

**(2018) 12 RAJ CK 0128**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneousellaneous Appeal No. 982, 983, 984, 985, 986, 988, 989, 990, 991 Of 2007

Aditya Kumar Samariya And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

**Date of Decision :** 04-12-2018

**Acts Referred:**

National Highways Act, 1956 — Section 3A, 3D, 3G(1), 3G(5), 3G(7), 3H(5), 11, 34(1), 34(4), 34(2)(b)(ii)

Arbitration & Conciliation Act, 1996 — Section 34, 34(2), 37

Rajasthan Land Revenue Act, 1956 — Section 34, 90A

Crown Proceedings Act, 1947 — Section 9(2)(b)

Land Acquisition Act, 1894 — Section 4(1), 23

Rajasthan Land Revenue (Conversion of Agricultural Land for Residential or Commercial Purposes in Rural Areas) Rules, 1971 — Rule 3, 4, 5

Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 — Rule 4(iv)

Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules of 1970 — Rule 4

Constitution of india 1950 — Article 300A

**Citation :** (2018) 12 RAJ CK 0128

**Hon'ble Judges :** P.K. Lohra, J

**Bench :** Single Bench

**Advocate :** Shekhar Nephade, Sanjeev Johri, Amit Chavan, Aseem Naphade, Eknath Chavan, Jitendra Maheshwari, Gaurav Shishodia, Lalit Parihar, Sharad Kothari, Lalit Pareek

**Final Decision :** Allowed

## Judgement

1. Determination of compensation for the land acquired by National Highways Authority of India (NHAI) has prompted all the appellants to prefer these appeals with a common grievance about its adequacy, being not satisfying the criteria and parameters prescribed under law. In substance, the afflictions of all the appellants are founded on unison grounds but for minor differentiation in factual aspects, therefore, all these appeals are heard together and disposed of by a

common judgment.

2. The undisputed facts, in brevity, are that at the threshold after following due process in adherence of the National Highways Act, 1956 (for short, 'Act of 1956'), NHA acquired land of appellants for constructing bypass of NH-79. The competent authority, after issuing Notification under Section 3A of the Act of 1956, published the same in Official Gazette as well as two local newspapers. In the follow of action, objections of persons interested in the land, i.e., appellants, were heard and then by resorting to Section 3D of the Act of 1956, declaration of acquisition was issued, which was duly published. Later on, possession of the land mentioned in the Notification under Section 3A of the Act of 1956 was taken from the appellants and then competent authority determined amount of compensation payable to the appellants under sub-section (1) of Section 3G of the Act of 1956. The amount of compensation, determined by the competent authority, did not satisfy the persons interested in the land, i.e., appellants, and therefore, espousing their cause by indicating unacceptability of the compensation amount, they submitted applications before the Arbitrator, District Collector, Bhilwara under sub-section (5) of Section 3G of the Act of 1956. The Arbitrator, upon consideration of the applications of appellants, found no infirmity in the amount of compensation determined by the competent authority and passed separate arbitral awards of even date affirming the determination made by the competent authority.

3. Feeling dismayed with the arbitral awards, appellants made endeavor to seek modification/setting aside of the same before District Judge, Bhilwara (for short, 'learned Court below') by laying applications under Section 34 of the Arbitration & Conciliation Act, 1996 (for short, 'Act of 1996'). Despite making sincere endeavor to persuade learned Court below that determination of compensation amount by competent authority is not satisfying the criteria laid down under sub-section (7) of Section 3G of the Act of 1956, the efforts made by the appellants proved abortive. Finally, the learned Court below dismissed the applications of the appellants on 08.11.2006 with separate orders leaving all of them high and dry. This sort of situation has compelled the appellants to invoke appellate jurisdiction under Section 37 of the Act of 1996.

4. With a view to highlight area of the acquired land of individual appellant, situated in village Raila, Tehsil Baneda, District Bhilwara, complete description is shown in the chart, having requisite details in tabular form, as under:

Sl. No.

Name

Acquired land

Khasra No.

Land type

1.

Aditya Kumar Samariya (CMA No.989/2007)

1 Biswa = 1361 sqft

2.10 Bigha = 50 Biswa = 68062.5 sqft.

1001/1

1006

Gair Mumkin Abadi

2.

The Raila Industrial Corporation Limited (CMA No.985/2007)

1.02 Bigha

4691 sqft

1.04 Bigha

0.10 Bigha

2.00 Bigha

0.15 Bigha

934

935

936

938

940

955

Bir Banjar

Bir Banjar

Bir Banjar

Bir Banjar

Bir Banjar

Barani

3.

Premlal Samariya (CMA 982/2007)

0.01 Bigha = 1361.25 sqft

0.01 Bigha = 1361.25 sqft.

3.00 Bigha = 81675 sqft.

942

948

950

Gair Mumkin Abadi

Barani III

4.

Ramkrishna Samariya (CMA No.983/2007)

2.12 Bigha = 16335 sqft.

0.12 Bigha = 54450 sqft.

988 Min

984/1

Gair Mumkin Abadi

5.

Satya Narayan Samariya (CMA No.988/2007)

1.08 Bigha = 38115

988/1

Gair Mumkin Abadi

6.

Premlal Samariya (CMA No.986/2007)

0.14 Bigha = 19057 sqft.

984

Gair Mumkin Abadi

7.

Satya Narayan Samariya (CMA 984/2007)

0.08 Bigha

1005

Barani III

8.

Bapunagar Housing Society, Raila (CMA No.990/2007)

2 Bigha 3 Biswa

933

Bir Banjar

9.

Banshilal Samariya (CMA No.991/2007)

4.18 Bigha

951

Barani III

5. Mr. Shekhar Nephade, learned Senior Counsel, while assailing order dated 8th of November, 2006, passed by learned Court below, has strenuously urged that it has not examined the arbitral award by exercising jurisdiction under Section 34(2)(b)(ii) of the Act of 1956. Learned Senior Counsel has contended that the learned Court below has miserably failed to test the arbitral award on the anvil of it being in conflict with Public Policy of India. While laying emphasis on the expression "Public Policy of India", learned Senior Counsel would contend that it embraces many facets, viz., perversity and patent illegality in the arbitral award. Learned Senior Advocate, laying challenge to the arbitral award, has argued that though the Arbitrator was having original jurisdiction to adjudicate the claims but utterly failed to do so. Elaborating his submissions in this behalf, learned Senior Counsel has urged that from the tenor of arbitral award, it is clearly apparent that the Arbitrator has acted as an appellate authority over the award of competent authority. It is submitted by learned Senior Counsel that a serious omission by the Arbitrator in exercising original jurisdiction so vested in it is a clear and unequivocal example of acting de hors the Public Policy of India.

6. Learned Senior Counsel further argued that the original Court/Tribunal is bound to consider evidence and pass a reasoned order in respect thereof, and therefore, failure on its part, ought to have been examined by the learned Court below. Learned Senior Counsel, Mr. Nephade, has argued with full vehemence that the arbitral award is a glaring example of non-application of mind inasmuch as the Arbitrator, while passing the award, has simply concurred with the reasonings of competent authority without making endeavor to consider the evidence produced by appellants independently/objectively. Learned Senior Counsel, in order to show indignation regarding market price of the land in question, submits that the very basis of such assessment is not founded on any substantial piece of evidence. Taking a dig at note/report from office of Tehsildar/Sub-Registrar, learned Senior Counsel has argued with potential that market price of the land @ Rs.3.44, 4.42 & 25 per sq.ft. respectively is ipse dixit of Tehsildar/Sub-Registrar. Learned Senior Counsel, while questioning the award of competent authority, has urged that in determining the compensation, it has

failed to apply other relevant principles/criterion, viz., location of the land in question, its potentiality, development in and around the land in question, etc., which is pre-requisite under Section 3G(7) of the Act of 1956.

7. Learned Senior Counsel further argued that competent authority, while recording the land in question as "Padat" and "Undeveloped", has not at all cared to consider report dated 08.10.2002 and the map prepared by Patwari, which shows that the land in question is abutting NH-79 and the eastern boundary of the land in question touches NH-79, besides its southern boundary touching Krishi Upaj Mandi. Placing heavy reliance on the map produced by appellant-claimants, showing distance of the acquired land from NH-79, Krishi Upaj Mandi, Bus Stand, Railway Station Raila, Primary Health Center (hospital) etc., learned Senior Counsel contends that the award passed by competent authority is not based on the criterion for determination of compensation as per Section 3G(7) of the Act of 1956. Learned Senior Counsel, while referring to application under Section 34(1) of the Act, submits that the learned Court below has failed to exercise power under Section 34(4) to eliminate the grounds for setting aside arbitral award.

8. Mr. Shekhar Nephade, learned Senior Counsel, has argued that the Arbitrator has seriously erred in rejecting sale-deed dated 31.12.1996, produced before it, which relates to a land situated at a distance of 400 mts from the land in question, showing rate of land @Rs.195 per sq.ft. for commercial and Rs.65 per sq.ft. for residential, besides sale-deed dated 20.11.1996 reflecting market rate in the year 1996. It is also argued by learned Senior Counsel that the Arbitrator, while ignoring commercial potential of the land in question, has not construed Section 90A of the Rajasthan Land Revenue Act, 1956 read with Rule 3 of the Rajasthan Land Revenue (Conversion of Agricultural Land for Residential or Commercial Purposes in Rural Areas) Rules, 1971 in right perspective. Learned Senior Counsel also submits that the reasons, spelt out by the Arbitrator for rejecting sale-deeds being anterior to six years from the year of acquisition, are patently illegal inasmuch as in such situations, escalated rate of land ought to have been applied in the matter.

9. Learned Senior Counsel has vehemently argued that after acquisition of the land in question, division of original land into two unequal portions has not been construed by the Arbitrator in right perspective by holding that on account of Highway the value of land in question would go up, instead affecting its potentiality or value. Learned Senior Counsel further submits that the Arbitrator in recording its finding that the land in question has no commercial value, solely as per the revenue records wherein it is shown as "Abadi", is not based on objective considerations as it has failed to consider the commercial potential of the land in question under the Land Revenue Act and the Rules made therein besides overlooking commercial and residential development in the subject area. Learned Senior Counsel has submitted that the learned Court below, while exercising jurisdiction under Section 34 of the Act, has completely eschewed

principles of Public Policy of India in examining validity of arbitral award despite it being in conflict with the principles. Lastly, learned Senior Counsel contends that with a view to eliminate the grounds for wholesome setting aside of arbitral award, it would be just and appropriate for this Court to properly determine market value of acquired land on the basis of available material, in the interest of justice.

In support of his arguments, learned Senior Counsel has placed reliance on following judgments:

- 1) Associate Builders Vs. Delhi Development Authority [(2015) 3 SCC 49].
- 2) Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by LR's & Ors. Vs. Special Land Acquisition Officer & Ors. [(2012) 7 SCC 595].
- 3) Valliyammal & Anr. Vs. Special Tehsildar (Land Acquisition & Anr.) [(2011) 8 SCC 91].
- 4) Mehrawal Khewaji Trust (Registered) Faridkot & Ors. Vs. State of Punjab & Ors. [(2012) 5 SCC 432].
- 5) Sunita Mehra & Anr. Vs. Union of India & Ors. [(2016) 8 SCALE 582].
- 6) Perfect Thread Mills Ltd. Vs. The Competent Authority (Land Acquisition) cum SDO, Girwa & Anr., decided on 17.11.2015 by Rajasthan High Court (Jodhpur).
- 7) Kommula Srinivas Vs. District Collector and Arbitrator under National Highways Act, Nizamabad & Ors. W.P. No.23466 of 2012 High Court of Andhra Pradesh at Hyderabad.
- 8) Vilas Dinkar Bhat Vs. State of Maharashtra & Ors. [2018 (9) SCC 89] Para 10 & 11.

10. E-converso, Mr. Sharad Kothari, learned counsel for the respondent-NHAI, submits that arbitral award is well reasoned and learned Court below has also declined to interfere with the same in exercise of its jurisdiction under Section 34 of the Act of 1996, therefore, it would not be appropriate to interfere with the arbitral award in exercise of appellate jurisdiction. Mr. Kothari would contend that while considering validity of an arbitral award under Section 34 of the Act of 1996, jurisdiction of the Court is very much limited and circumscribed not akin to appellate jurisdiction. Learned counsel further submits that although the phrase "Public Policy of India" has wide connotation but while examining the arbitral award, being in conflict with Public Policy of India, it is unfathomable to give expansive meaning to the same. Defending the arbitral award and its affirmation by learned Court below, Mr. Kothari has urged that in these matters there is no semblance of proof that arbitral award is in conflict with Public Policy of India. Repelling the contentions of learned Senior Counsel, Mr. Kothari submits that there is no perversity or apparent contraventions of the fundamental policy of Indian law in the arbitral award, nor such ground finds mention in the application under Section 34 of the Act of 1996 submitted on behalf of appellants.

11. Learned counsel has further argued that the grounds sought to be urged on behalf of appellants to question arbitral award are wholly untenable. Mr. Kothari, learned counsel for the respondent, contends that the arbitral award is based on available evidence and market price of the acquired land, shown as "Gair Mumkin Abadi" in the revenue records, has rightly been determined. Learned counsel for the respondent has contended that the arbitral award could not be said to be perverse to the extent that no man with ordinary prudence could have taken said view, nor any finding of Arbitrator be construed in contravention of any provision of law. Learned counsel, Mr. Kothari, has strenuously urged that learned Court below has rightly declined to interfere with the arbitral award inasmuch as it has not found any patent illegality appearing on the face of the award. Mr. Kothari, while reiterating his earlier submissions about scope of judicial review in appeal, would contend that re-appreciation of evidence is not permissible and even on the ground of an erroneous application of law, arbitral award cannot be set at naught under Section 34 of the Act of 1996.

12. While referring to Rule 4(iv) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 and corresponding Rule 4 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules of 1970, learned counsel submits that unlike earlier Rule 4(iv) of the Rules of 1957, under the new Rules of 1970, Rule 4 has been done-away with embargo for allotment of "Gair Mumkin Land" as "Khatedari land". Elaborating his submissions in this behalf, learned counsel contends that the acquired land can be utilized for commercial purposes is a far cry of the appellants, which in the backdrop of facts and circumstances cannot be countenanced. Likewise, learned counsel, Mr. Kothari, laid emphasis that some of the acquired land of appellants is Barani and Bir Banjar as per revenue records, and therefore, its use for commercial or other purposes is beyond comprehension, is a decision of the Arbitrator based on sound reasoning. Joining issue with the appellants on market price of acquired land, Mr. Kothari has strenuously urged that the same has rightly been determined by the Arbitrator on the basis of materials available on record and warrants no interference. Learned counsel, Mr. Kothari, further urged that the Arbitrator has rightly discarded the sale-deeds produced by appellants as the nature of land in respect of all the sale-deeds was different from the acquired land. It is also submitted by learned counsel Mr. Kothari that the Arbitrator has rightly concluded that division of original land of the owners into two portions after acquisition of the land in question would escalate the land value and its potentiality.

13. Learned counsel, Mr. Kothari, has strenuously urged that for determination of market value of the acquired land 'instances method' though can be pressed into service, but then, only genuine instances have to be taken into account and the Court has to co-relate the market value reflecting in the most comparable instance, which furnishes the index of market value. Further elucidating his arguments, Mr. Kothari would contend that the most comparable instances out of genuine instances have to be identified by applying criteria of proximity from the

time angle and also proximity from the situation angle. Stoutly defending the arbitral award, learned counsel submits that the Arbitrator has rightly applied instances method by applying sound principles governing the said province in determining market value of the acquired land and holding that the sale-deeds produced by the appellants have no bearing for the purposes of arriving at market value of the aforesaid land.

14. Further buttressing his arguments in this behalf, learned counsel submits that potentiality and value of a land abutting Highway would be in ascending order, sounds prudence and, therefore, said finding of the Arbitrator cannot be faulted. Lastly, learned counsel, Mr. Kothari, has urged that the argument of learned Senior Counsel about proceedings under Section 90A of the Act of 1956 is per se illusory inasmuch as looking to the nature of acquired land, its conversion into residential or commercial is not permissible as per Rule 4 & 5 of the Rajasthan Land Revenue (Conversion of Agricultural Land for Residential or Commercial Purpose in Rural Areas) Rules, 1971.

In support of his arguments, Mr. Kothari has placed reliance on following judgments:

- 1) Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona & Anr. [1988 (3) SCC 751]
- 2) Union of India Vs. Dyagala Devamma and Ors. [(2018) 8 SCC 485]
- 3) Ravinder Narain and Ors. Vs. Union of India [2003 (4) SCC 481]
- 4) Sutej Construction Limited Vs. Union Territory of Chandigarh [(2018) 1 SCC 718]
- 5) Shiam Cooperative Group Vs. Kamal Construction Ltd., decided on 10.08.2017 by Delhi High Court.

Heard learned counsel for the parties at length and perused the materials available on record.

15. Challenge to arbitral award in these matters is essentially confined to a solitary ground enshrined under Section 34(2)(b)(ii) of the Act of 1956. While assailing the arbitral award, appellants have made an affirmative attempt to castigate it to be in conflict with Public Policy of India. The Public Policy of India has many facets provided under Explanation-I to clause(b)(ii) of sub- section(2) of Section 34 of the Act of 1996. That apart, Apex Court, while interpreting the phrase 'public policy of India', has widened its horizon by invoking many doctrines and principles of law viz., perversity or irrationality of the decision/ award on the touchstone of sacrosanct principles of natural justice "audi altrem partem" and Wednesbury's principle of proportionality apart from its unsustainability for being resulted in miscarriage of justice.

16. In Oil & Natural Gas Corporation Ltd. Vs. Western GECO International Ltd. [(2014) 9 SCC 263], Supreme Court, while construing the phrase "Public Policy

of India", discussed the same threadbare with pragmatic approach, and held:

"35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

36. In *Ridge v. Baldwin*, the House of Lords was considering the question whether a Watch Committee in exercising its authority under Section 191 of the Municipal Corporations Act, 1882 was required to act judicially. The majority decision was that it had to act judicially and since the order of dismissal was passed without furnishing to the appellant a specific charge, it was a nullity. Dealing with the appellant's contention that the Watch Committee had to act judicially, Lord Reid relied upon the following observations made by Atkin, L.J. in *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.*: (KB p. 205)

"... Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

37. The view taken by Lord Reid was relied upon by a Constitution Bench of this Court in *Associated Cement Companies Ltd. v. P.N. Sharma* wherein Gajendragadkar, C.J. speaking for the Court observed: (AIR p. 1601, para 14)

"14. ... In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the

nature of the decision which the Watch Committee had been authorised to reach under Section 191(4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Article 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance."

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

17. Relying on the aforesaid decision, in a later judgment rendered in *Associate Builders (supra)*, Apex Court reiterated the same principle and held:

"It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything

arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

The Audi Alteram Partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34 (2) (a) (iii) of the Arbitration and Conciliation Act.

The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where- (i) a finding is based on no evidence, or (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

A good working test of perversity is contained in two judgments. In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 at p. 317, it was held:

"7...It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 at para 10, it was held:

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

18. Now, advertent to the grievance of appellants, it would be just and appropriate for the Court to test those grounds within the limited scope of judicial review. The appellants have made endeavor to challenge the arbitral award, after their efforts proved catastrophe before learned Court below, by urging that same is perverse and outcome of non-application of mind. For substantiating their afflictions, in this regard, emphasis of the appellants is on non-consideration of evidence available on record. This sort of situation, as per version of the appellants, has seriously jeopardized their right to claim just compensation for the land acquired. The evidence, in the form of sale-deeds of the proximate areas, report of Patwari, and map prepared by him, too was not considered. Apart from all these relevant considerations, appellants have also asserted that location of the acquired land having its close proximity with NH-79, Krishi Upaj Mandi, Bus Stand, Railway Station Raila, Primary Health Center (Hospital), etc. has not been given due credence for assessing market value of the land.

19. Determination of land price @ Rs.3.44, 4.42 & 25 per sq.ft., depending on nature of land, solely on the basis of note/report of Tehsildar/Sub-Registrar, too is cited a ground, showing their indignation and consequently furnishing a plausible reason, to categorize the arbitral award perverse. An attempt is also made at their behest to invoke sub-section(7) of Section 3G of the Act of 1956. In that background, if the arbitral award is scrutinized on the anvil of Public Policy of India, then, there remains no quarrel that the Arbitrator has examined the available materials, but for not to the satisfaction of the appellants. Law governing the province of compulsory land acquisition is founded on the principle of "eminent domain" as there is no lis between the parties on acquisition of land. The appellants' claim for compensation of the acquired land at par with market value of the land cannot be underplayed.

20. Queen's Bench, in the matter of Building & Civil Engineering Holidays Scheme Management Vs. Post Officem, [(1996) 1 QB 247], while construing the true meaning of "market value" under Section 9(2)(b) of the Crown Proceedings Act, 1947, held:

"The "MARKET VALUE" means the price at which thing is bought and sold as between willing buyer and willing seller, eventhough there may be only one seller and on buyer.

Statutory Definition, 'in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market."

Supreme Court, while construing the term "market value" within the meaning of Section 23 of the Land Acquisition Act, 1894, has laid stress on a pragmatic approach. The Court held:

"7. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case."

"11. The principle of deduction in the land value covered by the comparable sale

is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

12. The national highway runs very near to the proposed Port Trust colony. The lands acquired already for the South Eastern Railway Staff Quarters lie to the southern side of the land under acquisition. The town planning trust road runs on the northern side of the land under acquisition. The colony is in the fast developing part of the municipal town. The plot of Ac. 1.68 cents in Survey No. 2/2A acquired for the formation of the diversion road is adjacent to built-in-area. The land involved in these cases is of even level and fit for construction without the necessity for levelling or reclamation. The High Court has itself concluded on the evidence that the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the town planning trust road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed land with amenities of roads, electricity etc., the deduction in the value of the comparable land is not warranted.

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10 per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the

facts and circumstances of these cases. The appellants, therefore, succeed."

21. In *Bhupal Singh & Ors. v. State of Haryana* [(2015) 5 SCC 801], the Apex Court has dilated on the phrase "market value" and laid down guidelines for its determination with emphasis on factors to be considered. The Court held:

"18. 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.

19. It is apposite to take note of some of the decisions of this Court on the issue relevant for the disposal of these appeals:

19.1. In *Brig. Sahib Singh Kalha v. Amritsar Improvement Trust*, this Court opined that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town life. Accordingly, it was held that a deduction of 20% of the total acquired land should be made for land over which infrastructure has to be raised (space for roads, etc.). Apart from the aforesaid, it was also held that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) needs also to be taken into consideration. To cover the cost component for raising infrastructure, the Court held that the deduction to be applied would range between 20% to 33%. Commutatively viewed, it was held, that deductions would range between 40% and 53%.

19.2. In *Chimanlal Hargovinddas v. Land Acquisition Officer* while referring to the factors which ought to be taken into consideration while determining the market value of the acquired land, it was observed that a smaller plot was within the reach of many whereas for a larger block of land there were implicit disadvantages. As a matter of illustration, it was mentioned that a large block of land would first have to be developed by preparing its layout plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held that these factors could be discounted by making deductions by way of allowance at an appropriate rate ranging from 20% to 50%. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

19.3. In *Kasturi v. State of Haryana*, this Court opined that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities, etc. It was also opined that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained that the acquired land may be plain or uneven, the soil of the acquired land may be soft or hard, the acquired land may have a hillock or may be low-lying or may have deep ditches. Accordingly, it was pointed out that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In *Kasturi* case, it was held that normal deductions on account of development would be 1/3rd of the amount of compensation. It was, however, clarified that in some cases the deduction could be more than 1/3rd in other cases even less than 1/3rd.

19.4. In *Lal Chand v. Union of India*, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made.

19.5. In *A.P. Housing Board v. K. Manohar Reddy*, having examined the existing case law on the point it was concluded that deductions on account of development could vary between 20% to 75%. In the peculiar facts of the case, a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

19.6. In *Land Acquisition Officer v. M.K. Rafiq Saheb*, this Court after having concluded that the land which was the subject-matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50%, ought to be increased to 60%.

20. After taking note of the aforesaid cases and placing reliance upon the principles laid down therein, this Court in *Chandrashekar* observed as under: (SCC pp. 399-400, paras 20-22)

20. It is essential to earmark appropriate deductions out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

21. As far back as in 1982, this Court in *Brig. Sahib Singh Kalha* case held, that the permissible deduction could be up to 53%. This deduction was divided by the

Court into two components. For the 'first component' referred to in the foregoing paragraph, it was held that a deduction of 20% should be made. For the 'second component', it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction.

22. In 2009 in Lal Chand case and in 2010 in A.P. Housing Board case it has been held that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% could be made. But in 2009 in Subh Ram case, this Court restricted deductions on account of the 'first component' of development, as also, on account of the 'second component' of development to 33% each. The aforesaid deductions would roughly amount to 67% of the component of the sale consideration of the exemplar sale transaction(s)."

22. At this juncture, it is also necessary for the Court to consider parameters and yardsticks, which are relevant and germane. For assessment of market value under Section 23 of the Act of 1894, matters to be considered for determining and awarding compensation for acquired land are prescribed with clarity and precision, which also includes market value of the land on the date of publication of Notification under sub-section (1) of Section 4 of the Act of 1894. House of Lords, in Fraser Vs. City of Fraserville (1997 AC 194), laid down the principle, upon which valuation of property compulsorily acquired should be measured, by observing:

"it is the value to the seller of the property in its actual condition at the time of expropriation with all its possibilities, excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired."

Thus, compensation has to be determined by reference to the price, which a willing vendor might reasonably expect from a willing purchaser.

23. In Sabhia Mohammed Yusuf Abdul Hamid Mulla (supra), the Apex Court, while laying emphasis on relevant factors for fixing the market price, held:

"We have considered the respective arguments and carefully perused the record. It is settled law that while fixing market value of the acquired land, 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 High Way 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."

Further, relying on its earlier decisions in *Atma Singh Vs. State of Haryana* [(2008) 2 SCC 568] and *Kasturi Vs. State of Haryana* [(2003) 1 SCC 354] and quoting some paragraphs of these judgments, the Court observed:

"18. In *Atma Singh v. State of Haryana* the Court held: (SCC pp. 572-73, paras 4-5)

" 4. In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. 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 expression 'market value' has been the subject-matter of consideration by this Court in several cases. 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. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. (See *Kamta Prasad Singh v. State of Bihar*, *Prithvi Raj Taneja v. State of M.P.*, *Administrator General of W.B. v. Collector and Periyar & Pareekanni Rubbers Ltd. v. State of Kerala*.)

5 . 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. It is well settled that 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 led out in its most advantageous manner. 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 nearabout town is developing or has prospect of development have to

be taken into consideration. (See *Collector v. Harisingh Thakur*, *Raghubans Narain Singh v. U.P. Govt.* and *Administrator General of W.B. v. Collector*.) It has been held in *Kausalya Devi Bogra v. Land Acquisition Officer* and *Suresh Kumar v. Town Improvement Trust* that failing to consider potential value of the acquired land is an error of principle."

19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, 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. In *Kasturi v. State of Haryana* the Court held: (SCC pp. 359-60, para 7)

"7. ... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

(emphasis supplied)

The rule of 1/3rd deduction was reiterated in *Tejumaal Bhojwani v. State of U.P.* [(2003) 10 SCC 525], *V. Hanumantha Reddy v. Land Acquisition 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]."

24. Likewise, in *Valliyammal & Anr.* (supra), Apex Court, while considering comparable sale instance, allowed 10% per annum escalation in price for determining compensation by invoking Article 300A of the Constitution. The Court held:

"Though it may appear repetitive, we deem it necessary to mention that the acquired land is situated in the close vicinity of various residential colonies, educational institutions, hospitals etc. and is on the junction of two important roads. Therefore, it can safely be concluded that the land is semi-urban and has huge potential for being developed as housing sites and the High Court should have added 10% per annum escalation in the price specified in the sale deeds relied upon for fixing market value of the acquired land.

The third error committed by the High Court is that in fixing market value of the land acquired vide notifications issued in 1991, 1992 and 1995 with reference to sale deed dated 4.9.1990 vide which a piece of land was sold at the rate of Rs. 20/- per square feet, the High Court did not add 10% escalation per annum in the land prices.

We may have sustained 20% deduction keeping in view the smallness of the plots which were sold vide sale deeds dated 4.9.1990 and 8.2.1991, but, in the peculiar facts of the case, we think that it will be wholly unjust to allow such deduction. Majority of the Appellants have been deprived of their entire landholding and they have waited for 14 to 20 years for getting the compensation. It appears that in compliance of the interim orders passed by the Court, some of the Appellants did get 25% and one of them get 35% of the compensation, but majority of them have not received a single penny towards compensation and at this distant point of time, it will be wholly unjust to deprive them of their legitimate right by approving the 20% deduction made by the High Court. In such matters, the Court cannot be oblivious of the fact that the landowners have been deprived of the only source of livelihood, the cost of living has gone up manifold and the purchasing power of rupee has substantially declined."

In a subsequent judgment, in case of *Mehrawal Khawaji Trust (Registered) Faridkot & Ors.* (supra), reiterating the same principles, Apex Court, allowed market value of the acquired land with increase at 12% per annum.

25. In the matter of *Sunita Mehra & Ors.* (supra), Apex Court, upon considering acquisition proceedings under the National Highways Act, laid emphasis on right to fair compensation with following observations:

"We have considered the submissions advanced. In *Gurpreet Singh vs. Union of India*, (2006) 8 SCC 457, this Court, though in a different context, had restricted the operation of the judgment of this Court in *Sunder vs. Union of India*, (2001) 7 SCC 211 and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in *Golden Iron & Steel Forgings vs. Union of India & Ors.* i.e. 28.03.2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 01.01.2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the Act of 2013."

Elaborating their ground to question arbitral award on the anvil of assessment of compensation not on par with market value of the acquired land, appellants have also made endeavour for considering the requisite evidence tendered on their behalf and other materials available before the Arbitrator. As per appellants, if the evidence produced by them before the Arbitrator is examined objectively then unquestionably market value of the land assessed in the award would obviously fail the test of fair compensation laid down by the Apex Court in various judgments relied upon by them. In substance, appellants' whole thrust is that assessed market value of the acquired land by the Arbitrator is grossly inadequate and not commensurating with the nature of the land besides its potentiality in the light of evidence produced to authenticate the same.

26. Per contra, learned counsel for the respondent, in order to present a different perception pertaining to sale instances in juxtaposition to the precedents relied upon by the appellants, has referred to the judgment of *Ravinder Narain & Ors.* (supra) of the Apex Court. In this verdict, Court after considering sale instances, relied upon by both the acquiring authority and land owner, declined to consider it an absolute proposition for fixation of market rate when such rates are fixed in relation to small plots. The Court held:

"It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/ adjustments have to be made while determining the prices.

The judgment in *Chimanlal Hargovinddas* (supra), on which the learned counsel for the respondents has placed reliance, wherein land was acquired under the Act of 1894, while dilating on the valuation of the land under acquisition, Apex Court made endeavour to captualize same and held:

"The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

Minus factors

1. largeness of area.

2. situation in the interior at a distances from the Road.
3. narrow strip of land with very small frontage compared to depth.
4. lower level requiring the depressed portion to be filled up.
5. remoteness from developed locality.
6. some special disadvantageous factor which would deter a purchaser.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

- (i) proximity from time angle,
- (ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors: Plus factors

1. smallness of size.
2. proximity to a road.
3. frontage on a road.
4. nearness to developed area.
5. regular shape.
6. level vis-a-vis land under acquisition.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size.

A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

In Dyagala Devamma & Ors. (supra), Apex Court has reiterated the principles laid down in Chimanlal Hargovinddas (supra).

27. Upon comprehensive view of the factual position in all these matters and the legal position, which has come to the fore from the authoritative pronouncements of the Supreme Court, the Court has reasons to believe that the Arbitrator though enjoying original jurisdiction, did not make any endeavour to scrutinize the available evidence. The report of Patwari and the prepared map, which was solicited by the competent authority showing the nature and potentiality of the acquired land, is completely eschewed by the Arbitrator while passing the award. The very significant omission in the arbitral award is discarding the sale-deeds of the proximate area, produced by the appellants. I am at loss to say that how a sale-deed of the year 1996 can be treated as insignificant and irrelevant vis-a-vis year of acquisition, i.e., 2002, because in common parlance some escalation in the land cost is a possibility and in the present social scenario decline in land value is unimaginable. Therefore, the approach of the Arbitrator per se appears to be akin to appellate authority over the award passed by the competent authority. The Legislature, in its wisdom, has provided relevant criteria for determination of market value under the Act of 1894 and the said analogy can also be applied vis-a-vis acquisition under the Act of 1956.

28. True it is that in the revenue records some part of the acquired land is shown as Gair Mumkin Abadi and some part as Barani or Bir Banjar but its potentiality and value ought to have been judged by the Arbitrator by considering its proximity with Krishni Upaj Mandi, Railway Station, Bus-stand, Primary Health

Centre (Hospital) etc. To my utter surprise, all these relevant factors did not find due consideration in the arbitral award and therefore the reasons spelt out therein for concurring with the award of competent authority are far from satisfactory. Conclusion of the competent authority, that land in question is "Padat" and "underdeveloped" with which Arbitrator has concurred, runs contrary to the report of Patwari dated 08.10.2002 and the map prepared in this behalf, besides other relevant factors. As such, the said conclusion of the Arbitrator is infirm being contrary to available evidence and material on record and an outcome of non-application of mind. Thus, applying the ratio decidendi of the judgments of Supreme Court referred to supra, the arbitral award is per se vulnerable on the anvil of it being in conflict with Public Policy of India in this regard.

29. Pleas sought to be raised by the respondents pertaining to jurisdiction of the Court under Section 34 of the Act of 1996 and scope of judicial review in the arbitral award is not in dispute. Court is quite conscious that scope of judicial review is limited and circumscribed being not akin to appellate jurisdiction. However, it is rather difficult to infer that an arbitral award is immune from judicial scrutiny even if it suffer from any of the mischief provided under Section 34 of the Act of 1996. While examining arbitral award, Court is obviously not expected to correct errors of fact and further not to substitute its view if it is found that view taken by Arbitrator can be possible on the basis of evidence. However, when it is clearly apparent that approach of the Arbitrator is arbitrary or capricious or when the award suffer from the vice error of law on the face of record, Court is not loathed with the power to interfere in the matter.

30. Broadly speaking, if the arbitral is passed ignoring material evidence or totally misconstruing evidence, then it can be safely concluded that same is suffering from perversity and irrationality. Perversity or irrationality of an arbitral award is undeniably a vice enumerated within the four corners of Public Policy of India to make it vulnerable. Although, in common parlance, interference with the arbitral award is not warranted at the behest of either of the party on trivial issues as Arbitrator is a Judge appointed by the consent of both the parties or on an application under Section 11 of the Act before this Court. However, situation in the present case is altogether different inasmuch as there existed no agreement between rival parties and the Arbitrator herein was neither appointed with mutual consent of the parties nor by judicial intervention but for remedy of arbitration provided in the statute itself under sub-section (5) of Section 3G of the Act of 1956. Thus, there is no chance either for acquiring authority or the land owner to choose forum of arbitration but for submitting itself to the jurisdiction of Arbitrator provided under the statute.

31. For adjudging validity of an arbitral award, in case of dispute relating to breach of contract/right flowing from a contract between rival parties and vis-a-vis between acquiring authority and landowner pertaining to compulsory acquisition of land, whether same parameters and yardsticks be applied is yet

another issue which requires consideration. I am afraid, applying the same principles of judicial review, in both the situations, may not be prudent and wise because in case of compulsory acquisition of land a landowner is deprived of its property - land by enforcing law. Moreover, the appellants have buttressed their grievance against awarding inadequate compensation not commensurating with the market value of the land. Therefore, while concurring with the submissions of respondents about scope of judicial review against arbitral award, unhesitatingly, in my opinion, in all these matters interference is clearly warranted for the reasons spelt out supra and to prevent miscarriage of justice.

32. After objective analysis of the available material, the acquired land appears to be quite congenial for human dwelling and habitation in the light of surrounding areas and circumstances. However, its viability for commercial use is per se not apparent. The hypothetical situation about its possible conversion into commercial land is not foreseeable nor such case was set up by the appellants before the Arbitrator with substantial evidence. Nature of acquired land, as per revenue record too, does not make it unsuitable for residential purposes and likewise its conversion for the said purpose is not prohibited. As the Arbitrator has not examined all these issues, which were relevant and germane to the matter, in the light of evidence and other materials, and the learned Court below too while examining its validity under Section 34 of the Act of 1996 completely overlooked ground under sub-section 2(b)(ii) of the said Act, it is open for this Court to exercise appellate power for setting aside the award. However, in such a situation, lis between the rival parties would unnecessarily prolong by relegating the appellants to re-approach Arbitrator under sub-section (5) of Section 34 of the Act of 1996.

33. Therefore, in the backdrop of peculiar facts and circumstances of the case, it would be wise and prudent for the Court to settle the dispute perpetually at this stage in the wake of the fact that acquisition relates to the year 2002 and arbitral award was passed in July 2005. De novo initiation of arbitration in the matter, in such circumstances, would unnecessarily prolong the agony of the appellants, which may occasion undue delay and eventually failure of justice. The requisite evidence and material is also available on record, which can facilitate assessment of fair compensation commensurating with the market value of the land.

Reliance in this behalf can be placed on a decision of this Court in the matter of Perfect Thread Mills Ltd. (supra).

34. Now, the crucial question, what would be apposite compensation payable to the appellants for the acquired lands. The situation of the acquired land, in close proximity with Higher Secondary School, State Bank of India, Railway Station, Krishi Upaj Mandi, Primary Health Centre etc. within the periphery of one kilometer and the sale-deeds dated 29th November, 1996 & 31st of December, 1996 for residential area @Rs.65 per sq.ft. with other contemporaneous sale-deeds, is sufficient to award compensation of the acquired land at enhanced market value than what is determined by the Arbitrator and concurred by the

learned Court below. While it is true that the revenue records are denoting the nature of acquired land as Gair Mumkin Abadi, Birani/Bir Banjar but then as observed supra, its use for residential purpose is per se viable. Therefore, even by assuming the acquired land to be under-developed, its potentiality for future development as residential area, in the present social scenario of citizens' grave housing problem is a certainty without any demure.

35. Consequently, in totality of circumstances, the market value assessed by the Arbitrator solely upon relying note/report of the Tehsildar/Sub-Registrar cannot be sustained. The aforesaid note/report has no basis much less geographical or scientific basis. That apart, the note/report aforesaid is conspicuously silent about relevant criteria to assess market value of the acquired land and its potentiality for future utility. So the assessment of the market value of the land in question is an ipse dixit of Tehsildar/Sub-Registrar, which merits enhancement to commensurate with market value for doing substantial justice in the matter. Therefore, it would be just and appropriate to award compensation to the appellants for the acquired land at fair market value and, in my opinion, even if moderately assessed, it comes to Rs.20 & 55 per sq.ft. respectively. Accordingly, the appellants are declared entitled for enhanced amount of compensation on the acquired land in case of assessed value @ Rs.3.44 & 4.42 per sq.ft. to @Rs.20 per sq.ft. and vis-a-vis land valued @Rs.25 per sq.ft. to @Rs.55 per sq.ft. respectively. The respondents are, therefore, directed to re-determine compensation of the acquired land within two months and pay the enhanced amount of compensation with interest on the said amount @9% per annum from the date of taking possession in terms of sub-section (5) of Section 3H of the Act of 1956.

The upshot of above discussion is that all these appeals are allowed, orders passed by the learned Court below are set aside and the arbitral awards stand accordingly modified, as stated supra.