

being only a formal order, no Second Appeal will be maintainable against the impugned order. This second appeal is liable to be dismissed on this ground alone.

7. Accordingly the second appeal is hereby dismissed.

(2022)02ILR A717

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 04.11.2015

BEFORE

**THE HON'BLE SUDHIR AGARWAL, J.
THE HON'BLE RAKESH SRIVASTAVA, J.**

First Appeal No.908 of 2003

**Gas Authority of India Ltd. ...Appellant
Versus
Ram Ashrey & Ors. ...Respondents**

Counsel for the Appellant:

Sri A.K. Gaur, Sri Madhur Prakash, Sri V.K. Singh

Counsel for the Respondents:

Sri Dinesh Pathak, Sri Rakesh Pathak

A. Land Acquisition - Determination of market value of the acquired land - The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors. In other words, a balance sheet of plus and minus factors may be drawn and the relevant factors may be valued in terms of price variation. (Para 19)

First Appeal Rejected. (E-10)

List of Cases cited:

1. Jawajee Nagnatham Vs Revenue Divisional Officer (1994) 4 SCC 595

2. Land Acquisition Officer Vs Jasti Rohini 1995 (1) SCC 717

3. U.P. Jal Nigam Vs M/s Kalra Properties (P) Ltd. (1996) 3 SCC 124

4. Krishi Utpadan Mandi Samiti Vs Bipin kumar (2004) 2 SCC 283

5. Lal Chand Vs U.O.I. & anr. (2009) 15 SCC 769

6. Ramesh Chand Bansal Vs District Magistrate/Collector (1999) 5 SCC 62

7. R. Sai Ram Bharathi Vs J. Jayalalitha (2004) 2 SCC 9

8. Chimanlal Hargoviddas Vs Special Land Acquisition Officer (1988) 3 SCC 751

9. V.M. Salgoacar & brother Ltd. Vs U.O.I. (1995) 2 SCC 302

10. Shakuntalabai (Smt.) & ors. Vs St.of Mah. 1996 (2) SCC 152

11. State of U.P. Vs Major Jitendra kumar & ors. AIR 1982 SC 876

12. Administrator General of West Bengal Vs Collector, Varanasi AIR 1998 SC 943

13. Meerut Development Authority through its Secretary Vs Basheshwar Dayal (since deceased) through His L.Rs. & anr. First Appeal No. 454 of 2003

14. Bhule Ram Vs UOI & anr. JT 2014 (5) SC 110

15. Bhupal Singh & ors. Vs St.of Har. (2015) 5 SCC 801

16. Chandrashekar Vs Land Acquisition Officer (2012) 1 SCC 390

17. Subh Ram Vs State of Haryana (2010) 1 SCC 444

18. K. Devakimma & ors. Vs Tirumala Tirupati Devasthanam & anr. 2015 (111) ALR 241

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

1. Heard Shri V.K. Singh, learned Senior Advocate assisted by Shri Madhur Prakash, learned counsel for appellant and Shri Dinesh Pathak for respondents.

2. This appeal, at the instance of defendant-appellant i.e. Gas Authority Of India Limited (hereinafter referred to as GAIL), has been preferred under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") being aggrieved by award/judgment dated 31.5.2003 in Land Acquisition Reference (hereinafter referred to as LAR) No.56 of 1995 passed by Shri D.L. Srivastava, Additional District Judge, Court No.4, Etawah (hereinafter referred to as Reference Court) determining market value of acquired land considering the factors under Section 23 of Act, 1894, at the rate of Rs.35,000/- per 1800 square feet. Reference Court has further awarded 30% solatium on the amount of compensation, 12% additional compensation and interest for various periods, as per provisions of Act, 1894.

3. Shri V.K. Singh, learned Senior Counsel appearing for appellant stated that challenge in this appeal is confined to the rate of compensation determined by Reference Court i.e. Rs.35,000/- per 1800 square feet. According to him, Reference Court has determined market value at much excessive and inflated rate, which does not represent true market value at the time of acquisition.

4. On the request of appellant GAIL, acquisition proceedings under Act, 1894 were initiated by publication of notification dated 10.4.1992 under Section 4 (1) of Act, 1894 in the Gazette dated 20.6.1992. Notification dated 26.8.1992 under Section 6 (1) of Act, 1894 was published in Gazette dated

12.9.1992 and possession of land in village Vaisundhara was taken on 30.1.1993. It proposed to acquire 164.35 and 53.92 acres of land in villages Vaisundhara and Sehud, Pargana Auraiya, District Etawah (now part of District Auraiya), respectively, for the purpose of constructing residential colony of staff of Petrochemical Project, to be installed at Auraiya. Claimant-respondent no.1 filed objection on 23.5.1992 and thereafter, Special Land Acquisition Officer (hereinafter referred to as SLAO) made its award dated 24.9.1994 determining market value for the purpose of compensation at Rs.1,80,000/- per acre (Rs.7438/- per 1800 square feet). Land of claimant-respondent no.1 is situated in village Vaisundhara bearing Khasra no.185 Gata No.723, area 1.64 acres.

5. Claimant-respondent 1 being dissatisfied with aforesaid offer of compensation made application for reference under Section 18 to District Judge for determination of market value under Section 23 of Act 1894 pursuant whereunto impugned award dated 31.5.2003 has been delivered by Reference Court adjudicating and determining market value at Rs.35,000/- per 1800 square feet.

6. Reference Court in determining aforesaid market value has relied upon sale deed dated 6.7.1990 whereby 1800 square feet land of village Sehud, adjacent to village Vaisundhara, was transferred by sale by Karan Singh etc. in favour of Ram Prakash for a consideration of Rs.35,000/-.

7. Reference Court framed three issues. Issue 1, relevant to the issue raised in this appeal, reads as under: -

"क्या विशेष भूमि अध्याप्ति अधिकारी द्वारा किया गया प्रतिकर अपर्याप्त है? यदि हाँ तो याची कितनी धनराशि प्राप्त करने का हकदार है?"

8. Claimant-respondent 1 relied on sale deeds dated 29.8.1989 (paper no.16-Ga/4-5), 15.2.1988 (paper no.16-Ga/6-7), 31.7.1992 (paper no.16-Ga/8-9) and dated 6.7.1990 (paper no.16-Ga/10-12) vide list 22-Ga, besides other documents i.e. map, chakbandi record etc. He examined in support of his claim, himself as PW-1 and one Sobran Singh as PW-2.

9. On behalf of defendant, one Pradeep Kumar, Amin was examined as DW-1 and sale deed dated 10.9.1991 (paper no.46-Ga/1-3) executed by Radhunandan in favour of Lalaram was cited.

10. The court below with respect to location and other potential advantages of the land in question has recorded its findings that villages Sehud and Vaisundhara, both are adjacent to each other. Before SLAO several exemplar sale deeds of the said two villages were cited, but none were accepted by SLAO only for the reason that they would result in making higher rates of compensation to the land owners. Obviously, that could not have been a valid reason to reject exemplars of villages where acquired land is also situated. Having said so, court below has further observed that Collector, Etawah has determined market value for the purposes of stamp duty at the rate of Rs.35/- per square foot and above, depending upon location of land in aforesaid two villages and some other nearby area. In view thereof, value of acquired land should not have been below Rs.35/- to Rs.45/- per square foot. Having said so, it rightly did not follow circle rate determined by Collector for the reason that the same is not relevant for the purposes of market value under Section 23 of Act, 1894 as held repeatedly by Court time and again.

11. Counsel for the parties do not dispute that circle rate fixed by Collector cannot be a basis for determining market value. 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 land owners appealed against order of Reference Court before Andhra Pradesh High Court claiming higher compensation on the basis of the basic valuation register maintained by Revenue authorities under Stamp Act, 1899. The claim of land owners failed in High Court, which held that such register had no evidenciary value on statutory basis. In appeal, Apex Court held that basic valuation register was maintained for the purpose of collecting stamp duty under Section 47-A of Stamp Act, 1899 as amended in State of Andhra Pradesh. It did not confer expressly any power to the Government to determine market value of the land prevailing in a particular area, i.e., village, block, district or region. It also did not provide, as a statutory obligation, to 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***.

12. Another matter from State of U.P. came up for consideration involving the same issue in U.P. ***Jal Nigam Vs. M/s Kalra Properties (P) Ltd., (1996) 3 SCC***

124. The land owners' demanded for 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). The 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.

13. The issue has again been considered recently 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 the market value were examined. These decisions are *Ramesh Chand Bansal v. District Magistrate/Collector*, (1999) 5 SCC 62 and *R Sai Ram Bharathi v. J Jayalalitha*, (2004) 2 SCC 9. The Court resolved controversy in *Lal Chand Vs. Union of India* holding, if in a particular case, guideline for market values are determined by an Expert Committees constituted under State Stamp Law for following a detailed procedure laid down under the relevant rules and are published in State Gazette, the same may be considered as a relevant material to determine market value. The Court said when guideline of market values, 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 the Court further stated as under:-

"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."

14. Following aforesaid decisions and applying the same to the facts of present case, we find that it is no body's case that circle rates fixed by Collector, Ghaziabad do satisfy the requirement as observed in *Lal Chand Vs. Union of India* so as to form a relevant material to be considered for determining market value under Section 23 of Act, 1894. It is, in these circumstances, we have no hesitation in holding that in respect of determination of market value of land, acquired in these appeals, circle rates fixed by Collector would not be relevant material to be looked into for determining market value.

15. Reference Court thereafter referred to sale deed dated 6.7.1990 (Paper

no16-Ga/10-12) whereby Karan Singh transferred land by sale deed to Shri Ram Prakash at the rate of Rs.35,000/- per 1800 square feet. It was two years old exemplar and at the time of acquisition certain industries had already come up to acquire land causing increase in price of land.

16. We find that SLAO determined market value at Rs.1,80,000/- per acre, which comes to Rs.7,438/- for every 1800 square feet and this has been enhanced by Reference Court to Rs.35,000/- relying upon sale deed of 1990, and that too, without applying any appreciation. Can it be said that about a little less than five times increase by Reference Court, in fact, is highly excessive and inflated?

17. We find that in last several decades large number of authorities have come up laying down factors and principles, which have to be observed and followed by the acquiring authorities or the Court determining market value in reference under Section 18 of Act, 1894 following the factors enumerated under Section 23 of Act, 1894 and these principles almost cover the entire field. It would be appropriate to recapture those principles of referring authorities.

18. So far as material placed before SLAO and his award is concerned, we find that the same was not material to be looked into by Reference Court since proceedings before Reference Court are independent and separate. An award by SLAO is like an offer and not to be treated as a judgment of Trial Court. It is well settled, when the land holders are not agreeable to accept the offer made by Land Acquisition Officer, they have a right to approach Collector under section 18 of the Act, 1894, by a written

application, for referring the matter to court, for determination of the amount of compensation or if there is any dispute regarding measurement of land for that also. In the present case the references in question were made at the instance of claimants for determining the amount of compensation.

19. In *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, (1988) 3 SCC 751*, the court has said that a Reference is like a suit which is to be treated as an original proceeding. The claimants are in the position of a plaintiff, who has to show that the price offered for his land in the award is inadequate. However, for the said purpose the court would not consider the material, relied upon by Land Acquisition Officer in award, unless the same material is produced and proved before the court. The Reference Court does not sit in appeal over the award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before the 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 of Act, 1894. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. the court is a hypothetical purchaser, willing to purchase land from the open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under section 4 of the Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. The court, therefore, would co-relate market

value reflat in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words a balance sheet of plus and minus factors may be drawn and the relevant factors may be valued in terms of price variation, as a prudent purchaser would do. The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors.

20. The size of the land, therefore, 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. The Court said that in such matters, the factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging

between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

21. 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 a 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.

22. In *V.M. Salgoacar & brother Ltd. vs. Union of India* (1995) 2 SCC 302, the land acquired by notification dated 06.07.1970 in village Chicalim near Goa Airport belonged to a single owner. The 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 the 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".

23. Again, in *Shakuntalabai (Smt.) and others vs. State of Maharashtra*, 1996 (2) SCC 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 the 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".

24. We may also notice at this stage that deduction for development is different than the deduction permissible in respect of largeness of area vis-a-vis exemplar of small piece of land. Many times, land owners relied on the rates on which development authorities used to offer allotment of developed plots cropped out by them in residential or industrial area. Such rates apparently cannot form the 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. The statutory authorities including development authorities used to offer rates with reference to economic capacity by the buyer 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 the 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.

25. 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.

26. In *Lal Chand Vs. Union of India* (supra), Court noticed that this 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 vary depending upon relevant factors. With reference to exemplars of transfer of land between private parties, Court would also look into the intrinsic evidence, i.e., the exemplar sale deed where the sale deed recites financial difficulties of vendor and urgent need to find money as a reason for sale or other similar factors, like litigation or existence of some other dispute. These are all the factors constituting intrinsic evidence of a distress sale.

27. In *Lal Chand Vs. Union of India* (supra), the Court also observed, if

acquisition is in regard to a large area of agricultural land in a village and exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of prevailing market value even if such land is at the other end of village, at a distance of one or two kilometers. But, the same may not be the position 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.

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

29. 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. The Court determined rate of compensation relying on sale deed dated 11.7.1959, i.e., a document executed after almost three and half years after the date of acquisition notification. Supreme Court upheld reliance of such document observing that 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 the Court said as under:-

"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."

30. Further, we need not go into a catena of other decisions rendered in the last several decades since we are benefitted of a recent Division Bench decision of this Court in First Appeal No.454 of 2003 and other connected matters, *Meerut Development Authority through Its Secretary vs. Basheshwar Dayal (since deceased) Through His L.Rs and another* decided on 01.08.2013 wherein the legal principles settled by Apex Court in various judgments, relevant for determination of market value have been crystallized as under:-

(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification under Section 4(1),

(ii) The method for determination of market value may be :-

(a) Opinion of experts,
(b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

[Ref. (1994) 4 SCC 595, Jawajee Nagnatham Vs. Revenue Divisional Officer & others (para 5)]

(iii) While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:-

- (a) Sale must be a genuine transaction,
- (b) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,
- (c) the land covered by the sale must be in the vicinity of the acquired land,

(d) the land covered by the sales must be similar to the acquired land

(e) the size of plot of the land covered by the sales be comparable to the land acquired.

(f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land.

(iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition which are as under : -

Positive factors	Negative factors
(i) Smallness of size	(i) Largeness of area
(ii) Proximity to a road.	(ii) Situation in the interior at a distance from the road.
(iii) Frontage on a road.	(iii) Narrow strip of land with very small frontage compared to depth.
(iv) Nearness to developed area.	(iv) Lower level requiring the depressed portion to be filled up.
(v) Regular shape.	(v) Lower level requiring the depressed portion to be filled up.
(vi) Level vis-	(vi) Some special

a-vis land under acquisition.	disadvantageous factor which would deter a purchaser.
(vii) Special value for an owner of an adjoining property to whom it may have some very special advantage.	

(v) For ascertaining the market value of the 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.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or 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. (Ref. (2011) 8 SCC page 9, *Valliyammal and another Vs. Special Tahsildar Land Acquisition and another*, paras 13, 14, 15, 16, 17, 18 and 19).

(viii) When there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and

accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. (Ref. (2012) 5 SCC 432, *Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others*).

(ix) In view of Section 51A of the Act certified copy of sale deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word 'may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. (Ref. (2004) 8 SCC 270 para 28 and 38, *Cement Corpn. Of India Ltd. Vs. Purya and others*).

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors : -

(a) Existing geographical situation of the land.

(b) Existing use of the land.

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

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

(xi) Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the 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.

(xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or 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. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. ***Sabha Mohammed Yusuf Abdul Hamid Mulla (dead) and others, (2012) 7 SCC 595*** paras 16, 17, 18, 21 and 22, .

31. In ***Valliyammal and another v. Special Tahsildar (Land Acquisition) and another, (2011) 8 SCC 91*** the Court has looked into various earlier judgments laying down guiding principles for determination of market value of acquired land. The Court has observed that comparable sales method of valuation is preferred since it furnishes the 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 led out in its most advantageous manner. The Court stated that when undeveloped or underdeveloped land is acquired 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.

32. In *Bhule Ram v. Union of India and another*, JT 2014 (5) SC 110 the 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 the court must act reluctantly to venture too far in this direction. The factors such as the nature and position of the land to be acquired, adaptability and advantages, the purpose for which the land can be used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape of the land, the rise of depression in the value of the land in the locality

consequent to the acquisition etc., are relevant factors to be considered. It further said that value, which has to be assessed, is the value to the owner, who parts with his property, and not the value to the new owner, who takes it over. Fair and reasonable compensation means the price of a willing buyer, which is to be paid to the willing seller. Though the Act does not provide for "just terms" or "just compensation", but the 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.. The 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 the Labour Laws. Having said so, the 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)

33.x In *Bhupal Singh and others v. State of Haryana, (2015) 5 SCC 801* while the above principles laid down in various cases were reiterated, the Court in para 18 of the 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."

34 . It is also reaffirmed that where an exemplar relates to small piece of developed land and is sought to be relied to determine market value on large tract of undeveloped acquired land, deduction can be applied ranging between 20% to 75%. The Court in para 20 of the judgment relied upon its decision in *Chandrashekar v. Land Acquisition Officer, (2012) 1 SCC 390* stating that the deduction has two components, one is development and another with respect to the size of the area. The earlier 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. Thus, with respect to escalation

of price where exemplar is much earlier in point of time, the 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.

35. When we consider the entire matter in the light of above principles, we find that in respect of extreme potentiality of acquired land, Reference Court has observed: -

"विवादित भूमिआबादी हेतु यानि आवासीय कालोनी बनाने हेतु भावनात्मक क्षमता से परिपूर्ण थी और उस समय उसकी कीमत अत्यधिक हो चुकी थी और प्रतिकर आवासीय कालोनी सीपित होने के आधार पर प्रति वर्ग फुट या वर्ग मीटर में ही अध्यासन होने चाहिए था।"

36. Court below has then relied upon sale deed dated 6.7.1990, which was almost two years old whereby land was transferred by sale at the rate of Rs.19.44 per square feet (1800 square feet land was sold for a consideration of Rs.35,000/-). Normally, if no evidence of further development is available showing much higher increase, 5 to 7% per annum increase could have been applied to aforesaid rate, but in present case, there is specific finding that there has been rapid industrialization and development in the area concerned, meaning thereby rates of land must have increased with sufficient pace. Simultaneously, when a similar piece of

land is sold, Courts have allowed deduction considering principles of largeness of area, which vary from 20 to 75%. If we apply 15% appreciation per annum to the rate of land in sale deed dated 6.7.1990, it would come to around Rs.46,000/- for 1800 square feet in two years and if we apply 30% of deduction in respect of largeness of area, it will reduce to about Rs.29,000/- and odd for 1800 square feet. There is not much difference in two rates and probably, for this reason, Reference Court has followed the rates shown in sale deed 6.7.1990, which was executed two years back without making any enhancement or deduction of any amount.

37. In the entirety of facts and circumstances of the case, we do not find that rates determined by court below can be said to be excessive and inflated to such an extent that the same should be reversed or interfered with by this Court in this appeal.

38. Question, therefore, formulated above, is answered by holding that market value for the purposes of compensation determination of court below is neither unjust, unreasonable or excessive and hence, it warrants no interference.

39. The appeal, therefore, lacks merit. Dismissed with costs.

(2022)02ILR A730

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 05.01.2022

BEFORE

**THE HON'BLE DR. KAUSHAL JAYENDRA
THAKER, J.**

First Appeal From Order No. 534 of 2000

Oriental Insurance Comp. ...Appellant

Versus

Pramod Kumar Srivastava & Ors.

...Respondents

Counsel for the Appellant:

Sri Ajay Singh

Counsel for the Respondents:

Sri Sanjay Kumar Srivastava

(A) Civil Law - Motor Vehicles Act, 1988 - Section 3 - Necessity for driving licence , Section 149 (2) (a) (ii) - a condition excluding driving by a named person or persons or by any person who is not duly licenced , or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification - negligence - principle of "*res ipsa loquitur*" - "the things speak for itself" -principle of contributory negligence - A person who either contributes or author of the accident would be liable for his contribution to the accident having taken place.(Para - 10,11)

Claimant was the driver of tempo - no driving licence - driver of the truck has not stepped into the witness box. -- truck and the tempo are of unequal magnitude - driving the truck in rash and negligent manner - Tribunal awarded a sum of Rs.1,00,000/- - with interest at the rate of 12% as compensation to the respondent claimant - aggrieved by the order of tribunal - appeal filed by the Insurance company .

HELD:-An additional sum of Rs. 25,000/- @ 6% granted to respondent-claimant. The reason for granting additional amount is that while granting the amount of Rs.1,00,000/-, the Tribunal has not added any amount under the head of future loss of income . Rate of interest of 12% granted by Tribunal not disturbed looking to the passage of time and the injuries which the claimant has sustained.(Para - 20,21)

Appeal partly allowed. (E-7)

List of Cases cited:-