IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

WPA 21473 of 2025
M/s. Aawas Construction Pvt. Ltd. & Ors.
Versus
Union of India & Ors.
With
WPA 25101 of 2025
Union of India & Ors.
Versus
M/s. Aawas Construction Pvt. Ltd. & Ors.

For the petitioners (in WPA 21473 of 2025) And For the respondents (in WPA 25101 of 2025)	:	Mr. Jaydip Kar, Sr. Adv. Mr. Ayan Banerjee Mr. Dhiman Banerjee Mr. Ajeyo Chowdhury .... advocates
For the petitioners (in WPA 25101 of 2025) And For the respondents (in WPA 21473 of 2025)	:	Mr. Jayanta Kumar Mitra, Sr. Adv. Ms. Sayani Roy Chowdhury Mr. Brijendra Pratap Singh Ms. Biswadeepa Mandal ....advocates
Reserved on	:	20.05.2026
Judgment on	:	17.08.2026

Hiranmay Bhattacharyya, J.:-

1. WPA 21473 of 2025 is at the instance of the claimant praying for setting aside the judgment and order dated July 30, 2025 passed by the Appellate Authority, Metro Railways, in Acquisition Claim Case no. 19 of 2022 and to restore the judgment dated 14.03.2022 passed by the Competent Authority in Acquisition Claim case no. NGA/92/2017. WPA 25101 of 2025 is at the instance of the Metro Railways challenging the aforesaid order.

2. The claimant nos. 1 to 15 purchased 107.438 decimals of land comprising R.S. Dag No. 456 and 571 from the erstwhile owners for a valuable consideration by a registered deed of sale dated 14.12.2011. Claimant nos. 1 to 15 entered into a development agreement with the claimant no. 16 and 17. At the time of erecting boundary wall in the year 2016, the claimants came to learn for the first time that the aforesaid land is within the Metro Railway Acquisition Scheme. The claimants thereafter approached the competent authority for payment of compensation.

3. 101.1441 Decimals of land out of 107.438 decimals of the aforesaid land was acquired vide notification dated 25.03.2013 under Section 7 of the Metro Railways (Construction of Works) Act, 1978. Notification under Section 10(1) of the said Act dated 13.02.2014 was published in the Gazettee. The claimants approched the Competent Authority for payment of compensation giving rise to Acquisition Claim Case no. NGA/92 of 2017 which was allowed on contest in part by a judgment dated 14.03.2022.

4. Challenging the judgment of the competent authority dated 14.03.2022, the General Manager, Metro Railway, Kolkata preferred an appeal before the Appellate Authority, Metro Railway being Acquisition Claim Appeal no. 19 of 2022. The said appeal was allowed on contest by the appellate authority by a judgment dated July 30, 2025 thereby setting aside the judgment of the Competent Authority dated 14.03.2022 with a direction upon the Metro Railway to pay compensation to the claimants at a rate fixed by the Appellate Authority in the said judgment.

5. Being aggrieved by the judgment and order dated July 30, 2025 passed by the Appellate Authority, Metro Railway, Kolkata in Claim Appeal no. 19 of 2022 the claimants and the Metro Railways have approached this Court by filing separate writ petitions.

6. Mr. Kar, learned Senior Advocate appearing for the claimants contended that the property of the claimants which formed the subject matter of acquisition was classified as "sali" at the time of purchase but such property had the potential of being used as a commercial property. He submitted that after purchasing the aforesaid property, the claimants applied before the revenue authorities for conversion of the classification of the said lands from "sali" which was ultimately allowed by the revenue authorities. He further contended that the claimant nos. 1 to 15 also entered into a development agreement with the claimant no. 16 and 17 for the purpose of construction of a housing complex. He contended that immediately after purchasing the said property, khajna in respect of the said land was paid at commercial rate. He further submitted that another land located within 400 meters of the land of the claimants was also acquired by the Metro Railways under the same notification. He contended that the award in case of the said land being NGA 14 of 2014 was passed at the "Bastu Commercial" rate. He contended that the distance between the land which was the subject matter in NGA 14 of 2014 and the land of the claimants which has been acquired is around 200 meters and the decision in NGA 14 of 2014 was relied upon by the claimants before the competent authority and the competent authority upon placing reliance on the said exemplar correctly determined the compensation at the commercial rate. He further contended that the Appellate Authority even after arriving at a factual finding that the acquired land of the claimants is situated near Metro Railway Station and had the potentiality of being converted into a Bastu land failed to apply the commercial rate.

7. Mr. Kar further contended that the appellate authority mechanically applied the rate of Bastu land as communicated by the Collector vide letter dated

29.09.2016 being Exhibit E. He further contended that the Appellate Authority even after noticing the principles laid down by the Hon'ble Supreme Court in the case of ***Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer,*** reported at ***AIR 2012 SC 2709*** overlooked four factors namely existing geographical situation of the land, use of land in the contemporary scenario, existing advantages like its closeness to the developed area and the market value of the acquired land in the near locality and/or vicinity while computing the compensation. Mr. Kar contended that the Competent Authority was under a statutory obligation to apply the market value as specified in the Indian Stamp Act for registration of sale deeds in the area where the land is situated. He further contended that average sale price for similar types of land in the nearest vicinity including the consented amount of compensation, whichever is higher, ought to have been taken into consideration for the purpose of ascertaining the market value. He further contended that it was incumbent upon the Competent Authority as well as the Appellate Authority to apply the highest exemplar between the Collector's information vide letter dated 29.09.2016 and the award passed in NGA 14/2014. He further contended that since the award passed in NGA 14/2014 was the highest exemplar and the said amount has been paid by the Metro Railways, such value ought to have been taken to be the market value.

8. Mr. Kar further contended that the Collector's information as contained in the letter dated 29.09.2016 which was marked as Exhibit D in NGA 14/2014 was rejected and the award in NGA 14/2014 was passed after taking into consideration a letter dated 27.04.2017 of the Deputy Inspector General of Registration being Exhibit G in the said case. Mr. Kar further contended that the land in NGA 14/2014 as well as the land of the claimants has the same potential value as both were capable of being used as commercial housing complex. He, thus, contended that the appellate authority failed to appreciate such fact while passing the impugned judgment.

9. In support of his contention that the expression "market value" would include potential value, Mr. Kar placed reliance upon the decisions in the case of ***Mehrawal Khewaji Trust Registered (Faridkot) v. State of Punjab and others,*** reported in ***(2012) 5 SCC 432***; ***Himmat Singh v. State of MP,*** reported in ***(2013) 16 SCC 392, Chandramallika Suppliers Private Limited v. State of West Bengal,*** reported in ***AIR 2016 Cal 357***, ***Atma Singh (Dead) v. State of Haryana,*** reported in ***(2008) 2 SCC 568, V. P Ram Reddy v. LAO Hyderabad Urban Development Authority,*** reported in ***(1995) 2 SCC 305,*** and ***Manohar v. State of Maharashtra and Other***, reported in ***2025 SCC Online SC 1519.***

10. Mr. Mitra, learned Senior Counsel appearing for the Metro Railways seriously disputed the contentions of Mr. Kar. He contended that on the date of publication of the notification under Section 7 i.e., March 25, 2013, the land in question was a "sali" land. He, thus, contended that in view of the provisions laid down under Section 13 of the Metro Railway Act the market value for determination of compensation by the Competent Authority would be that of "Sali" land in Balia Mouza as on March 25, 2013. He further contended that in order to determine the compensation, the Competent Authority/ Appellate Authority under the Metro Railways Act are obliged to take recourse to the provisions of Section 26, 27,28 and 29 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. He further contended that Section 26 of the 2013 Act provided that the "market value" of the land is to be ascertained by the Collector and the District Magistrate 24 Parganas (S) has been assigned the duty under Section 26 of the 2013 Act to ascertain the market value of the property. He further contended that pursuant to a request made by Chief Engineer by a letter dated August 12, 2016 requesting the District Magistrate to furnish the market rates of the land in various Mouzas in terms of 26 of 2013 Act, the District Magistrate by a letter dated September 29, 2016 furnished the marker value of different clauses of land in Balia Mouza. He further

contended that the market value as determined by the District Magistrate in respect of several classes of land including Sali land in Balia Mouza but such determination of the market value had never been challenged by the complainants before any forum as per the provisions of the relevant statute or by way of a writ petition. He further contended that once the market value of the land has been determined by the Collector in terms of Section 26 of 2013 Act the Competent Authority or the Appellate Authority under Metro Railways Act is obliged to accept the said market value of land as the market value on the date of the publication of the notification under Section 7. He further contended that the Competent Authority exceeded its jurisdiction by placing reliance upon the market value determined by a private valuer engaged by the claimants. He further contended that the purported report of a privately engaged surveyor could not have been accepted by the Competent Authority for the purpose of determination of the compensation amount.

12. Mr. Mitra further contended that an exemplar was available of a similar property which was the subject matter of NGA 33 of 2014. He further contended that in view of the provisions of Section 6(1)(b) of the 2013 Act the market value ascertained in NGA 33 of 2014 ought to have been taken as the appropriate exemplar by the Competent Authority in respect of the land in question. He further contended that both the land in NGA 33 of 2014 and the land of the claimants which is the subject matter of NGA 92 of 2017 are similarly situated, classification of the lands was similar that is Sali, acquired by the same notification and having similar potentiality.

13. Mr. Mitra contended that the Competent Authority committed a jurisdictional error in ignoring the market value provided by the District Magistrate vide letter dated September 29, 2016 and by relying upon the valuation of the land made by a private valuer appointed by the claimants. He further contended that the Competent Authority failed to appreciate that since the statute directs determination of market value of the property as on the date of publication of the notification and on such date the property was

admittedly a Sali land, the claimants were entitled to be compensated at the market value of a Sali land but not at commercial rate.

14. Mr. Mitra sought to distinguish the decisions relied upon by Mr. Kar by contending that the said decisions were delivered considering the provisions of the Land Acquisition Act 1894 and not the 2013 Act. He further contended that in all the aforesaid decisions the matter travelled to the Hon'ble Supreme Court in appeal from the order of reference. He further contended that the 2013 Act have specifically provided the parameters required to be considered by the Collector in determination of the award and the concept of potential value of land has been incorporated in the 2013 Act. He further contended that since on the date of notification the land was admittedly the Sali land, the Competent Authority or the Appellate Authority ought to have determined the compensation by taking the market value of the land as a Sali land. Mr. Mitra contended that the Appellate Authority after arriving at a categorical finding that the land of the claimants was not a commercial land and the nature of the land was Sali on the dates of notification under Section 7 and 10 of the Metro Railways Act erred in holding that the land had the potentiality of being developed into a Bastu property. Mr. Mitra concluded by submitting that the compensation payable to the claimants should be determined on the basis of the market value as assessed by the District Magistrate 24 Parganas (S) vide letter dated July 29, 2016 for Sali land.

15. In reply, Mr. Kar, learned Senior advocate for the claimants submitted that the classification of land as on the date of notification is of no consequence. He contended that the potential value is to be looked into and it is immaterial as to what was the classification of the land as on the date of notification. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in ***Manohar Vs. State of Maharastra and ors***. reported at ***2025 SCC Online SC 1519***. Mr. Kar contended that the Appellate Authority failed to consider that Sali land in the said locality was being allowed to be converted to Bastu and used for

commercial purpose by the Government as would be evident from the award passed in NGA 14 of 2014 and the Appellate Authority ought to have considered that the lands of the claimants also had the potentiality of being used for commercial purpose and the compensation for the lands of the claimants should have been determined at commercial rate. Mr. Kar further contended that the appellate authority after arriving at a finding that the land in NGA 33/2014 was land locked ought to have held that the land in NGA 33 of 2014 is not similar as the land of the claimants had a much higher potential value considering its locational and other advantages.

16. Heard the learned advocate for the parties and perused the materials placed.

17. A Gazettee notification dated 07.02.2011 under Section 21 of the Metro Railways (Construction of Works) Act 1978 was published prohibiting any construction within the width of 50 meters from the proposed Metro alignment. During the validity period of the notification under Section 21, the claimant nos. 1 to 15 purchased 107.438 decimals of land in R.S. Dag Nos. 457 and 517 by a registered deed of conveyance dated 14.12.2011. Thereafter, the claimants applied for mutation on 10.01.2012. A company under the name and style "Dewakar Developers Pvt. Ltd." was incorporated on 11.01.2012 under the Companies Act, 1956. The development agreement was entered into between the claimant nos. 1 to 15 and the claimant nos. 16 and 17. On 25.03.2013 the Metro Railways published Gazette Notification under Section 7 of the 1978 Act expressing their intention to acquire the land in question.

18. An argument was advanced by the learned Senior Counsel for the Metro Railways that the claimants could not have purchased the property in question after issuance of the notification under Section 21 of the 1978 Act. It was further contended that within one year from the issuance of the notification under Section 21 the claimant purchased the land in question vide registered deeds i.e., during the period the prohibition under Section 21 of the 1978 Act was in force.

19. In reply the learned Senior Counsel for the claimants would contend that the prohibition under Section 21 was in respect of construction of buildings and excavation but not purchase of the property in question.

20. Section 20 and 21 of the 1978 Act falls under Chapter IV which deals with construction of works. Section 20 of the 1978 Act casts an obligation upon any person who proposes to develop any land or building along or on the metro alignment to obtain any approval or consent from the authorities before commencing the development work. Section 21 empowers the Central Government to prohibit or regulate the construction of buildings and excavation in order to facilitate the construction of any metro railway or for ensuring the safety of any metro railway. Section 22 of the 1978 Act provides for payment of an amount to be determined by the Competent Authority if in consequence of any direction contained in notification under Section 21(1) any person sustains any loss or damage.

21. Upon a harmonious reading of the Sections falling under Chapter IV, this Court is of the considered view that the provisions under Section 21 only prohibits or regulates construction of building or excavation and not purchase of any land.

22. The provisions relating to acquisition have been specifically laid down under Chapter III. To the mind of this Court, purchase of any property during the validity period of the notification issued under Section 21 of the 1978 Act cannot in any manner affect the right of a claimant to receive compensation for acquisition of the property purchased during the validity period of the notification issued under Section 21 of the 1978 Act.

23. The claimants chose not to file any objection within the time limit as specified under Section 9 of the said Act.

24. The notification under Section 10 of the 1978 Act dated 13.02.2014 was issued. With the issuance of the said notification under Section 10 of the 1978 Act, the land in question stood vested absolutely to the Central Government free from all encumbrances. Upon vesting of the said land the

Central Government became liable to pay compensation at the market value from the date of publication of the notice under Section 7 i.e., 25.03.2013.

25. After the land in question stood vested to the Central Government the claimants applied for conversion of the land from Sali to housing complex on 17.03.2015. After the conversion of the classification of the land from Sali to housing complex the claimants filed the compensation case before the Competent Authority on 18.05.2017.

26. Before the Competent Authority the claimants produced the certified copy of the judgment passed by the Competent Authority in acquisition claim case no. NGA 14 of 2014. The claimants also produced a valuation report prepared by one Prabhas Chandra Saha which was marked as Exhibit 21. The Competent Authority after considering the materials placed on record observed that the claimants purchased the case land with an intention to use the same commercially and they are entitled to get the value of the case land at the commercial rate. The Competent Authority after applying the proposition of law laid down by the Hon'ble Supreme Court wherein it was held that compensation has to be awarded at the rate awarded to adjoining land owners whose lands has been acquired in the said notification observed that the claimants should be awarded the same value as has been awarded to the claimant of acquisition claim case no. NGA 14 of 2014.

27. The Competent Authority placed reliance upon the evaluation report prepared by the engineer appointed by the claimants being Exhibit 21. The Competent Authority observed that such valuation appears to be quite reasonable and the claimant should be awarded compensation at the rate mentioned in the said exhibit.

28. In the light of the aforesaid observations the Competent Authority allowed the Acquisition Claim Case no. NGA 92 of 2017 on contest in part. The Competent Authority held that claimant nos. 1 to 15 shall get an award of compensation to the tune of Rs. 57,10,12,312/- (Rupees Fifty seven crore ten lakh twelve thousand three hundred twelve) only and severally they are

entitled to get an amount as per their respective shares in the case land and such amount was directed to be paid by Metro Railway within the time limit indicated in the said order.

29. Challenging the order of the Competent Authority, the Metro Railways preferred an appeal before the Appellate Authority being Claim Appeal no. 19 of 2022 which was allowed by a judgment and order dated July 30, 2025 passed by the Appellate Authority. By the said order the appeal was allowed on contest thereby setting aside the judgment and order passed by the Competent Authority. The Metro Railway was directed to pay compensation of Rs. 15,90,97,903/- (Rupees Fifteen crore ninety lakh ninety seven thousand nine hundred three) to the claimants jointly.

30. The Appellate Authority held that the land in question is not a commercial land. The nature of the land was “Sali” as on the date of notification under Section 7 and 10 of the 1978 Act dated 25.03.2013 and 13.02.2014 respectively. That the land in question is Sali land but had the potentiality of being developed into Bastu property considering its geographical position. The appellate authority accepted the rate for Bastu property in Balia Mouza on the date of notification under Section 7 i.e., 25.03.2013 as stated in the letter of the District Magistrate 24 Parganas (S) at Alipore dated 29.09.2016. The Appellate Authority accepted the rate of Rs. 7,95,375/- (Rupees seven lakh ninety five thousand three hundred seventy five) per Kottah and accordingly directed that the compensation amount to be paid by the Metro Railways to the claimants.

31. The said order of the Appellate Authority is under challenge at the instance of the claimants as well as Metro Railways. It is the contention of the claimants that they are entitled to compensation at the commercial rate in terms of the exemplar relied upon by them i.e., award in NGA 14 of 2014. On the other hand it is the contention of the Metro Railways that the compensation amount ought to have been determined by applying rate for “Sali” land in Balia Mouza as on the date of notification issued under Section 7.

32. Chapter III of the 1978 Act deals with Acquisition. Section 6 vests power to acquire land. Section 7 speaks of publication of notification for acquisition. Section 9 provides for hearing of objections of any person interested in the land. Section 10 deals with declaration of acquisition.

33. Sub-section (2) of Section 10 states that on publication of the declaration under subsection (1), the land, building, street, road or passage, or right of user or right in the nature of easement, therein shall vest absolutely in the Central Government free from all encumbrances.

34. Section 13 also falls under Chapter III and it provides the machinery for determination of amount payable as compensation. Sub-section (4) of Section 13 lays down the factors which are to be taken into consideration by the Competent Authority or the Appellate Authority while determining the amount under sub-section (1) or subsection (3). Sub-section (3) provides a remedy of appeal if the amount determined by the Competent Authority is not acceptable to either of the parties.

35. However, in view of the provisions of Section 105(3) of the 2013 Act, the provisions of the 2013 Act relating to determination of compensation in accordance with the First Schedule shall apply to the cases of land acquisition under the 1978 Act.

36. Section 26 of the 2013 Act lays down the provisions for determination of market value of land by Collector. Section 27 speaks of determination of amount of compensation Section 28 speaks of the parameters to be considered by Collector in determination of award. Section 29 states about the determination of value of things attached to land or building and Section 30 provides for award of solatium.

37. The dispute between the parties revolves around the determination of market value of the acquired land and for such reason the provision of Section 26 of the 2013 Act is extracted hereinafter.

*"**26. Determination of market value of land by Collector-** (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—*

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

38. Mr. Kar would strenuously contend that the highest of the 3 values amongst clauses (a),(b) and (c) of sub-section (1) of Section 26 of the 2013 Act ought to be taken as the Market value of the acquired land for determination of compensation.

39. In the case on hand, the market value specified in the Indian Stamp Act, 1899 for registration of sale deeds or agreements to sell in the area i.e., Balia Mouja i.e., the letter of the District Magistrate dated 29.09.2016 was marked as Exhibit E.

40. No materials have been produced by either of the parties with regard to average sale price for similar land situated in the nearest village or nearest vicinity area.

41. The award passed in NGA 14/2014, according to the claimants, is the consented amount of compensation as per Section 26(1)(c) as the said amount has been duly paid. Since the market value of the land as per the said Award is the highest, such value, according to Mr. Kar should have been accepted by the Appellate Authority.

42. The Competent Authority while determining the compensation amount payable to the claimants herein accepted the valuation of the plots in question made by the Engineer privately appointed by the claimants as indicated in the Evaluation Report being Exhibit 21. To the mind of this Court, the Appellate Authority was right in not relying upon the Evaluation Report of a private professional appointed by the claimants.

43. Before the Appellate Authority, Metro Railways produced the Award passed in NGA 33 of 2014 and according to the said Authority, the acquired plot of land of the claimants in more or less identical with the acquired land which was the subject matter of NGA 33 of 2014.

44. The Appellate Authority in paragraph 11.11 of the impugned judgment took note of the dissimilarities between the case land of NGA 14 of 2014 (Exhibit 22) and the case land of the claimants in NGA 92 of 2017. For better appreciation paragraph 11.11 is extracted hereinafter.

> ***"11.11:*** *The dissimilarities between the case land of* ***NGA 14/2014 (Ext-22)*** *and this present case* ***(NGA 92/2017)*** *is that* ***(a)*** *The case land of NGA 14/2014 is situated at more prominent place compared to case land of NGA 92/2017. The case land of NGA 14/2014 is situated just in front of the Kavi Subhash Metro Station, whereas the land of NGA 92/2017 is situated beside Kavi Subhash Metro station at the distance of 300-400 meter by the side of railway alignment. There is likelihood of sound pollution to the residents due to frequent running of metro trains.* ***(b)*** *The frontage road of NGA 14/2014 is about 25 ft. width, whereas the frontage road of NGA/92/2017 is 10-12 ft.* ***(c)*** *There is potentiality of land of NGA 14/2014 is that any mall or shopping complex can be*

constructed there but land of NGA 92/2017 has no such scope as it is situated beside the railway alignment and having narrow approach road. ***(d)*** *The case land of NGA 14/2014 was purchased by the raiyat in the year 1993, much before the publication of notice under section 21 of the 1978 Act, while the land of NGA 92/2017 was purchased on 14.12.2011, after publication of notice under section 21 of the 1978 Act. The intention of the claimants of the NGA 14/2014 was not to grab more compensation from the Government, whereas the acts of the claimants of NGA 92/2017 attracts doubts to their fairness.* ***(e)*** *The case land of the NGA 14/2014 was already converted to commercial before the publication of notification under section 7 and 10 of the 1978 Act, whereas the Claimants of NGA 92/2017 applied for conversion after notification under section 7 and 10 of the 1978 Act and filed the claim case only after it being converted to housing complex in the year 2015 with mala fide intention to grab more and more compensation.* ***(f)*** *The case land of NGA 14/2017 is a smaller plot of measuring about 11cottah, 4 chittak 25 sq,ft, whereas the case land of present case (NGA 92/2017) is larger plot measuring about 107.438 decimal. So, market value of smaller plot cannot be compared with larger plot.* ***(g)*** *The case land of NGA 14/2014 is situated in the Garagacha Mouza, whereas the case land of NGA 92/2017 is situated in Balia Mouza. Though the distance between the two is hardly 400 meter, but the natural justice demands that the case land of NGA 92/2017 (present case) shall be compared with similarly situated land of Balia Mouza, instead of Garagacha mouza.* ***(h)*** *The shape of case land of NGA 14/2017 is rectangular, whereas the shape of present case (NGA 92/2017) is neither square or rectangular but like a knife shape, which is one of minus factor.* ***(I)*** *The case land of NGA 14/2014 was converted to bastu commercial, whereas the case land of NGA 92/2017 was converted to housing project i.e residential housing project."*

45. The Appellate Authority pointed out that the case land in NGA 14 of 2014 was converted to commercial before publication of notifications under Sections 7 and 10 whereas the case land in NGA 92 of 2017 was converted to housing complex after publication of Notification under Section 7 and 10.

46. The Appellate Authority noted that the land in NGA 92 of 2017 was converted from Sali to housing project/bastu project as in NGA 14/2014. In the light of the aforesaid findings, the Appellate Authority held that the land in question is not a commercial land.

47. It is the case of the claimants that they intended to construct a housing complex on the plot in question and not a commercial complex. Thus, the

potentiality of the land in question from the point of view of the claimant is a housing complex and not a commercial complex. Valuation of a housing complex cannot be said to be the same as a commercial complex. This Court is, therefore, of the considered view that the Appellate Authority was right in holding that the land in question is not a commercial land.

48. After going through the Award dated 09.08.2017 passed by the Competent Authority in NGA 14/2014, this Court finds that the learned lawyer for Metro Railways in that case admitted that the land in question is bastu commercial and the only objection of the Metro Railways was that solatium under the 2013 Act cannot be considered as the land was acquired for a national project. Thus, the dispute that fell for consideration in NGA 14/2014 was not whether the land acquired was commercial or not.

49. However, in the case on hand, it is the contention of Metro Railways that since the land acquired in NGA 92/20107 was Sali at the time of publications of Notification under Section 7 and 10, the compensation should be determined for Sali land.

50. At this stage it would not be out of place to take note that in NGA 14/2014, the letter dated 27.04.2017 of the Deputy Inspector General of Registrar HQ being Exhibit G was relied upon disregarding the letter of the District Magistrate dated 29.09.2016 which was also exhibited in NGA 14/2014 as Exhibit D.

51. The subject matter of land in NGA 14/2014 was RS and LR Dag no. 10 under mouja Garagacha. It appears from the award of the Competent Authority in NGA 14/2014 that the total commercial value of land i.e., 4.73 decimals appertaining to RS Plot no. 9 was determined in Exhibit G. The competent authority after noticing that the R.S. Plot No. 10 is situated adjacent to RS Plot No. 9 of the same mouja and land situated side by side under the same mouja should be treated in the same manner in respect of the market value, the valuation of 1 decimals of land of R.S. Dag no. 9 as

stated in Exhibit G was accepted for determination of Market value of R.S. Plot no. 10.

52. Thus, it appears that since the valuation of an adjacent plot of the same mouja was available vide Exhibit G, such exhibited document was relied upon. To the mind of this Court, the valuation of different categories of land of various moujas including Balia and Garagacha as mentioned in the letter of D.M. dated 29.09.2016 was not rejected by the Competent Authority.

53. The Appellate Authority in paragraph 11.13 of the impugned judgment noted the similarity between the property in NGA 33/2014 and the property of the claimants in NGA 92 of 2017. Paragraph 11.13 is extracted hereinafter.

> ***"11.13:*** *Article 14 of the Constitution of India mandates that the equal should be treated equally and the unequal should be treated differently. A similar property (NGA 33/2014) to this case land whose nature was also sali on the date of acquisition and situated just behind the land of NGA 14/2014 has been compensated by the Ld. Competent Authority at the rate of Rs. 4,58,460/- per decimal at sali rate. The similarities between the claimants of NGA 33/2014 and this NGA Case 92/2017 are that* ***(a)*** *the land of both the case acquired by central government by same notification dated 13.02.2014.* ***(b)*** *The nature of both the acquired land was sali on the date of acquisition i.e 13.02.2014* ***(c)*** *The claimants of both the case applied for conversion of the land from sali to commercial after acquisition le after ceasing to be owner of the land. (****d)*** *The claimants of both the case entered into development agreement to construct residential housing complex. (e) The case land of both NGA 33/2014 and the present case (NGA 92/2017) are larger in size i.e 59.029 decimal and 107.438 decimal respectively.* ***(f)*** *The claimants of both the cases intended to develop the land to housing project and they produced valuer's report and chartered accountant report to get enhanced compensation. Both the valuer and the chartered accountant were appointed and paid by the claimants."*

54. The Appellate Authority noted that in NGA 33/2014, compensation was determined by relying upon the rate furnished by the D.M. by letter dated 29.09.2016 and the rate of Sali land of Gargacha mouja was taken to be the market value of the said land.

55. The Appellate Authority after recording that the claimant in NGA 92/2017 purchased the land in question at a price higher than the rate of Sali land in Balia mouja observed that though the land was recorded as “Sali” land in the Record of Rights as on the date of notification under Section 7 and 10 has the potentiality of being developed as a bastu land.

56. The Appellate Authority also noticed that the land in NGA 33/2014 is situated just in front of Kavi Subhas Metro Station though in land locked situation and the land of the claimants in NGA 92/2017 is situated beside Kavi Subhas Metro Station at a distance of approximately 400 meter, but having road (10-12) feet from three sides and held that the market rate of both lands cannot be same.

57. In ***Anjani Molu Dessai v. State of Goa*** reported at ***(2010) 13 SCC 710,*** the Hon’ble Supreme Court held that where there are several exemplars with reference to similar lands, usually the highest of the exemplar which is a bona fide transaction, will be considered. Where, however, there are several sales of similar lands whose price varies in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are marked by different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to.

58. In **Mahrawal Khewaji Trust (supra)**, the Reference Court determined the market price of the acquired land by averaging the prices of all the three same exemplars in place of relying upon the highest exemplar. The Hon’ble Supreme Court after noticing several decisions, including Anjani Molu Desai held that it is not desirable to take an average of various sale deeds placed before the authority/Court for fixing compensation.

59. In **Manohar** (supra), 12 sale deeds were produced, and the Reference Court overlooked the highest exemplar sale deed which was relied upon by the claimant as a bona fide sale transaction. The Hon’ble Supreme Court

interfered only because the Reference Court without recording any reason decided to completely overlook/omit the highest sale instance.

60. The aforesaid decisions cannot come to the aid of the claimants as sale deeds in respect of similar types of land has not been produced before the Authority in the case on hand. That apart, the aforesaid decisions deal with matters arising out of orders passed by the Reference Court under Section 18 of the Land Acquisition Act, 1894 and not acquisitions under the provisions of the 2013 Act.

61. In **Atma Singh (Dead) Through Lrs. Vs. State of Haryana** reported at **(2008) 2 SCC 568,** the Hon'ble Supreme Court held that for ascertaining the market value of land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that the market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when put in its most advantageous manner.

62. In ***Himmat Singh*** (supra) the Hon'ble Supreme Court reiterated the proposition of law laid down in **Atma Singh** (supra) that for ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration.

63. The co-ordinate bench in ***Chandramallika Suppliers Private Limited*** (supra) after noticing the definition "market value" in Section 2(16B) which was introduced by West Bengal Amendment in the Indian Stamp (West Bengal Amendment) Act, 1990 held that the statutory definition of market value means the price which a property would have fetched or would fetch if sold in open market on the date of execution of an instrument as determined in such manner and by such authority as may be prescribed by the rules made under the Indian Stamp Act, 1899 or the consideration stated in the instrument, whichever is higher.

64. In **P. Ram Reddy** (supra), the Hon'ble Supreme Court held that the market value of the acquired land when to be determined with reference to the date envisaged under Section 4(1) of the Land Acquisition Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for letter use i.e., on its potentiality.

65. It is, thus, well settled that the expression "Market Value" in land acquisition proceeding would include in its definition its potential value.

66. In view of the aforesaid discussion it follows that while determining the market value, the mode of user of the land as on the date of notification should not be the only guiding factor but the potentiality of the said land being available for better use in the immediate or near future should also be taken into consideration.

67. The Appellate Authority even after drawing an adverse interference against the claimants in obtaining the order of conversion after the land stood vested with the Central Government did not determine the Market value of the acquired land in question going only by its classification as "sali" in the RoR as on the date of notification but took into consideration the potentiality of the land being developed into bastu property considering its geographical location.

68. The Appellate Authority took into consideration the materials placed before it including the Award Passed in NGA 33/2014 and NGA 14/2014 as well as the letter of the District Magistrate, dated 29.09.2016 wherein the market value of different classes of land in different mouja including Balia and Gargacha were stated. Detailed reasons have been assigned in the impugned judgment for not accepting the award passed in NGA 14/2014 as the basis for determination of the market value. Reasons for adopting a different rate for determination of the market value than that arrived at in NGA 33/2014 has been recorded in details. The potentiality of the acquired land has also been taken into consideration by the Appellate Authority while determining

the market value. The parameters laid down by the Hon'ble Supreme Court for determination of market value has been correctly applied by the Appellate Authority. The reasons assigned by the Appellate Authority for not accepting the report of the Engineer privately appointed by the claimant i.e., Exhibit 21 which forms the basis of the award of the competent authority are also based on sound legal principles.

69. For all the reasons as aforesaid this Court holds that there is no infirmity in the decision making process warranting interference in exercise of the powers of Judicial Review under Article 226 of the Constitution of India.

70. Accordingly, the writ petitions stand dismissed. There shall be, however no order as to costs.

71. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)