P. Ram Reddy Vs Land Acquisition Officer, Hyderabad Urban Development Authority

Court: Andhra Pradesh High Court

Date of Decision: April 19, 1993

Acts Referred: Land Acquisition Act, 1894 â€" Section 23, 23(1), 23(1A), 4(1), 51A

Citation: (1993) 2 ALT 1

Hon'ble Judges: G.V.L. Narasimha Rao, J; G. Radhakrishna Rao, J

Bench: Division Bench

Judgement

G. Radhakrishna Rao, J.
These two appeals arise out of O.P.No. 129 of 1988 on the file of the Additional Subordinate Judge, Ranga

Reddy District, dated 18-1-1991 by which the learned Subordinate Judge enhanced the compensation by Rs. 60/-per square yard over and

above the compensation of Rs. 20/- granted by the Land Acquisition Officer, Hyderabad Urban Development Authority, hereinafter referred to,

for short, as ""HUDA""; in other words, fixing the market value of the land acquired at Rs. 80/- per square yard. Having been aggrieved by the

enhancement granted by the learned Subordinate Judge, the Land Acquisition Officer, HUDA preferred A.S.No. 2087 of 1991. Claimant has also

preferred A.S.No. 1565 of 1991 claiming a total compensation at the rate of Rs. 200/- per square yard.

2. As both the appeals arise out of the same judgment, both the appeals are being disposed of by a common judgment.

3. In order to appreciate the proper questions of law and fact involved in the matter, it would be necessary to refer to the salient features of the

case, which are briefly as follows:-

A total extent of Ac. 14-35 guntas, situate in Survey No. 161 of Mylardevpalli village and S.No. 48/12, 48/13, 48/18, 48/19, 48/24, 48/26 and

57 of Katedan village of Rajendranagar Mandal, was sought to be acquired for the purpose of formation of Inner Ring Road from Mylardevpalli-

Katedan, old Kurnool Road to join Hyderabad-Bangalore National Highway No 7. Out of the above said lands, the claimant P. Ram Reddy is the

owner of Ac.1-25 guntas out of Ac.5-22 guntas in S.No. 48/24 and Ac.2-18 guntas out of Ac.4-33 guntas in S.No. 48/26, in all 4 acres 3

guntas, situate at Katendan Village. Accordingly the Hyderabad Urban Development Authority had sent a requisition through letter No. B/9283/83

dated 15-7-1983, followed by another revised requisition through letter No. 9283/83-1, dated 13-8-1984, to the District Collector, Ranga Reddy

district. A joint inspection of the lands proposed for acquisition was conducted by the Land Acquisition Officer, HUDA and the Estate Officers,

HUDA on 19-7-1984. Thereafter, a notification u/s 4(1) of the Land Acquisition Act, hereinafter referred to as the ""Act"", was published in the

Andhra Pradesh Gazette on 24-7-1985. It was also published in two local news paper, viz., News Time and Eenadu on 1-9-1985 and its

substance was published in the locality on 2-9-1985. Thereafter, an enquiry as required u/s 5-A of the Act was conducted after giving reasonable

opportunity to the claimant and other affected persons of being heard. Declaration u/s 6 of the Act was published in the Andhra Pradesh Gazette

on 4-7-1986. The substance of the declaration u/s 6 was also published in two local news paper, viz., News Time on 20-7-1986 and Udayam on

19-7-1986 and the gist of the said notification was published in the locality on 22-7-1986 and thereafter award enquiry was held by the Land

Acquisition Officer, HUDA. After award enquiry, the Land Acquisition Officer passed a common award under Exs.B-1 and B-2 awarding a total

compensation of Rs. 3, 92,100/- to the claimant, calculated at the rate of Rs. 20/- per square yard and also granted 12% additional market value

and 30% solatium as per the amended Act of 1984. He deducted 40% towards lay-out losses. The table of calculation made by the Land

Acquisition Officer, HUDA, so far as the claim of the present claimant is concerned, is as follows:-

Survey No. 48/24 extent Ac. 1-25 guntas = 7865 Sq. Yards

Lay-out losses @ 40% 3146 Sq. Yards

Net area to be valued 4719 Sq. Yards

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a) Market value @ Rs. 20-00 per Sq. Yard Rs. 94,380-00

b) Addl. Market value @ 12% Rs. 33,662-20

c) 30% Solatium on lard value Rs. 28,314-00

Total Rs. 1,56,356-20

Survey No. 48/26 Extent Ac. 2-18 guntas = 11,858 Sq. Yards

40% Layout losses 4,743 Sq. Yards

Net area to be valued 7,115 Sq. Yards

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a) Market value of the land @ Rs. 20/-

per square yard Rs. 1,42,300-00

b) 12% Addl. Market value Rs. 50,753-80

c) 30% solatium on land value Rs. 42,690-00

Total Rs. 2,35,743-80

Abstract

S.No. 48/24 Rs. 1,56,356-20

S.No. 48/26 Rs. 2,35,743-80

Total compensation granted by the L.A.O., HUDA Rs. 3,92,100-00

Having been dissatisfied with the quantum of compensation granted by the Land Acquisition Officer, the claimant got the matter referred to the

Civil Court u/s 18 of the Act for determination of reasonable market value of the acquired lands.

4. In support of his claim for enchanced compensation, the claimant got himself examined as P.W.1 and examined seven more witnesses and got

Exs.A-1 to A.12 marked. P.W.1 is the claimant himself. P.W.2 is the vendee under the original of Ex. A-1. sale deed, which is for an extent of

300 square yards, situate at Shivarampalli. Under the said document i.e., original of Ex.A-1, P.W.2 purchased the house plot including one shed

thereon at the rate of Rs. 160/- per square yard, from one Syed Jaffer. P.W.3 is examined to speak about Ex.A-3 sale deed dated 26-7-1985.

P.W.4 is Asst. Inspector General of. Registrations and Stamps, Hyderabad, who is examined to speak about the values which have been

registered in the Basic Value Register maintained by the Inspector General of Registrations and Stamps, which was brought into effect from 16-8-

1975. P.W.5 is examined to speak about the gift of an extent of 270 square yards situate in S.No. 45 of Katedan village in favour of his wife under

Ex. A-2 gift deed. The total vlaue of the plot including the two rooms therein is valued at Rs. 28, 000/-. P.W.6 is examined to speak about the gift

of an extent of 300 square yards situate in S.No. 45 of Katedan in Shivarampally village under the original of Ex. A-4 gift deed dated 2-8-1985 in

his favour by his father. The total value of the plot is shown as Rs. 35,000/- and the temporary room is valued at Rs. 4,000/-. P.W.7 is examined

to speak about his gifting his plot, measuring 300 square yards, in favour of his wife under the original of Ex.A-5 gift deed. The value of the

property covered under Ex.A-5 is Rs. 43,000/- and the vlaue of the structures situate therein is shown as Rs. 5,500/-. P.W.8 is a retired Executive

Engineer, Panchayat Raj. He is examined to speak about his inspecting the lands under acquisition and also the lands covered by the originals of

Exs.A-1 to A-5 documents. He prepared the estimates under Ex.A-12.

5. On the other hand, on behalf of the referring officer, R.W.1, who is working as Deputy Tahsildar in HUDA, is examined to speak about the

acquisition of the lands in question and about the Land Acquisition Officer fixing the market value at Rs. 20/- per square yard after deducting 40%

towards layout loss. He got marked Ex.B-1 award, Ex.B-2 award proceedings and Exs.B-3 to B-5 certified copies of the sale deeds relied on by

the Land Acquisition Officer while passing the award.

6. P.W.1 the claimant has deposed that the acquired land is situate on the north of Andhra Pradesh Infrastructure Corporation Indusblal Estate,

that the distance between the acquired land and the industrial area is less than 150 yards, that the acquired land is situate in the very same survey of

industrial area, viz., S.No. 48/24, and that the industries like paints, rubber, autoparts etc., are on full swing in this industrial area. P.W.1 further

deposed that the acquired lands were earlier notified for industrial housing development area and industrial housing complex vide notification dated

26-3-1979 in G.O.Rt. No. 354 (IC). According to P.W.1, the railway line is about 3 furlongs from the acquired land and the Hyderabad city

limits is within 4 K.Ms. from the acquired land. He further deposed that Sivarampalli Railway Station is situate 3 furlongs away from the acquired

land, that on the N.H. there are the agricultural university, National Police Academy and other transport depots, that the acquired land is situate

within the Rajendranagar Municipality, that the city bus route is at a distance of less than 150 yards from the acquired lands and that two residential

colonies came up in the neighbouring area. The fact that the acquired land is useful for industrial housing complex, as spoken to by P.W.1, cannot

be disputed in view of the fact that the acquired land itself was once notified for industrial housing development area and industrial housing complex

vide notification dated 26-3-1979 in G.O.Rt. No. 354 (IC). Further the location of the land itself suggests that it can be used for house sites. The

potentiality of the land has to be considered with referrence to the use of the land, prior to the notification. Admittedly, P.W.1 is not deriving

practically any income from the land and it is a dry land, may be useful for house sites. P.W.1 has admitted in his cross-examination that all the

acquired land originally was an agricultural land. He further admits that at the time of acquisition the land was undeveloped area. Merely because

the land was dry land and that it has got the protentiality of house sites does not mean that it has to be considered only as house plots. At the same

time, the purpose for which the land is being acquired has also to be taken into consideration. The purpose of acquisition is formation of inner ring

road. For the site of the claimant there is no road and by virtue of the laying of the inner ring road, his land is divided into two parts thereby each

facing a broad wider road. That means, by laying this inner ring road, the potentialities of this land has been enhanced. The legal position on this

subject will be discussed later in this judgment. Suffice it to state at this stage, P.W.1 i.e., the claimant wants to justify his claim for enhancement

basing on the evidence of P.Ws.2 to 8 and Exs.A-1 to A-12 documents. The lower Tribunal has considered the oral evidence of P.Ws.1 to 8 and

R.W.1 and the documents, Exs.A-1 and A-3 in particular and the other documents in general and came to the conclusion that the claimant is

entitled compensation at the rate of Rs. 80/- per square yard. The findings of the lower tribunal are too vague. We may extract the findings of the

learned Subordinate Judge as follows:-

Considering the material on record and the arguments advanced by the learned counsel, admittedly Exs.A-1 to A-5 are the transactions held in

respect of the properties between the willing vendee and willing vendor, wherein they have purchased their respective plots ranging from Rs. 104/ -

per square yard to Rs. 150/- per sq.yard. As per the basic register valuation certificate in respect of the Kattedan village as on 1-7-1985, the

house-sites are between Rs. 60/- to Rs. 150/- per square yard.....

He has relied upon some of the Supreme Court decisions and our High Court decision, relied upon by both the learned counsel for the claimant

and the learned Government Pleader, and thereafter he further observed as follows:-

.....and taking into consideration the location, situation of the acquired land with the population and the amenities, according to P.W.1 the

claimant, the land acquired by the Govt. is situated in a developing locality nearer to National High Way No. 7 having railway station and other

facilities nearer to the vicinity, there are dwelling houses came around the acquired land and N.G.Os. colony of Mailardevpally, this shows that the

acquired land is situated in a developing locality. Even after 20 to 25% deductions for the amenities, the land value can be fixed for the acquired

land on the date of notification at Rs. 80/- per square yard. As per the Ex. A-7 the certificate of basic register valuation in respect of industrial flat

in Kattedan village i.e., Rs. 90/- per sq .yard. The L.A.O. apparently awarded meagre and inadequate compensation of Rs. 20/- per square yard

to the land situate under a developing locality having all the amenities without assigning proper reasons and also not considering the sale

transactions held between the independent wiling vendee and willing vendor. On the other hand Ex.B-1 is the award. Ex.B-2. is the award

proceedings. In view of the sale transaction and the smaller plots were sold ranging from Rs. 104/- to Rs. 150/- per sq. yard and the industrial flats

were sold at Rs. 90/- per sq. yard, in view of the material placed before this court the claimant is entitled to Rs. 80/- per sq.yard. However, the

contention of the G.P. is that the acquired land is having no potentiality and the L.A.O. fixed the market value of the acquired land is reasonable on

the date of notification is baseless.

The learned Subordinate Judge ultimately granted compensation at the rate of Rs. 80/- per square yard and also granted 30% solatium, 12%

additional market value and interest. The learned Standing Counsel for Huda vehemently contended that the appreciation of evidence by the

learned Subordinate Judge is perfectly on the wrong side and perverse. The learned Standing Counsel tries to justify the order of the Land

Acquisition Officer contending that the Land Acquisition Officer after taking into consideration all the aspects passed the award dated 14-7-1988

fixing the market value of the land at Rs. 20/- per square yard which is just, reasonable and correct.

7. On the other hand, the learned counsel for the claimant has contended that the acquired land has admittedly potentiality for residential purposes,

that on the basis of the sale deeds for residential purposes, the market value on the notification date ranged from Rs. 115.5 to Rs. 173.5 per

square yard and that the highest of the sales viz., Rs. 173.5 per square yard has to be taken into consideration for fixing the market value, that even

on the basis of the basic value register the market value was Rs. 150/- per square yard. He submits that the claimant should be awarded the

highest of Rs. 250/- per square yard deducting 20% for lay out i.e., Rs. 200/- per square yard.

8. In view of the rival contentions advanced on behalf of the claimant and the Land Acquisition Officer, we have to consider whether the

compensation awarded by the Land Acquisition Officer is just and correct or whether the enhancement granted by the Subordinate Judge on

reference is correct or whether the enhancement as claimed by the claimant is correct. When there are divergent claims it is the duty of the court to

scrutinise the documents with great care and caution.

9. Exs.A-1 to A-6 are the documents on which the claimant relies to claim enhanced compensation. Ex.A-1 is a certified copy of the sale deed

dated 16th February 1985, though marked by P.W.1 but proved by P.W.2. It is a sale deed executed by one Syed Jaffer in favour of Mrs.

Kusumalatha Priya (P.W.2). Under this sale deed the vendor sold house of an extent of 300 square yards, equivalent to 250.80 square meters,

situate in Survey No. 435 of Shivarampalli, Katedhan West in favour of P.W.2 for a consideration of Rs. 60,000/-. To prove this document

P.W.2 the vendee under Ex.A-1 is examined. She deposed mat on 16-2-1985 she purchased the house plot under Ex.A-1 sale deed for Rs.

60,000/-. She further deposed that in the purchased plot there was one shed, that the land was purchased at the rate of Rs. 160/- per square yard

excluding the shed cost and that the shed cost is Rs. 25/- per square feet. She has also deposed that the acquired land is at a distance of two

furlongs from her plot. This is a transaction in between the employees of the sama Bank. The vendor Syed Jaffar is working as an Attender in

Syndicate Bank while the vendee Mrs. Kusumalatha Priya is a clerk in the same Bank. The consideration of Rs. 60,000/- under this document has

not been paid before the Sub-Registrar. This land is situate in Shivarampally, Katedhan Taluk and bounded on the North by neighbouring Plot No.

24 and Plot No. 22 part, South by Road 15 ft. wide, East by 15 feet wide road and West by neighbouring plot No. 21. The plan of the land is

also annexed to the sale deed describing the area that has been sold under this sale deed.

10. The next document is Ex.A-3. It is also a certified copy of the sale deed dated 26th July 1985 executed by G. Mohan Reddy of Katedhan

village in favour of G. Shanta Devi for a sum of Rs. 26,500/- in respect of house bearing Panchayat No. 4-54/14 in Plot No. 41 in Survey No. 45

admeasuring 200 square yards or 167.22 square meters. The vendor under this document Mohan Reddy is examined as P.W.3 to prove this

document. He deposed that he sold the house bearing No. 4-54/14 in Plot No. 41 in Survey No. 45 situate in Katedhan village in favour of

Shantadevi on 26-7-1985 for a consideration of Rs. 26,000/-. He also stated that the extent of the land is 200 square yards and that the house

consists of two rooms constructed with brick and with asbestos sheets, that he constructed the shed and that the claimant''s land is at a distance of

two furlongs from his house sold under Ex.A-3. The boundaries for this site are on the North proposed road of 15 feet wide, on the South plot

No. 58, on the East 25 feet wide road and on the West house of neighbour. A reading of this sale deed also shows that the sale consideration of

Rs. 26,500/- was not paid in the presence of the Sub-Registrar.

11. These two sale deeds Exs.A-1 and A-3 are for small extents of land. While considering the compensation payable for vast extent of land, the

general principle is that the sales for small extents with constructions cannot be taken into consideration as comparable sales. Our above view has

been fortified by the dicision of the Supreme Court reported in Koyappathodi M. Ayisha Umma Vs. State of Kerala, . In this case the Supreme

Court observed as follows:-

.....It is equally seen that Exs.A-1 and A-2 relate to small extent of land together with buildings standing thereon. Therefore, they too do not also

form any reasonable basis or guide to determine market value of large extent of six acres of the acquired land.....

In the case on hand also it is seen that Exs.A-1 and A-3 relate to small extents of land together with buildings standing thereon. Therefore, they do

not also form a reasonable basis or guide to determine the market value of a large extent of Ac.4-03 guntas. It is useful to refer to the equivalent

conversion measurements. One cent is equivalent to 48.4 square yards. One acre is equivalent to 40 Guntas. One acre is equivalent to 100 cents.

One acre is equivalent to 4840 Square yards. In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,

also the Supreme Court observed that when large tracts are acquired, the transaction in respect of small properties do not offer a proper guide line

and, therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger

tracts of property. In Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, it was held that in determining the market value of

the land, the price paid in sale of purchase of the land acquired within a reasonable time from the date of acquisition of the land in question would

be the best piece of evidence and in its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land

acquired in or about the time of the notification would supply the date to assess the market value. A Division Bench of this Court has also observed

in A.S.No. 1895 of 1985 dated 26th March, 1993 that the courts should not rely upon the sale transations for small bits of lands for comparing the

acquisition of larger extents of land. When large extents of land are acquired, the transations in respect of small properties do not offer a proper

guide line. In the Supreme Court''s decision reported in Koyappathodi M. Ayisha Umma Vs. State of Kerala, referred to supra, the Supreme

Court while determining the market value of six acres of land which was acquired, Exs.A-1 and A-2 which are for 5 cents and 14 cents, are

considered to be sales for small extents of land and so they do not form any reasonable basis or guide to determine the market value. Here in this

case, as already stated above, Exs.A-1 and A-3 are for Ac. 0-6.2 cents, Ac.0-4.13 cents respectively and the claimant"s land under acquisition is

Ac.4-03 guntas. So Exs.A-1 and A-3 cannot be taken into account for a comparable assessment or reasonable basis or guide to determine the

market value of the acquired land.

12. In fact, the entire notification in this case is in respect of Ac. 14-8 guntas and a common award was passed by the Land Acquisistion Officer

granting uniform rate. The mere fact that the sale deeds for small extents are filed or they alone are stated to be available and produced, it does not

automatically mean that those documents have to be given due weight unless there are any exceptional given circumstances. If under the given

circumstances the sale deeds for small extents produced by the parties have not been accepted, the court is competent to consider the

compensation on the lines indicated by the Supreme Court, which will be referred to in this judgment, at a later stage, by adopting the capitalisation

method etc., if the evidence permits. If the evidence prima facie appears to be available as per the sale statastics etc., and such evidence has not

been exhibited in the court under a mistaken impression that those documents may be considered and if the court feels that those documents, if

proved, would have a material bearing with regard to the compensation that is payable, to the claimant, the appellate court is competent to remit

the matter to the lower court to give an opportunity to both the parties to adduce such evidence so that in the case of compulsory acquisition the

affected party may not suffer in getting the just and reasonable compensation. If the evidence does not permit any other course except the one

confirming the award, the court has no other alternative except to confirm the same as it is the settled principle in the case of failure on the part of

the claimant in producing the relevant evidence.

13. To our mind, on a careful scrutiny of the sale deeds with reference to the circumstances existing in this case, they cannot form the basis or

guide to determine the market value of the acquired land. Added to it, the subject matter of Exs.A-1 and A-3 is situate more than two furlongs

away from the acquired land. They are in a developed area bounded by roads on two sides and also neighbouring plots and houses are there.

Another circumstance which we have to consider in a case of this nature is whether the value mentioned in the sale deeds of small extents reflects a

correct and true value or artificial value. Knowing fully well about the growing tendency of the area, the purchasers may pay fanciful price to make

some business. In this case the two sale deeds cannot reflect true value as there is quite variance with the sale transactions that took place within a

period of three years. Normally we have to take into consideration the sales of three years prior to the notification. R.W1 has deposed in his

evidence that the Land Acquisition Officer took the sale statastics of three years prior to the notification and fixed the value of the acquired land at

Rs. 20/- per square yard. The Land Acquisition Officer relied upon some of the sale transactions without examining any one of the persons

connected thereto and without getting them marked. Such documents should not be taken into account to determine the market value. It is also

well settled proposition of law that unless the documents mentioned in the award proceedings are marked in civil court and proved at least by one

of the persons connected with those documents, they cannot be considered by the civil court also.

14. Now coming back to Exs.A-1 and A-3 sale transactions, P.W.1 has no personal knowledge about these transactions. P.Ws.2 and 3 are

examined to speak about these documents, whose evidence has. already been referred to in the preceding paragraphs. Taking into account the

evidene of P.Ws.2 and 3, it does not inspire any confidence and the documents Exs.A-1 and A-3 do not throw any real value and they cannot be

relied upon to fix the market value. On coming to know about the land acquisition proceedings, the parties want to create documents for small

extents of land which is a common feature. For the acquisition proceedings a pre-survey is required. The pre-survey is required to determine the

exact area that falls for acquisition and to know the exact person who is in possession of the same and the person in whose favour the title of the

land stands. For that purpose it is but natural to make a personal inspection by a Government official to arrive at the exact area basing on the plan

given by the revenue authorities. The requisition for pre-survey in this case has been given in the year 1983 and after survey and after following the

procedure and after arriving at the extent possessed by each person whose land is going to be acquired, the notification has been issued in 1985.

In this process which is done to the knowledge of the villagers, especially to the knowledge of the persons whose lands are going to be affected by

the proposed acquisition, they will create sale deeds of this type to get more compensation. In fact, P.W.1 has deposed that the acquired lands

were earlier notified for industrial housing development area and industrial housing complex vide notification dated 26-3-1979 in G.O.Rt.No. 354.

But that proposal was dropped. In the cross-examination also he admitted that all the acquired lands were originally agricultural lands. He has also

admitted that at the time of the acquisition of the lands in question it is an undeveloped area. As already stated Ex.A-1 does not relate to Katedhan

village but it relates to Shivarampalli village. Ex. A-3 is dated 26-7-1985, i.e., it is a post-notification sale. The learned counsel for the claimant

contended that as the publication in the news papers alone has to be taken into consideration as the parties will come to know about the acquisition

only through paper publication and as the publications in this case are on 1-9-1985 and 2-9-1985, it must be presumed that the transaction Ex. A-

3 has been entered into without the knowledge of the proposed acquisition. We do not agree with this contention. As already stated, there will be

pre-survey before the Section 4(1) notification and it was started in the year 1983. It is common knowledge that the inner ring road like the one

that is being laid in this case will be known to all the villagers through which the road is being passed. In this connection it is relevant to refer to the

decision of the Supreme Court reported in Administrator General of West Bengal Vs. Collector, Varanasi, wherein it was held as follows:-

Subsequent transactions which are not proximate in point of time to the acquisistion can be taken into account for purposes of determining

whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is

shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such

subsequent transaction, the transaction could also be relied upon to ascertain the market value. But this principle can be appealed to only where

there is evidence to the effect that there was no upward surge in the prices in the 4. Administrator General of West Bengal Vs. Collector, Varanasi,

. interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction.

In this case there was proposal for acquisition of this land in the year 1979. Since then there is every reason to think that the land would be

acquired one day or the other. Post-notification sale will generally be taken into consideration to find out whether the prices are static or whether

the prices are on the increasing side. The judicial notice has been taken by the court of the prices being on the increasing side. Where the sale

deeds come into existence just prior to or just subsequent to the proposed acquisition they may not reflect true or prevailing market rate. Even on a

comparison of Exs.A-1 and A-3 sale deeds, we can see that by the date of Ex.A-1 sale deed i.e., by February 1985 the rate was Rs. 200/- per

square yard whereas by July 1985 as per Ex.A-3 sale transaction the rate as spoken to by P.W.3 was Rs. 116/- per square yard. This itself

suggests that the rate is in downward trend.

15. Before parting with the discussion on this point, we may refer to the decision of a Division Bench of this Court reported in Vittal and Others

Vs. Government of A.P., regarding the sale transactions for small extents of land for determining the compensation for vast extents of land. In this

case it was held as follows:-

While considering the compensation payable for a large extent of land acquired under the Act, any comparable sale transaction for a small extent

with higher consideration cannot be looked into as a safe guide for the purpose of arriving at a just compensation. When a person purchases a

small extent of land out of necessity, he will pay higher compensation. He cannot be called a willing purchaser purchasing the land from a willing

seller. At best, he can only be termed as a purchaser for necessity. It may be a genuine transaction but the consideration paid under that transaction

in those circumstances cannot be taken as price of lands prevailing in that area. In villages, people purchase small extents of lands even without any

lay-out if it is contiguous to their fields or for the purpose of providing cart-way to their fields, to keep seed-beds or to raise a hut etc., such sale

transactions cannot be taken as a safe guide for arriving at a reasonable compensation for large extent of lands acquired. Simply because a sale

deed of a small extent for higher consideration is filed, it cannot easily be accepted when the consideration mentioned therein is much exaggerated

one.....

To the same effect is the decision of this court reported in The Revenue Divisional Officer Vs. Raja J. Rameswara Rao and Another, .

16. In view of our above discussion with regard to Exs.A-1 and A-3 sale transactions, we hold that they cannot be taken into consideration as

they do not form and reasonable basis or guide to determine the market value of a large extent of land acquired in this case, which is Ac.4-3 guntas

in extent and which is not a developed area. There is no improvement of the site under acquisition right from the date of purchase by the claimant

till the date of acquisition and it is kept as it is. Therefore, Exs.A-1 and A-3 cannot be relied upon.

17. The next set of documents on which the learned counsel for the claimant relied upon is Exs. A-2, A-4 and A.5, which are gift deeds Ex. A-2 is

certified copy of gift settlement deed dated 16th May 1985 executed by one B.M.L. Diwakara Rao in favour of his wife. The donor B.M.L.

Diwakar Rao is examined as P.W.5. He deposed that he gifted one plot in Survey No. 45 of Katedan at Rajendranagar in favour of his wife under

Ex. A-2 gift deed, that the plot consists of two rooms, that the area of the plot is 270 square yards. The total value of the plot including the two

rooms is Rs. 28,000/-, that the market value rent on the date of execution of Ex.A-2 is Rs. 110/- per square yard and that the rooms were

constructed with mud and laid with asbestos. He further stated that the rooms were constructed not for living but to allot house number. In the

cross-examination this witness has stated that he constructed the two rooms in the year 1974 and in the year 1984 house number was given by the

Gram Panchayat. He has also stated that the layout was not sanctioned. On a perusal of Ex.A-2 gift deed it can be seen that the donor P.W.5,

who is stated to be the exclusive and absolute owner and possessor of the house bearing Panchayat No. 4-54 /12 in plot No. 47 and 49 part

situate in Survey No. 45 admeasuring 217 square yards situate at Katedhan village, gifted the said property in favour of his wife. The value of the

house is shown as Rs. 28,000/-. Ex.A-4 is certified copy of another gift deed dated 2nd August, 1985. It is executed by one Karapati

Bhagwandas in favour of his son Karapati Rajkumar. Under this document the donor gifted one house bearing Panchayat No. 4-54/13 in Survey

No. 45 admeasuring 300 square yards situate in Shivarampalli. The consideration for this gift is shown as Rs39,000/-. The donee Raj Kumar is

examined as P.W.6 to prove this document. He deposed that his father executed the original of Ex.A-4 gift deed in his favour. According to him, in

the month of August 1985 the market value for Survey No. 45 was prevailing at the rate of Rs. 115 to Rs. 117/- per square yard. He also

deposed that the gifted plot consists of two temporary rooms, that the total value of the plot is shown as Rs. 35,000/- and the temporary room is

valued at Rs. 4,000/-. He has also stated that the acquired land is at a distance of two furlongs from his land. He has stated in his cross-

examination that the market value of Rs. 115/- to Rs. 117/- per square yard is his own assessment, and that the temporary room is not valued by

any valuer. Ex. A-5 is certified copy of the gift deed dated 22nd day of August, 1985 executed by Smt. C. Sarojani in favour of her husband C.

Nagaiah. The donee Nagaiah is examined as P.W.7 to prove this gift. He deposed that in the year 1985 the land was gifted to him by his wife.

Ex.A-5 is the certified copy of the gift deed. According to him, the extent of plot is 300 square yards and the said plot contains two rooms totally

covering an area of 224 square feet. The value of the property covered under Ex.A-5 is Rs. 43,000/- and the value of the structures is about Rs.

5,500/-. He deposed that the value of the land is Rs. 125/- per square yard, that the nature of the construction of house is brick, mud, ACC

roofing and shabad stones. He has stated in his cross-examination that Ex.A-5 was valued as per the basic value register. Thus, Ex.A-2 is a gift

deed executed by the husband in favour of his wife, Ex.A-4 is a gift deed executed by the father in favour of his son and Ex.A-5 is a gift deed

executed by the wife in favour of her husband.

18. The evidence of P.W.8 P. Achiraju, a retired Executive Engineer will not be of any use as it is held that small extents covered by Exs.A-1 and

A-3 with constructions and the gift deeds Exs.A-2, A-4 and A-5 cannot be taken into consideration for comparison of the value. Further he visited

the land on 15-7-1990 and gave his opinion. The notification in question is dated 24-7-1985. So his evidence is not of much help to the claimant.

19. It is contended by the learned counsel for the claimant that as the gift deeds have been produced and proved by examining the competent

persons, they can be taken into consideration to assess the correct market value. On the other hand, Mr. K. Janardhana Rao, learned Standing

Counsel for Huda contended that as there is no willing vendor and willing vendee in the case of gifts they have to be excluded in arriving at the

correct market value of the aquired land. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, there were altogether seven

transactions of alienation made by the respondent one of which was a gift and the Supreme Court held that it must necessarily be excluded.

20. Generally in the gift deeds which will be executed between the close relations the real market value does not find a place. The valuation will he

put only for registration purposes by the Registrar"s Office with reference to the basic value register. The inclination of the donee will always be to

register the documents for the lowest possible amounts to avoid stamp duty. At certain times for obtaining loans from the banks by deposit of title

deeds the parties will adopt this execution of gift deeds by putting nominal values. Sometimes for obtaining higher loans also the gift deeds will be

created showing higher value. Since the gift deeds will not reflect correct prevailing market value as on the date of the execution of that document,

such documents cannot be based for arriving at correct market value as a comparable transaction; Even the gifts deeds executed for value as per

the Basic Value Register also will not afford or exhibit correct market value. There will be no willing vendor and willing vendee. So Exs.A-2, A-4

and A-5 gift deeds have to be excluded since the valuation given in the gift deeds will not afford or reflect a reasonable price which a willing

purchaser may pay under a bona fide transaction to a willing seller.

21. The learned counsel for the claimant has contended that in view of the evidence of P.W.4 Asst. Inspector General of Registrations and

Stamps, the values mentioned in the basic value register have to be accepted as they have been prepared taking into consideration various factors,

such as previous transactions as noted in the registration records and also the values that were indicated by the village officers. P.W.4 the Asst.

Inspector General of Registrations and Stamps deposed that for the determination of the stamp duty and registration in respect of documents, the

basic value register has been brought into effect from 16-8-1975, that the basic register value has been fixed after elaborate enquiries and

discussions with the revenue officers with the active co-operation and involvement of regular Tahsildar, Village Officers, R.D.O. etc., and after

taking into consideration various facts such as previous transactions as noted in the registration records and also the values that were indicated by

the village officers and that the market values in the basic registers are the guide lines to the registering officers. In support of his contention, the

learned counsel for the claimant has relied upon the decision reported in Jawajee Naganatham Vs. Revenue Divisional Officer, Abilabad, . This

case has come up for consideration before a Division Bench of this court reported in Vasireddi Bharata Rao and Another Vs. Revenue Divisional

Officer, . In this case the Division Bench came to the conclusion that the entries in basic value register are only instructions and not binding on the

parties. In Sagar Cements Ltd., Mattampalle v. State of Andhra Pradesh 1989 (3) ALT 677 the value to be attached to the Basic Value Register

has come up for consideration. In that case it was observed that it is not in dispute that it has no statutory sanction behind it. Neither the Stamp Act

nor any other provision of law empowers the Government to prepare such a register. Moreover the register was prepared on the basis of its own

enquiries by Government. After giving his earnest consideration to the issue involved in the case, the learned Judge opined that the value stated in

the Basic Value Register, which has no statutory sanction,cannot bind the registering officer. The Government has been revising those values from

time to time. When the values are determined for all the properties in the State, it can never be accurate with respect to each individual property or

piece of land. So holding, ultimately the learned Judge held that the values stated in the Basic Value Register cannot be treated as binding upon the

registering officers or upon parties who present documents for registration and that, at the most, it can be treated as a guideline, a relevant material

by the registering officers. In another case reported in P. Sasidar v. Sub-Registrar, Hayatnagar, 1991 (1) ALT 99 this court held that the entries in

the basic value register are not conclusive and binding on the registering officer. It was observed by the learned Judge in that case that in the course

of enquiry the parties may be able to demonstrate that the value noted in the basic value register does not cover the property in question or that

there is a palpable error in the entries or that there is more relevant material which deserves to be preferred to the entries in the register. The

Registering Officer cannot take the stand that he would look into the Basic Value Register and nothing more and form the belief on the basis of that

register alone, more so when the basic value register has no statutory basis.

22. The binding effect of the Basic Value Register came up for consideration before a Division Bench of this court reported in Jawajee

Naganatham Vs. Revenue Divisional Officer, Abilabad, . In that case the entry Ex.B-15 in the market value register was relied upon to show that

during the year 1975 a square yard in Ward No. 5, Block No. 7 was directed to be valued at Rs. 300/. This rate of Rs. 300/ - relates to sites sold

for shops and the rate is Rs. 150/- per square yard if the site is sold for residential purposes. Subsequently there was a representation that such

rates as were noted in the market value register were too high and yielding to such representation, the rates were correspondingly reduced to Rs.

250/- or Rs. 75/- per square yard depending upon whether the sites were sold for shops or for residential purposes. In the evidence R.W.3, the

Registrar, Adilabad made it clear that the valuations noted in the market value register were not based on comparative sales and that such valuation

was based on primarily the property tax assessments. The Division Bench observed that to curb the tendency on the part of persons to recite a low

value in registering documents, the Government have prepared market value registers indicating the values of different lands in a particular area and

made it obligatory on the parties to pay the stamp duty and registration expenses on the basis of such values. After referring to the market value

register and the evidence of PW.3 the learned Judges observed that property tax assessment is naturally based on the annual rental value. If it is a

shopping area, the annual rental value will be more and naturally the property tax assessment would also be at a higher level. As such values were

based only on the municipal assessment, the Division Bench held, they do not reflect the market value obtaining in the locality and more so, when

the values so noted in the market value register were not based on any comparative sales. It was further held that in fixing the market value the

court has to take into account the price which a willing purchaser is prepared to pay to a willing seller. The valuations noted in the market value

register were not admittedly based on such consideration which a willing party was paying to a willing vendor. Therefore, the Division Bench

refused to fix the market value on the basis of the valuations noted in the Basic Value Register.

23. The Basic Value Register was not prepared on any scientific data. It was prepared on block-wise for the purpose of collection of stamp duty.

It was prepared on a generalised data which has been furnished by some revenue officials whose object mainly is to inflate the rates for the

purpose of collection of stamp duty and the same cannot reflect the reasonable market value or cannot reflect as comparable value for the purpose

of acquisition of the lands in question. Even if the consideration shown in the instrument is less than the market value, the vendee of that document

is bound to pay the stamp duty on the basis of the value fixed in the Basic Value Register. The rates in the basic value register depend upon the

purpose for which the land is put to use. If the land is sold for purpose of house-sites one rate will be fixed and if the land is sold for commercial

purpose another rate will be fixed. Generally the lands on the road side will fetch more value since the same will be utilised for shopping purposes

and the sites located inner side will fetch low value. When such is the state of affairs, can we say that the basic value register will reflect the correct

value of the lands. The answer must be in the negative.

24. Granting of incentives or special benefits in the event of compulsory acquisition has been considered by the Legislature and the provisions have

been incorporated in the Act itself. If really it is contemplated that the value that has been fixed in the Basic Value Register has to be taken into

consideration, the Legislature would have mentioned the same either in the form of a proviso or by incorporation of a clause in Section 23 of the

Act. Therefore, it must be inferred that the Legislature must have thought it fit not to give any legal sanction to the basic value register and courts

also have expressed the same opinion in one form or the other.

25. In K. Malla Reddy and others Vs. The Land Acquisition Officer and others, the same view was expressed by a Division Bench of this court

observing that the Legislature though it fit to give additional benefits, i.e., solatium, interest etc., to the claimants and if tine Legislature is intended to

give the benefit of fixing the value basing on the basic value register it would have mentioned so. It was further observed that when the basic value

register is not prepared on any scientific data the only conclusion that can be drawn is that the values can be taken for the purpose of stamp duty

and it cannot be utilised for any other purpose and so no reliance can be placed on the basic value register. We are, therefore, of the firm opinion

that the value that has been mentioned in the basic value register cannot be taken into consideration as a comparable value for the purpose of

determining the compensation under the Land Acquisition Act.

26. The learned counsel for the claimant has argued that the Government has issued G.O.Ms.No. 925, Revenue (UC.II) Department, dated 15-9-

1989 whereunder revised norms and conditions for processing the applications for grant of exemptions in the cases enumerated therein u/s 20(1)

(b) of the Urban Land (Ceiling and Regulation) Act, 1976, and in that G.O. it was stated that the prevailing market value shall be determined by

adding 25% of the value of land as adopted in the basic valuation registers for that locality in order to ensure uniformity and fixation of market value

on a rational basis, the lower court was not justified in taking into account the basic value register. The said G.O. is marked as Ex.A-9. The very

purpose of the said G.O. is to consider the case of hardship to the person whose vacant land is acquired. The G.O. lays down revised norms and

conditions for grant of exemptions u/s 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976. It is in that context that the Government

wants to give some advantage to tine person whose land is going to be taken away and when he wants to retain it on the ground that it is

contiguous to a building. It is necessary to extract the G. O. to have a clear understanding of the problem. The G.O. reads as follows:-

GOVERNMENT OF ANDHRA PRADESH

Abstract

Urban Land (Ceiling and Regulation) Act, 1976 - Revised norms and conditions for grant of exemptions u/s 20(1)(b) of the Act in individual cases

of undue hardship - Orders - Issued.

REVENUE (UC.II) DEPARTMENT

G.O.Ms.No. 925 Dated 15-9-1989.

Read:-

ORDER:-

According to Clause (b) of Sub-section (1) of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, where any person holds vacant

land in excess of the ceiling limit and the Government are satisfied that, the application of the provisions of Chapter-Ill of the said Act would cause

hardship to such person, the Government may, by orders, exempt, subject to such conditions, if any, as may be specified in the order such vacant

land from the provisions of Chapter-Ill of the Act.

2. Guidelines for granting exemptions u/s 20(1)(b) of the Urban Land "Ceiling and Regulation) Act, 1976 in individual cases of hardship have been

issued from time to time in the GO. read above. However, the exemptions granted in a large number of cases do not seem to be in proportion to

the real needs of the applicants. Further, there is a heavy demand on urban land for public purposes and also considerable escalation in the land

values. Recently, the Government have considered the question of regularising the occupations of unobjectionable Government lands and issued

guide lines for implementing the programme of assignment of house site pattas in the Government lands to eligible encroachers. Among others, it

was decided that the area limit for assignment free of cost shall be 50 sq. yards that in exceptional cases it should be 60 sq. yards and that the area

in excess of such limit held by them shall be regularised on payment of market value and development charges subject to the requirements of the

lay out approved for the colonies, likewise, in order to achieve the social objectives of the Urban Land (Ceiling and Regulation) Act, 1976and also

to conserve private land for public purposes and public housing, it had become expedient to rationalise the norms for exemptions while processing

such applications either in respect of lands contiguous to a building with a dwelling unit thereon or in respect of lands not contiguous to the

buildings. Therefore, the cancellation of the orders issued in the G.Os. read above, the following revised norms and other conditions for processing

the applications for grant of exemptions in the following nature of cases u/s 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976, are

issued:-

i) The request of the land holders/declarants may be considered for exemption to retain a marginal surplus of upto 50 sq. meters.

ii) In respect of extent exceeding 50 sq. meters and below 500 sq. mtrs the request of landholder may be considered for exemption to retain the

marginal land by paying prevailing market value. ""Prevailing market value"" shall be determined by adding 25% of the value of land as adopted in

the basic valuation registers for that locality, in order to ensure uniformity and fixation of market value on a rational basis.

iii) In respect of extents exceeding500 sq. mtrs. the same may be considered individually on merits depending on the needs of the land holders and

also the utility of such pieces of lands for public purposes, subject to the conditions as at condition (ii) above.

iv) In all the above cases, the land holder shall retain the land so exempted for their personal use and in case they intend to alienate the same, the

Government should be approached for permission.

v) Cases where exemption is sought for disposing of surplus land on grounds of extreme hardship such as requiring medical treatment abroad or

for any other exceptional reason, will continue to be examined individually on merits.

vi) the funds realised from the land holders for retention of surplus lands as at conditions (ii) and (iii) above should utilised for public housing

schemes for weaker sections.

3. The Special Officer and Competent Authority, Urban land Ceilings of the Urban Agglomeration concerned will work out the market value

payable in consultation with the registering authorities concerned, if necessary and intimate it to Government in each case while forward ing the

exemption application or while offering remarks called for on the application, as the case may be.

4. Instructions on the mode of payment and the Heads of Account to which the market value should be credited will be issued separatley, in

consultation with Finance and Planning (Finance Wing) Department.

(By order and in the name of the Governor of Andhra Pradesh)

K.S.R. Murthy,

Principal Secretary to Government.

27. The valuation mentioned either in a G.O. or any other document executed under exceptional circumstances cannot be taken into account. The

exceptional circumstances are the root cause for either exhibiting higher prices or lower prices. Such values cannot be termed as market value as it

will not reflect a reasonable value that is being payable to a willing purchaser by a willing seller. The G.O. mainly speaks of the land to be retained

under special circumstances. Only in respect of an extent exceeding 50 sq. metres and below 500 sq. metres the request of the land holder can be

considered under that G.O. for exemption to retain marginal land by paying the prevailing market value which shall be determined by adding 25%

of the value of the land as adopted in the Basic Valuation Registers. Under any circumstances it cannot be contended or even presumed that it is a

comparable value as a value determined in the case of a willing seller and willing purchaser. It cannot be said that the above said G.O. will come to

the aid of the claimant to contend that at least the rates mentioned in the Basic Valuation Register have to be taken into consideration.

28. The learned counsel for the claimant has relied upon Exs. A-10 and A-11 and contended that the market value is 2/3rds more than the basic

value register, which comes to Rs. 250/-per square yard, which, according to the claimant, was the prevailing market value on the relevant date.

Ex.A-10 is a house valuation certificate issued by the Sub-Registrar, Khairatabad, Hyderabad in favour of one Dr. P. Sarojini Reddy sister of

P.W.1. It is dated 21-8-1987. It is marked through P.W.1 the claimant in this case. Ex.A-10 shows that the total market value of the double

storied H.No. 10-3-653-12, (13/3RT) situate at Vijayanagar Colony Hyderabad with compound wall and all amenities is Rs. 3, 97, 922-70. It is

clearly stated in this certificate that the total market value of the double storied building is arrived for the purpose of registration only. Ex.A-11 is

the sale deed dated 17-8-1987 in respect of the above said building, market through P.W.1. These two documents cannot be used as comparable

sales for the simple reason that the property covered under Exs. A-10 and A-11 is a double storied building with compound wall and all amenities,

situate at Vijayanagar Colony of Hyderabad, which is one of the well developed areas in the Hyderabad Metropolitan City, whereas the property

under acquisition in this case is situate in Katedan Village of Rajendranagar Mandal in Ranga Reddy District which is far away out side the

municipal limits of Rajendranagar Municipality. However, these documents will be of some help for the court to arrive at the conclusion that the

basic value register cannot be taken into consideration for arriving at the market value. Exs. A-10 and A-11 documents illustrate that the value

mentioned in the Basic Value Register is not the real value that has to be taken into consideration. The learned counsel contended that even though

the consideration that has been mentioned in a particular document is on the lower side than the one mentioned in the basic valuation register, the

parties are bound to register as per the valuation given in the basic value register. According to him, in such cases there is no option left to the party

to get the document registered on the lower value. As we have already expressed that the values mentioned in the basic value register cannot be

taken to arrive at the market value, as they do not afford any reasonable basis muchless any basis to arrive at a reasonable market value near to

the value prevailing between a willing purchaser and a willing seller.

29. It is next contended by the learned counsel for the claimant that Exs.B-3 to B-5 which are certified copies of sales, on which the Land

Acquisition Officer mainly relied upon to award the compensation, cannot be looked into as no one connected with the said documents has been

examined. He has also contended that u/s 51-A of the Land Acquisition Act certified copies of documents can be accepted as evidence of the

transaction. In support of his contention, strong reliance has been placed on the following decisions. Before referring to the various decisions on

this aspect of the matter, it would be necessary to extract Section 51-A of the Land Acquisition Act, which is in the following terms:-

51-A. Acceptance of certified copy as evidence:- In any proceeding under this Act, a certified copy of a document registered under the

Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such

documents.

In Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, while considering the sale under Ex.118, the Supreme Court

observed as follows:-

The evidence of Virbhadrasingh has no evidentiary value as he has no personal information regarding the sale under Exhibit 118. One Ratialal who

prepared the said document gave evidence in court but he did not have any personal knowledge about the transaction either. Under these

circumstances, no reliance can be placed on Ex.118.

In The Collector, Raigarh Vs. Harisingh Thakur and Another, also the Supreme Court held that the sale statement by itself without examining either

the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be relied upon. In Sub-Collector

(L.A.O), Tenali v. Tummala Sambasiva Rao and Anr. AIR 1990 NOC 35 while dealing with the admission of photostat copies of sale deeds, this

court observed that the photos tat copies of the sale deeds without any proof that they are true copies of the originals, are not admissible in

evidence. It was also observed that the recitals in such documents are not admissible unless either the vendor or the vendee or the scribe or the

attestor who witnessed the transaction and saw the passing of the consideration are examined in the court. In G.H. Ali Mohd. & Co. v. District

Asst. Social Welfare Officer (12), referred to supra, a Division Bench of this court, after referring to the decision of the Supreme Court reported in

Mehta Ravindrarai Ajitrai v. State of Gujarat (13) referred to supra, held that in the land covered by Ex. A-l there is a basement of 19" x 18", that

no details with regard to the consideration has been spoken as P.W.1 has no knowledge about the contents of the documents and that as P.W.1

himself has no knowledge and consideration under Ex.A-1 has not been established by proving, it cannot be said that the document has to be

taken into consideration for the purpose of arriving at a conclusion. In another decision reported in The Revenue Divisional Officer Vs. Raja J.

Rameswara Rao and Another, a Division Bench of this court held that unless and until the document relating to the sale has been produced,

marked and proved by a competent witness, it cannot be considered. It was further held that even the sale statistics mentioned in the award cannot

be considered unless they are produced, marked and proved through a competent witness. In yet another decision reported in The Mandal

Revenue Officer and Another Vs. Sri Sri Sri Jagannadhaswamyvari Temple, a Division Bench of this court held that since in this case none of the

parties to the aforesaid documents (i.e., Exs.A-4 to A-9 sale deeds) were examined to prove the transactions covered by those sale deeds, mere

filing of the documents has no relevance for arriving at the reasonable market value for the acquired land based on the value of market price

covered by the sale deeds. In Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, also the Supreme Court took the view that in a

comparable sales the features should be established by adduction of material evidence by examining the parties to the sale or persons having

personal knowledge of the slae transactions, and that the proof also would focus on the fact whether the transactions are genuine and bona fide

transaction. However, contrary to the above view expressed by the Supreme Court and also Division Bench of this court in the above reported

cases, a Full Bench of this court, in Land Acquisition Officer v. N. Venkata Rao 1990 (3) ALT 305 (F.B.) observed as follows:-

If secondary evidence is allowed to be marked for one party without objection at the trial, no objection can be permitted to be raised by the

opposite party at any later stage in the same court or in appeal that conditions for adducing secondary evidence have not been made out initially.

Though ordinarily copies of copies are not to be treated as ''secondary evidence'' unless such copies are again compared with the . original, the

said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act. These certified copies are, under law, to

be treated as secondary evidence and once they have acquired such a status, the marking of such documents at the trial without objection result in

such documents and their contents being evidence in the case. No objection can be raised in the same suit or proceeding or in appeal later by the

opposite party that before marking the certified copies, the necessary conditions for adducing secondary evidence have not initially been

established.

From a reading of the above judgment of the Full Bench it appears that the decision of the Supreme Court reported in Mehta Ravindrarai Ajitrai v.

State of Gujarat (13) and Collector, Raigarh v. Harisingh Thakur (14), referred to supra, have not been brought to the notice of the Full Bench.

The view expressed by the Supreme Court in those decisions is that such a document which has not been proved either by the vendee or vendor

or any person connected with it cannot be relied upon. In view of the above decisions of the Supreme Court, viz., Mehta Ravindrarai Ajitrai v.

State of Gujarat (13), Collector, Raigarh v. Hari Singh Thakur (14) and Periyar and Pareekanni Rubbers Ltd. v. State of Kerala (16), referred to

supra, the observation of the Full Bench of this court, referred to above, on the question of admissibility of certified copies of sale deeds in

evidence without proof, is not good law. In L.A.O. & Sub-Collector v. Chigurapati Umamaheswara Rao 1992 (2) An.W.R. 259 also this court

held as follows:-

.....No persons connected with those sale transactions i.e., Exs.A-2 to A-5 were examined. Simply marking the above documents is of no avail.

Therefore,.....we are of the opinion that the trial court has rightly rejected those sale deeds as none of the persons connected with documents were

examined.....

30. Following the above rulings of the Supreme Court and the consistent view expressed by the Division Bench of this court in the various cases,

referred to above, since ho persons connected with Exs.B-3 to B-5 sale transactions are examined, they cannot be looked into and relied upon to

arrive at the reasonable market value as on the date of notification. It is true that as the persons that are producing the title deeds are third parties,

their inclination always is not to part with the original sale deeds and that is why a provision has been made u/s 51-A of the Land Acquisition Act

to receive the certified copies of the sale deeds in evidence. That means, the mere production of the certified copies by itself is not sufficient unless

they are proved by the competent persons.

31. The learned counsel for the claimant has argued that the higher value that has been mentioned in the documents alone has to be taken into

consideration. There is no dispute with regard to this proposition. If two or more documents are produced and proved by examining the competent

persons, and brought out by cogent evidence that it is a bona fide transaction between a willing purchaser and a willing seller, the court is bound to

take into account the highest value. In support of his contention he has relied upon the decision of the Supreme Court reported in Ranee of Vuyyur

v. Collector of Madras 1969 (1) An.W.R. 45 wherein it was observed by the Supreme Court that it seems to be only fair that the highest value

shown in the sale deeds relied on by the Government should be preferred to the rest unless there are strong circumstances justifying a different

course. It was also observed therein that it seems that there is substance in the first contention of Mr. Ram Reddy that after all when the land is

being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is

shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition.

The learned counsel has also brought to the notice of this court that in Koyappathodi M. Ayisha Umma v. State of Kerala (1) referred to supra,

the higher of the two methods of land valuation and capitalisation of income is adopted and in Administrator General of W.B. v. Collector,

Varanasi (4), referred to supra, also the higher sale deed value is adopted. As already stated, there is no dispute with regard to the above

proposition. But, we have already found that Exs.A.1 and A.3 sale transactions and also Exs.B-3 to B-5 sale transactions, cannot be taken into

consideration and they have to be eschewed from record, the fact remains that there are no sale transactions available on record for comparison

and so the question of adopting the highest value does not arise.

32. The claimant claimed compensation on account of severance. It is contended by the learned counsel for the calimant under this head that the

land acquired is for the inner ring road which runs not on one side of the acquired land but in the middle of the claimant''s land right through length-

wise separating the land on either side, that one big plot of 6 acres 14 guntas is more valuable than two plots on either side of the road irrespective

of the fact whether it is for residential purposes or industrial purposes, that there was diminution in the value of the land left out consequent upon

the acquisition of the land in the middle of the land and that therefore, the claimant is entitled to severance compensation at the rate of Rs. 10/- per

square yard. In support of his contention he has relied on the decision of the Supreme Court reported in Smt. Tribeni Devi and Others Vs.

Collector of Ranchi, in which it was held as follows:-

The High Court was also not justified in disallowing 5% awarded by the Judicial Commissioner, Chhotanagpur as compensation for severance

merely because there was an entracne to the land. When a portion of the land is acquired and a large portion left out there would be diminution in

the value of the land that is left out for which some compensation has to be allowed. The 5% compensation allowed by the Judicial Commissioner,

Chhotanagpur is reasonable.

In Smt. Tribeni Devi and Others Vs. Collector of Ranchi, the Karnataka High Court while dealing the claim for damages for severance of the land

after acquisition, held as follows:

The principles governing the assessment of damages consequent on severance of a land left out have been laid down by the High Court of

Bombay in Government v. Century Spinning and Manufacturing Co. Ltd. (AIR 1942 Bom 105). According to the said decision, the true principle

is to see as to what would be the market value of the portion of the land left out both before and after severance. In M.F.A.No. 669 of 1971 the

ratio of the said decision was accepted by a Division Bench of this court as laying down the Correct law. In the treatise on Valuation and

Compensation by R.M. Shah and H.R. Shaha (1975 Edition) the learned Authors have stated at page 221 under the heading ""Measure of

Damage"" thus:

The measure of damage caused by the injurious affection is the difference between the market value before the injury and the market value after

the injury"".

The claimant in this case is the owner of 10 acres and odd out of which an extent of Ac.4-3 guntas was taken away or acquired by the

Government. This Ac.4-3 guntas of land acquired by the Government passed through middle of the land. of the claimant. That means the remaining

land of the claimant has been divided into two parts. That means the proposed inner ring road passes in between the remaining land of the claimant.

At one time the land of the claimant has no access. Now by virtue of the laying of the inner ring road, the two portions divided on account of

formation of road have got road in front of the each portion. Thus, by virtue of the laying of the road the remaining land of the claimant is in more

advantageous position than before acquisition. In the decision of the Supreme Court reported in Tribeni Devi v. Collector, Ranchi (20) referred to

above, cited by the learned counsel for the claimant, the learned Judges felt that when a portion of the land is acquired and a large portion is left

out, there would be diminution in the value of the land that is left out for which some compensation has to be allowed. There is no quarrel with

regard to this general proposition that when a diminution is caused on account of the acquisition, certainly the claimant is entitled to damages. In this

connection we may extract the relevant portion of Sub-section (1) of Section 23 of the Land Acquisition Act, which runs as follows:-

23. Matters to be considered in determining compensation:-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration:-

xx xx

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector''s taking possession of the land, by reason of the

acquisition injuriously affecting his other property, moveable or immovaable, in any other manner, or his earnings.

Thus, the injury contemplated by Clause 4 of Sub-section (1) of Section 23 is the injury resulting from the anticipated depreciation in the value of

the land ok account of acquisition in the severance of the acquired portion from the remaining portion. But when there is no injury or damage

caused to the claimant on account of the severance caused due to the acquisition of middle portion of land and on the other hand when the calimant

is in a more advantageous position than before by the acquisition of the land in question, the object of which in this case is for formation of inner

ring road, we feel that the claimant is not entitled to any damages on account of severance. Can we say that the 10 acres of land of the claimant

which is being bifurcated into two portions having a road in between the two portions is put to any loss or damage or injury? The answer must be

in the negative. When there is a pucca road the value of the remaining portion of the land on either side of the road will increase to a large extent

rather than reducing its value. Each case has to be decided on its own merits. In each and every case damages need not be awarded for the

alleged injury or loss by reason of the severance of the land by acquisition. We have to see whether there is any injury or loss caused to the

claimant on account of the severance. Our above view has been amply fortified by the decision of the Supreme Court reported in Balammal and

Others Vs. State of Madras and Others, wherein it was observed as follows:-

Where there is nothing to prove that the owners had sustained any loss by reason of the severance of the land acquired from their other lands nor

is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were

affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the

publication of the declaration and the time of taking possession of the land, the owners cannot claim compensation in respect of the damages due

to the severance of their land.

In yet another case reported in Periyar and Pareekanni Rubbers Ltd. v. State of Kerala (6), already referred to supra the Supreme Court took the

same view and held that there is no damage due to acquisition of the land of the appellant and therefore the award of severance charges is

unwarranted, that the value of the land of the appellant has not been injuriously affected due to the acquisition and therefore no damage due to

severance was caused and that under these circumstances the appellant is not entitled to compensation in this regard.

33. The acquisition proceedings cannot be utilised for claiming unwarranted and exhorbitent compensation. Just and reasonable compensation

alone has to be awarded in cases of land acquisition depending upon the circumstances warranting such case. Considering the loss that may be

caused on account of the acquisition of lands, the Legislature thought it fit to enhance the solatium from 15% to 30% and also granted 12% of the

additional market value and other benefits. Under these circumstances, we hold that the claimant is not entiteld to any compensation on account of

severance of land.

34. The Land Acquisition Officer deducted 40% of the land on account of lay out losses and ultimately granted compensation at the rate of Rs.

20/- per square yard for the remaining land. It is contended by the learned counsel for the claimant that 40% deduction made by the Land

Acquisition Officer is on very high side and according to him 20% deduction would be reasonable because the acquired lands are located in a rural

areas and building activity is fast picking up. He has also contended that in a Municipality a larger area is provided for community purposes like

parks etc., and that deduction on account of lay out is less in rural area where the building activity is picking up and the duration of locking up the

capital will be short. He has also relied upon the decision of the Supreme Court, reported in Balammal v. State of Madras (22), referred to supra,.

In that case the Land Acquisition Officer valued Group-II lands at Rs. 1600/- and reduced it by 25 per cent for expenses for laying out roads and

providing other amenities. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, 25% deduction on the ground of

largeness of block was held to be justified. In P.S. Krishna and Co. Pvt. Ltd. Vs. The Land Acquisition Officer, (Deputy Collector) Hyderabad,

also, a deduction of one-fifth of the valuation towards development charges was held to be proper. In Administrator General of West Bengal v.

Collector Varanasi (4), referred to supra, while considering the question of deduction for developmental expenses, the Supreme Court observed

as follows:-

It is trite proposition that prices fetched for small plots cannot form safe basis for valuation of large tracts of land. As the two are not comparable

properties. The principle that evidence of market value of sales of small developed is not a safeguide in valuing large extents of land with

potentialities for urban use has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots

cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for

building purposes, that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the

method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of

comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of

land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water

and electricity lines and the interest on the outlays for the period of de deferment of the realisation of the price; the profits on the venture etc., are to

be made. Deductions for land required for roads and other developmental expenses can, together, come upto as much as 53% . Accordingly, the

prices fetched for small plots cannot directly be applied in the case of large areas for the reason that the former reflects the "retail" price of land

and the latter the "wholesale" price.

Thus, on a careful reading of the above decisions of the Supreme Court and the principles underlying the deduction, we feel that each case has to

be decided depending on its facts. Depending upon the facts and circumstances of a given case, the court has to find out what is the just

percentage which has to be deducted for amenities etc. Before making any allowance for deduction, the court has to bear in mind the object of

acquisition. Since the lands under, compulsory acquisition have not got the approved lay out or sanction from the municipal authorities, a duty is

cast on the court to find out a reasonable solution to deduct some percentage of the land towards amenities. As seen from the above decisions of

the Supreme Court, the deduction varies from 20% to 53%, depending upon the facts and circumstances of each case. The view taken by the

Land Acquisition Officer in this case is that 40% deduction would be reasonable. We feel that it is on high side in view of the circumstances of this

particular case. The purpose of acquisition is laying of an inner ring road. On a careful analysis of the facts of this case with reference to the

guidelines given by the Supreme Court in the various decisions, referred to above, we feel that 20% deduction would be reasonable one that can

be made in this case. We accordingly direct that 20% deduction should be given towards developmental charges.

35. It is contended by the learned counsel for the claimant that in view of the growing trend of inflation and the persons possessing black money,

there is every possibility of registering the documents for lesser amounts and that the amended Section 269 of the Income Tax Act itself is a

recognition that a lot of unaccounted money goes into transaction of real estate. This is what the Delhi High Court in Tanvi Trading & Credits v.

Appropriate Authority, 188 ITR 623 says .... It was observed in that case as follows:-

It is to be remembered that chapter XXC was incorporated in an effort to curb sales of immovable properties for apparent consideration which

would be less than the actual consideration. In other words the effort was to see that immovable property is not transferred by taking sale

consideration in black.

Since the purchase of property is subject to the control of the Income Tax Department and the Income Tax Department is given the right to assess

the value in case where they found undervaluation and the valuation shown by the assessee is far below than the market value, it cannot be taken

into consideration for fixing the market value of the land as the market value has to be determined in the case of a willing purchaser and willing

seller of a bona fide nature. The courts also have to take judicial notice of the fact of under-valuation and the same also has been accepted by the

Legislature by incorporating the right to purchase but that does not mean that the transactions round about the city where for small extents for

higher consideration reflecting many number of times than the one that was prevailing in the last three years can be accepted merely because it is

produced through a competent person.

36. We may state here that the market value of a piece of property for purposes of Section 23 of the Land Acquisition Act is stated to be the price

at which the property, changes hands from a willing seller to a willing purchaser but not too anxious a buyer. The prices fetched for similar lands

with similar advantages and potentialities under bona fide transactions of sale at or about the time of the notification are the usual tests to be

adopted. In Koyappathodi M. Ayisha Umma v. State of Kerala (1), referred to supra, the Supreme Court has laid down the following methods to

be adopted in determining the compensation payable u/s 23 of the Land Acquisition Act.

It is settled law that the methods of valuation to be adopted in ascertaining the market value of the land as on the date of the notification are:-(i)

opinion of experts, (ii) the price paid within a reasonable time in bona fide transaction of the purchase or sale of the lands acquired or the lands

adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective

profits of the lands acquired. These methods, however, do not preclude the court from taking any other special circumstances obtained in an

appropriate case into consideration. As the subject being always to arrive as near as possible in an estimate of the market value in arriving at a

reasonable correct market value, it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not

always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality or is it possible in all cases to

have reliable material from which that valuation can be accurately determined.

37. Bearing in mind the above principles laid down by the Supreme Court and in view of our elaborate discussion on various aspects of the matter,

we have to now consider the amount of compensation payable to the claimant. Having excluded Ex.A-1 sale transaction, which is a pre-

notification sale for a small extent which is being utilised for residential purpose and having excluded Ex.A-3 sale deed which is a post-notification

sale for the very same reasons as Ex.A-1 was excluded, we have to find out what is the reasonable compensation to be awarded in this case.

Normally when the claimant failed to prove his claim for enhancement by adducing satisfactory evidence, the compensation that has been awarded

by the Land Acquisition Officer has to be confirmed and that is the settled principle. While discussing the percentage that has to be deducted we

find that the 40% deduction made by the Land Acquisition Officer is on the high side. Normally in the case of vast extents of land acquired for

house-sites or for public purposes, the deduction would be one-third. The deduction varies from the circumstances of the case ranging from 20%

to 40% the average normal deduction will be 33 1/3%. If the deduction is below one-third , special reasons have to be given by the court. As we

felt that the land is situate in a Gram Panchayat as on the date of the notification and as it is an undeveloped area and it is only agricultural dry land

and for the various reasons stated in this judgment in the preceding paragraphs, we feel that 20% deduction is reasonable one. In the case of

compensation in land acquisition matters some guess work has to be made. Where the claimant claims exorbitant compensation by converting the

action of the Government in acquiring his land into one of windfall and the acquiring authority contends that the lowest amount has to be granted,

we have to strike at a balance and in that process of striking out the balance some element of guess work also has to be made by the court. In

almost all the cases of land acquisition an element of guess work has to be done by applying judicial conscience duly taking into account the settled

principles of law in the case of acquisition. The claimant is not consistent with his claim. In his deposition given before the lower court he claimed

the highest value of Rs. 150/- per square yard. At another stage he claimed compensation at the rate of Rs. 250/- per square yard. He has filed

Ex. A-7 certificate of basic value register and according to it, the certified market value in Kattendan village for industrial area is Rs. 90/- per

square yard as on 1-7-1985 While filing the appeal in this court, his prayer is that he may be granted compensation at the rate of Rs. 200/- per

square yard. Mr. K. Janardhana Rao, learned counsel appearing for the Huda contends the claimant has not made any improvements to the land

since the date of purchase till the date of notification. He has also submitted that the claimant purchased the land under acquisition in April 1969 for

a sum of Rs. 2,000/- and in fact he was under the threat of acquisition in the year 1979 which was subsequently dropped and that the claimant has

now made exorbitant claim and in these circumstances, the learned Standing Counsel contends, the compensation awarded by the Land

Acquisition Officer would meet the ends of justice. We feel that the rate adopted by the Land Acquisition Officer is not in commensurate with the

real potentials of the land and the rate adopted by the Subordinate Judge is also not correct in the circumstances of the case. R.W.1, who is

working as Deputy Tahsildar in HUDA, has stated that the Land Acquisition Officer fixed the market value for the acquired land at the rate of Rs.

20/- per square yard after deducting 40% towards lay out loss. Exs.B-3 to B-5 are the certified copies of the sale deeds relied upon the Land

Acquisition Officer in passing the award. Not only Exs.B-3 to B-5 sale transactions but some other sale statistics also have been taken into

consideration by the Land Acquisition Officer. Ex.B-3 is a copy of the sale deed dated 13th October 1982 in respect of an extent of 200 square

yards or 167.20 square metres, situate at Katedhan for a consideration of Rs. 4,000/-, (i.e., @ Rs.20/- per sq. yd.). It is no doubt a well-

developed plot bounded on the north by road, on the south, east and west bounded by developed house plots. Like that, Ex.B-4 is also a copy of

another sale deed dated 7th October 1982 in respect of 200 square yards or 167.22 sq. metres situate at Shivarampally Katedhan village, for a

consideration of Rs. 4,000/-. It is bounded on the north by 20'' wide road, on south by plot No. 59, on east by 60 feet wide road and on the west

by plot No. 81. Similarly, Ex.B-5 is a copy of the sale deed dated 31st January 1983 in respect of 200 square yards or 167.20 square metres,

situate at Ketedhan village, for a sum of Rs. 4,000/-. This land is also bounded on norm by road, on the south by plot No. 133, on the east road of

60 feet wide and on the west by plot No. 141. We reaffirm that the sale deeds and sale statistics relied upon by the Land Acquisition Officer

which are not proved in the court, cannot be relied upon. The Land Acquisition Officer has mainly relied upon Exs.B-3 to B-5 sale deeds to fix the

market value at Rs. 20/- per square yard. We are mentioning the above facts only to appreciate the contentions of the parties to know as to under

what circumstances the Land Acquisition Officer has come to that conclusion. The notification u/s 4(1) is dated 24-7-1985. In the circumstances

we feel that the rate adopted by the Land Acquisition Officer is low. Even if we double the amount granted by the Land Acquisition Officer, the

rate comes to Rs. 40/- per square yard and if we deduct 20% towards lay out losses, as already stated, the resultant compensation comes to Rs.

32/- per square yard.

38. The contention of the learned counsel for HUDA, Mr. K. Janardhana Rao that the claimant has purchased the land under acquisition only for

Rs. 2,000/- in the year 1969 and it is left without any improvements and that the awarding of Rs. 20/- per square yard as compensation by the

Land Acquisition Officer is a reasonable compensation, cannot be accepted in the circumstances of this case. As already stated above, we feel that

Rs. 32/- per square yard would be the reasonable rate of compensation that can be awarded in this case. Any person may purchase the property

for a song or for a nominal value. The price that was paid by the claimant at the time of his purchase is not the criteria but the price prevailing as on

the date of Section 4(1) notification alone is the criteria. A person, though paid lesser consideration at the time of his purchase, will not be deprived

of the market value as on the date of notification and he is certainly entitled to the market value prevailing on the date of notification, i.e., as on 24

th July 1985. Merely because he purchased the land for Rs. 2,000/- without development, he will not be deprived of the enhanced market value

that was prevailing as on the date of notification, which according to us is at the rate of Rs. 32/- per square yard or at Rs. 1,54,880/- per acre.

We, therefore, hold that the claimant is entitled to compensation at the rate of Rs. 32/- per square yard for his Ac.4-03 guntas of land acquired by

the Government.

39. u/s 23(1-A) of the Land Acquisition Act, in addition to the market value of the land, the court shall in every case award an amount calculated

at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of publication of the notification u/s

4(1) in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. In this case the

proceedings were not held up on account of any stay or injunction granted by any court. Section 4(1) notification is published in the A.P.Gazette

on 24-7-1985, the date of taking possession is 5-8-1988 and the date of award is 14-7-1988. Since the date of the passing of the award by the

land Acquisition Officer is earlier to the date of taking possession, the learned Subordinate Judge is not justified in granting 12% additional market

value from 24-7-1985, the date of 4(1)notification, till 5-8-1988 the date of taking possession. It must be remembered that the date of passing

award by the Land Acquisition Officer, viz., 14-7-1988 is earlier to the date of taking possession i.e., 5-8-1988. So, 12% of the additional market

value for the period commencing from 24-7-1985 the date of notification till 14-7-1988, the date of award is hereby granted to the claimant u/s

23(1-A) of the Land Acquisition Act.

40. In view of our above discussion, we hold that the claimant is entitled to compensation calculated at the rate of Rs. 32/- (Rupees thirty two

only) per square yard for his 4 acres 3 guntas of land. In addititon to the above market value he is entitled to 30% solatium on the market value

and 12% additional amount on such market value from the date of notification i.e., 24-7-1985 till the date of award i.e., 14-7-1988. He is also

entitled to interest as per the provisions of the amended Act as the award passed by the Land Acquisition Officer in this case is subsequent to the

coming into force of the amended Act.

41. In the result, A.S. No. 2087 of 1991, the appeal preferred by HUDA, is allowed in part and A.S. No. 1565 of 1991, the appeal preferred by

the claimant, is dismissed. In the circumstances there will be no order as to costs.