
(2012) 09 AHC CK 0289
In the Allahabad High Court
Case No : First Appeal No. 356 of 1999

Allahabad Development Authority and Another	APPELLANT
Vs	
Saifuddin and Others	RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 20, 21, 23, 3(b)

Citation : (2012) 11 ADJ 24 : (2013) 1 AWC 1066

Hon'ble Judges : Prakash Krishna, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : J.N. Sharma, B.B. Paul and U.N. Sharma, for the Appellant; D.P. Singh, D.V. Jaiswal, Gulrez Khan, J.H. Khan, Maneesh Kumar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Prakash Krishna, J.—The above appeal has been filed u/s 54 of the Land Acquisition Act 1894 against the original judgment and decree dated 14.3.1991 passed by Xth Additional District Judge, Allahabad in Land Acquisition Reference No. 124 of 1988 where by the Court below has fixed the market value of the land of the respondents acquired under the provisions of Land Acquisition Act @ Rs. 150 per square meter alongwith other statutory benefits. The backgrounds facts may be noticed in brief:

The State of U.P. proposed to acquire several plots being plot Nos. 38, 39, 40, 41, 43, 44, 45, 47, 48, 53, 54, 55, 56-13 in numbers measuring 16 Bighas 17 Biswa situate in Village Nasibpur Bhaktiari @ Chhikatpur, Chail, Allahabad to address the residential problem of the people. The notification for acquisition u/s 4 was issued on 25.10.1986. It was followed by notification dated 13.11.1986 issued u/s 6 of the Act acquiring a lesser area. The said notification was published in the newspaper "Amrit Prabhat" on 2.11.1986 and the possession was taken on 2.2.1987. The Special Land Acquisition Officer by award No. 32 of 1986-87 dated 23.4.1987 determined the amount of compensation payable to

the land holders, respondent herein. Being not satisfied with the award, application u/s 18 of the Land Acquisition Act was filed before the Collector, Allahabad who referred the matter with regard to determination of compensation to the District Judge, Allahabad. It was registered as L.A.R. No. 124 of 1988. Before the reference Court, the present appellant was impleaded as one of the defendants. The claim for enhancement of compensation was contested by the present appellant by filing written statement.

2. The land holders filed evidence oral and documentary in support of their case. The land holders examined Saifuddin as PW-1 and filed copies of certain sale-deeds as exemplars. It may be noted that the present appellant did not lead any evidence either oral or documentary. A copy of an award passed by Special Land Acquisition Officer in respect of the adjoining plot No. 58 area one bigha 16 Biswansi (which was though proposed for acquisition in the present land acquisition proceedings was left out) was filed to show that the Special Land Acquisition Officer subsequently has awarded compensation @ 150/- per square meter. A copy of the judgment of Reference Court in L.A.R. No. 122 of 1988 (Ratan Kumar Tandon and others v. State of U.P. and others) dated 20.7.1989 passed by the 2nd Additional District Judge Allahabad, was also filed in evidence.

3. The following four issues were framed by the Court below on the pleadings of the parties. They are to the following effect:

1. Whether the amount of compensation as determined by the Special Land Acquisition Officer is inadequate and towards lower side and if so what is the adequate and proper amount of compensation?

2. Whether the claimants are entitled to get the entire compensation amount with respect to the acquired land?

3. Whether the claim petition is barred by the provisions of Urban Land Ceiling Act?

4. To what relief if any the claimants are entitled to get?

4. All the issues were decided in favour of the land holders, respondents herein. Finding under issue No. 3 was not challenged, before us. The following two points have been urged by the learned counsel for the appellant:

1. The reference Court committed illegality in awarding the entire amount of compensation to the claimant-respondents who, according to the counsel, were lessees, therefore, there should be proportionate distribution of the amount of compensation in between the lessor and the lessees, lessor being the State.

2. The enhancement of the compensation amount to Rs. 150/- per square meter by the reference Court is unjustified.

5. Heard Shri B.B. Paul, learned counsel for the appellant and Shri W.H. Khan, learned senior counsel for the respondents.

Point No. 1

6. We take up the first point first. The learned counsel for the appellant submits that in the award, the Special Land Acquisition Officer has after determining the market value of the land provided for apportionment of the said amount in between the claimants and their lessor i.e. the State of U.P. The submission is that the Court below under issue No. 2 committed an error of law in holding that the State of U.P. will get only 20 times of the annual rent of the land in dispute. The Court was taken through the award of the Special Land Acquisition Officer in this regard.

7. In reply, Shri W.H. Khan, learned counsel for the respondents submits that the present appeal is at the instance of the appellant alone. In other words, the State of U.P. has not felt aggrieved by the judgment and award of the reference Court. The present appellant cannot raise any such grievance in the appeal, submits the learned counsel for the respondents. Even otherwise also he further submits that the State Government by its Government Order dated 5.6.1981 addressed to all the District Magistrate has provided that whenever land pertaining to Bhumidhar with non transferable right is acquired, they should be given compensation at the rate which is admissible to a Bhumidhar of a transferable rights. Elaborating the argument he submits that after the abolition of Zamindari in urban areas, all the occupancy tenants have become Sirdar (Bhumidhar with non transferable rights) and thereafter Bhumidar with transferable rights by operation of law.

8. Considered the respective submissions of the learned counsel for the parties.

9. We may place on record that in the paper book filed by the present appellant, besides the appellant, Collector, Allahabad have been mentioned as appellants.

10. The argument was also proceeded initially as if the appeal is on behalf of the Collector, Allahabad also. But on examination of the original record, it transpired that the appeal was preferred by Allahabad Development Authority through its Secretary and the name of respondent No. 2 that is the Collector, Allahabad was deleted, a fact which was not even disputed by the appellant's counsel who submits that the appeal on behalf of the Collector, Allahabad could be filed only by the State counsel and not by any private counsel and that is the reason the name of Collector, Allahabad appellant No. 2 was deleted, subsequently. We are very much anguished, as the paper book gives an idea that there are two appellants.

11. Be that as it may, the present appeal is only at the instance of Allahabad Development Authority. This being the position, we are of the opinion that the present appellant cannot urge the point No. 1. The State Government or Collector, Allahabad has not felt aggrieved by the judgment under appeal and that is the reason no appeal was preferred by it. The plea relating to apportionment, if at all, is open to the Collector/State of U.P. and not to the present appellant. The present appellant cannot be considered as person

aggrieved with regard to the finding recorded by the Court below on the aforesaid issue.

12. Besides the above, on merits also we are not inclined to accept the submission with regard to the apportionment.

13. Noticeably the statement of Saifuddin PW-1 that after the abolition of Zamindari in the Allahabad city in the year 1963, all the land holders/claimants have become complete owner and they are entitled to get the entire amount of compensation remains unrebutted. Not a single question was put to him in the cross examination either by the counsel for the State of U.P. or by the counsel for the Allahabad Development Authority, in this regard. There is no iota of evidence to show that the claimants were not Bhumidars of the plot in dispute on the date of the acquisition notification dated 25.10.1986.

14. Much emphasis was laid down by the learned counsel for the Allahabad Development Authority on the award of the Special Land Acquisition Officer but the Special Land Acquisition Officer has not referred any material in this regard. The argument of the learned counsel for the respondents that had the State of U.P. been the owner of the plot in question, there would have been no question of acquisition under the provisions of Land Acquisition Act, may now be addressed.

15. A person who is owner of property cannot possibly acquire it. In the case of State of U.P. Vs. Prakash Narain Katju (D) through L.Rs. and Others, , a Division Bench of this Court, has held that power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. The Supreme Court in the case of Sharda Devi Vs. State of Bihar and Another, , has observed that it would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act.

16. In the above case, the High Court has relied upon a Supreme Court decision in the case of The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, , wherein the Apex Court has held that if the Government has itself an interest in the land, it has only to acquire the other interests outstanding thereof so that it might be in a position to pass it on absolutely for public user.

17. In Sahibdar Khan and Another Vs. Sadloo Khan (Dead) by LR's. and Others, , the Apex Court has held that entry in Khatauni as occupancy tenant even if incorrect can be taken into consideration for deciding, whether a person is bhumidhar or not. If the entry in Khatauni is not fictitious or forged, an occupancy tenant became owner with transferable right after coming into force of

U.P. Zamindari Abolition & Land Reforms Act.

18. In *Ahad Brothers Vs. State of M.P. and Another*, a case under the Land Acquisition Act, dealing with the question of apportionment of the compensation amount-Whether the High Court was right in coming into the question of title over the property acquired by the State and in recording a finding that appellant therein had only lease hold right in the said land, held as follows:

...

...

...The respondent-State itself has treated the appellant all along as the owner of the land. Not only in the notification acquiring the land, name of the appellant is shown as owner, even the revenue records also show the appellant as owner. Further the Land Acquisition Officer passed award in respect of this land treating the appellant as owner entitled to receive compensation. If the State was owner of the land in question, there was no reason for it to acquire its own land. The State cannot said to be a person interested to agitate any claim either u/s 18 or u/s 30 of the Act. The Court exercising jurisdiction u/s 18 could not decide the question of the title of the State over the acquired land. The position of law is clear in this regard by recent judgment of this Court in *Sharda Devi v. State of Bihar* and another. The sole question that arose for consideration in that case was-when the State proceeds to acquire land on an assumption that it belongs to a particular person, can the award be called into question by the State seeking a reference u/s 30 of the Act on the premise that the land did not belong to the person from whom it was purportedly acquired and was a land owned by the State having vested in it? In para 36 of the said judgment, having considered various aspects and the scheme of the Act, this Court has concluded thus:

36. To sum up, the State is not a "person interested" as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject-matter of acquisition by the State. The Question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector [as defined in Section 3(c) of the Act]. If it was Government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either u/s 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings u/s 30 of the Act beginning from the reference and adjudication

thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.

19. In addition to above, we find that the Government Order dated 5.6.1981 relied by the respondents being the Paper No. 36-C supports the contention of the landholders. In paragraph 4 of the aforesaid Government Order, it is mentioned that as far as possible, the land of lease holders to whom the lease was granted under the Government Grants Act ordinarily are not be acquired. Such leases were granted to the weaker section of the society. Even if under compelling circumstance, such land has to be acquired, the landholder should be given compensation at the rate admissible to the Bhumidars.

20. Having regard to above, we do not find any substance in the first point of the learned counsel for the appellant and hold that the said point is not available to the appellant besides the fact that there is no merit in it.

POINT NO. 2

21. The learned counsel for the appellant then urged that the Court below was not justified in awarding the compensation @ Rs. 150/- per square meter. The submissions is that the reference Court has not considered the sale-deed which was relied upon by the Special Land Acquisition Officer.

Elaborating the submissions, it was stated that the Reference Court should not have taken into consideration the award dated 25.9.1989 passed by the Special Land Acquisition Officer in respect of other plot of land determining the market value at Rs. 150.55 per square meter which is in respect of a smaller plot.

22. The learned counsel for the respondents, on the other hand, submits that in addition to the award referred to above, there is another award of the reference Court in the case of L.A.R. No. 122 of 1988 in respect of land situate in the close vicinity of the land in question, having an area of more than 4 acres. The compensation has been determined @ 500/- per square yard. The reference Court award in the said L.A.R. number has been varied by this Court in the first appeal and the judgment of this Court has been confirmed by the Apex Court except with regard to the proportionate distribution. It is reported in AIR 1996 S.C. 2710. He also submitted that looking to the potentiality of the acquired land and its strategic situation, the compensation determined by the reference Court cannot be said to be on higher side. The acquired land is situate at about a half furlong distance from the circuit house. It is surrounded by the sides of Nursing Home, School Colleges, Homeopathic Medical College, T.V. Tower, Ashok Nagar constructed by the A.D.A.

23. Considered the respective submissions of the learned counsel for the parties and perused the record.

24. Much emphasis was laid down by the learned counsel for the appellant on the question that the Reference Court has not considered the sale-deed treated as exemplar by the Special Land Acquisition Officer, while determining the market

value of the acquired land. Pointedly, a query was put as to whether the said sale-deed was placed for consideration before the reference Court or not, he could not give any reply. On further examination of the record, we find that it is a case of no evidence before the reference Court so far as appellant is concerned. Copy of any such sale-deed was not filed. The above argument of the appellant proceeds, as if, the proceedings before the reference Court are in the nature of appeal, which is not correct.

25. The Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, , has laid down that the following factors which must be taken by the reference Court into consideration:

(1) A reference u/s 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 utilized by him for making his valuation cannot be utilized 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.

26. The same principle has been reiterated subsequently in *The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc.*, .

27. In *Karan Singh and others etc. Vs. Union of India*, , the Apex Court has held that it is only the previous judgment of a Court or an Award which can be made basis for assessment of the market value of the acquired land subject to party relying such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land.

28. The reference Court could consider only such documents which were before it. The reference Court has based its award on the award given by the Special Land Acquisition Officer in respect of Plot No. 58 area 1 Bigha 16 Biswa. The

award is dated 25.9.1989. The plot under the said award is the adjoining plot to the plots so acquired in the case on hand. It was also acquired under the same scheme though subsequently. The notification u/s 4(1) of the Act was issued on 8.5.1987 i.e. about 7 months after the notification issued in the present case. The said award is in the nature of offer by the Special Land Acquisition Officer and being in respect of adjoining plot, in our considered view is the best exemplar. It cannot be said even for a moment that the said award is in any manner was made by the Special Land Acquisition Officer at an exaggerated amount. The said award further declares that the compensation has been determined in the light of sale-deed dated 6.10.1986 executed by Smt. Susheela Devi. The said sale-deed is prior to the relevant date, it is 25.10.1986.

29. It was also argued that a vast piece of land was acquired and the Special Land Acquisition Officer had awarded compensation amount after dividing the land into two belts, the reference Court was not justified in determining the compensation at the uniform rate. On a careful consideration of the matter, we find that there is no such rule of universal application that whenever a large piece of land is acquired, belting system has to be adopted. Reference can be made to Union of India (UOI) Vs. Harinder Pal Singh and Others, . In the present case, all the plots are adjoining plots and the acquired area is a compact area. The plots were acquired for the purposes of providing residential accommodation, known as "Patrakar Colony". Due to pollution of air and noise, the recent trend is that persons prefer to pay a little more to such plots which are away from road. No cogent ground has been made out before us to interfere in the present matter on the above.

30. Then, it was urged that the reference Court should have made a deduction while considering the market value of the acquired land especially when the relied upon award of Special Land Acquisition Officer is in respect of comparatively for a lesser area. The learned counsel for the appellant suggested that at least 50% should be deducted. We are not at all impressed by the said argument of the learned counsel for the appellant.

31. The reasons are many. At the very outset, it may be placed on record that against the relied upon award, a reference for further enhancement of the market value of the land in question is admittedly pending before the reference Court being L.A.R. No. 124 of 1988. Indisputably, the relied upon award is not in respect of a very small piece of land. It should also be remembered that as observed by Apex Court in Udho Dass Vs. State of Haryana and Others, , that "we must also high light that Collectors, as agents of State Government, an extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their value, we take the present case as exemplar." Meaning thereby that there is a fair chance of enhancement of the compensation amount by the Reference Court in L.A.R. No. 124 of 1988. The point which we are trying to bring home is that the compensation awarded by the Collector @ Rs. 150/- per square meter is the minimum amount subject to

upward revision and not otherwise.

32. In another L.A.R. No. 122 of 1988, Ratan Kumar Tandon v. State of U.P. The reference Court in its judgment dated 20.7.1989 has determined the compensation @ 500/- per square yard. The said market value has been reduced to Rs. 423/- per square meter. The Apex Court in Ratan Kumar Tandon (Supra) has not interfered. The total area of the land involved therein was 4 acres and the notification was issued u/s 4(1) on 14.2.1986 while in the case on hand it was issued on 25.10.1986. The said acquisition relates to a land which is situate in the same Mohalla and is not far away from the acquired land. It is about half furlong from the acquired land, as has been stated by PW-1. The land of Ratan Kumar Tandon was situate on the eastern boundary of the Circuit House. It is about half furlong from the land in question. In addition to above, the acquired land is in a fully developed area. The PW-1 has stated that it is also situate on the same road i.e. Hastings Road on which the house of Ratan Kumar Tandon existed. The Circuit House is about half furlong from the acquired land. Accountant General Office, Police Head Quarter, Board of Revenue, Government Press, U.P. Education Board, Head Post Office, Civil Lines, Railway Station, High Court are within the radius of one kilometer of the acquired land. Market known as Bahuguna Market is about half furlong. Rajapur, Beli Hospital, Kartra Market and other mohallas are the adjoining mohallas.

33. In other words, the uncontroverted testimony of PW-1 establishes beyond doubt that the plots in dispute are situate in a highly developed colony in a posh locality of Allahabad city. It has great potential value for residential and commercial complexes, and to similar other plots, the compensation has been awarded @ Rs. 423/- per square meter and Rs. 150/- square meter, there is no justification for any reduction.

34. The learned counsel for the respondents also argued that no deduction should be made as the plots are owned by five brothers in equal shares. Therefore, the share of each brother should be taken into consideration as one brother could sell not more than his share, in the open market. It cannot be said that the said argument is without any substance.

35. The learned counsel for the respondents also placed reliance upon another Government Order dated 7.3.1987 wherein it has been stated that the compensation under the Land Acquisition Act should be awarded at the same rate as fixed by the District Magistrate for the purposes of payment and realization of stamp duty.

36. Taking into consideration all these facts and the fact that there is no evidence in rebuttal, the award made by the reference Court is perfectly justified and calls for no interference in the appeal. The amount of compensation fixed by the reference Court is towards lower side, particularly, in view of the judgment given in the case of Ratan Kumar Tandon referred to above and in any case, it is not excessive or on higher side.

37. In *State of Uttar Pradesh Vs. Begum Saleha Hadi Hasan*, , a Division Bench of this Court has held that in awarding compensation regarding the land of the interested persons, the officers and the Court should take a liberal view in assessing the compensation awardable to the interested persons. They should not adhere to technicalities with a view to deprive the interested persons of the compensation due to them in law.

38. In *Allahabad Development Authority Vs. Kishori Lal and Others*, , it has been held that while determining market value for the purposes of compensation, reliance of smaller of land treating the same as exemplar is not safe guide for determining market value of larger area of land acquired.

39. In *Ratan Kumar Tandon and others Vs. State of Uttar Pradesh*, , market value of the land was determined at Rs. 423/- per square yard by the High Court was confirmed by the Apex Court.

40. In *Administrator General of West Bengal Vs. Collector, Varanasi*, , it has been held as follows:

The determination of market-value of a piece land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market-value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event, viz., the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

41. In *K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others*, , the Apex Court has held that a reference u/s 30 was made by the Land Acquisition Office would not invest the Court with jurisdiction to consider the question of quantum of compensation which is not directly connected with the reference regarding the apportionment of the compensation amongst the various claimants.

42. The Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, , has laid down that the plus factor and minus factor to be taken into account for determining market value of lane.

(13) The market value of the land under acquisition has there after 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 :

(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.

43. In *Karan Singh and others etc. Vs. Union of India*, , the Apex Court has held that in under certain conditions, post-notification transactions of sales of lands can be relied upon in determining market value of acquired land with the rider that it must be shown by reliable evidence that there was no upward rise in price of land during period of issue of notification and date of sale transaction.

44. In *The State of Madras Vs. A.M. Nanjan and Another*, , the Apex Court has held as follows:

The awards given by the Land Acquisition Collector are at least relevant material and may be in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates fund in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. The awards can be taken as safe guides. And are admissible in evidence for the determination of compensation.

45. In *Land Acquisition Officer and Sub-Collector, Gadwal Vs. Smt. Sreelatha Bhoopal and another*, , the Apex Court has held that though the award of Land Acquisition Officer is not evidence *stricto sensu* with a view to do substantial justice, it considered the material on record and fixed appropriate market value of the land.

46. In *Allahabad Development Authority Vs. Asfaq Hussain and State of U.P.*, , a Division Bench of this Court has held that at least 1/3rd should be reduced towards development cost.

47. In *Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others*, , the Apex Court has held that in determining compensation, highest

of the exemplars to be considered and accepted.

48. In *Balraj Taneja and Another Vs. Sunil Madan and Another*, it was held that in a suit for specific performance to plead readiness and willingness of the plaintiff to perform his part of the contract. The trial Court was not right in decreeing the suit merely on the ground of failure of defendant in filing written statement.

49. A Full Bench of this Court in *Shiam Lal and Others Vs. Collector of Agra*, has held that where agricultural land of zamindar over which tenant has occupancy right is acquired by Government, the compensation allowed should be apportioned in the ratio of 10 to 6 as between the zamindar and tenant, in the absence of evidence to the contrary. This rough and ready rule is not to be accepted as any rule of law, but merely as rule of practice for the purpose of forming a rough estimate of the respective rights of the zamindar and the tenants.

50. In AIR 1930 64 (Privy Council), the following has been held:

The jurisdiction of the Courts under the Act is a special one and is strictly limited by the terms of Sections 18, 20 and 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it, e.g. question of measurement raised for the first time three years after references were duly made by Collector.

51. Before parting with the case, we may notice some other aspect of the case highlighted by the learned counsel for the respondents.

52. He submitted that this is an unfortunate case for the claimant-respondents. For the reasons best known to the appellant, the respondents could not get any amount towards the enhancement compensation determined by the reference Court. They left no stone unturned to deprive the respondents to get even a fraction of the amount of the decree under appeal.

53. Against the judgment of the reference Court, in the month of September 1991, the present appeal with deficiency in Court fees was filed. Simultaneously, a review application alongwith condonation of delay application was filed before the Court below. On 30.7.1992, the appeal was dismissed being deficiently stamped. Review application was dismissed on 19.1.1993 by the 10th Additional District Judge, Allahabad. Thereafter, on 2.9.1996, an application to restore the appeal and set aside the order dated 30.7.1992 dismissing the appeal was filed which was conditionally allowed by this Court on 9.5.1997 directing the appellant to pay 1/3rd of decretal amount to the claimants. Deficiency was made good in the Court fee subsequently on 21.7.1997. However, SLP was filed before the Supreme Court which was allowed and the condition to deposit 1/3rd of the

decretal amount was set aside by it. Resultantly, the appellant has not deposited even a single shell and the appeal remained pending for all these years. Record further shows that it was dismissed in default on 31.8.2009 earlier, but was restored subsequently. The respondents have suffered a lot for no fault of their. For all these years they have been deprived of the land and its value. About twenty years have gone by now, and in the meantime, price of properties have skyrocketed but the value of rupees has depreciated.

54. A perusal of the order dated 1.4.1999 passed by the Division Bench admitting the appeal after remand by the Apex Court would show that one month time was prayed for and was granted to supply paper book to the appellant. The paper book which has been filed shows that the appeal has been preferred by two persons namely ADA and the Collector, Allahabad. Obviously, this is an incorrect statement. Least it was expected from the appellant to file the correct paper book. The addition of name of Collector, Allahabad as the appellant No. 2 while his name was deleted in the appeal itself long back is definitely a pointer of the conduct of the appellant in the matter. We do not wish to say anything further in this regard. Some argument was advanced by the learned counsel for the appellant to remand the matter back to the reference Court for re-decision. We are not impressed by the said argument as no case for remanding the matter to the reference Court at this distance of time has been made out. It is not the case of the appellant that it was not afforded proper opportunity by the reference Court. The request is not bona fide. The said argument is therefore, rejected.

Any other point was not pressed.

We do not find any merit in the appeal. The appeal is dismissed with cost.