developed area,

(d) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

(xi) Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired.

Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost".

(Ref. [Sabhia Mohammed Yusuf Abdul Hamid Mulla \(D\) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, \).](#)

10. We have already noted the undisputed finding of fact as recorded by the Special Land Acquisition Officer, Meerut in the award dated 22.2.1990 to the effect that the acquired land is located on Meerut Mawana Road within the limit of Mahapalika, Meerut, it is merely 2 Km. Away from the Mawana Bus Stand, it is near to Electra Vidyapeeth which is higher education center of the city, adjacent to the acquired land of Mawana Road there is defence colony which is fully developed and in vicinity of the acquired land there are residential colonies like Meenakshi Puram, Radha Garden Colony, P & T Colony and Rajendra Puram etc.. Sri Gangeshwar Dayal, PW-1 in his statement dated 14.2.1992 and 21.2.1992 has categorically stated that the MDA has acquired his land being Khasra Plot No. 131, 132, 135, 136 and 138 for Raksha Puram Scheme for residential colony which is joins the boundary of the Defence colony in village Kaseru Buxer. He stated that Defence colony also fall in village Kaseru Buxer and Amheda Adipura. He stated that P & T Colony, Radha Garden Colony, Meenakashi Puram Colony and Defence Colony (Sainik Co-operative Society) are within radius of 100 yards from his land and towards the east of his land there is Meerut Mawana Road and on the west drainage Road approaching to village Amheda Adipura road and the north his land joins the Mawana Amheda Adipura road and in the south is the Meerut Cantonment area and his land fall within the limits of Nagar Mahapalika much prior to the date of acquisition Notification.

11. In his statement he referred Paper No. 13Ga and 14 GA which proves that P & T Colony and Defence Colony (Sainik Co-operative Society) are recorded in the revenue records of village Kaseru Buxer and Amheda Adipura. He stated that District Court is about 2.5 Km., Saket and residence of Divisional Commissioner is about 1.5 Km. Defence colony from Meerut city is about 1.5 Km. near to his acquired land and in the surrounding of his acquired land several colonies have already been developed. He stated that at the time of acquisition the rates of land near to his land was between 400 to 500 per Sq. Yard. He referred to the sale deed dated 2.2.1987 (Paper No. 15 GA1) of Plot No. 69 Village Kaseru Buxer and Amheda Adipura whereby the land was sold at Rs. 157/- per Sq. Yard. The second sale deed referred by him is of Plot No. 393 Defence Colony village Kaseru Buxer and Amheda Adipura,(dated 7.5.1987) Paper No. 16Ga by which the land has been sold @ 293 per Sq. Yard. He stated that the market value of the acquired land is no circumstances less than Rs. 300 per Sq. Yard. PW-1 was cross examined on 21.2.1992. During the course of cross examination the MDA or the State have not put any question with

regard to the statement regarding the existence of Meerut Mawana Road, various developed colonies and location of District Court residence of Divisional Commissioner, cantonment area and adjoining city area nor cross examined him with regard to market value of the acquired land as suggested by him.

12. Thus the evidence of PW-1 and the finding of fact recorded by the Special Land Acquisition Officer, Meerut in the award dated 22.2.1990 proves that the acquired land is situate on Meerut Mawana Road and in vicinity of it there are several developed colonies and on a very short distance District Court Meerut, the residence of Divisional Commissioner etc. are situated and the acquired land as well as the land of Defence colony and certain other colonies fall in village Kaseru Buxer and Amheda Adipura. This clearly evidences the high potentiality of the acquired land for residential purposes.

13. The MDA has produced Sri Indrapal Singh, Lekhpal (DW-1) who stated on oath on 27.4.1994 that Khasra Plot No. 270, 275 and 276 were also acquired for Raksha Puram and these Khasra Plots are about 1250 meter away from Meerut/Mathura Main Road and this acquired land is unlevelled and near the drain. He admitted that he is working in MDA since November, 1989 and the possession was not taken by the MDA in his presence nor the award was passed in his presence. He admitted that Defence Colony joins the Meerut Mawana Road and in the south of Defence Colony there is a drain alongwith which there is a Metaled Road and Metaled Road touches the acquired land. He admitted that the acquired land joins the Meerut Cantonment area. He admitted that Khasra Plot No. 138, 132, 133 and 65 joins the Defence colony. He admitted that in between Ganga Nagar and Raksha Puram there is Abadi. He admitted that the MDA has acquired land for development within the Meerut Nagar Maha Palika limits, he denied that at the time of acquisition the market value of the land was between Rs. 300 to 400 per Sq. Yard. Thus, the DW-1 has also not denied the location of the acquired land and developed residential colonies and other objects in vicinity of the acquired land.

14. Sri Sudhir Kumar Sharma, Junior Engineer, MDA, Meerut, (DW-2) has stated on oath on 27.4.1994 that about 65% of the total acquired land is saleable. This witness has stated nothing about potentiality, location and market value of the acquired land.

15. From the perusal of the records of Appeal No. 444 of 2003 (arising from Reference Case No. 88 of 1990), we find that the claimant Sri Sher Singh (PW-1) in his statement on oath dated 18.7.1991 stated that total acquired land of his family is 18 Bigha and 14 Biswas which adjoins the defence colony and is on the lable of the road, there were six shops on this land facing the main road and large number of trees etc, the rate of land at the time of acquisition was between Rs. 500/- to 600/- per Sq. Yard. In his cross examination on 29.8.1991 he stated that it is wrong to say that his land is unlevelled. He stated that Meenakashi Puram Colony and Basant Vihar Colony is on the back side towards north of his land which are private colonies.

The Radha Garden Colony, Green Park Colony are existing about 10 years and Defence Colony from 15 to 20 years ago. He denied the award of compensation to be correct. Sri Dharam pal Singh (PW-2) in his statement date 18.2.1992 stated that his land in village Kaseru Buxer is on road and adjoins to defence colony. The land is fully leveled, near to it there is Meenakashi Puram Colony, Basant Vihar Colony, Ganga Nagar Colony, and Radha Garden colony etc. and the market value of land when acquired was between Rs. 500/- to 600/- Sri Tej pal Singh (PW-3) was examined on 18.2.1992. He stated that Mohalla Kaseru Buxer fall in ward No. 30 of Nagar Mahapalika, Meerut and he has seen the land of Sri Sher Singh etc. in Village Kaseru Buxer and their land adjoins the defence colony, it is located on the main Meerut Mawana Road and is fully leveled. In the cross examination on 26.3.1992 the PW-3 gave various details with regard to several colonies near the acquired land and further stated that it is wholly wrong to say that compensation has been awarded at the market rate. Sri Suresh (DW-1) was examined on 22.4.1992. He stated that the acquired land is about 4 Km. from Meerut City and in between is the cantonment area. He stated that the acquired land adjoins the defence colony and near to it towards Meerut there is P & T colony. Green Park and Aman Vihar colony is about one and half Km. away and thereafter there is Electra City. He stated that Ganga Nagar colony is in front of the acquired land and the plots in this colony were sold by MDA @ 350 per Sq. Yard. He admitted that the acquired land is within the limits of Nagar Mahapalika, Meerut. He denied the rate of acquired land to be Rs. 600/- per Sq. Yard. He stated that defence colony is on the land falling in village Kaseru Buxer. He admitted that some of the plots of the acquired land touches the Meerut Cantonment and Mawana Road and the use of the acquired land is shown as residential in the master plan.

16. Thus, from the findings recorded by the Special Land Acquisition Officer in the award dated 22.2.1990, the Oral evidences of Plaintiffs and defendants in both the Land Acquisition reference cases, it is established that the acquired land is situated on Meerut Mawana Road, near to it are various developed colonies and the acquired land fall within the limits of Nagar Maha Palika, Meerut. It is also established that the residence of Divisional Commissioner and the District Court are located on very short distance from the acquired land. Thus, it is established that the acquired land had high potentiality for residential purposes. Thus, we find no error in the findings of the fact recorded by the Court below in the impugned judgment that the acquired land is situated near the developed colonies, within the limits of Nagar Maha Palika, Meerut, near the house of Divisional Commissioner and the District Court and near the Saket colony which is a posh colony of Meerut. We also take judicial notice of the findings recorded by the Hon"ble Supreme Court in paragraph 13 of Meharban's case (supra) in which the Hon"ble Supreme Court has observed while considering the land acquisition Notification of Village Qasimpur Nagla Tashi, Meerut dated 14.8.1987, that Meerut city is a fast growing industrial and commercial city and many part of it is already developed, there is pressure on the land for the

developmental activities viz. for building and commercial purposes and net market value to be Rs. 175/- per Sq. Yard.

17. Village Qasimpur Nagla Tashi is also situated within the limits of Nagar Mahapalika Meerut and land thereof was acquired by another notification of even date i.e. 14.8.1987. From the facts and map available on record the location of acquired land of Village Kaseru Buxer and Amheda Adipura appears to be better and having more potentiality than the land of village Qasimpur Nagla Tashi.

18. We find that the first and second submission of the learned counsel for the appellants that sale deed exemplar of small piece of land cannot be the comparable exemplar and cannot be considered for determination of market value, is incorrect. It has now been well settled by Hon"ble Supreme Court in large number of decisions that market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. 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. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.

19. As per Paper No. 22Ga the circle rate issued by ADM (Finance), Meerut with regard to the land situated in village Kaseru Buxer and village Amheda Aadipura is Rs. 200/- per Sq. Yard for the land falling by the side of the road or in the industrial area and the circle rate of the land situated other than the aforesaid place has been fixed at Rs. 150 per Sq. Yard. There is no dispute that the acquired land is on Meerut Mawana Road. Since the acquired land is a large area which may partly fall on road and partly not on the road and as such the average of the two circle rates shall come to Rs. 175 per Sq. Yard.

20. We are conscious of the legal position that circle rates fixed by the Collector for the purposes of stamp duty cannot be made the basis for determination of market value as held by Hon"ble Supreme Court in the case of [U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties \(P\) Ltd. Lucknow and others](#), and in the case of [Lal Chand Vs. Union of India \(UOI\) and Another](#), paras 35 and 36. However, we have referred circle rates merely for limited purposes to see whether it matches with the rates of compensation fixed by Hon"ble Supreme Court in Meharban's case (supra) at Rs. 175 per Sq. Yard of the land of village Qasimpur Nagla Tashi which was acquired by the MDA by another notification of the same date i.e. 14.8.1987.

21. We find that reference Court has referred certain sale deeds relating to certain pieces of land in village Kaseru Buxer filed as Paper No. 15Ga and 16Ga which are of February 1987 and September, 1987 and the price of land sold is Rs. 157 per Sq. Yard and Rs. 293 per Sq. Yard respectively. At the end of paragraph 5 of the impugned judgment the reference Court (Reference Case No. 39 of 1991) after considering various evidences have come to the following conclusion:-

Thus, from the statement of PW-1 Gangeshwar Dayal it is quite clear that the land acquired is situated near the developed colonies, within the limits of Nagar Maha Palika, Meerut. It is near the house of Divisional Commissioner and Courts, near the Saket colony which is a posh colony of Meerut. Moreover, the exemplars filed by the claimants show that the rate of land is not less than Rs. 157 Sq. Yard and Rs. 293/- per Sq. Yard.

The reference Court has further noted in paragraph 6 of the impugned judgment that the DW-1 has admitted that acquired land is near the developed colonies. The reference Court in paragraph 7 of the impugned judgment noted that the DW-2 has admitted that in the booklet issued by MDA, the price of land measuring 200 Sq. meters has been fixed Rs. 3,80,000/- and the price of 173 Sq. Meters it has been fixed as Rs. 3,25,000/-. 50% of the land may be excluded for development purposes but 50% must be left with the MDA for allotment and therefore the reference court assessed the rate of the acquired @ Rs. 126 per Sq. Yard.

22. We further find that in the impugned judgment in the first appeal No. 444 of 2003 (arising from land acquisition Reference Case No. 88 of 1990) the learned Court below also recorded the findings of fact in paragraph 10 that several developed colonies are adjacent to the acquired land and it is admission from the side of the opposite party that the land is situated near a developed area of Meerut City and the land has great potentiality to meet out the expanding situation of Meerut city for the purposes of constructing building for citizens of Meerut City. Thus the acquired land has building potentiality. With regard to the market value for compensation of the acquired land, the learned Court below has recorded the findings in paragraph No. 10, 11, 12 and 13 which are reproduced below:-

10. PW-3 Tejpal Singh has also stated that there are several trees on his land, Defence colony is situated nearby his land, Minakshipuram, Vasant Vihar, Ganga Nagar, Radha Garden etc. colonies are situated nearby his land. Green Park, Aman Vihar colonies are situated at a distance of 2-3 Kilometers ahead his land. The rate of the land, at the time of acquisition of the land was not less than Rs. 600/- per sq. yard and now the rate of the land is Rs. 1200-1300/- per Sq. Yard.

Thus from the oral evidence produced by the side of the claimants there are developed colonies around the acquired land. Moreover, Suresh Chandra D.W.1 is Lekhpal of the opposite party. He has admitted at page "2" of his statement that the land has been acquired for Raksha Puram workshop, Meenakashi Puram, Defence

colony are near the acquired land. He has also admitted that post and telegraph colony is situated at a little distance towards Meerut side of the acquired land. He has further admitted that Green Park and Aman Vihar colonies exist at the distance of 1-1/2 Km. ahead from the acquired land, Electra School is also just ahead of Aman Vihar Colony. The land has been acquired for the purposes of building construction. Thus from the statement of witness of the opposite party also it is clear that several developed colonies are adjacent to the acquired land. It is a well proved admission from the side of the opposite party that the land is situated near a developed area of Meerut City. Moreover, it is also an admission from the side of the opposite parties that the land has great potentiality and therefore, it has been acquired to meet out the expanding situation of Meerut City for the purposes of constructing building for citizens of Meerut City. Thus it is well proved that the acquired land has building potentiality although it was used for agriculture purposes prior to its acquisition. If a land has building potentiality, situated near the city and is acquired for building purposes, naturally the land cannot be said to have agricultural potentiality after the acquisition. It is also well known fact that M.D.A. Is selling the land at a very exorbitant rate. The M.D.A. Has not filed any paper in order to show as to what would be the development cost for the purposes of construction of the building. Even if 50% land may be vested for development construction 50% land would be used for allotment for residences and other commercial activities. The rate given by the MDA is only Rs. 30/- per Sq. Yard i.e. Rs. 90,750/- per pucca Bigha. Now the court has to see as to whether the rate of Rs. 30/- per Sq. Yard was market price at the time of acquisition for a land which has been acquired for building purposes, situated near the developed colonies and has great potentiality value for the construction of houses of the citizens of Meerut city. The MDA has not given any rate on which they are selling the land. The acquisition took place in the year 1987 and the Award was given in the year 1990 and still the MDA is allotting the land for building construction. Four sale deeds referred to above filed by the MDA have not been proved. Moreover, even if it is taken for the purposes of holding the market value of the acquired land, it would not be wrong to say that the sale deeds are of the time much before the taking of the possession of the land by MDA. Moreover, the court has to see as to whether the willing seller is ready to part with his land to a willing purchaser for the rate shown in the sale deeds filed by the MDA. Moreover, the sale deed 15C shows that the land is situated at a far distance from the main road, therefore, it cannot be treated as good exemplar. The sale deed paper No. 16C shows that the land cannot fetch more consideration than what has been given in it. Moreover, this sale deed does not make it is away from the main road or it is adjacent to the main road and therefore, this also cannot be treated as a good exemplar. Paper No. 17C also shows that no more consideration of this land is expected, moreover this also does not show as to what is the situation of the land and therefore, this also cannot be treated as a good exemplar. 18C sale deed shows that the stamp used for the purposes of sale deed has been affixed at the rate of Rs. 130/- per Sq. Yard. It means the government rate for the purposes of stamp duty

was not less than Rs. 130/- per sq. yard. Thus this itself shows that the value of the land should not have been less than Rs. 130/- per Sq. Yard. This exemplar filed by the opposite party cannot be treated as good exemplar.

11. The sizra filed on behalf of the claimants shows that the lands are within the vicinity of Meerut Nagar Maha Palika, the Cantonment area is situated near the acquired land, the acquired land is thus connected with main road and By-pass and thus the situation of the land is very important in this case.

12. The exemplars filed per list 21C2 by the claimants are of the valuation of such more. The exemplars relates to the adjoining area and the exemplar shows that the land sold through these sale deeds per list 21C2 had certain constructions also which itself shows that the land has great potentiality for constructing houses being an area of houses and the cost of the houses are deducted from the area of the land which has been sold through these exemplars. The rate of the land comes much more than Rs. 300/- per Sq. Yard.

13. In view of the above discussion I am of the opinion that the acquired lands are situated near Meerut City, it has more residential colonies around it, it has more building potentiality, the rate given by the Special Land Acquisition Officer is highly inadequate and if the exemplars filed by the claimants are considered and it is presumed that a big land would fetch less rate per Sq. Yard, the price of the land should not be less than Rs. 126/- per Sq. Yard. In my opinion the Special Land Acquisition Officer has awarded inadequate compensation and claimants are entitled to a compensation of Rs. 126/- per Sq. Yard and not Rs. 270/- per Sq. Yard as claimed by the claimants.

23. We find that the reference Court has not properly considered settled law of 1/3rd deduction and the evidences on record including the statement of DW-2 (in L.A.R. No. 39 of 1991) who has stated that out of the acquired land 65% land is salable. The reference court has, therefore, wrongly taken 50% land as saleable so as to determine the market value of the acquired land at Rs. 126 per Sq. Yard. Thus if deduction of 1/3rd is applied on the full rate, the market value would come to Rs. 168/- per Sq. Yard ($126 \times 2 - 33.33\%$). The MDA has completely failed to rebut the potentiality of the acquired land as established by the claimants, the geographical situation and the available advantages like proximity to road and developed areas. The MDA, neither before the reference court nor before us; could place any material on record to show that the acquired land of village Kaseru Buxer and village Amheda Aadipura vide notification dated 14.8.1987 has lesser potential or stand on disadvantageous position as compared to the land acquired for the same purpose i.e. residential colony by the MDA itself in Village Qasimpur Nagla Tashi vide another notification of the same date i.e. 14.8.1987 and in respect of which the Hon'ble Supreme Court has fixed the compensation at Rs. 175 per Sq. Yard. The reference court has committed an error in not considering the judgment of Hon'ble Supreme Court in Meharban's case (supra) which was filed by claimants before it. Thus, the

reference Court has committed an error of facts in determining the market value of the acquired land in question at a very low rate of Rs. 126/- per Sq. Yard. The MDA has failed to establish the market value of the acquired land in question to be Rs. 30 per Sq. Yard as contended by them or the fixation of compensation of Rs. 126 per Sq. Yard by the reference Court to be excessive. The sale deed exemplar filed by the MDA was correctly not accepted by the reference Court as representing market value of the acquired land, after giving valid reasons to which we fully agree.

24. Most of the exemplar of sale deeds of land of Village Kaseru Buxer and located near the acquired land comes to more than Rs. 245/- per Sq. Yard. The reference Court has recorded the finding of fact in paragraph no. 12 of the judgment passed in Reference Case No. 88 of 1990 that the rate of land comes much more than Rs. 300/- per Sq. Yard. If deduction of 1/3rd is applied on the aforesaid Rs. 300/- the market value would be Rs. 200/- per Sq. Yard. Thus from the facts and evidence on record as well as the net compensation fixed by Hon"ble Supreme Court @ 175/- per Sq. Yard in Meharban"s case (supra), we are of the considered opinion that the MDA has completely failed to establish that the compensation awarded by the Court below under the impugned judgments @ Rs. 126/- per sq. Yard is excessive. We are of the considered view that from the facts and evidences on record as discussed above the net market value of the acquired land is not less than Rs. 175/- per Sq. Yard and the claimants are entitled for compensation of the acquired land @ Rs. 175/- per Sq. Yard.

25. In view of the discussion made above and conclusion reached by us, we are of the opinion that the market value of the acquired land of village Kaseru Buxer and village Amheda Aadipura vide notification dated 14.8.1987 is not less than Rs. 175/- per Sq. Yard and accordingly we hold that the MDA is liable to pay compensation to the claimants/land holders @ 175 per Sq. Yard.

26. During the course of argument the learned counsel for the MDA has placed much reliance on the judgments of Hon"ble Supreme Court in the case of [Land Acquisition Officer Vs. Nookala Rajamallu and Others](#) paragraph 6) to contend that where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. We have already discussed this contention in detail and rejected the same on the facts of the present case. The next judgment relied by the learned counsel for the MDA is Satish and others Vs. State (2009 (108) R.D. 511) to contend that increase in price after acquisition and developing the acquired land area cannot be taken into account for determining the compensation of the acquired land. We find that in the present set of facts the market value has not been determined on this basis. So far as admissibility of certified copy of sale deeds in evidence is concerned, there is no dispute that the certified copies of sale deed may be acceptable as evidence of the transaction recorded in the documents but as held by Constitution Bench of Hon"ble Supreme Court in the case of Cement Corporation of India Ltd. (supra), the discretion has been conferred upon the Court

to be exercised judicially and only because a document is admissible in evidence, the same by itself could not mean that the content thereof stand proved. Having regard to the other material brought on record, the Court may not accept the evidences contained in the deed of sale. The finding recorded by the Court below in the impugned judgment shows that the Court below has correctly not accepted the exemplar of sale deed filed by MDA in view of the other materials brought on record. The next judgment relied by the learned counsel for the MDA is in the case of [K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another,](#) . A perusal of this judgment shows that on the facts and evidences of that case the Hon"ble Supreme Court has held the compensation of Rs. 20 per Sq. Yard to be the just compensation. Thus this judgment is distinguishable.

27. The contention of the learned counsel for the MDA that even if the acquired land possessed potential value of the building site, no development had taken place and deduction is required to be made. He relied on certain judgments. This aspect has already been discussed by us in detail and we have come to the conclusion that Rs. 175/- per Sq. Yard is the appropriate net market value of the acquired land. Since, we have found that Rs. 175/- per Sq. Yard is the appropriate net market value of the acquired land as on the date of acquisition and as such the contention of the learned counsel for the MDA with reference to Section 24(fifthly) and that too without any factual foundation, deserves to be rejected.

28. We have already summarized in paragraph 10 above the legal principles for determination of market value of acquired land for compensation as settled by Hon"ble Supreme Court in various judgments. We find that the principles as mentioned in paragraph 10 of this judgment fully supports the view taken by us with regard to the potentiality of the acquired land as well as the net market value of the acquired land to be Rs. 175/- per Sq. Yard. In the result, the First Appeal Nos. 454/2003, 453/2003, 399/2003, 401/2003, 402/2003, 450/2003, 455/2003, 291/2003, 292/2003, 293/2003, 294/2003, 295/2003, 354/2003, 355/2003, 356/2003, 357/2003, 388/2003, 391/2003, 403/2003, 404/2003, 405/2003, 406/2003, 407/2003, 445/2003, 444/2003, 396/2003, 397/2003, 398/2003, 364/2003, 386/2003, 390/2003, 392/2003, 394/2003, 395/2003 and 387/2003 filed by the appellants are hereby dismissed. The Cross Objections filed by the claimants in the respective appeals as mentioned in paragraph no. 2 of this judgment (except cross objection filed in First Appeal No. 401/2003, 391/2003 and 403/2003) and First Appeal No. 311/2003 (Defective) filed by the claimant are allowed and it is held that the claimants are entitled for compensation of the acquired land @ Rs. 175/- per Sq. Yard. The cross objection No. 136853 of 2011 filed in First Appeal No. 401/2003 Cross Objection No. 136859 of 2011 filed in First Appeal No. 391 of 2003 and cross objection No. 136855 of 2011 filed in First Appeal No. 403/2003 are hereby rejected for want of payment of Court's fee by the objectors for enhancement of compensation from Rs. 126/- to 175/- per Sq. Yard. The appellants (MDA) shall pay the compensation along with all statutory benefits to the claimants within six month from today in accordance with

law.