
U.P. Avas Evam Vikas Parishad Vs Smt. Rukman Devi & Others

First Appeal No. 86 of 2009

Court: ALLAHABAD HIGH COURT

Date of Decision: Feb. 23, 2016

Acts Referred:

Land Acquisition Act, 1894 "Section 4, 54, 6#Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 "Section 28, 32

Citation: (2016) 4 ADJ 471 : (2016) 2 UPLBEC 1132

Hon'ble Judges: Sudhir Agarwal; Rakesh Srivastava, JJ.

Bench: Division Bench

Advocate: Pramod Kumar Sinha and P.N. Tiwari, Advocates, for the Respondent

Final Decision: Allowed

Judgement

...

1. Filing of paper-book, as requested, is dispensed with.",,,

2. Heard Sri A.P. Srivastava, learned counsel for appellant. None appeared on behalf of claimants-respondents, though name of Sri Pramod",,,

Kumar Sinha and Sri P.N. Tiwari, Advocates, is shown in the cause list as counsel for respondents and this appeal has been called in revised",,,

hence, we proceed to decide appeal ex-parte.",,,

3. This appeal under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as ""Act, 1894""") has arisen from award/ judgment dated",,,

07.10.2006 passed by Smt. Pratibha Khanna, Additional District Judge, Court No. 2, Rampur determining market value of acquired land at the",,,

rate of Rs. 100/- per square yard.,,,

4. The acquisition proceedings at the instance of U.P. Avas Evam Vikas Parishad (hereinafter referred to as ""UPAEVP""") were initiated by",,,

publication of notice under Section 4 of Act, 1894 (Section 28 of U.P. Avas Evam Vikas Parishad Act, 1965 - hereinafter referred to as ""Act,"",,,

1965") on 22.07.1973. Notification under Section 6 of Act, 1894 (Section 32 of Act, 1965) was published on 27.01.1979. Appellant sought to",,,

acquire 28.84 acre land. Special Land Acquisition Officer (hereinafter referred to as "SLAO") made award on 28.10.2000 wherein market value",,,

was determined at the rate of Rs. 41.58 per square yard. Aggrieved thereto, claimants-respondents moved an application before District",,,

Magistrate for making reference to District Judge under Section 18 of Act, 1894 for determining market value. Pursuant thereto, impugned",,,

award/judgment has been passed.,,,

5. Learned counsel for appellant contended that in order to show market value of property in dispute at the time when acquisition proceedings,,,

were initiated, no exemplar was produced by claimants-respondents before Court below, hence they did not discharge onus lying upon them",,,

justifying higher compensation. Court below, besides some oral evidence, which relate to a period much subsequent to the date of acquisition, also",,,

referred to sale-deed of 1999 whereby 150.57 square yard land was transferred by sale at the rate of Rs. 560/- per square yard. Court below has,,,

observed that sale consideration in the aforesaid sale-deed appears to be excessive since area of land was very small and market value should not,,,

have been more than 400/- per square yard and in that view of the matter 20 years earlier thereto, rate could not have been more than Rs. 100/-",,,

per square yard and made its award on the basis of conjectures and surmises based on assumptions and presumptions without there being any,,,

material on record. He also pointed out that there is a specific finding recorded by Court below that between 27.01.1976 to 27.01.1979, acquired",,,

land was being used for agriculture and cash crops, i.e., vegetables etc. It is then submitted that award given by Court below determining market",,,

value at the rate of Rs. 100/- per square yard is patently illegal and liable to be set aside.,,,

6. The questions up for consideration in the case in hand are:,,,

(i) Whether claimants-respondents have discharged their onus that compensation offered by SLAO was not justified and market value of,,,

property in question need be determined at a higher rate?,,,

(ii) Whether Reference Court has determined market value of acquired land taking into consideration relevant principles and market value,,,

determined by it is just, valid and in accordance with law?"",,,

7. Before answering the aforesaid questions, it would be appropriate for us to remind the principles laid down in a catena of decisions in the last",,,

few decades which have to be considered and taken into account for determining market value of a land acquired forcibly under Act, 1894/Act",,,

1965. One of the principles is that material and evidence considered by Collector/SLAO is not to be relied on as such unless the same is placed,,,

before Reference Court and proved in accordance with law.,,,

8. Before us, it is not disputed that an award made by SLAO is an offer made by Collector to land owners for compensation payable against" ,,,

acquired land. Reference Court does not sit in appeal over award of SLAO to find out whether determination made by SLAO is correct or not.,,,

The proceeding before Reference Court is original and treated like a suit. Material considered by SLAO is not to be seen by Reference Court.,,,

unless such material has been relied and proved in accordance with law before it.,,,

9. In *Chimanlal Hargovinddas v. Special Land Acquisition Officer* (1988) 3 SCC 751, Court has said that a reference is like a suit which is to be" ,,,

treated as an original proceeding. The claimant is in the position of a plaintiff who has to show that price offered for his land in the Award is,,,

inadequate. However, for the said purpose, Court would not consider the material, relied upon by Land Acquisition Officer in Award, unless some" ,,,

material is produced and proved before Court.,,,

10. Thus, Reference Court does not sit in appeal over the Award of Land Acquisition Officer. Material used by Land Acquisition Officer is not" ,,,

open to be used by Court suo motu unless such material is produced by the parties and proved independently before Reference Court.,,,

Determination of market value has to be made as per market rates prevailing on the date of publication of notification under section 4 (1) of Act," ,,,

1894.,,,

11. It may also be observed that circle rate is not a relevant material to be considered for the purpose of determining market value.,,,

12. Many a times it is seen that Collector / SLAO or even landowners justify a particular market value with reference to circle rate published by,,,

Collector which has been determined for the purposes of stamp duty. This approach has not been approved by Courts time and again.,,,

13. In *Jawajee Nagnatham v. Revenue Divisional Officer*, (1994) 4 SCC 595, this question came up for consideration in the matter arisen from" ,,,

State of Andhra Pradesh. The landowners appealed against order of Reference Court before Andhra Pradesh High Court claiming higher,,,

compensation on the basis of the basic valuation register maintained by Revenue authorities under Stamp Act, 1899. The claim of land owners" ,,,

failed in High Court, which held that such register had no evidenciary value on statutory basis. In appeal, Apex Court held that basic valuation" ,,,

register was maintained for the purpose of collecting stamp duty under Section 47-A of Stamp Act, 1899 as amended in State of Andhra Pradesh." ,,,

It did not confer expressly any power upon the Government to determine market value of land prevailing in a particular area, i.e., village, block," ,,,

district or region. It also did not provide, a statutory obligation upon Revenue authorities to maintain basic valuation register for levy of stamp duty" ,,,

in regard to instruments presented for registration. Therefore, there existed no statutory provision or rule providing for maintaining such valuation" ,,,

register. In the circumstances, such register prepared and maintained for the purpose of collecting stamp duty had no statutory force or basis and",,,

cannot form a valid criteria to determine market value of land acquired under Act, 1894. This decision was followed in Land Acquisition Officer v.",,,

Jasti Rohini, 1995 (1) SCC 717.",,,

14. Another matter from State of U.P. came up for consideration involving same issue in U.P. Jal Nigam v. M/s Kalra Properties (P) Ltd., (1996)",,,

3 SCC 124. Landowners" demanded compensation in regard to land acquired under Act, 1894 on the basis of market value assessed as per",,,

circle rate determined by Collector. It was accepted by High Court, but in appeal, judgment was reversed by Supreme Court following its earlier",,,

decision in Jawajee Nagnatham (supra). Court held that market value under Section 23 of Act, 1894 cannot be determined on circle rates",,,

determined by Collector for the purpose of stamp duty under Stamp Act, 1899. This view was reiterated in Krishi Utpadan Mandi Samiti v. Bipin",,,

Kumar, (2004) 2 SCC 283.",,,

15. The issue has again been considered recently by a larger Bench in Lal Chand v. Union of India and another, (2009) 15 SCC 769, wherein two",,,

Judgments of Apex Court taking a view that circle rates may be considered, as prima facie basis, for the purpose of ascertaining the market value",,,

were examined. These decisions are Ramesh Chand Bansal v. District Magistrate/Collector, (1999) 5 SCC 62 and R. Sai Ram Bharathi v. J.",,,

Jayalalitha, (2004) 2 SCC 9. The Court resolved controversy holding, if in a particular case, guidelines for market values are determined by an",,,

Expert Committee constituted under State Stamp Law for following a detailed procedure laid down under the relevant rules and are published in,,,

State Gazette, the same may be considered as a relevant material to determine market value. Court said, when guidelines of market value, i.e.,",,,

minimum rates for registration of properties, are so evaluated and determined by Expert Committees, as per statutory procedure, there is no",,,

reason why such rates should not be a relevant piece of evidence for determination of market value. Having said so, in para 44, Court further said",,,

:-",,,

44. One of the recognised methods for determination of market value is with reference to the opinion of experts. The estimation of market",,,

value by such statutorily constituted Expert Committees, as expert evidence can, therefore, form the basis for determining the market value",,,

in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the",,,

presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant",,,

piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment",,,

procedure (either streetwise, or roadwise, or area wise, or village-wise) and finalised after inviting objections and published in the gazette. Be",,,

that as it may."",,,

16. It is thus evident that for the purposes of determining market value circle rate fixed by Collector for the purposes of stamp duty would not be a,,,

relevant material unless such determination is under a statutory obligation and after following a prescribed procedure.,,,

17. When an exemplar sale-deed is relied on for the purpose of determining market value, Court has to examine the same so as to balance rates",,,

mentioned in sale-deeds with the rates which may be determined in respect to acquired land.,,,

18. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. Court, is a",,,

hypothetical purchaser, willing to purchase land from open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of",,,

publication of notification under section 4 of the Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. Court, ",,,

therefore, would co-relate market value reflected in the most comparable instance which provides the index of market value. Only genuine",,,

instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine",,,

and acquisition itself has not motivated purchaser to pay a higher price on account of the resultant improvement in development prospects.,,,

Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine,,,

instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to",,,

arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words, a balance",,,

sheet of plus and minus factors may be drawn and the relevant factors may be valued in terms of price variation as a prudent purchaser would do.,,,

The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for,,,

minus factors.,,,

19. In *Kaushalya Devi Bogra and others v. Land Acquisition Officer, Aurangabad and another*, (1984) 2 SCC 324, about 150 acres of land was",,,

acquired. Owners of acquired land were in two groups, i.e. Kaushalya Devi Bogra and Syed Yusufuddin Syed Ziauddin. First group, i.e.",,,

Kaushalya Devi Bogra owned 74 acres, while Yusufuddin owned about 15 acres of land. In these facts of case where almost 60% of total",,,

acquired land was owned by two sets of owners and exemplar of smaller property was relied, Court said that ""when large tracts are acquired, the",,,

transaction in respect of small properties do not offer a proper guideline. In certain other cases, for determining market value of a large property on",,,

the basis of a sale transaction for smaller property, a deduction should be given.",,,

20. In Bhagwathula Samnna and others v. Special Tehsildar and Land Acquisition Officer, Visakhapatnam Municipality (1991) 4 SCC 506, High",,,

Court applied deduction of 33.3% observing, when large extent of land was acquired under housing scheme and exemplar is of small land,",,

reasonable deduction can be made. Following the decision in Tribeni Devi v. Collector, Ranchi, AIR 1972 SC 1417, it was argued before Apex",,,

Court that High Court wrongly applied deduction. Acquired land was fully developed and eminently suitable for being used as house sites and,",,

therefore, there was no justification for making any deduction. The land was acquired for formation of road, High Court applied deduction on the",,,

ground that expenses have to be incurred for development, which was not justified. Aforesaid submission was considered by Supreme Court in the",,,

light of facts of that case. In para 7 and 11 Court said: -",,,

7. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date",,,

of the relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market,,

value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending,,

upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in,,

an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken,,

into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for",,,

larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a",,,

deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area,,

in order to compare with the small plots dealt with under the sale transaction.,,,

11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the",,,

acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the,,

acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an",,,

advantageous position. If smaller area within the large tract is already and suitable for building purposes and have in its vicinity roads,",,

drainage, electricity, communications etc. then the principle of deduction simply for the reasons that it is part of the large tract acquired, may",,,

not be justified."",,,

21. Court further held that 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 price fetched by small plots of land. If larger tract of,,,

land, because of advantageous position, is capable of being used for the purpose for which 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 value for the purposes of comparison is not",,,

warranted. Having said so, Court in para 13 held as under: -",,,

13. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the",,,

land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the",,,

entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require",,,

any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the",,,

fair market value of land from Rs. 10/- pr square yard to Rs. 6.50 paise pr square yard. In our opinion, no such deduction is justified in the",,,

facts and circumstances of these cases. """,,,

22. The size of land would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a large",,,

number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra",,,

liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. Courts have said that",,,

in such matters, factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to",,,

account for land, required to be set apart for carving out road etc. and for plotting out small plots.",,,

23. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number",,,

of land holders and size of their plots.,,,

24. When we talk of concept of prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller, the individual",,,

land holder will come. It is the area of his holding which will be relevant for him and not that of actual, total and collective large area, which is",,,

sought to be acquired.,,,

25. In V.M. Salgoacar and brother Ltd. v. Union of India (1995) 2 S.C.C 302, land acquired by notification dated 06.07.1970 in village Chicalim",,,

near Goa Airport belonged to a single owner. Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of",,,

fetching higher price in comparison to the plot which are much higher in size. Having said so Court further said:,,,

... though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for",,,

determining the market value. On its basis, giving proper deduction, the market value ought to be determined"".",,,

26. Again in *Shakuntalabai (Smt.) and others v. State of Maharashtra*, 1996 (2) S.C.C 152, 20 acres of land in Akola town was sought to be" ,,,

acquired by notification published on 11.08.1965 under section 4(1) of Act, 1894 which was also owned by a single person. It is in this context," ,,,

Court said, ""the Reference Court committed manifest error in determining compensation on the basis of sq. ft. When land of an extent of 20 acres" ,,,

is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis." ,,,

Therefore, the Reference Court has to consider valuation sitting on the armchair of a willing prudent hypothetical vendee and to put a question to" ,,,

itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the" ,,,

conclusion. The answer is obviously ""no""." ,,,

27. In order to determine market value when exemplars are adduced, normally it is found that exemplars of small land, and that too, in developed" ,,,

area after plotting and development are relied. Sometimes a single exemplar is available and sometimes more than that. It is not the number of,,

exemplars which is important and would determine the question whether burden has been discharged by claimants that offer of compensation made,,

by Collector is inadequate and he is entitled to higher compensation but it is the genuity, authenticity and creditworthiness of the documents. If the" ,,,

document is found most suitable and appropriate for determining compensation in respect of acquired land even a single instance/exemplar cited by,,

landowner may be relied and it can be said that claimant-landowner has succeeded in discharging his burden.,,,

28. In *Gafar v. Moradabad Development Authority*, 2007 (7) SCC 614, the Court observed that burden is on the claimants to establish that" ,,,

amount awarded to them by Collector is inadequate. That burden has to be discharged by claimants and only if initial burden in that behalf is,,

discharged, the burden would shift to State to justify the compensation offered by SLAO." ,,,

29. Further, when there are more than one exemplar, one, which provides highest rate, has to be followed. In *Satish v. State of U.P.*, 2009 (14)" ,,,

SCC 758, Court after relying on its earlier decision in *Viluben Jhalenjar Contractor (Dead) by Lrs. v. State of Gujarat*, 2005 (4) SCC 789, said :"" ,,,

...when comparable exemplars are brought on record, the one carrying the highest market value amongst them may be followed. """" ,,,

30. Whenever the area of acquired land is larger than the area of land which is subject matter of the exemplar and smaller in size, Courts have held" ,,,

the same admissible subject to appropriate deduction.,,,

31. In *Basavva (Smt.) and others v. Special Land Acquisition Officer and others*, (1996) 9 SCC 640, notification under Section 4(1) of Act, 1894" ,,,

proposing to acquire 194 acres of land for industrial development near Dharwad was published on 30.10.1981. Collector made award dated,,

22.8.1985 offering compensation at the rate between Rs. 8,000/- to Rs. 8,080/-, which was enhanced by Reference Court vide award dated" ,,,

11.10.1988 to Rs. 1.72/- per square fit (Rs.74,953/- per acre). On appeal High Court reduced compensation to Rs. 56,000/- per acre. The",,,

appeal preferred by State Government against High Court"s judgment was dismissed.,,,

32. In the appeals preferred by landowners, it was contended on behalf of landowners that deduction towards development upto 53% was",,,

reasonable but High Court in applying 65% deduction has erred in law. Court observed, while determining compensation, at first instance, it has to",,,

be seen whether sales relating to smaller pieces of land are genuine and reliable; and, whether they are in respect of comparable land. If it is found",,,

that sales are genuine and reliable and lands have comparable features, sufficient deduction should be made to arrive at a just and fair market value",,,

of large tracts of land. The time lag for real development and waiting period for development are also relevant for determination of just and",,,

comparable compensation. For deduction of development charges, nature of development, conditions and nature of land, the land required to be",,,

set apart under building rules for roads, sewerage, electricity, parks, water etc. and all other relevant circumstances involved are to be considered.",,,

33. The above principles were also laid down in D. Vasundara Devi v. Revenue Divisional Officer, (1995) 5 SCC 426 which was relied by Court",,,

in Basavva (Smt.) and Others v. Special Land Acquisition Officer and others (supra). It then found that exemplar sale deed was dependable but in",,,

respect of a small plot of land situated at a distance of more than 1 k.m. It also found that the land in area is not developed and there is no",,,

development towards that area. It was also noticed that it would take years for development in those lands though lands was capable of user for",,,

non-agricultural purpose. It is in this background, Court applied 53% deduction for development. It further held that since a long time would take",,,

for development and for that purpose additional 12% deduction was allowed making total as 65% deduction.,,,

34. In Land Acquisition Officer, Kammarapally Village v. Nookala Rajamallu and others, AIR 2004 SC 1031 the Court said as under :",,,

It has been held that the deduction can be made where the land is acquired for residential and commercial purpose with regard to roads",,,

and 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. So far as this Court is concerned, it has",,,

discarded the deduction policy on various grounds. One of the grounds is that if the State or its authority acquires the land for the purpose of",,,

selling it to the ultimate purchasers upon making available facilities, they normally recover the price inclusive of common facilities, therefore, a",,,

Government or its authority cannot be doubly benefited either by deductions from the payment of compensation in one hand and by",,,

collections of price of such development from the ultimate purchasers on the other hand. It also to be seen that no law prescribes deduction",,,

in paying compensation. It is to be remembered that deduction is an exception not the rule."",,,

35. In *Udho Dass v. State of Haryana and Ors.* 2010 (12) SCC 51, by notification dated 17.5.1990, 162.5 acres of land in village Patti",,,

Musalmanan was sought to be acquired for the purposes of housing project in Sonapat (Haryana). Collector determined compensation at the rate",,,

of Rs. two lacs per acre, but it was enhanced by Additional District Judge on reference under Section 18 of Act, 1894 to Rs. 125/- per square",,,

yard for the land behind E.C.E. Factory, situated away, and on the left side of the Sonapat Bahalgarh road, and Rs. 150/- per square yard on the",,,

right side abutting the road. Reference Court held that land on the left side did not abut the road and it had therefore less potential value vis-a-vis",,,

land on the right side, which touched the road. In appeal High Court enhanced compensation from Rs. 125/- to Rs. 135/- and from Rs. 150/- to",,,

Rs. 160/-. Land owner came in appeal before Supreme Court claiming compensation at Rs. 200/- per square yard. Court, as a matter of fact",,,

found in that case that even compensation, which was determined by Collector or Reference Court was not paid to land owners immediately, but",,,

payment spread over for two decades. Court said if compensation payment continued over a period of almost 20 years, potential of land acquired",,,

from land owners must also be adjudged keeping in view development in the area, spread over the period of 20 years if evidence so permits and",,,

cannot be limited to near future alone. Court observed that this broad principle would be applicable where possession of land has been taken",,,

pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of Government and is subsequently",,,

acquired",,,

36. The Court also observed that in case where compensation is based exclusively on sale instances, it creates some time a disadvantageous",,,

position to land owners, whose land is forcibly acquired. There is wide spread tendency to undervalue sale prices. Circle rates determined by",,,

Collector only marginally corrected anomaly, as these rates are also abnormally low and do not reflect true value. These things cause serious",,,

disadvantage to land owners, since they have no control over price on which some other land owners sell their property, which is often the basis",,,

for compensation payable to land owners, whose land are forcibly acquired. Court also held that there cannot be application of belting system in",,,

that case. Normally, land along side the road has more value vis-a-vis the land away from, but that would have been the case where agricultural",,,

land, which have no potential for urbanization or commercialisation had been acquired and in such a case, belting system is permissible."",,,

37. In *Udho Dass (supra)* Court held that land was acquired in 1990. It had great potential and had been completely urbanized as huge residential",,,

complexes, industrial area and estates, huge education city have come up in the last 10 or 15 years. It further held as under:"",,,

Moreover, insofar as land which is to be used for residential purposes is concerned, a plot away from the main road is often of more value",,,

as the noise and the air pollution alongside the arterial roads is almost unbearable. It also significant that the land of Jamalpur Kalan was,,,

touching the rear side of the ECE factory and the High Court had granted compensation of Rs. 250/- per square yard for the acquisition of,,,

the year 1992. We have also seen the site plan to satisfy ourselves and find that the land acquired from Jamalpur Kalan and the present land,,,

share a common boundary behind the ECE factory. The belting system in the facts of the present case would thus not be permissible. """,,,

38. In *Anjani Molu Desai v. State of Goa and another*, (2010) 13 SCC 710, a very large tract comprising 3,65,375 square meter of land in Balli",,,

village, Quepem Taulak, Goa was acquired for the purposes of Konkan Railway for laying down broad gauge line. Acquisition notification was",,,

issued on 30.7.1991. Appellant Anjani Molu Desai owned 60,343 square meter of land in Survey No.45/1, 45/5, 45/6, 51/1 and 51/2. Collector",,,

awarded compensation at the rate of Rs. 12/- per square meter for orchard lands and Rs. 6/- per square meter for paddy lands. Reference Court,,,

and High Court affirmed said valuation by rejecting reference and appeal. Collector determined market value relying upon two exemplars and,,,

taking an average thereof. First exemplar sale deed dated 30.8.1989 relates to 2055 square meters of land situated at the distance of 200 meter,,,

away from acquired land and sold at the rate of Rs. 43.80 per square meter. Collector deducted 45% from sale price towards ""development cost""",,,

i.e. for providing approach road and open spaces, expenses relating to development work, conversion charge etc. This reduced price from Rs.",,,

24/- per square meter. Since sale deed was of August, 1989 and acquisition commenced in 1991, thus there being gap of 20 months, Collector",,,

provided an increase at the rate of 14.5% per annum and thus, arrived at Rs. 32.24 per square meter. Exemplar sale deed dated 30.1.1990",,,

relates sale of 7600 square meters of land at the distance of one kilometer from acquired land sale at Rs. 3/- per square meter. Here also, gap was",,,

of 18 months, thus 14.5% increase was allowed, which made sale price at Rs. 3.82 per square meter. Collector then averaged two rates derived",,,

from two sale deeds and determined Rs. 18/- per square meter (Rs.32.24 + Rs. 3.82/2). This method adopted by Collector was not approved by,,,

Supreme Court. It was held, where there are more than one exemplar, which could be considered for determining market value, the one providing",,,

higher rate should be accepted and followed. It is only in exceptional cases where there are several sales of similar land, whose prices range in a",,,

narrow bandwidth, the average can be taken as representing market value. But where values disclosed in respect of two sales are markedly",,,

different, it can only lead to an inference that they are with reference to dissimilar land or that lower value sale is on account of under valuation or",,,

other price depressing reasons. In respect of orchard land, therefore, Court followed exemplar sale deed dated 30.8.1989 providing sale price at",,,

Rs. 43.80 per square meter and applying appreciation of 14.5% and odd per annum, Court determined market value at Rs. 57.50 and to that",,,

extent claim of appellant Anjani Molu Dessai was upheld. Here also proposition laid down by Apex Court is not exceptional but depends on the,,,

facts of individual cases.,,,

39. In Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others, AIR 2007 SC 1414, land was acquired for new",,,

broad gauge line of Konkan Railway. Acquisition notification under Section 4 Act, 1894 was issued in August, 1994. SLAO made award of Rs.",,,

4/- per square meter. In reference, District and Sessions Judge relying on two sale deeds dated 13.12.1993 enhanced compensation at the rate of",,,

Rs. 192/- per square meter. Sale price in exemplar sale deed was Rs. 449/- per square meter. Land owners as well as acquiring body both,,,

preferred appeals. Land owner"s appeal was rejected while acquiring body"s appeal was allowed to the extent that market value was reduced to,,,

Rs. 38/- per square meter. Supreme Court found that compensation awarded by High Court by rejecting valuer report is not based on cogent,,,

material and not supported by cogent reasons. The injury, which land owner, was likely to sustain due to loss of his future earning from selling land",,,

as also damage already suffered due to diminution of profit of land between time of publication of notice and time taken by Collector in possession,,,

was not considered. Since land was acquired for the purposes of laying down railway line, no development was to be done. There existed civil",,,

amenities like, school, police station, water supply, bank, electricity, highway, transport, petrol pump, industries, telecommunication and other",,,

business. Hence it determined compensation at the rate of Rs. 250/- per square meter, but then applied 20% deduction, which brings rate at Rs.",,,

200/- per square meter.,,,

40. In Special Land Acquisition Office v. Karigowdo and others, 2010 (5) SCC 708, total acquired land was 146 acres and 7 guntas. It was",,,

owned by 419 claimants owners, whose area vary from 2 to 48 guntas. Acquired land was situated in village Sanaba, Chinakavali Hobli",,,

Pandavapura. These land got submerged in 1993 under backwaters of Tonnur tank due to construction of Hemavathi Dam. Physical possession of,,,

land was taken between October, 1996 to December, 1999, while acquisition notification under Section 4 (1) of Act, 1894 was issued on",,,

4.4.2002. Crops standing on land were damaged. SLAO determined market value at Rs. 90,460/- per acre for wet land and Rs. 37,200/-",,,

petitioner acre for dry land. On reference, compensation was enhanced to Rs. 2,92,500/- per acre for wet land (garden land), Rs. 1,46,250/- for",,,

dry land (lightly irrigated) and Rs. 1,20,000/- for dry land (without mulberry crop). In appeal by land owners, High Court enhanced compensation",,,

to Rs. 5,00,000/- per acre for wet/garden land and Rs. 2,53,750/- per acre for dry land. State, therefore, came in appeal before Apex Court.",,,

Dispute arose before Court was for computation of compensation payable to claimants and quantum thereof. Argument advanced by State was,,,

that method adopted by Reference Court as well as High Court was impermissible in law. Court cannot take into consideration commercial,,,

activity, which may result from, and be indirectly incidental to agricultural activity, particularly, when both of them are carried on independent of",,,

each other.,,,

41. In that case there were no sale instances from village Sanaba prior to 2002. The exemplars of adjoining villages were produced before Court.,,,

After looking into statutory provisions of Act, 1894, Court said (1) provision of Section 23 are mandatory; and (2) it is for claimants to ascertain",,,

as a matter of fact location, potential and quality of land for establishing its fair market value. It is for claimant to show that what is contemplated",,,

under conditions attached thereto has been satisfied. It is also for claimant to show that to award compensation payable under statutory provisions," ,,,

they have brought on record evidence to satisfy criterion and conditions required to be fulfilled for such a claim. Court has to determine,,,

compensation strictly in accordance with the provisions of Sections 23 and 24 of Act, 1894. Potentiality of land should be on the date of",,,

acquisition i.e. existing potentiality. Further, potentiality has to be directly relatable to capacity of acquired land to produce agricultural products, or",,,

its market value relatable to method of compensation. If there is any existing crops or trees or fruit bearing trees, the same can be taken into",,,

consideration, but extent of benefit cannot go to the extent that fruits grown in agricultural land would be converted into jam or any other eatable",,,

products. This extension of loss of benefits amounts to remote factors, which is not permitted to take into consideration. The Court thus held that",,,

compensation determined by Reference Court and High Court was not justified. State appeal was partly allowed and Court provided for,,,

compensation at Rs. 2,30,000/- per acre for wet/garden land and Rs. 1,53,400/- per acre for dry land." ,,,

42. In Mohinder Singh and others v. State of Haryana, (2014) 8 SCC 897, by notification dated 2.12.1982, 327.52 acres in village Patti Jhambra",,,

Shahabad in District Kurushetra (State of Haryana) was acquired for development and utilisation of land for residential, commercial, industrial",,,

purposes etc. Notification under Section 6 was issued on 4.7.1984 in relation to 178.62 acres, and ultimate possession taken was found only",,,

90.07 acres. Collector made award at different rates per acre depending upon quality of soil/land. Reference Court awarded uniform,,,

compensation at Rs. 2,66,400/- per acre. State preferred appeal whereupon High Court reduced compensation to Rs. 1,83,080/- per acre. Land",,,

owner preferred intra court appeal and Division Bench determined market value at Rs. 2,19,696/- per acre. Land owners further went in appeal",,,

before Supreme Court, which set aside the judgment of High Court and restored award passed by Reference Court determining Rs. 2,66,400/-" ,,,

per acre as market value. While restoring award of Reference Court, Supreme Court observed that 40% deduction applied by High Court was" ,,,

not justified. Since land was within developed Municipal limit, therefore, deduction of 25% applied by Reference Court was justified." ,,,

43. In Union of India v. Raj Kumar Baghal Singh (deal) through legal representatives and others, (2014) 10 SCC 422, 72.9375 acres of land in" ,,,

village Bir Kheri Gujran, District Patiala in State of Punjab was acquired vide notification dated 14.3.1989. Collector made award of Rs. two lacs" ,,,

per acre. Reference Court enhanced amount of compensation to Rs. 9,05,000/- per acre. In appeal, Single Judge of High Court reduced" ,,,

compensation to Rs. 105.80 per square yard and it was confirmed by Division Bench also. Union of India preferred appeal, which was dismissed." ,,,

Court held that there is no rule of thumb for deduction at a particular rate. It varies and depends on individual case. In para 11 Court said ""the" ,,,

extent of cut depends on individual fact situation""." ,,,

44. Deduction for development is different than deduction permissible in respect of largeness of area vis-a-vis exemplar of small piece of land.,,,

Many times, land owners relied on the rates on which development authorities used to offer allotment of developed plots carved out by them in" ,,,

residential or industrial area. Such rates apparently cannot form basis for compensation for acquisition of undeveloped lands for reasons more than ,,,

one. The market value in respect of large tract of undeveloped agricultural land in a rural area has to be determined in the context of a land similarly ,,,

situated whereas allotment rates of development authorities are with reference to small plots and in a developed lay out falling within urban or semi- ,,,

urban area. Statutory authorities including development authorities used to offer rates with reference to economic capacity of buyers like economic ,,,

Weaker Sections, Low Income Group, Middle Income Group, Higher Income Group etc. Therefore, rates determined by such authorities are not" ,,,

uniform. The market value of acquired land cannot depend upon economic status of land loser and conversely on the economic status of the body ,,,

at whose instance, land is acquired. Further, normally, land acquired is a freehold land whereas allotment rates determined by development" ,,,

authorities etc. constitute initial premium payable on allotment of plots on leasehold basis.,,,

45. However, where an exemplar of small piece of land is relied, in absence of any other relevant material, Court may determine market value in" ,,,

the light of evidence relating to sale price of small developed plots. In such cases, deduction varying from 20% to 75% is liable to apply depending" ,,,

upon nature of development of lay out in which exemplar plot is situated.,,,

46. In Shaji Kuriakose and another v. Indian Oil Corporation Ltd. and others, (2001) 7 SCC 650, a large tract of land in village Manakunnam," ,,,

District Cochin was proposed to be acquired for setting up a bottling plant by Indian Oil Corporation and notification under Section 4 (1) was,,,

issued on 23.08.1990. Acquired land included 7.13 acres of land of claimant/landowner-Shaji Kuriakose. Collector vide award dated 05.05.1992,,,

offered compensation at Rs. 1,225/- per acre i.e. Rs. 500 per cent which was enhanced to Rs. 7,000/- per cent by Reference Court. High Court",,,

reduced compensation to Rs. 4,000/- per cent for wet land and Rs. 6,500/- for dry land. Appeal preferred by claimants before Apex Court failed.",,,

Court found that land which was sold vide exemplar sale deed was not similarly placed with acquired land inasmuch as there was no access to,,,

acquired land, there existed only an internal mud road which belonged to one of the claimants, whose land was acquired, the land covered by",,,

exemplar sale deed was a dry land, whereas acquired land was mostly wet land. After acquisition, acquired land has to be reclaimed and a lot of",,,

amount would be spent for filling it. The exemplar sale deed related to a small piece of land while acquired land was quite large. Sale for smaller,,,

plot fetches more consideration than larger or bigger piece of land. Looking to all these facts, Court found that determination made by High Court",,,

was justified and dismissed appeal.,,,

47. In Kasturi and others v. State of Haryana, (2003) 1 SCC 354, 84.31 acres of land in State of Haryana was proposed to acquire for",,,

development of residential and commercial area at Sector 13 and 23 Bhiwani by publishing notification under Section 4 on 04.04.1986. Collector,,,

made award dated 10.11.1987 and 31.03.1988 determining compensation at Rs. 57,500/- per acre and Rs. 55,200/- per acre which comes to",,,

around Rs. 11.81 per square yard. Reference Court enhanced compensation to Rs. 125/- per square yard. Landowners as well as State, both",,,

preferred appeal in High Court. Landowners sought compensation at Rs. 500/- per square yard while State appealed for restoration of Collector"s,,,

award. High Court reduced compensation to Rs. 79.98 per square yard applying 20% deduction towards development charges. It partly allowed,,,

appeal of State but dismissed appeals preferred by claimants/landowners. Division Bench confirmed judgment of Single Judge hence matter was,,,

taken to Apex Court by claimants/ land owners. It was contended that High Court erred in applying deduction of 20% towards development,,,

charges and also by not enhancing compensation to Rs. 500/- per square yard as claimed by landowners. Supreme Court found that land acquired,,,

comprised a large area and was not developed though has potential for residential and commercial purposes. For its development roads were to,,,

be laid, provision for drainage was to be made and certain area was to be earmarked for other civic amenities. The acquired land is not a small",,,

plot located in such a way that no other development was required at all and it could be utilised as it is, being a developed building site. In respect",,,

of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 33% amount was processed for",,,

deduction subject to variations depending upon nature of land, location, extent of expenditure involved for development and area required for",,,

roads and other civic amenities to develop land so as to make plots for residential or commercial purposes. Whether land is plain or uneven, soil of",,,

land is soft or hard having bearing on foundation for the purpose of making construction; whether land is situated in the midst of a developed area,,,

all around or may have a hillock or may be low lying or may be having deep ditches, are all relevant considerations since that would have",,,

consequences in the land to be spent for development. Court relied on various decisions and thereafter upheld deduction of 20% towards,,,

development and dismissed appeal of landowners.,,,

48. In *Lal Chand v. Union of India* (supra), Court noticed that deduction for development constitutes two components-one is with reference to",,,

area required to be utilised for development work and second is the cost of development work. It further held that deduction for development in,,,

respect of residential plot may be higher while not so where it is an industrial plot. Similarly, if acquired land is in a semi-developed urban area or in",,,

any undeveloped rural area, then deduction for development may be much less and vary from 25 to 40 percent since some basic infrastructure will",,,

already be available. The percentage is only indicative and vary depending upon relevant factors. With reference to exemplars of transfer of land,,,

between private parties, Court would also look into intrinsic evidence, i.e., the exemplar sale deed where it recites financial difficulties of vendor",,,

and urgent need to find money as a reason for sale or other similar factors, like litigation or existence of some other dispute. These are all the",,,

factors constituting intrinsic evidence of a distress sale.,,,

49. In *Lal Chand v. Union of India* (supra), Court also observed, if acquisition is in regard to a large area of agricultural land in a village and",,,

exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie",,,

evidence of prevailing market value even if such land is at the other end of village, at a distance of one or two kilometers. But, the same may not be",,,

appropriate where acquisition relates to plots in a town or city where every locality or road has a different value. A distance of about a kilometer,,,

may not make a difference for the purpose of market value in a rural area but even a distance of 50 meters may make a huge difference in market,,,

value in urban properties. Thus, distance between two properties, the nature and situation of property, proximity to the village or a road and",,,

several other factors may all be relevant in determining market value.,,,

50. In *Valliyammal and others v. Special Land Acquisition*, 2011 (8) JT 442, Court has looked into various earlier judgments laying down guiding",,,

principles for determination of market value of acquired land. Court has observed that comparable sales method of valuation is preferred since it,,,

furnishes evidence for determination of market value of acquired land at which a willing purchaser would pay for acquired land if it had been sold in,,,

open market at the time of acquisition. However, this method is not always conclusive and there are certain factors, which are required to be",,,

fulfilled and on fulfilment of those factors, compensation can be determined. Such factors are (a) sale must be a genuine transaction; (b) sale deed",,,

must have been executed at the time, proximate to the date of issue of notification under Section 4; (c) land covered by the sale must be in the",,,

vicinity of acquired land; (d) land covered by the sales must be similar to acquired land; and (e) size of plot of the land covered by the sales be,,,

comparable to the land acquired. If there is dissimilarity in regard to locality, shape and size or nature of land, court can proportionately reduce",,,

compensation depending upon disadvantages attached with the acquired land. Further, for determining market value, potentiality of acquired land",,,

should also be taken into consideration. The ""potentiality"" means, capacity or possibility for changing or developing into state of actuality. It is well",,,

settled that market value of property has to be determined having due regard to its existing condition, with all its existing advantages and its",,,

potential possibility when let out in its most advantageous manner. Court also said, when undeveloped or underdeveloped land is acquired and the",,,

exemplar is in respect to developed land, deduction towards deduction can be made. Normally, such deduction is 1/3, but it is not a hard and fast",,,

rule.,,,

51. In Bhule Ram v. Union of India and another, JT 2014 (5) SC 110, Court in para 7 has observed that valuation of immovable property is not",,,

an exact science, nor it can be determined like algebraic problem, as it bounds in uncertainties and no strait-jacket formula can be laid down for",,,

arriving at exact market value of the land. There is always a room for conjecture, and thus court must act reluctantly to venture too far in this",,,

direction. The factors such as the nature and position of land to be acquired, adaptability and advantages, the purpose for which the land can be",,,

used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape",,,

of the land, the rise of depression in the value of the land in the locality consequent to the acquisition etc., are relevant factors to be considered. It",,,

further said that value, which has to be assessed, is the value to the owner, who parts with his property, and not the value to the new owner, who",,,

takes it over. Fair and reasonable compensation means the price of a willing buyer, which is to be paid to the willing seller. Though the Act does",,,

not provide for ""just terms"" or ""just compensation"", but market value is to be assessed taking into consideration the use to which it is being put on",,,

acquisition and whether the land has unusual or unique features or potentialities. Court then also considered as to what is the concept of ""guess",,,

work"" and observed that it is not unknown to various fields of law as it applies in the cases relating to insurance, taxation, compensation under the",,,

Motor Vehicle Act as well as under Labour Laws. Having said so, Court further said:",,,

The court has a discretion applying the guess work to the facts of the given case but is not unfettered and has to be reasonable having",,,

connection to the facts on record adduced by the parties by way of evidence. The court further held as under:-",,,

"Guess" as understood in its common parlance is an estimate without any specific information while ""calculations"" are always made with",,,

reference to specific data. ""Guesstimate"" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the",,,

same time ""guess"" cannot be treated synonymous to ""conjecture"". ""Guess"" by itself may be a statement or result based on unknown factors",,,

while ""conjecture"" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. ""Guesstimate"" is",,,

with higher certainty than more ""guess"" or a ""conjecture"" per se." (para 8)",,,

52. In Bhupal Singh and others v. State of Haryana, (2015) 5 SCC 801 while the above principles laid down in various cases were reiterated,",,,

Court in para 18 of judgment, said: -",,,

Law on the question as to how the court is required to determine the fair market value of the acquired land is fairly well settled by several",,,

decisions of this Court and remains no more res integra. This Court has, inter alia, held that when the acquired land is a large chunk of",,,

undeveloped land having potential and was acquired for residential purpose then while determining the fair market value of the lands on the",,,

date of acquisition, the appropriate deductions are also required to be made."",,,

53. It is also reaffirmed that an exemplar when relates to small piece of developed land and is sought to be relied to determine market value of",,,

large tract of undeveloped acquired land, deduction can be applied ranging between 20% to 75%. The Court in para 20 of judgment relied upon",,,

its decision in Chandrashekhar v. L.A. Officer, (2012) 1 SCC 390, stating that deduction has two components, one is ""development"" and another",,,

with respect to the ""size of the area"". Percentage of deduction was restricted in Subh Ram v. State of Haryana, (2010) 1 SCC 444, stating that",,,

deduction of both components should be around 1/3 each in its entirety, which would roughly come to 67% of component of sale consideration of",,,

exemplar sale transaction.,,,

54. Thus, with respect to escalation of price where exemplar is much earlier in point of time, Court in K. Devakimma and others v. Tirumala",,,

Tirupati Devasthanam and another, 2015 (111) ALR 241, said that recourse can be taken in appropriate cases to the mode of determining market",,,

value by providing appropriate escalation over the proved market value of nearby land in previous years where there is no evidence of any",,,

contemporaneous sale transaction or acquisition of comparable lands in neighbourhood. The percentage of escalation may vary from case to case",,,

so also the extent of years to determine the rates.,,,

55. In *Trishala Jain and another v. State of Uttaranchal and another*, (2011) 6 SCC 47, for the purposes of construction of Government Polytechnic",,,

Institute at Dehradun, notification under Section 4 was published on 30th January, 1992, proposing to acquire 12.85 acres of land situated in",,,

village Sewala Kalan, Pargana Kendriya Doon, District Dehradun. The area of land belong to claimants-landowner, Trishala Jain and others, was",,,

4.58 acres and 3.031 acres respectively. Collector offered compensation applying ""belting system"" and the first belt at Rs. 9,78,223.40 per acre",,,

second belt at Rs. 6,52,482.27 per acre and third belt at Rs. 4,39,362.70 per acre. Reference Court held belting system applied by Collector",,,

improper observing that entire land having been acquired for one purpose, there was no justification for application of belting system. Relying on",,,

two exemplar sale deeds dated 26.11.1991 and 17.11.1991 it awarded compensation at Rs. 5,12,000/- per bigha after applying 20% deduction",,,

to gross market value of Rs. 6,40,000/- per bigha. In appeal, High Court upheld view taken by Reference Court that there was no justification for",,,

applying ""belting system"" but raised deduction from 20% to 33.33% and hence determined market value at Rs. 4,26,667/- per bigha. The",,,

aforesaid deduction was applied on account of ""development charges"". Appeal was taken to Supreme Court by claimants/landowners. The four",,,

questions formulated by Court are as under:",,,

I. Whether or not the belting system ought to have been applied for determination of fair market value of the acquired land?",,,

II. What should be the just and fair market value of the acquired land on the date of issuance of notification under Section of the Act?",,,

III. Whether in the facts and circumstances of the present case there ought to be any deduction after determining the fair market value of the",,,

land?",,,

IV. What compensation and benefits are the claimants entitled to?""",,,

56. Court upheld the view taken by courts below that application of ""belting system"" was unjustified since land as a whole was similarly placed and",,,

surrounded by developed areas and proposed to be used for one purpose, i.e., construction of Government Polytechnic Institute. Court then also",,,

held that deduction towards development is justified in certain circumstances but how much deduction is to be applied, will depend upon individual",,,

facts of the case. In para 39 of judgment, Court said:",,,

39. The law with regard to applying the principle of deduction to the determined market value of the acquired land is quite consistent",,,

though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. In other words",,,

it is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases. Normally the rule stated",,,

by this Court consistently, in its different judgments, is that deduction is to be applied on account of carrying out development activities like",,,

providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial",,,

or institutional projects. It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the,,,

acquisition relates to a large tract of land.""" ,,,

(emphasis added),,,

57. Further in paras 41 and 44 of judgment, Court said:" ,,,

41. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which",,,

it is acquired requiring no additional expenditure for its development, falls under the purview of cases of "no deduction". Furthermore, where",,,

the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features",,,

comparable to the proposed acquired land, including that of size, is another category of cases where principle of `no deduction" may be",,,

applied. These may be the cases where least or no deduction could be made. Such cases are exceptional and/or rare as normally the lands,,,

which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at,,,

the time of issuance of notification under Section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes",,,

and intents for determining the market value of the land in question.""" ,,,

44. It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed",,,

surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further" ,,,

expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered" ,,,

for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation," ,,,

amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits.""" ,,,

(emphasis added),,,

58. In Chandrashekhar v. Land Acquisition Officer (supra) for residential layout issued by Gulbarga Development Authority acquisition,,,

proceedings were initiated by publishing Notification dated 13.5.1982 proposing to acquire 144 acres of land in villages Rajapur (71 acres) and,,,

Badepur (73 acres). The land of claimants-appellants measured 8 acres, 4 guntas in village Badepur and in connected appeal it measured 7 acres," ,,,

7 guntas. Collector made award determining compensation at Rs. 4100/- per acre for land in village Badepur and Rs. 13,500/- for land in village",,,

Rajapur. Reference Court enhanced compensation to Rs. 1,46,000/- per acre in place of Rs. 4100/- per acre for land in village Badepur. On" ,,,

appeal, High Court remanded matter, where after Reference Court determined compensation at Rs. 1,45,000/- per acre vide order dated",,,

21.12.2002. High Court reduced compensation in appeal at Rs. 65,000/-. The view taken by High Court was upheld by Supreme Court by",,,

dismissing appeal of landowners. The issue raised before Court was the extent of deduction to be applied while determining market",,,

59. It would be interesting to notice review of various cases by Supreme Court demonstrating that deduction applied has varied in all cases.",,,

(a) In *Brig. Sahib Singh Kalha v. Amritsar Improvement Trust*, (1982) 1 SCC 419, the Court said where a large area of undeveloped land",,,

is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly, deduction of 20 percent of total acquired",,,

land should be made for land over which infrastructure has to be made (space for roads etc.). Besides, cause of raising infrastructure like",,,

roads, electricity, water, underground drainage, etc. is also to be considered and for this purposes deduction would raise from 20% to 33%.",,,

Thus, in all the Court upheld deductions between 40% and 53%.",,,

(b) In *Administrator General of West Bengal v. Collector, Varanasi*, (1988) 2 SCC 150, the Court upheld deduction of 40%.",,,

(c) In *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another* (supra), the Court upheld deduction between 20%",,,

to 50%.",,,

(d) In *Land Acquisition Officer Revenue Divisional Officer, Chottor v. L. Kamalamma (Smt.) Dead by and others*, (1998) 2 SCC 385",,,

Court upheld deduction of 40% as development cost",,,

(e) In *Kasturi and others v. State of Haryana* (supra), â...rd deduction was upheld on development, clarifying that deduction can be more or",,,

less of â...rd depending upon facts of the case.",,,

(f) In *Land Acquisition Officer v. Nookala Rajamallu and others*, (2003) 12 SCC 334, Court upheld 53% deduction.",,,

(g) In *V. Hanumantha Reddy (Dead) v. Land Acquisition Officer*, (2003) 12 SCC 642, Court upheld 37% deduction towards",,,

development",,,

(h) In *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789, Court observed that deduction of 20 to 50% towards",,,

development is permissible",,,

(i) In *Atma Singh v. State of Haryana and another*, (2008) 2 SCC 568, 20% deduction towards largeness of area was applied.",,,

(j) In *Subh Ram and others v. State of Haryana and others*, (supra), Court observed that where valuation of a large area of agricultural or",,,

undeveloped land has to be determined on the basis of sale price of a small developed plot, standard deductions would be â...rd towards",,,

infrastructural space and 1/3 towards infrastructural developmental cost, i.e. â...rd % i.e. 67%.",,,

(k) In *Andhra Pradesh Housing Board v. K. Manohar Reddy and others*, (2010) 12 SCC 707, it was observed that deductions on account",,,

of development could vary between 20% to 75%.",,,

(l) In Special Land Acquisition Officer and another v. M.K. Rafiq Sahib, (2011) 7 SCC 714, Court was upheld 60% deduction." ,,,

60. In this background of authorities, Court in Chandrashekhar v. Land Acquisition Officer (supra), observed that quantum of deduction towards" ,,,

development is on account of two components. In this regard it said in para 19.1 and 19.2 as under : ,,,

19.1. Firstly, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining" ,,,

pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants," ,,,

electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart" ,,,

for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries" ,,,

and hospitals, police stations, petrol pumps etc. This ""first component"" , may conveniently be referred to as deductions for keeping aside" ,,,

area/space for providing developmental infrastructure. ,,,

19.2 Secondly, deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the" ,,,

infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out" ,,,

smaller plots and the like. This ""second component"" may conveniently be referred to as deductions for developmental expenditure" ,,,

/expense. """" ,,,

61. Having said so Court in para 23 said:- ,,,

23. 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 33â€¦." percent can be made. Likewise, for the ""second component"" under the head of ""development"" a further" ,,,

deduction of 33â€¦." 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 33â€¦." percent, the two components under the head of ""development"" put together, should not exceed the upper benchmark. """" ,,,

62. The above principles have further been followed and reiterated in Atma Singh v. State of Haryana and another (supra), Nirmal Singh v. State" ,,,

of Haryana, (2015) 2 SCC 160 and Major Major General Kapil Mehra v. Union Of India and another (2015) 2 SCC 262." ,,,

63. The decisions of this Court in National Thermal Power Corporation through its G.M. v. State of U.P. and others, 2015 (4) ADJ 537 (All.) and" ,,,

Power Grid Corporation v. State of U.P. and Others, 2015 (5) ADJ 138(All.) also reiterate the said principles." ,,,

64. In *Sabhia Mohammed Yusuf Abdul Hamid Mulla (d) by L.Rs. and others v. Special Land Acquisition Officer and others* (2012) 7 SCC 595,,,

Reference Court while determining market value observed that though land was agricultural but had non-agricultural potential and determined,,,

market value. High Court made a deduction of 15% towards development charges.,,,

65. Referring to an earlier decision in *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789, Court in *Sabhia Mohammed Yusuf*,,,

Abdul Hamid Mulla (supra) said that development charges may range between 20% to 50% of the total price. Court further observed:,,,

in fixing market value of the acquired land which is undeveloped and under-developed the courts have generally approved deduction of" ,,,

â...rd 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. "" ,,,

(emphasis added),,,

66. In making this observation Court relied on its earlier decisions in *Kasturi v. State of Haryana* (supra), *Tejuma Bhojwani v. State of U.P.*, ,,,

(2003) 10 SCC 525, *V. Hanumantha Reddy v. Land Acquisition Officer and Mandal Revenue Officer* (supra), *H.P. Housing Board v. Bharat S.*, ,,,

Negi, (2004) 2 SCC 184 and *Kishan Tandon v. Allahabad Development Authority*, (2004) 10 SCC 745, *Lal Chand v. Union of India* (supra), ,,,

A.P. Housing Board v. K. Manohar Reddy, (2010) 12 SCC 707 and *Subh Ram v. State of Haryana* (supra). ,,,

67. In *Ashrafi and others v. State of Haryana and others*, (2013) 5 SCC 527, Court has observed, if acquired land has potentiality, it would not" ,,,

be justified to apply ""belting system"" . ,,,

68. Recently above authorities and several others have been considered in *Major General Kapil Mehra v. Union of India and another* (supra), and" ,,,

Court has observed that while fixing market value of acquired land, Land Acquisition Collector is required to keep in mind the following factors:-" ,,,

(i) Existing geographical situation of land.,,,

(ii) Existing use of land.,,,

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

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

69. Court has further said that market value is determined with reference to the market sale of comparable land in the neighbourhood by a willing,,,

seller to a willing buyer on or before the date of preliminary notification i.e. under Section 4(1) of 1894 Act, as that would give a fair indication of" ,,,

market value.,,,

70. With respect to factors of comparable sales, Court in *Major General Kapil Mehra v. Union of India and another* (supra) has referred to its" ,,,

earlier decision in *Urban Water Supply and Drainage Board and Others v. K.S. Gangadharappa and another*, (2009) 11 SCC 164, and has" ,,,

observed that element of speculation is reduced to minimum if underlying principles of fixation of market value with reference to comparable sales,,,

are satisfied, i.e.,(i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii)",,,

it should be of the land acquired or of the land adjacent to the land acquired; and (iv) It should possess similar advantages.,,,

71. Where there are several exemplars showing different rates, it has been said that averaging is not permissible, if land acquired are of different" ,,,

types and different locations. But where there are several sales of similar land, more or less, at the same time, prices whereof have marginal" ,,,

variation, averaging thereof is permissible. It is further held that for the purpose of fixation of fair and reasonable market value of any type of land," ,,,

abnormally high value or abnormally low value sales should be carefully discarded. If number of sale deeds of the same locality and of same period,,,

with short intervals are available, average price of available number of sale deeds shall be considered as a fair and reasonable market price." ,,,

Ultimately, it is in the interest of justice for land losers to be awarded fair compensation. All attempts should be taken to award fair compensation" ,,,

to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc." ,,,

72. "Freehold land" and "leasehold land", both these terms are conceptually different. If a property, subject to lease and in possession of a lessee," ,,,

is offered for sale by owner to a prospective private purchaser, the purchaser being aware that on purchase he will get only title and not possession" ,,,

and that the sale in his favour will be subject to encumbrance namely, the lease, he will offer a price taking note of the encumbrances. Naturally," ,,,

such a price would be less than the price of a property without any encumbrance. But when a land is acquired free from encumbrances, market" ,,,

value of the same will certainly be higher.,,,

73. In Urban Water Supply and Drainage Board (supra), Court also considered deductions towards competitive bidding and development. In" ,,,

paragraph no. 39, Court said :",,,

We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards" ,,,

development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set,,

apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development" ,,,

charges like laying of roads, construction of sewerage.""" ,,,

74. Thus, having gone through all the aforesaid decisions, we find that no absolute principle or Rule of Thumb has been laid down in any of the" ,,,

authorities as to how much deduction should be made. The substance of all the decisions is that deduction should be applied where undeveloped,,,

and under-developed land is acquired and it can vary from 10% to 70%, depending upon various factors of each case. Similarly, if area of land" ,,,

,Positive factors,,Negative factors

(i),Smallness of size,(i),Largeness of area

(ii),Proximity to a road.,(ii),"Situation in the interior at a distance from the road.

(iii),Frontage on a road.,(iii),"Narrow strip of land with very small frontage compared to depth.

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'''

(iv),Nearness to developed area.,(iv),"Lower level requiring the depressed portion to be filled up.

(v),Regular shape.,(v),"Lower level requiring the depressed portion to be filled up.

(vi),"Level vis-a-vis land under acquisition.",(vi),"Some special disadvantageous factor which would deter a purchaser.

(vii),"Special value for an owner of an adjoining property to whom it may have some very special advantage.".,,

Reference Court or not.,,,

79. In the present case, Reference Court has recorded its finding in para 9 of award that land in question was being used for agricultural purpose at",,,

the time of acquisition. It was also a low lying land. Appellant before making it usable have taken steps for filling it four to five feet to bring up level,,,

of land. Acquisition proceedings commenced on 22.07.1973 when Notification under 4 of Act, 1894 (Section 28 of Act, 1965) was issued,",,

though Notification under Section 6 of Act, 1894 (Section 32 of Act, 1965) was issued on 27.01.1979. SLAO rejected 31 exemplars of sale",,,

relating to land in Village Madhaiyan Nadarbag being unreliable. There were 19 exemplar sale-deeds of sale of land in Village Shadinagar Patti out,,

of which one at Sl.No. 14 was relied on to determine market value at Rs. 41.58 per square yard. It was challenged by claimants-land owners on,,

the ground that exemplars did not relate to Village of which the land was acquired, i.e., Madhaiyan Nadarbag and relate to another Village.".,,

Therefore, exemplar relied on by SLAO was not justified. However, it is also admitted that no exemplar of Village in question relating to period",,,

1976 to 1979 was placed before Reference Court by claimants-respondent. Having said so, it has referred to statement of PW-1, Dharam Singh,",,

giving existing development conditions in and around the acquired land stating as under:,,,

mijksDr xkV/k la0 244] 249] 255] 256] 263] 266] 274] 282] 387 o 290 dgy jdok 5 ch?kk 5 fcLok yxkuh :0 95-12 fLFkr eMS;ku",,,

uknjckx iwjs mRrj izns"k esa lcls vPNh fjk;"kh Hkwfe gS vkSj jkeiqj ds lokZf/kd lqfodflr {ks= esa gS vkSj chfl;ksa o""kksZa ls ;g Hkwfe",,,

Js""B LfKkuh;rk dh ekuh tkrh gSA chfl;ksa o""kksZa ls bl Hkwfe dh ,d fdyks0eh0 dh ifjf/k esa tu lkekU; dks leLr lqfo/kk;sa miyC/k Fkh",,,

vkSj blds ikl ls gh ftyk dpgjh] dysDV~sV jkeiqj] ftykf/kdkjh] iqfyl v/kh{kd vkokl] flusek?kj] uflZax gkse] fofHkUu izfr""Br O;fDr;ksa ds",,,

vkokl ,oa fofHkUu ljdkh dk;kZy; fLFkr gS vkSj pkjksa rjQ ls ;g Hkwfe iDdh IM+dksa ls tqM+h gSA ;g Hkwfe "kgj dh eq[; IM+dksa",,,

jkgs jtk o jkgs eqrZtk ds chp esa gSA bl Hkwfe esa lnSo ls fctyh] ikuh o VsyhQksu dh ykbus vkfn fcNh jgh gSA""",,,

The aforesaid Gata Nos. 244, 249, 255, 256, 263, 266, 274,282, 387 and 290 measuring 5 Bighas 5 Biswas and entailing land revenue",,,

to the tune of Rs. 95.12 situated at Madaiya, Nadar Bagh constitute the best residential land in the entire Uttar Pradesh and lie in the most",,,

well developed area of Rampur; and for over twenty years, this land is considered to be of prime location. For over twenty years, all public",,,

conveniences were available within 1 km radius of this land; and situated near to it are District Court, Rampur Collectorate, District",,,

Magistrate"s office, residence of the Police Superintendent, cinema halls, nursing homes, residences of many reputed persons and various",,,

Government offices, and this land is connected with concrete roads from all its four sides. This land lies between the main roads namely",,,

Rahe Raza and Rahe Murtaza. Electricity, water and telephones lines have always been laid in this land. """,,,

(English Translation by Court),,,

80. The appellant, on the contrary, pointed out that it was a low lying land and used to be water logged from time to time. The statement of PW-2",,,

in this regard has also been noted stating as under:",,,

iz"uxr tehu ds ikl izkbZosV Qsfeyh vLirky yxHkx nl o""kksZa ls gSA blds vykok iz"uxr tehu esa uxjikfydk dh ikbZi ykbZu vkokl fodkl cuus",,,

ls igys ugha Fkh vkSj u VsyhQksu dh ykbZu fcNh FkhA ysfdu ;g ykbZus vklandikl jkgs jtk o jkgs eqrZtk ij fcNh FkhA vkokl fodkl jkjk",,,

Hkwfe vf/kxzghr djus ls iwoZ bl tehu ij [ksrh gksrh FkhA bl izdkj bu nksuksa lk{kHx.k ds c;kuksa ls ;g Li""V gks tkrk gS fd iz"uxr tehuksa",,,

esa ls nks lykV jkgs jtk jksM+ ls yxs gq, gSa] tcfd "ks""k lHkh lykV vanj dh vksj gSA ;g ckr i=koyh ij miyC/k uD"ks ls Hkh Li""V gksrh",,,

gSA blds vykok ;g vo"; gS fd ;kphx.k o muds iwoZt bl Hkwfe ij [ksrh djrs Fks tks fd "kgj ds nks eq[; ekxksZa ij jkgs jtk o jkgs eqrZtk ds",,,

chp esa fLFkr gSA bl izdkj bl Hkwfe ds pkjksa vksj fodflr {ks= Fkk vkSj bu IM+dksa ij fctyh] ikuh o VsyhQksu dh ykbZus fcNh FkhA""",,,

Near the land in question, there has been a private family hospital for about 10 years. Except this, the pipelines of the municipality were not",,,

there in the land in question nor were there telephone lines prior to the construction of Aawas Vikas but these lines had been laid on the",,,

nearby roads Rahe Raza and Rahe Murtaza. Prior to the acquisition of this land by Aawas Vikas, it was used for cultivation. In this way," ,,,

from the statements of both these witnesses, it is clear that two plots out of the lands in question are adjacent to Rahe Raza road whereas all" ,,,

the remaining plots are on the inner side. This is also clear from the sitemap available on record. Apart from this, it is certain that the" ,,,

petitioners and their predecessors used this land for cultivation, which lies between the two main roads of the city namely Rahe Raza and" ,,,

Rahe Murtaza. In this way, the area around this land had been a developed one; and these roads had been laid with electricity, water and" ,,,

telephones lines.""" ,,,

(English Translation by Court),,,

81. None of the claimants, however, could tell as to what was the market value or what could have been market value of acquired land or land in" ,,,

vicinity of acquired land between 1976 to 1979. Reference Court then referred to circle rate determined by Collector for the purpose of stamp,,

duty on 02.07.1982 and a sale-deed of 1999 where under 150.57 square yard land was transferred by sale for a consideration of Rs. 85,000/-" ,,,

i.e., at the rate of Rs. 560/- per square yard. Having said so, Reference Court assumed that if after 20 years rate at which sale-deed was executed" ,,,

in 1999 was Rs. 560/- per square yard, it could not have been less than or more than Rs. 100/- per square yard and hence it has determined" ,,,

market value accordingly.,,,

82. In our view, claimants-respondents miserably failed to discharge onus lying upon them to justify determination of market value at a rate claimed" ,,,

by them or higher than what was determined by SLAO and once they themselves have failed, there was no justification for Reference Court to" ,,,

determine market value on some presumptive and conjectural basis. It has not recorded any reason or finding as to what was or what could have,,

been annual increase or appreciation in respect to value of property etc. and on mere conjectures and surmises, it has determined market value at" ,,,

Rs. 100/- per square yard. In our view and also considering the exposition of law, as discussed above and the findings, as noted above," ,,,

award/judgment in question is clearly erroneous and cannot be sustained.,,,

83. Appeal is, accordingly, allowed. Impugned judgment/award dated 07.10.2006 is hereby set aside. The award of Special Land Acquisition" ,,,

Officer dated 28.10.2000 is restored and confirmed.,,,