

(AFR)
Reserved on 05.07.2019
Delivered on 18.09.2019

Court No. - 34

Case :- FIRST APPEAL No. - 13 of 2016

Appellant :- Bulandshahr Khurja Development Authority

Respondent :- Hamid Ali Since Deceased And 6 Ors.

Counsel for Appellant :- Bhupeshwar Dayal, B. Dayal

Counsel for Respondent :- Bijendra Kr. Mishra, Bijendra Kumar Mishra, Pankaj Agarwal

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. This is a defendant's appeal filed by Bulandshahr Khurja Development Authority (*hereinafter referred to as "BKDA"*) under Section 54 of Land Acquisition Act, 1894 (*hereinafter referred to as "Act, 1894"*) being aggrieved by judgment and award dated 06.10.2015 passed by Sri Rajat Singh Jain, Additional District Judge, Court No.2, Bulandshahr in Land Acquisition Reference (*hereinafter referred to as "LAR"*) No. 4 of 2010 determining market value of acquired land, for the purpose of payment of compensation, at the rate of Rs. 1920/- per square metre. Besides, it has also directed that Land-Owners will be entitled for 30 per cent solatium, 12 per cent additional compensation and interest at the rate of 9 per cent for one year on the entire amount of compensation from the date of possession and thereafter at the rate of 15 per cent per annum from one year after date of possession till actual payment. It has also directed for payment of cost under Section 27 of Act, 1894 by Special Land Acquisition Officer, Bulandasahar (*hereinafter referred to as "SLAO"*).

2. Facts in brief, giving rise to this appeal, are that BKDA is a statutory authority constituted under Section 4 U.P. Urban Planning and Development Act 1973 (*hereinafter referred to as "U.P. Act, 1973"*). It was constituted for planned development of the area

notified in Bulandshahar and Khurja, under U.P. Act, 1973. BKDA proposed to develop a residential colony and for this purpose, proposed to acquire 52.361 hectare of land at Khurja, District Bulandshahar. Accepting their proposal, State Government published notification under Section 4 (1) read with Section 17 of Act, 1894 on 08.10.2004 in U.P. Gazette (Extraordinary). Notice was also published in daily newspapers "Amar Ujala", and "Dainik Jagran" on 12.10.2004. A public notice was also issued on 18.10.2004. Thereafter, declaration under Section 6(1) read with Section 17 of Act, 1894 was issued vide Notification dated 17.10.2005, published in U.P. Gazette (Extraordinary) on the same day. In the local newspapers "Dainik Jagran" and "Peedit Manav", notice was published on 28.10.2005 and 01.11.2005 respectively. It was locally announced on 22.11.2005. Possession of acquired land was taken on 30.12.2005 and 25.08.2006.

3. Acquired land included holding of claimant-Tenure Holders, Hamid Ali (now deceased and substituted by his legal heirs) and Zahid Ali, sons of Hussain Ali, being Gata No. 914 area 8080 meters (0.808 Hectare) who are respondent in this appeal.

4. SLAO declared award dated 29.07.2008. It considered that land comprising of various Gatas falls in two categories, i.e., those which comes within Municipal limit of Khurja City and those which are outside the Municipal limit of Khurja. However, for the purpose of compensation since entire land was in continuity and contiguous, single market rate was determined at Rs. 178.92 per square metre. This rate was determined by SLAO relying on a sale-deed exemplar No. 259 dated 13.01.2004 whereby 404.40 sq. meter of Gata No. 909 was sold by Krishna Kumari S/o Nihal Singh in favour of Akash, Vikash, Prakash (minor sons of Brijesh under the guardianship of Dattr Pal Singh maternal grandfather) at the rate of Rs. 238.57 per square metre. Since from the same Gata, 0.733 hectare land was also acquired in the acquisition in question, he applied 25 per cent

deduction and thereafter, determined market value of entire acquired land at Rs. 178.92 per square metre.

5. Aggrieved by the aforesaid award dated 29.07.2008 passed by SLAO, Land-Owners-respondents made an application under Section 18 of Act, 1894 before Collector for making reference to District Judge, Bulandshahar for determining market value by taking into consideration factors enumerated in Section 23 of Act, 1894. Claimant- Land-Owners stated that acquired land is lying in an area which is extremely developed and has potential of development as commercial land. It is situated on Delhi-Kanpur Highway and adjacent to it is Khurja Railway Station. A big Commercial Centre, Nursing Home, several shops and residential colonies are also existing. Number of factories are existing and the area is in vicinity of District Gautam Budh Nagar where number of national and international level factories are existing. The acquired land is at a distance of about 40 minutes travel on road from Delhi and within National Capital Region. A number of sale deeds of relevant period were cited showing that the land was sold in the area of acquired land at much higher rate going to the extent of Rs. 8,000/- per square yard. Collector made reference to District Judge and it was registered as LAR No. 4 of 2010.

6. Defendants 1 and 2, i.e., State of U.P. and SLAO, filed their common written statements stating that Railway Station is about 6 kilometres from acquired land and from Noida and Greater Noida i.e. District Gautambudh Nagar it is about 60 kilometres; Industrial area Secunderabad is about 40 kilometres from acquired land and otherwise facts stated in the reference were also incorrect; the buildings and other constructions referred to in para 14 of Reference are several kilometers away from acquired land; institution like petrol pump etc. are existing and all such buildings are more than two kilometers away from acquired land. It is said that SLAO has rightly determined market value.

7. Appellant, i.e., BKDA, who was impleaded as defendant-3, in the aforesaid Reference, filed separate written statement but therein also the basic facts stated are similar, as pleaded in the written statement of respondents-1 and 2, therefore, we are not repeating the same.

8. Reference came up for adjudication in the Court of Additional District Judge, Court No. 2, Bulandshahar. It framed following six issues on the basis of pleadings of the parties:

(1) Whether the compensation awarded to applicants is inadequate?

(2) Whether applicants are entitled to get compensation at the rate of Rs.70,000/- per square metre?

(3) Whether Reference is time barred?

(4) Whether Reference is maintainable in the light of statement made in para 35 and 36 of written statement?

(5) Any other relief?

(6) How much land of petitioners was acquired?

9. Oral evidence adduced by claimant-land owners comprised of the deposition of Sami Ahmad Khan as PW-1 and Ajay Kumar Tomar as PW-2 and on behalf of defendants, Anil Kumar Singh, Suits Clerk was examined as DW-1, Harendra Kumar, Land Acquisition Amin was examined as DW-2 and R.P. Singh, Assistant Engineer was examined as DW-3.

10. Documentary evidence adduced by Land-Owners, besides others, included certified copy of the map (Paper No. 34C1); certified copy of circle rates (Paper No. 35C1); certified copies of sale dated 05.02.2003 (Paper No. 36C1); sale deed dated 26.03.2002 (Paper No. 37C1); sale dated 27.03.2002 (Paper No.38C1); sale deed dated 27.03.2002 (Paper No. 39C1); sale deed dated 31.10.2003 (Paper No. 40C1); sale deed dated 21.01.2004 (Paper No. 41C1); sale deed dated 14.06.2004 (Paper No. 42C1); sale deed dated 15.01.2004 (Paper No.

43C1) and certified copy of order dated 16.01.2015 passed by this Court in Writ Petition No. 38 of 2015.

11. On behalf of State of U.P., in documentary evidence, a copy of CC Form (Paper No. 67C1) showing payment of Rs. 17,80,561/- to the Land-Owners on 09.04.2009 was filed.

12. Appellant, i.e., defendant-3, filed documentary evidence which comprised of photocopy of CC Form 8C2 and minutes of meeting dated 17.01.2009 of BKDA (Paper No. 96C2), list of payments of tenure holders (Paper No. 97C1) and (Paper No. 98C1).

13. The aforesaid Reference has been decided by Reference Court vide judgment and award dated 06.10.2015. Adjudicating Issue-3, on the question, whether reference is time barred; it has answered the same in negative and against defendants.

14. Issue-4 has been answered in affirmative and against the defendants holding that Reference is maintainable and there is no impediment if one of the Land-Owners sold his land before initiation of proceedings by SLAO.

15. Issue-6, which related to the dispute of area acquired, was answered by holding that only 0.808 hectare of land of Gata No. 914 has been acquired and claimant-land owners are entitled to receive compensation for unsold portion of acquired land, i.e., 5961.5 square metre.

16. Then, Issues-1 and 2 were taken together. It held that SLAO considered sale-deed in respect of the Plot No. 909 which is situated far away from Grand-Trunk Road and there was no proper approach for the said land. On the contrary, acquired land in dispute is situated on National Highway No. 91, i.e., Grand Trunk Road touching National Highway. Therefore, SLAO relied on a document which relates to a land totally dissimilar to the acquired land in question. Thereafter, Reference Court relied on the sale-deeds filed as Papers No. 37C1, 38C1 and 39C1 and took a view that aggregate market value for the land adjacent to main road would be Rs. 2800/- per

square metre. After applying deduction on account of largeness of area to the extent of 30 per cent it would come to Rs.1960/-. Hence it determined market value at the rate of Rs. 1960/- per square metre. Having said so in para 65, Reference Court, however, in para 69 of judgment has observed that claimants Land-Owners are entitled for compensation at the rate of Rs. 1920/- per square metre and the same has been maintained in the operative part of the order. Therefore, though the finding was recorded in Para-65 that actual market value of the land comes to Rs. 1960/- per square meter, in the penultimate paragraph 69, and in the order and award, it has been mentioned Rs. 1920/- per square meter. Reference Court, therefore, answered the Reference by holding market value for the purpose of compensation at Rs. 1920/- per square meter. It is this determination of market value, whereby appellant, BKDA is aggrieved and has filed the present appeal.

17. We have heard Sri B. Dayal, learned counsel for appellant and Sri Pankaj Agarwal, learned counsel for respondents.

18. Learned counsel for appellant contended that sale-deed exemplars relied by Reference Court relate to very small piece of land and such exemplars could not have shown true market value of a land which was many times larger in area. The contention is that sale-deed exemplars relied by Reference Court were not relevant for the purpose of determining market value of land in question and relevant exemplars, which were cited by appellant, have been rejected illegally. It is further contended that some of the Land-Owners accepted compensation at a much lower rate and that being so, it was not open to respondents-Land-Owners to claim higher market value and Reference Court has committed manifest error in failing to consider this aspect of the matter. The situation of land is that major part of land is inside and away from National Highway. The plot was rectangular in shape and a small part formed frontage while major part was inside and away from National Highway. Therefore, land which

was away from National Highway could not have fetched the same price as that which is adjacent to National Highway and this aspect has also not been considered by Reference Court.

19. It is next submitted that in a multiparty settlement arrived between defendants and Land-Owners, compensation as awarded by SLAO was increased to Rs. 498/- per square meter which was accepted and a number of Land-Owners got compensation received at the same rate. That being so, it was not open to Reference Court to determine much higher rate of compensation in the case in hand. The sole exemplar relied by SLAO was in respect of the same plot which was subject matter of acquisition in the present acquisition also and, therefore, Reference Court committed manifest error in holding that land of Gata No. 914 was at a much distance from the acquired land and not relevant to determine market value.

20. Learned counsel for claimants-respondents, on the contrary, submitted that Reference Court has awarded just and equitable compensation and, in fact, contrary to findings, has given a lesser rate of compensation in the operative part hence the same does not require any interference. He defended the judgment and award dated 06.10.2015 for the reasons stated therein and reiterated the same submissions.

21. In the light of rival submissions, as noticed above, we have now to examine the only point for determination, “whether market value determined by Reference Court is just, adequate and actual or it is excessive and on a higher side which requires reduction”.

22. Before examining the aforesaid issue on merits, it would be appropriate to have a bird's eye view of relevant legal principles settled in last several decades, which are to be applied when 'market value' of a land acquired forcibly under the provisions of Act, 1894 has to be determined by Court in a Reference made under Section 18 of the said Act.

23. In **Chimanlal Hargovinddas vs. 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. 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.

24. 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 rate, prevailing on the date of publication of notification under section 4 (1) of Act, 1894.

Circle Rate- Relevance:

25. As we have noticed that circle rates were also relied before Reference Court. In law circle rates are irrelevant and ought not to have been considered. In the matters where circle rates are relied and referred such an approach has been castigated, condemned and disapproved by Courts time and again.

26. 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 “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, Supreme 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 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 Vs. Jasti Rohini, 1995 (1) SCC 717**.

27. Another matter from State of U.P. came up for consideration involving same issue in **U.P. Jal Nigam Vs. 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 Vs. Bipin Kumar, (2004) 2 SCC 283**.

28. The issue was again considered by a larger Bench in **Lal Chand Vs. 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 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**. Court resolved controversy, holding, if in a particular case, guidelines for market values are determined by an Expert Committee constituted under State Stamp Law, following a detailed procedure laid down under the relevant rules and are published in State Gazette, 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 areawise, or villagewise) and finalized after inviting objections and published in the gazette. Be that as it may.**"*

(emphasis added)

29. 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 the prescribed procedure.

Other Principles relevant for determining market value:

30. For determining market value of acquired land, in the last several decades, Courts have considered the matter time and again and laid down certain principles which includes; (i) Court should proceed as hypothetical purchaser willing to purchase land from open market and prepared to pay a reasonable price on the scheduled date, i.e., the date of publication of notification under Section 4 of Act 1894, (ii) willingness of Vendor to sell the land on reasonable price shall be

presumed, (iii) relevant material, which may help the Court to find out reasonable price would include sale deeds, if any, executed in the close proximity of the relevant date which is genuine and shows a voluntary and open transaction between the parties. Where land subject matter of exemplar sale deed is smaller or larger but the document otherwise is credible and genuine, suitable adjustment by applying plus and minus factors and also appropriate deduction can be made by the Court.

31. A burden, however, to establish as to what is the reasonable and adequate market value and that the offer made by Collector is inadequate, is on the Land Owners at whose instance Reference has been made to District Judge under Section 18 of Act, 1894.

32. 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 75%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

33. 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. 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.

34. In **Kausalya 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 the 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.

35. In **Bhagwathula Samna 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 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."*

(emphasis added)

36. 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 utilize 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."*

(emphasis added)

37. In **V.M. Salgoacar & brother Ltd. vs. 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".*

(emphasis added)

38. Again in **Shakuntalabai (Smt.) and others vs. 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".

(emphasis added)

39. 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 Land Owner may be relied and it can be said that Claimant-Land Owner has succeeded in discharging his burden.

40. In **Gafar vs. Moradabad Development Authority, 2007 (7) SCC 614**, Court observed that burden is on 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.

41. Further, when there are more than one exemplar, one, which provides highest rate, has to be followed. In **Satish Vs. State of U.P.**,

2009 (14) SCC 758, Court after relying on its earlier decision in **Viluben Jhalenjar Contractor (Dead) by Lrs. Vs. 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."

(emphasis added)

Deductions:

42. 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.

43. In **Basavva (Smt.) and others Vs. 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 foot (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. 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.

44. The above principles were also laid down in **D. Vasundara Devi Vs. Revenue Divisional Officer, (1995) 5 SCC 426** which was relied by Court in **Basavva (Smt.) & Others Vs. 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; land in area is not developed and there is no development towards that area and it would take years for development in those land though land was capable of user for non-agricultural purpose. It is in this background, Court applied 53% deduction for development. It further held that since long time would be taken for development and for that purpose additional 12% deduction was allowed making total deduction as 65%.

45. In **Land Acquisition Officer, Kammarapally Village Vs. Nookala Rajamallu and others, AIR 2004 SC 1031**, 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 realization 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."

(emphasis added)

46. In **Udho Dass Vs. 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 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. 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 the 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-à-vis the land away from, but that would have been the case where agricultural land, which have no potential for urbanization or commercialization had been acquired and in such a case, belting system is permissible.

47. 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."

(emphasis added)

48. 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 meters 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 meters. 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 to 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 to sale of 7600 square meters of land at a distance of one kilometer from acquired land sold at Rs.3/- per square meter. Here also, there was a gap was of 18 months, thus 14.5% increase was allowed, which made sale price to Rs.3.82 per square meter. Collector then averaged two rates derived from two sale deeds and determined Rs.18/- per square meter ($\text{Rs.32.24} + \text{Rs.3.82} \div 2$). 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 on the facts of the case.

49. 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.

50. 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-land owners, whose area varied from 2 to 48 guntas. Acquired land 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/- per 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 Supreme 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. 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 Claimants 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 exist crops, 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 processed food like jam or any other eatable products. This extension of loss of benefits amounts to remote factors, which is not permitted to take into consideration. 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.

51. 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 utilization 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 of only 90.07 acres was taken. 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 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.

52. In **Union of India v. Raj Kumar Baghal Singh (dead) 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, a 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*".

53. 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 rely on the rates on which development authorities 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. 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.

54. In **Shaji Kuriakose and another Vs. 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/Land Owner-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 Supreme 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. Considering all these facts, Court found that determination made by High Court was justified and dismissed appeal.

55. In **Kasturi and others Vs. State of Haryana, (2003) 1 SCC 354**, 84.31 acres of land in State of Haryana was proposed to be acquired 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. Land Owners 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/Land-Owners. Division Bench confirmed judgment of Single Judge hence matter was taken to Supreme 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 utilized 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 amount to be spent for development. Court relied on various decisions

and thereafter upheld deduction of 20% towards development and dismissed appeal of Land Owners.

56. In **Lal Chand Vs. Union of India (supra)**, Court noticed that deduction for development constitutes two components- one is with reference to area required to be utilized 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 may 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 factors constituting intrinsic evidence of a distress sale.

57. In **Lal Chand Vs. 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, i.e. 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, i.e. 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.

58. In **Valliyammal & others Vs. 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 fulfillment 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.

59. 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, size and shape of the land, the rise of depression in the value of land in the locality consequent to 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 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 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)

(emphasis added)

60. In **Bhupal Singh and others v. State of Haryana, (2015) 5 SCC 801**, while 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.**"*

(emphasis added)

61. It is also reaffirmed that when an exemplar 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%. Court in para 20 of judgment relied upon its decision in **Chandrashekhhar Vs. 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.

62. With respect to escalation of price where relied on exemplar is of 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.

63. In **Chandrashekar Versus Land Acquisition Officer (supra)**, for residential layout issued by Gulbarga Development Authority, acquisition proceedings were initiated by publishing Notification dated 13.5.1982 under Section 4 of Act, 1894, 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, whereafter 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 Land Owners. The issue raised before Court was the extent of deduction to be applied while determining market. 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 Vs. Amritsar Improvement Trust, (1982) 1 SCC 419**, 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 range from 20% to 33%. Thus, in all Court upheld deductions between 40% and 53%.

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

(c) In **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another (supra)**, Court upheld deduction between 20% to 50%.

(d) In **Land Acquisition Officer Revenue Divisional Officer, Chottor vs. L. Kamamma (Smt.) Dead by and others, (1998) 2 SCC 385**, Court upheld deduction of 40% as development cost.

(e) In **Kasturi and others vs. State of Haryana (supra)**, 1/3rd deduction was upheld on development, clarifying that deduction can be more or less of 1/3rd depending upon facts of the case.

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

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

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

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

(j) In **Subh Ram and others Vs. 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 1/3rd towards infrastructural space and 1/3 towards infrastructural developmental cost, i.e. 2/3rd % i.e. 67%.

(k) In **Andhra Pradesh Housing Board Versus 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 Versus M.K. Rafiq Sahib, (2011) 7 SCC 714**, Court was upheld 60% deduction.

64. In this background of authorities, Court in **Chandrashekhar Versus 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."

(emphasis added)

65. 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 33-1/3 percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33-1/3 percent, the two components under the head of "development" put together, should not exceed the upper benchmark."

(emphasis added)

66. The above principles have further been followed and reiterated in **Atma Singh Versus State of Haryana and another (supra)**, **Nirmal Singh Vs. State of Haryana, (2015) 2 SCC 160** and **Major General Kapil Mehra and others Vs. Union Of India and another (2015) 2 SCC 262**.

67. Decision of this Court in **Power Grid Corporation Vs. State of U.P. and Others, (2019) 1 ADJ 753** also reiterates the said principles.

68. In **Sabha Mohammed Yusuf Abdul Hamid Mulla (d) by**

LRS and others vs. 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.

69. Referring to an earlier decision in **Viluben Jhalejar Contractor vs. State of Gujrat, (2005) 4 SCC 789**, Court in **Sabha 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 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired." (emphasis added)

70. Above authorities and several others have been considered in **Major General Kapil Mehra Vs. 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.

71. 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.

72. With respect to factors of comparable sales, Court in **Major**

General Kapil Mehra Vs. Union of India and another (supra) has referred to its earlier decision in **Urban Water Supply and Drainage Board and Others Versus 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.

73. 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 situated in 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 highvalue 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 that land losers are awarded fair compensation. All attempts should be made to award fair compensation to the extent possible on the basis of accessibility to different kinds of roads, locational advantages etc.

74. '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 an 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.

75. 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.”

76. Thus, having gone through 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 exemplar is very small, appropriate deduction can be made.

77. Normally, Courts have held that exemplars should be such which are before the date of notification under Section 4(1) of Act, 1894 but an exemplar sale deed of a subsequent period of date of acquisition notification is not completely ruled out to be relevant document provided circumstances to justify the same are available.

78. In **State of U.P. Vs. Major Jitendra Kumar and others, AIR 1982 SC 876**, notification under Section 4 was published on 6.1.1948. Court determined rate of compensation relying on a sale deed dated 11.7.1951, i.e., a document executed after almost three and half years after the date of acquisition notification. Court upheld reliance on

such document, observing, if there is no material to show that there was any fluctuation in market rate between the date of acquisition and the date of concerned sale deed, such document may be considered as a relevant material in absence of any other apt evidence. This view was followed in a subsequent decision, i.e., **Administrator General of West Bengal Vs. Collector, Varanasi, AIR 1998 SC 943**, where it is held:

"Such subsequent transactions which are not proximate in point of time to the acquisition 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."

(emphasis added)

79. In certain cases, where nature, extent, size, surrounding and location of acquired land greatly varies, Courts have applied "belting system" for determination of market rate of acquired land. It is applied in appropriate cases when different parcels of land with different survey numbers belong to different owners and having different locations are acquired. Such chunk cannot be taken as a compact block. In **Bijender and others Vs. State of Haryana and others (2018) 11 SCC 180**, Court in para 34 of judgment said:

"The acquired land comprises of more than around 300 acres or so and is thus a very large in chunk. The acquired land belonged to several landowners and obviously so being so large in volume. One side of the acquired land is abutting the road. The land has surrounding with some kind of activities in nearby areas and this shows that the acquired land has some potential."

80. In Belting System, acquired land is usually divided in two or three belts depending upon the facts of each case. Appreciating this aspect in para 35 of judgment in **Bijender and others Vs. State of Haryana and others (supra)**, Court said:

“The market value of the front belt abutting the main road is taken to fetch maximum value whereas the second belt fetches two third or so of the rate determined in relation to the first belt and the third belt, if considered proper to carve out, fetches half or so of the maximum. It is again depending upon facts of each case.”

81. In para 49 of judgment, Court further said:

“49. It is also held that the value of the smaller plots, which is always on the higher side, is usually not taken into consideration for determining the large block of the land. One of the reasons being that the substantial area of the large block is used for development of sites like laying out the roads, drains sewers, water and electricity lines and several civic amenities and to provide these facilities, lot of time is consumed. The deduction is, therefore, made, which ranges from 20% to 50% or in appropriate cases even more.”

82. In **Trishala Jain and another Vs. State of Uttranchal 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 belonging to Claimants-Land Owner, Trishala Jain and others, was 4.58 acres and 3.031 acres respectively. Collector offered compensation applying “belting system,” for 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/Land-Owners. Four questions formulated by Supreme 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?”

83. 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)

84. 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)

85. In **Union of India and others Vs. Mangatu Ram (1997) 6 SCC 59**, a Three-Judge Bench of Supreme Court considered the question, when 'belting system' should be applied and held that when a large extent of land under acquisition comprises of lands of several persons and some lands are abutting the main road and some lands are in the interior, the same would not have the uniform rate of market value. Reasonable demarcation/classification should be made before determination of the compensation. Upholding the 'belting system' to be applied in that case, Court said that lands situated around 500 yards from the main road should be classified as 'A' class land irrespective of the quality of the land and uniform rate of compensation should be applied to the same and remaining should be placed in category 'B' and applied another but lesser rate. Therein an argument was made that if different rates are applied, it will violate fundamental right of equality enshrined under Article 14. Rejecting it, Court said:

“It is equally settled law that Article 14 has no application vis-a-vis determination of the compensation for the obvious reason that it is hardly possible that all the lands are equal in all respects; they differ from one another and bear different features, e.g., nature, quality and character;

therefore, all the lands do not command the same market value when they are sold to a willing purchaser by a willing vendor in the open market.”

86. Court further held:

“ ... the doctrine of equality in the matter of payment of compensation under Article 14 is inapplicable.”

87. In **Wazir and others State of Haryana, (2019) 3 SCJ 506 (SC)**, a very large chunk of land i.e. about 1500 acres spreading in several villages, namely, Kasan, Bas Kusla, Naharpur Kasan, Manesar, Bas Haria and Dhana, Tehsil and District Gurgaon was acquired by publishing Notifications under Section 4(1) of Act, 1894 on 06.03.2002, 07.03.2002 and 26.02.2002. Declarations under Section 6 were published on 15.11.2002, 25.11.2002 and 18.11.2002. Sub-Divisional Officer (Compensation)-cum-Land Acquisition Collector (hereinafter referred to as “LAO”) found market value of land different in different villages and made award offering compensation on various rates ranging from Rs. 3,60,000/- per acre to 10 lakhs per acre. The land in village Manesar was offered highest rate of compensation of Rs.10 lakhs per acre while in Villages Kasan and Naharpur Kasan, Rs.7,50,000/- and 7,20,000/- per acre respectively were offered while in Villages Bas Kusla, Bas Haria and Dhana, market value was determined at Rs.3,60,000/- per acre. Dissatisfied with said award of LAO, Land-Owners sought Reference under Section 18 of Act, 1894. When matter was pending, in another matter where Notification under Section 4(1) was published on 15.11.1994 acquiring land in Villages Manesar, Naharpur Kasan, Khoh and Kasan, Supreme Court in **Harayana State Industrial Development Corporation Vs. Pran Sukh and Ors., (2010) 11 SCC 175** determined market value at Rs.20 lakhs per acre. Relying thereon, Reference Court vide judgment and award dated 30.11.2010, determined market value at Rs.37,40,230/- per acre by allowing annual increase of 12 per cent per annum. High Court affirmed the aforesaid rate whereafter matter went in appeals to Supreme Court in

Harayana State Industrial Development Corporation Vs. Udal and Another, (2013) 14 SCC 506. Supreme Court allowed appeals and remanded matter to High Court observing that flat enhancement of 12 per cent per annum was not justified. High Court in its turn vide judgment dated 06.10.2015 remanded matter to Reference Court for fresh disposal. In appeal, this judgment of High Court was set aside and matter was again remanded to High Court. Again it was decided by High Court by applying cumulative enhancement at the rate of 12 to 15 per cent per annum over base rate of Rs.20 lakhs per acre but thereafter applying an over all rate deduction of 10 to 20 per cent. Market rate determined by High Court in fact came to Rs.41.40 lakhs for land acquired in Villages Naharpur Kasan, Kasan, Bas Haria, Bas Kusla and Dhana. However, in respect of land acquired in Village Manesar, it applied 50 per cent enhancement and determined market value at the rate of Rs.62.10 lakhs per acre. This judgment when came up for consideration before Supreme Court in **Wazir and others State of Haryana (supra)**, it was held that annual appreciation of rates depends on various factors. There is no hard and fast rule as to how much appreciation will apply and there cannot be any uniformity in this regard since it depends upon different factors. Court found that different appreciation was allowed from time to time in different cases as under:-

- (i) 10 per cent per annum appreciation was allowed in **Ranjit Singh Vs. Union Territory of Chandigarh, (1992) 4 SCC 659; Land Acquisition Officer and Revenue Divisional Officer Vs. Ramanjulu, (2005) 9 SCC 594.**
- (ii) 15 per cent per annum escalation was accepted in **Krishi Utpadan Mandi Samiti Vs. Bipin Kumar, (2004) 2 SCC 283.**

88. Considering above authorities, Supreme Court held that increase in land prices depends on four factors: (i) situation of land; (ii) nature of development in surrounding area; (iii) availability of

land for development in area; and (iv) demand for land in area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. Contrary thereto, in urban and semi-urban areas, where development is faster, demand for land is high and construction activities are going on all around, escalation in market price would be at a much higher rate as comparing to rural areas. In some pockets in big cities, due to rapid development and high demand for land, escalations in prices had touched even 30 per cent to 50 per cent or more, per year, during nineties. Similarly, in remote rural areas, where there was no chance of any development and hardly any buyers, prices stagnated for years and rose marginally at a nominal rate of 1 or 2 per cent per annum. Thus there is a significant difference in increase of market value of land in urban/semi-urban areas vis-a-vis rural areas. Court said, if increase in market value in urban/semi-urban areas is about 10 to 15 per cent per annum, corresponding increases in rural areas would, at the best, be only around half of it, i.e. 5 to 7 per cent. If, there is any special reason for applying higher rate of increase that may be considered in the light of special facts and evidence brought before Court in this regard. Consequently, Supreme Court held that 7.5 per cent per annum appreciation would be sufficient and reasonable to determine market value of acquired land. Then, Court also considered that acquired land, though relates to common acquisition proceedings, but situate in different villages. It was also evident that valuation was different in different villages and it gives rise to another question “whether two sets of villages ought to be given different treatment or be clubbed and put at the same level for the purpose of payment of compensation for land acquired under Act, 1894”. After considering sale exemplars and other evidence, Court held that market value of land acquired in Villages Bas Kusla, Bas Haria and Dhana, should be same i.e. Rs.28.77 lakhs per acre, for Villages Naharpur Kasan and Kasan, market value was determined at Rs.37.54 lakhs per acre and for Village Manesar, it was determined at

Rs.56.31 lakhs per acre.

89. The market value determined by Reference Court in the case in hand, thus has to be examined in the light of aforesaid facts and exposition of law.

90. As already said, defendants did not file any sale deed exemplar before Reference Court. State of U.P.-defendants 1 and 2 filed only a copy of CC Form (Paper No. 67C1) showing payment of Rs.17,80,561/- to Land-Owners on 02.04.2009. Appellant, who was impleaded as defendant 3 before Reference Court, also filed a copy of CC Form and a list of payments made to Tenure Holders and also minutes of meeting of BKDA held on 17.01.2009. These were the documents showing that on some agreement between Land-Owners and BKDA, payment of compensation was made. No exemplar was cited by appellant before Reference Court. An attempt was made on behalf of appellant to show that since compensation at the rate of Rs.498/- per square meter was accepted by 72 farmers out of 130 whose land were acquired and 22 farmers including respondents-Land-Owners have also received compensation awarded by SLAO, therefore, now they neither can dispute rate nor claim for higher rate of compensation. Reference Court while deciding Issue 4, has observed that during pendency of Reference, if compensation has been received by Land-Owners, it will not defeat their right to get determination of appropriate market value and Reference will not become bad. There are various reasons for acceptance of compensation by Land-Owners. Many times when possession of land is taken away by State, it means the only source of livelihood is taken away and Land-Owners would find it extremely difficult to sustain themselves and their family what to talk of contesting litigation. In such circumstances, he/they is/are forced by circumstances to compromise with whatever amount he/they can get at the earliest, which is necessary for their survival. Sometimes some Land-Owners find it difficult to engage themselves in long drawn litigation hence

surrender themselves for compromise. There may be various reasons. All these facts will not go against Respondent/Land-Owners. However, if compensation was paid during pendency of Reference since dispute was already raised by them and once Reference is made, Land-Owners are entitled to have reference decided by determination of market value as per Section 23 of Act, 1894.

91. Now, we go to other evidence which comprised of oral evidence adduced by parties and documentary evidence adduced by Claimant-Land-Owners.

92. Hence, we would first like to refer to oral evidence adduced by appellant in Court below. Anil Kumar Singh, Suit Clerk of Bulandshahar Development Authority, has deposed as D.W.-1. In examination-in-chief, he has filed his affidavit stating that award was made in Kalindi Kunj Awasiya Yojna in respect of acquisition of 52.661 hectares of land and determining market value at Rs.298/- per square meter and the said determination was in accordance with law. In cross examination, he said that he used to sit in the office of Bulandshahar Development Authority and has never seen acquired land. He also stated that whatever he has said in Paragraph 2 of the affidavit with regard to award and determination of market value, he has no idea about it and has no idea about determination of market value. He has made statement only on the basis of award of SLAO. His evidence therefore is totally irrelevant for the purpose of determining market value as to what should be market value of land in question.

93. Second defendant's witness is Harendra Kumar, Amin, Land Acquisition working in the office of SLAO, Bulandshahar, who was examined as D.W.-2. He said that in Khata No.1005/1069, Gata No.914, which has total area of 0.808 hectare i.e. 8080 square meters, only 5961.50 square meters land was acquired and 2118.50 square meters land was excluded vide acquisition Notifications dated 08.02.2004 published under Section 4 and 07.10.2005 published under

Section 6 of Act, 1894. SLAO vide award dated 29.7.2008 determined market value at Rs.178.92 per square meter. Claimants' demand of compensation at the rate of Rs.50,000 to 70,000/- is not justified as it is highly excessive. In acquired land, a village market used to be held every month. Acquired land is not recorded in Revenue records as 'Abadi'. Exemplars cited by Claimants-Land-Owners are in respect of small pieces of residential land. He lastly said that award given by SLAO determines appropriate and correct market value. In cross examination, however he said that it is true that in Gata No.914 (area 0.808 hectare) land has been acquired and it is correct that 2118.50 square meter of land has also been acquired. He has seen acquired land but was not aware that a cattle market is also held in disputed land. He was not posted in area when Notification under Section 4 of Act, 1894 was published but has joined there only in July, 2007. He has seen acquired land for the first time in 2008. He however, admitted that land is abutting Grand Trunk Road. However, he was not aware as to what was the circle rate of land abutting Grand Trunk Road when land was acquired.

94. The third and last witness produced by defendant-appellant is R.P. Singh, Assistant Engineer, BKDA, who was examined as D.W.-3. He also filed affidavit in examination-in-chief and stated that area of land of Claimants/Land-Owners i.e. respondents, is 5961.50 square meter since claimants-respondents had already sold 2118.50 square meters land before acquisition. Land when developed results in sparing 40 to 50 per cent of land for the purpose of Roads, Parks, Sewerages, Over Head Tanks etc. An agreement was entered between BKDA and representatives of Farmers in Board's meeting dated 17.01.2009 and it was agreed that compensation shall be paid at Rs.498/- per square meter. Total 130 Land-Owners' land was acquired out of which 72 have entered into agreement and 22 have already received compensation which included Claimant-Respondents also. In cross examination, however he said that whatever compensation has

been received by Hamid Ali i.e. respondent no.1 (now deceased and substituted by legal heirs), was from the office of SLAO. Besides, Hamid Ali has not executed any agreement or settlement with BKDA. He specifically stated that Hamid Ali has not received any compensation from BKDA except what he has received from office of SLAO. He also admitted that entire area of 0.808 hectare of Gata No.914 has been acquired though admittedly Hamid Ali and Zahid Ali had already sold 2118.50 square meters of land before acquisition but entire land of Gata No.914 has been acquired. Award has been made by SLAO in respect to aforesaid Gata number for entire area 0.808 hectare in the name of Hamid Ali. He said that as per record, acquired land was uneven and forest though he has never seen acquired land before 01.08.2012. He was not aware of the date on which Hamid Ali received compensation from the office of SLAO. Acquired land does not touch Grand Trunk Road and there is no Inter College in the vicinity. Bharat Vikas Parishad Girls Inter College is at distance but he cannot give actual distance. On the North-East side of acquired land, there is a school adjacent to it and on North-West side, there is Grand Trunk. Road. On disputed land, cattle market is never held though it is held on two other lands which are also acquired and in vicinity of such land, near main road, there is a Petrol Pump and Bus Stand at a distance from acquired land.

95. Both these witness, D.W.-2 and D.W.3- have no idea of development activities, whether existed or not, near acquired land at the time of acquisition as they were not present at that time and had come to join their offices subsequently. D.W.-2 joined in July, 2007 and D.W.-3 joined on 01.08.2012.

96. Now, we come to evidence adduced by Claimants/Land-Owners i.e. defendants. Statement of P.W.-1 is placed on paper-book. Since Hamid Ali had died when reference was pending, respondent no.1/1, Sami Ahmad Khan has been examined as P.W.-1. In examination-in-chief, he has said that land in Gata No.914 was

declared non agricultural under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (*hereinafter referred to as "Act, 1950"*). There used to be held cattle market and village market. In evidence, he adduced Khatauni and Revenue maps as Paper Nos.33C and 34C. Acquired land comes within National Capital Region which has been declared under National Capital Region Planning Board Act, 1985 (*hereinafter referred to as "Act, 1985"*). It is situated on Grand Trunk Road which has now been declared as National Highway-91. Acquired land is near industrial estate wherein government offices and government officials' residence are also existing. A number of Crockeries and Autoware factories are situated near acquired land. Well known Potteries like Jagdish Udyog, VJP Pottery, Dadu Pottery, Blue Art Pottery etc. are existing near acquired land. On the opposite side of acquired land, Tehsil office and residence of Tehsildar and Nayab Tehsildar are existing. Further, even Sub-Treasury Office and office and residence of Deputy Collector are also existing in front of acquired land. Similarly, office and residence of Deputy Superintendent of Police is also in front of acquired land. At a distance of 50 meters, Krishi Utpadan Mandi Samiti and its office is situated. Several shops, tractor agencies, transport agencies, residential colonies are also there. Vinayak Hotel and Anchal Marriage Home are at about 150 meters from acquired land. P.W.D. office is near acquired land. Zenith Public School and Bharat Vikas Parishad Girls Inter College are about 100 meters away from acquired land. A Polytechnic College is near acquired land. A famous Nav Durga Shakti Temple is about 500 meters from acquired land and within 200 meters, there is a Fire Station. Some land from Gata No.914 has been sold by Claimants-respondents to different persons for commercial purposes prior to acquisition notifications were issued.

97. Besides, details of sale deed exemplars cited by Claimants/Land-Owners, are placed in the form of chart as under:-

Sl.	Date of sale	Vendor	Vendee	Plot No.	Area (in	Rate (in	Paper
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No.	deed				square meter)	square meter)	No.
1	02/05/03	Sami Ahmad Khan	Amar Singh	914	16.73	4184/-	36C
2	26.03.2003	Hamid Ali and Zahid Ali	Smt. Lajjo Devi	914	16.73	3586/-	37C
3	27.03.2002	Hamid Ali and Zahid Ali	Smt. Anita Sharma	914	16.73	3586/-	38C
4	27.03.2002	Hamid Ali and Zahid Ali	Smt. Rantana Devi	914	16.73	3586/-	39C
5	31.10.2003	Hamid Ali	Kamal Singh Chauhan	880	25.27	3561/-	40C
6	21.01.2004	Hamid Ali	Smt. Mahrani Devi	880	25.27	3561/-	41C
7	14.06.2004	Hamid Ali	Munna Lal	880	25.27	3561/-	42C
8	15.01.2004	Hamid Ali	Balbeer Singh Brijendra Singh	880	25.27	3961/-	43C

98. P.W.-1 also said that at the time of execution of aforesaid sale deeds, prescribed circle rate determined by Collector, Bulandshahar, was Rs.9,000/- per square meter. Copy of circle rate was filed as Paper No.35C. Compensation was received by Hamid Ali under protest. He claimed compensation at Rs.70,000/- per square meter. In cross examination, P.W.-1 admitted that Hamid Ali received compensation from the office of SLAO under protest. Gata No.914 was Abadi since declaration under Section 143 of Act, 1950 was already made. Land was outside municipal area. He did not enter into any settlement with BKDA. Acquired land is about 30 Kilometres from boundary of District Gautam Budh Nagar and 35 to 40 Kilometres from Sikandarbad, 5 Kilometres from Khurja Station and 5 Kilometres from Yagyadutt Medical College.

99. Reference Court on the basis of evidence on record, has found that area near acquired land, was well developed at the time of acquisition; it was being used for non agricultural purposes; land was declared non agricultural under Section 143 of Act, 1950 in the year 1984; had great potential for development of residential purpose; there was abadi at Khurja Town in vicinity; Layout plan was already submitted to BKDA; more than 2 years prior to Notification under Section 4 of Act, 1894, Land-Owners of acquired land, had started selling plots for residential and commercial purposes at a much higher rate; with regard to shape of land, acquired land is rectangular and frontage is lesser than depth of acquired land.

100. We find that entire Plot No.914 was acquired besides other plots, numbers whereof are given on Paper No.10A which is copy of award dated 29.7.2008 of SLAO. Out of this entire land, Respondents-Land-Owners have sold some part of land to various other parties who also filed their objections and details are given in award of SLAO as under:-

“गाटा संख्या 914:

प्रश्नगत प्रकरण में गाटा संख्या 914 से 0.808 हेक्टेयर भूमि का स्थायी रूप से अर्जन किया जा रहा है। उक्त गाटा सं० 914 से विक्रीत हुई भूमि के संबंध में निम्न आपत्ति कार्यालय में प्राप्त हुई, जिनमें बैनामों की छाया प्रतियां संलग्न कर प्रतिकर की मांग की गई है:

	विक्रीत रकबा	बैनामा दिनांक
1-सतेन्द्रपाल सिंह पुत्र रन सिंह	137.31 वर्ग मीटर	11-10-2002
2-ऊषा देवी पत्नी तेजपाल सिंह	83.64 वर्ग मीटर	04-01-2002
3-सुशील कुमार शर्मा, अमित कुमार पुत्रगण हरनारायण	132.30 वर्गमीटर	25-02-2002
4-सर्वेश देवी पत्नी पूरन सिंह	125.46 वर्गमीटर	25-07-2001
5-पुष्पा देवी पत्नी सतेन्द्रपाल सिंह	137.31 वर्गमीटर	11-10-2002
6-राजेश कुमार पुत्र रनवीर सिंह	154.91 वर्गमीटर	18-07-2003
7-संजय कुमार पुत्र रनवीर सिंह	126 वर्गमीटर	21-02-2003
8-निर्मलादेवी पत्नी श्यौदान सिंह	209.11 वर्ग मीटर	05-04-2003

गाटा संख्या 914 से अध्याप्ति भूमि के बाबत उक्त आपत्तिकर्ताओं ने बैनामों की छाया प्रति संलग्न कर प्रतिकर दिये जाने की मांग की है। साथ ही भूमि को भावनिक क्षमता की दर्शाते हुए प्रतिकर की मांग की गयी है। कुछ

आपत्तिकर्ताओं ने भूमि को अर्जन से मुक्त किये जाने का उल्लेख किया गया है। प्रश्नगत प्रकरण में धारा-17 का प्राविधान लागू होने के कारण अध्याप्ति निकाय को नियमानुसार भूमि का कब्जा दिया जा चुका है। अतः भूमि को अर्जन मुक्त किये जाने का प्रश्न नहीं उठता है। अध्याप्ति भूमि का प्रतिकर नियमानुसार भूमि की क्षमतानुसार बाजारी दर पर देय है। विक्रय की गयी उक्त भूमि से संबंधित क्रेतागण एवं विक्रेतागण की सुनवाई प्रतिकर भुगतान के समय करते हुए विक्रेतागण से शपथ पत्र आदि लेने के उपरान्त पूर्ण संतुष्टि की दशा में भूमि का प्रतिकर नियमानुसार भुगतान किया जायेगा।” (emphasis added)

“Gata No. 914

In the case-in-question, 0.0808 hectares of land, out of Gata No. 914, is being permanently acquired. The following objections have been received in the office regarding the land sold out of the said Gata No. 914; wherein compensation has been sought by enclosing the photocopies of the sale-deeds.

		Sold Area	Date of Sale-Deed
1.	Satendra Pal Singh s/o Rann Singh	137.31 Sq. Mtrs.	11.10.2002
2.	Usha Devi w/o Tejpal Singh	83.64 Sq. Mtrs.	04.01.2002
3.	Sushil Kumar Sharma, Amit Kumar sons of Harnarayan	132.30 Sq. Mtrs.	25.02.2002
4.	Sarvesh Devi w/o Pooran Singh	125.46 Sq. Mtrs.	25.07.2001
5.	Pushpa Devi w/o Satendra Pal Singh	137.31 Sq. Mtrs.	11.10.2002
6.	Rajesh Kumar s/o Ranveer Singh	154.91 Sq. Mtrs.	18.07.2003
7.	Sanjay Kumar s/o Ranveer Singh	126 Sq. Mtrs.	21.02.2003
8.	Nirmala Devi w/o Shyaudan Singh	209.11 Sq. Mtrs.	05.04.2003

By enclosing the photocopies of the sale deeds, the said objectors have sought compensation for the land acquired out of Gata No. 914. Along with this, compensation for the land has been sought by showing its building capabilities. Some objectors have asked for the release of the land from acquisition. In the case-in-question, on the provisions of section 17 being applicable, the possession of the land has been as per rules given to the acquiring body. Hence, there arises no question for releasing the

land from acquisition. The compensation of the land so acquired is payable as per rules at the market rate as per the capacity of the land. The compensation for land shall be paid as per rules by hearing at the time of payment the concerned buyers and sellers related to the said sold land and on being satisfied consequent upon acceptance of affidavits etc. from the sellers.” (English translation by Court)

101. Since sale deeds were executed in respect of other purchaser between 25.07.2001 to 18.07.2003 and area of land transferred to vendors between aforesaid period vary from 83.64 square meters to 209.11 square meters; rates on which land was sold, also varied from Rs.3,500/- and odd per square meters to Rs.4184/- per square meter. Therefore, these Land-Owners/purchasers were also entitled for payment of compensation at the rate which should not have been lower than the rate on which they have purchased land in question. However, those purchasers are not before us, therefore, we have to examine claim of respondents only who were initially owners of entire land of Gata No.914 area 0.808 hectare out of which, as per their own admission, 2118.50 square meter land was sold and 5961.50 square meter land remained with them and rate of compensation has to be examined in respect of aforesaid land.

102. Sale deed exemplars relied by Reference Court are in respect of very small size of land but this is also evident that land in question was already being sold as commercial plots and that too, 2 to 3 years before acquisition Notification under Section 4(1) was issued. Therefore, value of land was apparently quite high. Also looking to the facts that it was not agricultural land but an Abadi, having been declared as long back as in 1984 under Section 143 of Act, 1950 and that the land was abutting Grant Trunk Road i.e. National Highway-91, though its shape being rectangular larger size inside but that will not make any difference since potentiality of land in its entirety cannot be doubted, its rates had to be determined accordingly.

103. Looking at the area of land for which compensation was claimed by Claimants-Respondents and exemplars i.e. Paper Nos.37C, 38C and 39C, which were executed in March, 2002, Court below has found that there was an appreciation of market value by 16 per cent per annum but it is only one sale deed which is in the rate of Rs.4184.13 and is dated 05.02.2003 but there is another sale deed dated 21.01.2004 wherein rate is Rs.3561/- per square meter. This shows that there was no appreciation in value of land inasmuch as in 2002 also land was sold at the rate of Rs.3500/- and odd per square meter and in 2004 also, land was sold at the rate of Rs.3500/- and odd per square meter. Sale deed dated 15.01.2004 (Paper No.43C1) is in respect of 25.27 square meter and the rate was Rs.3961/- per square meter while 5 months thereafter, another sale deed was executed on 14.06.2004 whereby same size of land i.e. 25.27 square meter was sold at the rate of Rs.3561/- per square meter i.e. a little bit lesser rate. Reference Court, therefore in observing that there was 16 per cent increase in market value within a span of one year has erred in law and this finding shows that documents in question have not been examined properly. In our view, three years sale deeds show that small size of land, were sold for commercial purposes and rate was broadly more than Rs.3500/- per square meter but there was no substantial increase in the said rate and individual sale deeds with higher rates may be on account of individual requirement of vendee. The same can be treated to be a sale deed exemplar founded on different facts and reasons and not a sole guiding factor. We, therefore, find it appropriate to hold that market rate of small size land up to the time of Notification issued under Section 4 (1) of Act, 1894 i.e. 08.10.2004 was about Rs.3561/- which by rounding off would come to Rs.3600/- per square meter.

104. The aforesaid rate is in respect of land, size whereof is less than 26 square meter. Area of acquired land for which compensation has to be determined is more than 5900 square meter, in our view, at least 60

per cent deduction towards largeness of area would be justified. If we would have any sale deed exemplar of larger size, available for corresponding period, the same could have been better exemplar, but in absence of any such exemplar, and particularly when appellant did not place any exemplar before Reference Court and document filed before SLAO, cannot be looked into either by Reference Court or by this Court since the same were not relied as evidence before Court below, we hold that sale deed exemplar relied by Court below is valid. Excluding appreciation, in our view, appropriate market rate would be Rs.3600/- per square meter. Considering huge area of acquired land of Respondents/Land-Owners, in our view, a larger deduction is needed, hence we apply 60 per cent deduction. This bring us to the rate of land at Rs.1440/- per square meter.

105. Further, Reference Court has observed that rate of land abutting National Highway, cannot be equated with land which is on inner side. In our view, it would not be appropriate to apply belting system in this case though this aspect is also relevant for determination of market value but here the distance is not much, hence a uniform rate would be proper. However, looking to facts that area facing National Highway is lesser and more land is inside and also there are some plots behind plots which are adjacent to Grand Trunk Road but distance is not much, hence application of “Belting System” would not be justified.

106. In our view, it would be appropriate to make a further 10 per cent deduction from rate of land obtained after 60 per cent deduction on account of largeness of area already applied. This will bring market value of acquired land at Rs.1296/- per square meter and on rounding off, we make it Rs.1300/- per square meter. Judgment of Reference Court under appeal therefore is liable to be modified in respect of market value of acquired land on which compensation must be paid to Respondents/Land-Owners.

107. In the result, we **allow** this appeal partly and modify judgment and award dated 06.10.2015 passed by Sri Rajat Singh Jain, Additional District Judge, Court No.2, Bulandshahar in LAR No. 4 of 2010 to the extent that market value of acquired land of Claimants/

Land-Owners, for the purpose of payment of compensation, shall be taken as Rs.1300/- per square meter. Other statutory dues i.e. solatium, interest etc. as awarded by Reference Court, are maintained.

108. Cost made easy.

Dt. 18.09.2019

Vivek Kr.