



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

**RFA No.6 of 2008 alongwith
RFAs No. 8, 9, 10, 11, 12, 13,
14, 15, 17, 18, 19, 20, 21 and
22 of 2008**

Reserved on: 25.11.2014

Decided on : 26.11.2014

1. RFA No. 6/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation.

...Appellant.

Versus
Bhagwan Dass and others. ...Respondents.

2. RFA No. 8/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

...Appellant.

Versus
Chet Ram (died) through LRs and others. ...Respondents

3. RFA No. 9/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

...Appellant.

Versus
Purva Devi and others. ...Respondents

4. RFA No. 10/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

...Appellant.

Versus
Dote Ram and others. ...Respondent.

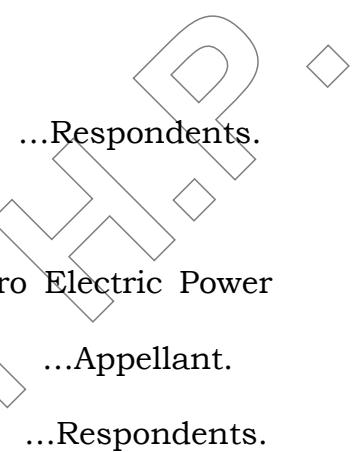
5. RFA No. 11/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

...Appellant.

Versus

Dile Singh (died) through LRs and others.



6. RFA No. 12/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Chet Ram and others.

7. RFA No. 13/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Hukami and others.

8. RFA No. 14/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Dot Ram and others.

9. RFA No. 15/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Narayan Chand alias Narayan Singh and others.

...Respondents.

10. RFA No. 17/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Raghbir Singh and others.

...Appellant.
...Respondents.

11. RFA No. 18/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus

...Appellant.

Tej Ram and others.

...Respondents.

12. RFA No. 19/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Sher Singh and others.

...Appellant.
...Respondents.

13. RFA No. 20/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Tek Chand and others.

...Appellant.
...Respondents.

14. RFA No. 21/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Prem Chand and others.

...Appellant.
...Respondents.

15. RFA No. 22/2008

Collector, Land Acquisition, National Hydro Electric Power Corporation

Versus
Jave Ram and others.

...Appellant.
...Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Appellant : **Mr. K.D. Shreedhar, Sr. Advocate with Mr. Rajnish Maniktala and Mr. Yudhvir Singh Thakur, Advocates.**

For the Respondents: **Mr. Parmod Thakur, Addl. A.G. with Mr. Neeraj K.Sharma, Dy. A.G. and Mr. R.P. Singh, Asstt. A.G. for the respondent-State in all the appeals.**

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes

**Mr. Sanjeev Kuthiala and Mr. Sunil
Mohan Goel, Advocates for the
respective respondents.**

Justice Rajiv Sharma, Judge.

Since common questions of law and facts are involved in all these appeals, the same were taken up together for hearing and are being disposed of by a common judgment.

2. These appeals are instituted against the award dated 29.9.2007 rendered by the Additional District Judge, Fast Track Court, Kullu in Reference Petitions No. 67/2003 6/2004, 68/2003 7/2004, 70/2003 9/2004, 71/2003 10/2004, 80/2003 15/2004, 79/2003 16/2004, 76/2003 17/2004, 77/2003 18/2004, 78/2003 19/2004, 81/2003 20/2004, 82/2003 21/2004, 83/2003 22/2004, 28/2003 38/2004, 27/2003 39/2004, 26/2003 40/2004, 29/2003 41/2004 and 30/2003 42/2004.

3. "Key facts" necessary for the adjudication of these appeals are that a notification under section 4 of the Land Acquisition Act, 1894 was issued on 5.12.2000 whereby it was proposed to acquire the land situated in Phati Dhaugi, Sub-Tehsil Sainj for the construction of Parbati Hydro Electric Project. After the completion of the procedural formalities under sections 6 and 7 of the Land

Acquisition Act, 1894, the Land Acquisition Officer-Sub Divisional Officer (Civil), Kullu announced the award on 4.1.2002. Respondents-claimants (hereinafter referred to as the “claimants” for convenience sake) dissatisfied with the award of the Land Acquisition Collector preferred Reference Petitions under section 18 of the Land Acquisition Act before the Land Acquisition Collector. According to the averments contained in the reference petitions, the market value of the land has not been determined in accordance with law and the same was liable to be modified and enhanced. According to the claimants, land was situated near Sainj Bazaar, which was market centre of the area. The land has potential of raising orchards, growing vegetables, construction of commercial buildings and hotels. According to them, the market value of the land was not less than ten lakhs per bigha at the time of issuance of notification under section 4 of the Land Acquisition Act.

4. According to the appellant, the land was not situated near Sainj Bazaar and the same was not the marketing centre of the area. No commercial activities were expected in or around the area. Due, adequate and reasonable compensation has been paid to the claimants.

It was denied that the value of the land was ₹ 10 lakhs per bigha.

5. Learned Additional District Judge, Fast Track Court, Kullu, after appreciating the oral as well as documentary evidence held the claimants entitled for the grant of ₹ 20,000/- per biswa (₹ 4 lakhs per bigha) irrespective of nature, kind and classification of acquired land. The claimants were also held entitled to statutory benefits. Hence, the present appeals.

6. Mr. K.D. Shreedhar, learned Senior Advocate for the appellant has vehemently argued that the Additional District Judge, Fast Track Court, has wrongly assessed the market value of the land at ₹ 20,000/- per biswa. He then contended that the Additional District Judge has taken into consideration the value of the small plots. He has also contended that the sale deeds produced by appellant, i.e. Ex.R-1 to Ex.R-11 have not been taken into consideration.

7. Mr. Sanjeev Kuthiala, Advocate and Mr. Sunil Mohal Goel, Advocate have supported the award dated 29.9.2007.

8. I have heard the learned counsel for the parties and have gone through the award and records meticulously.

9. The notification under section 4 of the Land Acquisition Act, 1894 was issued on 5.12.2000. The award has been made by the Land Acquisition Collector-cum-Sub Divisional Officer (Civil), Kullu on 4.1.2002. The land has been acquired for the construction of Parbati Hydro Electric Project. The acquired land is situated at Phati Dhaugi.

10. PW-1 Tej Singh has testified that the lands of the claimants were situated in Phati Dhaugi. The lands were adjacent to Sainj Bazaar. These were acquired by National Hydro Electric Power Corporation for the construction of colony of Parwati Project. The lands were situated by the side of Aut-Sainj road. The value of the acquired lands was more than 10 lakhs per bigha. However, the Land Acquisition Collector has assessed the value of acquired lands inadequately. There were shops, residential houses, hotels, rest house, schools, dispensary and bank adjacent to the acquired land. Lands have been reserved by the claimants for the construction of commercial complex. The lands of Bhimi Ram and Khub Ram etc. had been acquired by the National Hydro Power Corporation for the construction of colony of Parbati Project. The award of Collector was challenged before learned District Judge, Kullu. He has enhanced the

compensation to ₹ 20,000/- per biswa. According to him, compensation has also not been awarded adequately for the acquired land and for fruit and non-fruiting bearing trees. He was cross-examined. In his cross-examination, he has admitted that the acquired land was situated on the left side of the river. Most of the land falls in Sainj area. The distance between Sainj and Banjar was 20-25 KMs. The distance between Dhaugi and Sub Tehsil Headquarters, Sainj is 4 KMs. He has denied that this area was developed after the acquisition of land by N.H.P.C.

11. PW-2 Padam Singh has led his evidence by way of affidavit. It is specifically averred in the affidavit that on 14.9.2000, he has purchased two biswas of land for ₹ 90,000/- from Yogender Pal. Sale was duly registered. He has proved copy of sale deed Ex.P-1.

12. PW-3 Prem Chand has also led his evidence by way of affidavit. According to the averments contained in the affidavit, he has sold land measuring 0-1-10 bighas for ₹ 45,000/- to Sh. Kishori Lal. He has proved copy of sale deed Ex.P-3 and Jamabandi Ex.P-4.

13. PW-4 Prem Chand son of Jagat Ram has also led his evidence by way of affidavit. According to the averments contained in the affidavit, on 15.9.2000 he has

sold two biswas of land for ₹ 1,00,000/- to Sher Singh. ◇

The copy of sale deed is Ex.P-5 and copy of Jamabandi is Ex.P-7.

14. The claimants have also tendered in evidence copy of award No.124/2003 passed by the Additional District Judge, Fast Track Court Ex.P-7, copy of award No.84/2003 passed by District Judge, Kullu Ex.P-9 and copy of award passed by Land Acquisition Collector Ex.P-11.

15. RW-1 Prabhat Singh has proved sale deeds dated 29.12.1999, 12.11.1999, 22.2.2000, 2.6.2000, 26.9.2000, 1.2.2000, 24.8.2000, 23.3.2000, 12.1.2000, 30.9.2000 and 23.10.2000 vide Ex.R-1 to Ex.R-11.

16. RW-2 Mohinder Pal Gupta, Junior Engineer has deposed that there was no water supply in the year 2000-2002 in village Dhaugi.

17. RW-3 Mehar Chand has proved Ex.R-13 to Ex.R-16. In his cross-examination, he has admitted that Ex.R-13 to Ex.R-16 are not in his handwriting.

18. RW-4 Kanshi Ram in his cross-examination has admitted that the acquired land was situated over and below the Sainj-Aut road and on the Northern side is Sainj Bazaar. He has also admitted that there were 100 shops in the Sainj Bazaar.

19. RW-5 Devender Singh has deposed that the acquired land was at a distance of half KM from Sainj Bazaar.

20. The appellant has tendered in evidence copy of award Ex.R-18.

21. PW-2 Padam Singh has categorically deposed that he has purchased the land measuring two biswas on 14.9.2000 for a sum of ₹ 90,000/- from Yongender Pal. Sale deed was also registered to this effect. The land is situated in Phati Dhaugi. PW-3 Prem Chand has deposed that he has sold land measuring 0-1-10 bighas on 14.9.2000 for a sum of ₹ 45,000/- to Kishori Lal. It was duly registered. He has denied the suggestion that the sale deed was prepared to get the maximum compensation. PW-4 Prem Chand son of Jagat Ram has deposed that he has sold land measuring 2 biswas on 15.9.2000 for a consideration of ₹ one lakh to Sh. Sher Singh. The sale deed was duly registered. This land is also situated in Phati Dhaugi. He has denied that the sale deed was executed by him in a fictitious manner.

22. According to the revenue record, i.e. copy of Jamabandi Ex.P-2, Ex.P-4 and Ex.P-6, the nature of the land is Bathal Som, Banzar Kadim and Ropa abal. The appellant has placed strong reliance upon Ex.R-1 to Ex.R-

11. These were produced by RW-1 Prabhat Singh, Registration Clerk, Sub-Tehsil, Sainj. However, the appellant has not led any tangible evidence to establish that the sale deeds Ex.R-1 to Ex.R-11 were having same potentiality, utility, similarity and advantages as of acquired land. There is no evidence on record to suggest even remotely that nature and potentiality of the land was similar to the land having been sold vide Ex.R-1 to Ex.R-11. The nature of the land has not been recorded as per sale deeds Ex.R-1 to Ex.R-11. Thus, the learned Additional District Judge, Fast Track Court has rightly discarded the sale deeds Ex.R-1 to Ex.R-11. Some of the Reference Petitions arising out of the award passed by the Collector stood already decided by the District Judge, Kullu and Additional District Judge, Kullu vide Ex.P-9 and Ex.P-7, respectively. According to awards Ex.P-7 and Ex.P-9, the market value of the acquired land in village Phati Dhaugi was assessed at ₹ 20,000/- per bigha. The land sold as per sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 relates to 0-2-0, 0-1-10 and 0-2-0 bigha, respectively. The land acquired for the construction of project in village Dhaugi was 68-19-00 bighas. Thus, the land acquired was larger chunk vis-à-vis sale deeds Ex.P-1, Ex.P-3 and Ex.P-5. Sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 are bona

fide sale deeds. The land acquired is in the proximity of the headquarters of Sub-Tehsil, Sainj. The distance between Aut-Dhaugi is about 20 KMs. Aut is situated on a National Highway. There are 100 shops in the Sainj Bazaar. There is great potentiality for the land to be used for the purpose of commercial activities. Learned Additional District Judge on the basis of sale deeds Ex. P-1, Ex.P-3 and Ex.P-5 has assessed the average value of the acquired land at ₹ 41,666/- per biswa, i.e. ₹ 20,000/- per biswa. However, the Additional District Judge, after taking into consideration all the facts, has made necessary deductions to the extent of 50%. The Additional District Judge has rightly maintained the parity while determining the market price of the land by relying upon Ex.P-9 and Ex.P-7. The land acquired, vide Ex.P-7 and Ex.P-9 was from the same award made by the Land Acquisition Collector.

23. Mr. K.D. Shreedhar, learned Senior Advocate has also argued that example by way of Ex.P-1, Ex.P-3 and Ex.P-5 could not be taken into consideration by the learned Additional District Judge while determining the market price of the land. The notification under section 4 of the Land Acquisition Act was issued on 5.12.2000. Sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 are dated 14.9.2000,

14.9.2000 and 15.9.2000, respectively. These are in close proximity with the date of issuance of notification under section 4 of the Land Acquisition Act.

24. Their lordships of the Hon'ble Supreme Court in the case of ***Periyar and Pareekanni Rubbers Ltd. vrs. State of Kerala***, reported in **(1991) 4 SCC 195**, have held that the compensation should be fair and reasonable and not arbitrary and unreasonable. Their lordships have held that when the courts are called upon to fix the market value of the land the best evidence of the value of the property is the sale of acquired land to which claimant himself is a party, in its absence the sales of the neighbouring lands. The underlying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bonafide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. Their lordships have held as under:

“10. Therefore, the transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the Courts are called upon to fix the market value of the land in compulsory acquisition, the best

evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principles to fix a fair market value with reference to comparable sales is to reduce the element of speculation. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. As held by this Court in Collector, Rajgarh v. Hari Singh Thakur, (1979) 2 SCR 183 : (AIR 1979 SC 472) that fictitious and unreal transactions of speculative nature brought into existence in quick succession should be rejected. In that case it was found by majority that these sale deeds are brought up sales. In Administrator General of West Bengal v. Collector, Varanasi (1988) 2 SCR 1025, that the price at which the property fetches would be by a willing seller to a willing purchaser but not too anxious a buyer, dealing at arm's length. The prices fetched for similar lands with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc.

17. In Narasingh Rao's case, I have dealt with in paragraph 8 thus: "The object of the inquiry is to bring on record the price fetched or capable of fetching, the relative situation of the land acquired and the subject of the sale transaction, their fertility, suitability, nature of the use to which they are put to, income

derived or other special distinctive features possessed of by the respective lands either single or some or all relevant to the facts in issue. In this process the courts are not mere umpires but to take intelligent participation and to see whether the counsel on either side are directing towards this goal or the court itself to intervene in this regard. "Therefore, it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. The neighbourhood lands possessed of similar potentialities or same advantageous features or any advantageous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometime trench on the border of the guesswork but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasises solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

18. In V. R. Katarki v. State of Karnataka, C. A. No. 4392 of 1986, D/- 22-3-1990, decided by Bench of this Court to which one of us (K. Ramaswamy, J.) is a member, the appellant apart from other charges, was imputed with misconduct of fixing in his capacity as Civil Judge at Bagalkot, "higher valuation than was legitimate of the lands." After conducting enquiry he was dismissed from service and when he challenged it, the High Court upheld it on the judicial side. On further appeal., since the appeals against higher valuation were pending in the High Court, without going into that question, while confirming the dismissal laid the rule thus: "We would like to make a special mention of the position that even if that assessment of valuation is modified or affirmed in an appeal as a part of the judicial process, the conduct of the judicial officer drawable from an overall picture of the matter would yet be available to be looked into. In appropriate. cases it may be opened to draw inferences even from judicial acts" of the misconduct. The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camouflage the official act to a hidden conduct in the

function of fixing arbitrary or unreasonable compensation to the acquired land. Equally it is salutary to note that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensed for rehabilitation or to purchase similar lands elsewhere. In some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of notification under Section 4(l). Therefore it is the paramount duty of the Land Acquisition Judge authority to keep before him always the even scales to adopt pragmatic approach without indulging in facts of imagination" and assess the market value which is reasonably capable to fetch reasonable market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case, The guiding star would be the conduct of a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition as on the date of the notification under Sec. 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value."

25. Their lordships of the Hon'ble Supreme Court in the case of ***Rishi Pal Singh and others vrs. Meerut Development Authority and another***, reported in ***(2006) 3 SCC 205***, have held that exemplars of small plots can be taken into consideration specially when other relevant or material evidence not available, provided adequate discount given in that behalf. Their lordships have held as under:

"5. On merits the learned counsel submits with reference to the impugned judgment of the High Court that only two reasons have been given by the High Court for setting aside the order of the

Reference Court and remanding the case back to it. First reason is that exemplars relied upon by the Reference Court are of small plots of land whereas the acquisition is of a large tracts of land i.e. about 180 acres. The second reason given in the impugned judgment for remand is that exemplars filed by the acquiring authority i.e. appellants before us, were not considered by the Reference Court. The learned counsel for the appellants has taken us through the judgment of the Reference Court to show that both the reasons given by the High Court in its impugned order are factually incorrect. With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of smaller plots into consideration. It appears that the attention of the High Court was not drawn to this part of the judgment of the Reference Court which has resulted in the High court completely overlooking the relevant discussion in the judgment of the Reference Court.”

26. Their lordships of the Hon'ble Supreme Court in the case of ***Trishala Jain and another vrs. State of Uttaranchal and another***, reported in **(2011) 6 SCC 47**, have held that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. Their lordships have held as under:

“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.

81. It is not in dispute before us that sale instance at serial No. 108 falls in the Revenue Estate of the same Village and as recorded by the Reference Court, in LA Case No. 121 of 1994, it is situated at a distance of 1= furlong from the acquired land. The acquired land belonging to the claimants forms part of Khasra No.39/2 while, in the same Revenue Estate, the sale instance at serial No. 108 is part of Khasra No. 410. Thus a sale deed related to a land in such proximity of time and distance cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance. Though it relates to the sale of a smaller plot of land but is certainly bigger than the land sold by the claimants between themselves. Its location and potential, if not identical in absolute terms, is certainly comparable for the purposes of determining market value of the land in question.

82. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land it will meet the ends of justice if 10% deduction is made from the estimated market value of the acquired land.”

27. Their lordships of the Hon’ble Supreme Court in the case of ***Bilkis and others vrs. State of Maharashtra and others***, reported in **(2011) 12 SCC**

646, have held that the following factors are required to

be considered for determining compensation:

- (i) Conversion of acquired land into non-agricultural land;
- (ii) Potential for which land was reasonably capable of being used;
- (iii) Existence of some structures;
- (iv) Proximity to highway.

28. Their lordships of the Hon'ble Supreme Court in the case of ***R. Sarangapani vrs. Special Tahsildar Karur Dindigul Broadguage Line***, reported in **(2011) 14 SCC 177**, have held that in absence of any other exemplars, small pieces of land can be taken into consideration after applying appropriate deduction. Their lordships have held as under:

“19. Equally erroneous is the approach adopted by the High Court in fixing market value of the remaining land. Although, the appellants' argument that the Reference Court should not have segregated land covered by the trees for the purpose of fixing market value of the remaining land may not be acceptable because once market value of the trees was separately fixed, there could be no justification for clubbing the two types of land for the purpose of fixing market value, the High Court committed serious error by ignoring the two sale instances - Ext. A4 and A5 and, at the same time, applying 1/3 rd cut. It is true that the two sale instances related to a small parcel of land but, in the absence of any other exemplar, such sale instance could be relied upon for the purpose of fixing market value of the acquired land, on which trees had not been planted, after applying an appropriate cut. By Ext.A4 dated 8.9.1982, 21 cents land was sold for a sum of Rs.41,500/-. The same piece of land was sold vide Ext. A5 dated 6.7.1983 at the same price, i.e. Rs.41,500/-. The notification under Section 4(1) was published on 30.5.1984. If the rule of escalation in the land price evolved by this Court is applied, then a minimum increase of 10% is to be added to the price specified in Ext. A5. Thus, as on the date of Section 4(1) notification, the

approximate value of 21 cents land would be Rs.45,550/- This would be equivalent to approximately Rs.2,169/- per cent and Rs.2,27,750/- per acre. Though, the respondent did not produce any evidence to show the amount, which was likely to be spent on making the land useful for the purpose of laying Broad Gauge Line, if 1/3rd cut applied by the High Court is considered reasonable in view of the principles laid down by this Court in *Kasturi v. State of Haryana* (2003) 1 SCC 354, which were reiterated in *Tejumal Bhojwani v. State of U.P.* (2003) 10 SCC 525, *V. Hanumantha Reddy v. Land Acquisition Officer & Mandal Revenue Officer* (2003) 12 SCC 642, *H.P. Housing Board v. Bharat S. Negi* (2004) 2 SCC 184 and *Kiran Tandon v. Allahabad Development Authority* (2004) 10 SCC 745, market value of the acquired land will be about Rs.1,50,000/- per acre.

20. We also agree with Shri Nageswara Rao that the appellants should be given the benefit of the principles laid down by the Constitution Bench in *Sunder v. Union of India* (supra). It appears that attention of the High Court was not drawn to that judgment else it would have, in all probability, extended the benefit of that judgment to the appellants.

21. In the result, the appeals are allowed. The impugned judgments are set aside and the award passed by the Reference Court is restored with modification that the appellants shall be entitled to interest on the enhanced amount with effect from 11.3.1985, i.e. the date on which possession of land was taken by the Railway Department. They shall also be entitled to interest on solatium and additional amount in terms of the judgment in *Sunder v. Union of India* (supra). The respondent is directed to pay the balance amount of compensation and interest to the legal representatives of the landowners within a period of 3 months from the date of receipt/production of copy of this judgment."

29. Their lordships of the Hon'ble Supreme Court in the case of ***Digamber and others vrs. State of Maharashtra and others***, reported in **(2013) 14 SCC 406**, have reiterated that the Land Acquisition Collector is required to keep in mind the following factors:

- (i) Existing geographical situation of the land.

- (ii) Existing use of the 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.

30. The Additional District Judge has correctly assessed the market value @ 20,000/- per biswa and awarded the statutory benefits by applying the correct principles.

31. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the appeals and the same are dismissed. Pending application(s), if any, also stands disposed of. No costs.

**(Justice Rajiv Sharma),
Judge.**

26.11.2014

awasthi

High
Court
of
Uttar
Pradesh