
(2017) 02 AHC CK 0243
In the Allahabad High Court
Case No : 143 of 1978

AMI CHAND

APPELLANT

Vs

STATE OF U P

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 23, Section 24, Section 18, Section 54, Section 17(1), Section 23(1), Section 4(1), Section 6(1), Section 17(1A) - Publication of preliminary notification and powers of officers thereupon. - Matters to be considered In determining compensation - Matters to be neglected in determining compensation - Reference to Court - Appeals in proceedings before Court - Special powers In cases of urgency - Matters to be considered In determining compensation - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Special powers In cases of urgency

Citation : (2017) 02 AHC CK 0243

Hon'ble Judges : Sudhir Agarwal, Kaushal Jayendra Thaker

Bench : Division Bench

Advocate : D P Singh, Gulrez Khan, Mazahar Ul Islam, Noor Mohd, Rajeev Gupta, V K Srivastava

Final Decision : Allowed

Judgement

1. Heard Sri Gulrez Khan, learned counsel for the appellant and learned Standing counsel for State of U.P. 2. Uttar Pradesh State Industrial Development Corporation, Kanpur (hereinafter referred to as UPSIDC), through its Chairman is respondent no.2 and notices were issued to it by registered post A.D. as well as Courier to him. Perused report dated 28.07.2016. Service of notice upon respondent no.2, is deemed sufficient under the Rules. Neither respondent no.2 has chosen to appear through counsel nor any one representative of respondent no.2 is appeared, hence we proceed to hear and decide appeal against respondent no.2 ex-parte. 3. This is an appeal under Section 54 of Land

Acquisition Act, 1894 (hereinafter referred to as "Act, 1894"), arisen from judgment and award dated 28.10.1976, passed by Sri P. C. Saxena, Ist Additional District & Sessions Judge, Meerut, in Land Acquisition Reference (hereinafter referred to as "LAR") No. 394 of 1972, whereby market value determined by Special Land Acquisition Officer (hereinafter referred to as "SLAO"), has been confirmed and Reference has been answered accordingly. 4. Appellant alone has filed this appeal claiming compensation at Rs.2/- per square yard, but by subsequent amendment he has prayed for compensation at the rate of Rs.40/- per square yard. 5. Disputed area of land of appellant is 4 Bigha 7 Biswa (12952 square yards) and 8 Bigha 1 Biswa (24,351¼ square yards), situated in Village Karkar Mandal and Jhandapur, District Ghaziabad. 6. At the instance of UPSIDC for planned development of Industries in Village Karkar Mandal, Pargana Loni, Tehsil and District, Ghaziabad, acquisition proceedings were initiated by issuing notification dated 15.12.1967 under Section 4(1) of LAR Act, 1894 published in U.P. Gazette dated 23.12.1967. Notification proposed to acquire 152.6235 acres of land. 7. Declaration under Section 6(1) read with Section 17(1) and (1-A), dated 09.01.1969, was published in U.P. Gazette dated 11.01.1969. Possession of land by Collector was taken on 06.03.1969. SLAO vide award dated 21.03.1970 determined market value for the purpose of compensation of acquired land, at the rate of Rs.1.10 per square yard. Dissatisfied therewith, land owners including appellant, made an application under Section 18 of the Act, 1894, requesting Collector to make Reference to District Judge for determination of market value of acquired land. Land owners including appellant claimed compensation at the rate of Rs.3/- per square yard. Reference Court by impugned judgment and award, however, has found market value determined by SLAO justified and declined to provide any higher rate, hence this appeal. 8. Question for consideration in this appeal is "whether Reference Court was justified in affirming market value determined by SLAO or it should have determined market value on at a higher rate." 9. Claimant relied on an exemplar sale deed dated 26.06.1964 executed by Behari and Chhotey in favour of M/s Mahamaya General Finance Private Company Limited, in respect to two plots No.532(1-1- 0) and 533 (2-18-0), according to which rate comes to Rs.4.35/- per square yard. Per contra defendant-respondent relied on a sale deed dated 27.02.1967 executed by one Ram Lal in favour of one Jiya Lal in respect to plot No. 658/2(1-10-0) for a consideration of Rs.5,000/- which leads to market rate at Rs.1.10 per square yard. Since sale deed dated 27.02.1967 was nearer to the date of acquisition of notification issued under Section 4(1), the same was followed by SLAO and Reference Court upheld the same. Reference Court has also observed that claimant sought compensation at Rs.3/- per square yard which shows that the claimant land owners were also not relying on the sale deed dated 26.06.1964, according to which the land was transferred at the rate of Rs.4.35 per square yard. 10. Sri Khan, learned counsel for appellant stated that in a subsequent acquisition commenced on 21.10.1969, for acquiring 455 acres of land in Village Prahalad Garhi, Maharajpur and Karkar Mandal, compensation was determined at the rate of Rs.1.32 per square yard. The matter

went to Supreme Court in Civil Appeal No. 5514 of 2014 (M/s Mahamaya General Finance Company Limited v. State of U.P. and others). Court considered two exemplar sale deeds dated 13.06.1969 and 16.10.1969. The first one transferred by sale 233 square yard of land at the rate of Rs.22/- per square yard while later sale deed transferred 675 square yard of land at the rate of Rs.19.73 per square yard. Both the sale deeds relate to land located at Village Maharajpur and belong to M/s Mahamaya Gen Finance Company Limited itself. Court set-aside orders passed by Courts below, allowed appeal and directed for payment of compensation at average price of two transactions by sale deeds dated 13.06.1969 and 16.10.1969 along with other statutory benefits. Para 12 of judgment dated 08.05.2014 reads as under:- "In the aforesaid circumstances, we set aside the compensation awarded by the learned Acquisition Officer as affirmed by the Reference Court and the High Court by the orders under appeal. Instead, we direct that the compensation payable to the appellant shall now be computed by taking into account the average of the price, at which the two transactions by sale deeds dated 13.06.1969 (Exbt.1) and 16.10.1969 (Exbt.2) were effected, as noted above, along with solatium and interest as payable under the Act. The Special Land Acquisition Officer, Ghaziabad, U.P., shall make the necessary computation in terms of the present order so as to enable the appellant to receive the balance amount of compensation along with solatium and interest as payable, forthwith, and in any case within three months from the date of receipt of this order." (emphasis added) 11. Sri Khan submitted that as per aforesaid judgment of Supreme Court, compensation determined in respect to acquisition commenced in same village on 21st October 1969 will come to the rate of Rs.20.865 per square yard. In the present case land was acquired by notification dated 15.12.1967 i.e. less than two years ago and, therefore, compensation allowed at the rate of Rs.1.10 per square yard is extremely unfair, unjust and inadequate. He further submitted that in any case when two sale deeds are cited, one which was of higher rate and much earlier in point of time i.e. of the year 1964 ought to have been followed instead of that which prescribed lower rate. 12. Learned Standing Counsel on the contrary submitted that since sale deed relied by authorities below is nearer to date of acquisition, therefore, no interference is called for. 13. We have heard learned counsels for the parties and also perused relevant records. 14. First of all, in our view, approach of Reference Court was not justified, in as much it was not sitting in appeal over the award of SLAO, but it had to determine market value on its own on the basis of material placed before it. However, Court below has not determined market value but has made entire endeavour to find out whether order of SLAO determining market value at Rs.1.10 per square yard is correct or not. When a sale deed of June 1964 was placed before it, in respect thereto, Reference Court did not find any reason to doubt its correctness or genuineness and also did not find that transaction entered between parties therein was with inflated rates or there existed any other reason so that document was not to be relied, there was no justification for not accepting said exemplar for the purpose of determination of market value of land in dispute. 15. When agricultural land of

a farmer is acquired which is his sole source of income, approach must be to provide adequate and appropriate compensation to such land owner, so that he may manage sustenance, not only himself but family also and forcible acquisition may not cause any irreparable loss to such person. The owner of land should not have a feeling that his only fault is that his land has been chosen by State for development activities and for that public purpose, he must compromise with his own life by losing means of sustenance for all time to come. The purpose of Act 1894 is not to destroy owner of land and his family all together, but it has a social liability to discharge whenever land is acquired thereunder i.e. firstly to lay down a smooth process of making land available for development activities, so that non availability of land be a hindrance in development activities, and secondly, but simultaneously, interest and welfare of landowners also has to be taken care. Reference Court has completely lost its approach which was expected in a case like this. 16. Here at this stage, we may also referred to certain principles laid down and passed in several decays relevant for determination of market value which are required for the purpose of development, under Act, 1894. 17. The authorities laying down principles relevant for determination of market value broadly may be considered under the following head : (i) Status of the proceeding before Collector/ SLAO in the proceedings before Reference Court. (ii) Relevance of circle rate determined by Collector / SLAO for the purposes of stamp duty. (iii) Evidence permissible to be considered by Reference Court for determining market value/ compensation under Section 23(1) of Act, 1894. Status of Proceedings of SLAO before Reference Court 18. Collector/ SLAO invites objections from landowners and after hearing them, determine amount of compensation payable to landowners in respect of acquired land. In this process generally it considers sale deeds executed in the area where acquired land situates, by collecting relevant information from the office of Sub-Registrar. Besides, such material as is placed before it by landowners is also considered. It is supposed to consider situation of land, nature and quality of soil and other relevant factors. 19. The award made by Collector/SALO determining market value of acquired land for the purposes of compensation is an offer made to landowners. Statute provides that landowners, if satisfied with said offer, may accept compensation, but if not, they have a remedy of submitting application before Collector for making reference to District Judge for determining market value of acquired land. District Judge then would consider the matter, looking into the principles laid down in Act, 1894 and, in particular, Sections 23 and 24. 20. Before us, it is not disputed that an award made by SLAO is an offer made by Collector to land owners for compensation payable against acquired land. Reference Court does not sit in appeal over award of SLAO to find out whether determination made by SLAO is correct or not. The proceeding before Reference Court is original and treated like a suit. Material considered by SLAO is not to be seen by Reference Court unless such material has been relied and proved in accordance with law before it. 21. In *Chimanlal Hargovinddas v. Special Land Acquisition Officer*, (1988) 3 SCC 751, Court has said that a reference is like a suit which is to be treated as an original proceeding. The claimant is in the

position of a plaintiff who has to show that price offered for his land in the Award is inadequate. However, for the said purpose, Reference Court would not consider the material, relied upon by Land Acquisition Officer in Award, unless such material is produced and proved before Reference Court. 22. Thus, Reference Court does not sit in appeal over the Award of Land Acquisition Officer. Material used by Land Acquisition Officer is not open to be used by Court suo motu unless such material is produced by the parties and proved independently before Reference Court. Determination of market value has to be made as per market rates prevailing on the date of publication of notification under section 4 (1) of Act, 1894. Circle Rate-Relevance 23. Many a times it is seen that Collector / SLAO or even landowners justify a particular market value with reference to circle rate published by Collector which has been determined for the purposes of stamp duty. This approach has not been approved by Courts time and again. 24. In *Jawajee Nagnatham v. Revenue Divisional Officer*, (1994) 4 SCC 595, this question came up for consideration in the matter arisen from State of Andhra Pradesh. The landowners appealed against order of Reference Court before Andhra Pradesh High Court claiming higher compensation on the basis of the basic valuation register maintained by Revenue authorities under Stamp Act, 1899. The claim of land owners failed in High Court, which held that such register had no evidenciary value on statutory basis. In appeal, Apex Court held that basic valuation register was maintained for the purpose of collecting stamp duty under Section 47-A of Stamp Act, 1899 as amended in State of Andhra Pradesh. It did not confer expressly any power upon the Government to determine market value of land prevailing in a particular area, i.e., village, block, district or region. It also did not provide, a statutory obligation upon Revenue authorities to maintain basic valuation register for levy of stamp duty in regard to instruments presented for registration. Therefore, there existed no statutory provision or rule providing for maintaining such valuation register. In the circumstances, such register prepared and maintained for the purpose of collecting stamp duty had no statutory force or basis and cannot form a valid criteria to determine market value of land acquired under Act, 1894. This decision was followed in *Land Acquisition Officer v. Jasti Rohini*, 1995 (1) SCC 717. 25. Another matter from State of U.P. came up for consideration involving same issue in *U.P. Jal Nigam v. M/s Kalra Properties (P) Ltd.*, (1996) 3 SCC 124. Landowners" demanded compensation in regard to land acquired under Act, 1894 on the basis of market value assessed as per circle rate determined by Collector. It was accepted by High Court, but in appeal, judgment was reversed by Supreme Court following its earlier decision in *Jawajee Nagnatham* (supra). Court held that market value under Section 23 of Act, 1894 cannot be determined on circle rates determined by Collector for the purpose of stamp duty under Stamp Act, 1899. This view was reiterated in *Krishi Utpadan Mandi Samiti v. Bipin Kumar*, (2004) 2 SCC 283. 26. The issue has again been considered recently by a larger Bench in *Lal Chand v. Union of India* and another (2009) 15 SCC 769, wherein two Judgments of Apex Court taking a view that circle rates may be considered, as prima facie basis, for the purpose of ascertaining the

market value were examined. These decisions are *Ramesh Chand Bansal v. District Magistrate/Collector*, (1999) 5 SCC 62 and *R Sai Ram Bharathi v. J. Jayalalitha*, (2004) 2 SCC 9. Court resolved controversy holding, if in a particular case, guidelines for market values are determined by an Expert Committee constituted under State Stamp Law for following a detailed procedure laid down under the relevant rules and are published in State Gazette, the same may be considered as a relevant material to determine market value. Court said, when guidelines of market value, i.e., minimum rates for registration of properties, are so evaluated and determined by Expert Committees, as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. Having said so, in para 44, Court further said :-

"44. One of the recognised methods for determination of market value is with reference to the opinion of experts. The estimation of market value by such statutorily constituted Expert Committees, as expert evidence can, therefore, form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either streetwise, or roadwise, or areawise, or villagewise) and finalized after inviting objections and published in the gazette. Be that as it may." 27. It is thus evident that for the purposes of determining market value circle rate fixed by Collector for the purposes of stamp duty would not be a relevant material unless such determination is under a statutory obligation and after following a prescribed procedure. Agreement to Sale-whether relevant material 28. There is consensus on judicial precedents that constitutes and includes sale deeds of immovable properties, situated in area in which acquired land comes, particularly, if have been executed in proximity of the date of acquisition notification published under Section 4(1). Even "agreement for sale" has been held relevant though with caution and in given circumstances. There is no hard and fast Rule which may exclude an "agreement for sale" to be considered for the purposes of determining market value. When "agreement for sale" has subsequently matured in a sale transaction and there is nothing to create any doubt over genuity of transaction, it may constitute a relevant material. 29. In *Fort Press Co. Ltd. v. Municipal Corporation of City of Bombay*, AIR 1922 PC 365, it was held that an agreement between the parties as to the price does not interfere with the jurisdiction of Collector under Act, 1894. Referring to the aforesaid decision in *Assam Railway and Trading Co. Ltd. v. Collector of Lakhimpur* and another, AIR 1976 SC 1182, Court held "there was an agreement between the parties about the price that is not disputed; whether this amounted to a concluded contract does not seem to us a question that is required to be decided in this appeal. Assumption to this was an agreement which bound the parties, the Collector had still the jurisdiction to determine the market value of the land." In the aforesaid decisions agreement for sale was not discarded

merely for the reason of it's being agreement but what Court said is that it is only a material to be considered by statutory authority since jurisdiction to determine market value lies upon Collector under section 11 of Act, 1894. The document of agreement for sale would not be a conclusive material. 30. Court in Assam Railway and Trading Co. Ltd (supra) also referred to another Privy Council decision in Samiullah v. Collector of Aligarh, AIR 1946 PC 75, holding " in assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation and his judgment could not be controlled by an agreement between the parties interested. On a Reference under section 18 the District Judge must also exercise its own judgment and consider among other things whether the award of the Land Acquisition Officer was based on a correct principle". 31. In Mehta Ravindrarai Ajitrai and others v. State of Gujrat, AIR 1989 SC 2051, claimants relied on instances by way of agreement of sale dated 21.01.1957 and the sale deed dated 2nd April, 1957. The notification under section 4(1) of the Act, 1894 was published on 6th August, 1956 and agreement for sale was executed about five months thereafter. Court held that such an agreement of sale, per se, could not be rejected for the reason that it was executed posterior to the date of acquisition notification under section 4(1) and said: "...the agreement for sale in connection with that land, pertains to a sale after the acquisition, it can be fairly regarded as reasonably proximate to the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition, the agreement to sell dated January 21, 1957 must be regarded as furnishing some light on the market value of the land on the date of publication of Section 4 notification." (emphasis added) 32. A Division Bench of Karnataka High Court in Purushotham Pandit Kher v. Special Deputy Commissioner, ILR 1989 Karnataka 2042, also had an occasion to consider this issue. Therein also, an agreement for sale was registered on 22.08.1972. Before it could fructify into sale, one of the land, referred to in the agreement for sale, was sought to be acquired vide notification dated 21.02.1974, issued under section 4(1) of Act, 1894. The agreement to sale was relied by the body for whose benefit land was acquired and opposed by purchaser claimant before High Court. The claimant contended that Reference Court should not have relied upon the value of acquired land as reflected in the registered agreement for sale. The question formulated by Court therein reads as under: ".....whether the Reference Court would be justified in placing reliance on an agreement to sell relating to an acquired land to which the claimant was a party, as reflecting its market value, instead of relying upon the value of sites or lands in the neighborhood of the acquired land as reflecting the value of each of them for determining the market value of the acquired land on a comparable basis. " 33. Court answered the question as under: ".....we are not left in doubt that a Reference Court would be fully justified in relying upon a bona fide, genuine and authentic transaction of an agreement to sell entered into by the claimant for purchase of the very acquired property, as reflecting its market value, instead of relying upon the transactions of sites or lands in the neighbourhood of the acquired land as furnishing proper criteria for determining

its (acquired land's) market value on a comparable basis". (emphasis added) 34. In *Special Land Acquisition Officer and another v. Sidappa Omannu Tumari and others*, 1995 Supp. (2) SCC 168 which is a judgment of three Hon'ble Judges, Court, in para 11 of the judgment has said: "What could be regarded as the near estimate of the acquired land has to be ascertained, be it the Collector or be it the court on the basis of authenticated transactions of sales or agreements to sell relating to the same land or a portion of it wherever possible because such transactions of sale or agreements to sell are always regarded as the best evidence available for the purpose." (emphasis added) 35. Again, in para 13, Court expressing its view of permissibility to look into an agreement for sale has observed as under: "However, if sale deed or agreement to sell relating to the small extent of land on the basis of which the market value of the large extent of the agricultural land has to be determined is a portion of the acquired agricultural land itself or other land in its close proximity, it may be made the basis for determining the market value of the acquired large extent of agricultural land but has to be done when there is satisfactory evidence of the absence of sales or agreements to sell off bigger extents of land pertaining to the acquired land or other lands in the vicinity of the acquired land." (emphasis added) 36. Court in *Special Land Acquisition Officer and another v. Sidappa Omannu Tumari and others* (supra), again in para 14 of judgment, said as under: "14. Therefore, where a sale deed or an agreement to sell relating to a small extent of land is produced by the claimant, in the enquiry held for determination of compensation payable for his large extent of land, the court is not always bound to determine the market price of such large extent of acquired land on the basis of the price fetched or to be fetched by small extent of land covered by such sale deed or agreement to sell." (emphasis added) 37. In *U.P. Avas Evam Vikas Parishad v. Janul Islam*, (1998) 2 SCC 467, a three Judge Bench of Supreme Court, in para 35 of the judgment, said: "[35] We do not find any substance in the submissions urged on behalf of the Parishad regarding rejection of the application for adducing additional evidence by the High Court. The High Court, in our opinion, has rightly held that in the absence of any material that the agreements for sale relied upon had matured into sale transactions not much assistance could be derived from them in the matter of determination of the market value of the acquired land,". (emphasis added) 38. The aforesaid decisions, therefore, do not exclude agreement to sell from being a relevant material for determining market value where it has matured into sale transaction. There are some other authorities earlier to aforesaid judgment in this regard. 39. The authorities under Act, 1894, therefore, while determining rate of compensation payable to land holders may consider material placed before it by the parties. An agreement for sale, relied by any of parties, is not to be discarded merely for the reason that it is an agreement for sale unless there are other reasons justifying its rejection. 40. A Division Bench judgment of this Court also has considered the aforesaid aspect in *National Thermal Power Corporation through its G.M. v. State of U.P. and others*, 2015 (4) ADJ 537 (all) and in para 48 of judgment, has said as under: "48. In view of the above discussions, we are of the view that there is no

inherent anathema to consider a registered agreement of sale, if genuinity of a valid and honest transaction is not disputed but the Court tried otherwise. In the present case, it is admitted position that land which was subject matter of registered agreement of sale was included in the acquisition notification and, therefore, parties could not conclude their transaction into sale. Thus the reason for non-execution of sale deed was something beyond their control." 41. No authority otherwise has been brought to the notice of this Court wherein it has been held that agreement to sell, even if reflects bona fide transactions, and having not resulted in sale deed for reasons beyond the control of parties, cannot be taken into account in any circumstance, whatsoever, even if it belongs to same land or constitutes part of the same land which has been acquired and determination of market value whereof is under consideration. Other Principles relevant for determining market value 42. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. Court, is a hypothetical purchaser, willing to purchase land from open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under section 4 of Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. Court, therefore, would co-relate market value reflected in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words, a balance sheet of plus and minus factors may be drawn and the relevant factors may be valued in terms of price variation as a prudent purchaser would do. The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors. 43. In *Kausalya Devi Bogra and others v. Land Acquisition Officer, Aurangabad* and another, (1984) 2 SCC 324, about 150 acres of land was acquired. Owners of acquired land were in two groups, i.e. Kaushalya Devi Bogra and Syed Yusufuddin Syed Ziauddin. First group, i.e. Kaushalya Devi Bogra owned 74 acres, while Yusufuddin owned about 15 acres of land. In these facts of case where almost 60% of total acquired land was owned by two sets of owners and exemplar of smaller property was relied, Court said that "when large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. In certain other cases, for determining market value of a large property on the basis of a sale transaction for smaller property, a deduction should be given. 44. In *Bhagwathula Samnna and others v. Special Tehsildar and Land Acquisition Officer, Visakhapatnam Municipality* (1991) 4 SCC 506, High Court applied

deduction of 33.3% observing, when large extent of land was acquired under housing scheme and exemplar is of small land, reasonable deduction can be made. Following the decision in *Tribeni Devi v. Collector, Ranchi*, AIR 1972 SC 1417, it was argued before Apex Court that High Court wrongly applied deduction. Acquired land was fully developed and eminently suitable for being used as house sites and, therefore, there was no justification for making any deduction. The land was acquired for formation of road, High Court applied deduction on the ground that expenses have to be incurred for development, which was not justified. Aforesaid submission was considered by Supreme Court in the light of facts of that case. In para 7 and 11 Court said: - "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. 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, 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 and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reasons that it is part of the large tract acquired, may not be justified." (emphasis added) 45. Court further held that 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 price fetched by small plots of land. If larger tract of land, because of advantageous position, is capable of being used for the purpose for which 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 value for the purposes of comparison is not warranted. Having said so, Court in para 13 held as under: - "13. 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 utilize 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/- pr square yard to Rs.6.50 paise pr square yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases." 46. The size of land would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. Courts have said that in such matters, factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots. 47. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number of land holders and size of their plots. 48. When we talk of concept of prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller, the individual land holder will come. It is the area of his holding which will be relevant for him and not that of actual, total and collective large area, which is sought to be acquired. 49. In *V.M. Salgoacar & brother Ltd. v. Union of India* (1995) 2 S.C.C 302, land acquired by notification dated 06.07.1970 in village Chicalim near Goa Airport belonged to a single owner. Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of fetching higher price in comparison to the plot which are much higher in size. Having said so, Court further said "though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined" . 50. Again in *Shakuntalabai (Smt.) and others v. State of Maharashtra*, 1996 (2) S.C.C 152, 20 acres of land in Akola town was sought to be acquired by notification published on 11.08.1965 under section 4(1) of Act, 1894 which was also owned by a single person. It is in this context, Court said, "the Reference Court committed manifest error in determining compensation on the basis of sq. ft. When land of an extent of 20 acres is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider valuation sitting on the armchair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously "no" . 51. In order to determine market value when exemplars are adduced, normally it is found that exemplars of small land, and that too, in developed area after plotting and development are relied. Sometimes a single exemplar is available and sometimes more than that. It is

not the number of exemplars which is important and would determine the question whether burden has been discharged by claimants that offer of compensation made by Collector is inadequate and he is entitled to higher compensation but it is the genuity, authenticity and creditworthiness of the documents. If the document is found most suitable and appropriate for determining compensation in respect of acquired land even a single instance/exemplar cited by landowner may be relied and it can be said that claimant-landowner has succeeded in discharging his burden. 52. In *Gafar v. Moradabad Development Authority*, 2007 (7) SCC 614, Court observed that burden is on the claimants to establish that amount awarded to them by Collector is inadequate. That burden has to be discharged by claimants and only if initial burden in that behalf is discharged, the burden would shift to State to justify the compensation offered by SLAO. 53. Further, when there are more than one exemplar, one, which provides highest rate, has to be followed. In *Satish v. State of U.P.*, 2009 (14) SCC 758, Court after relying on its earlier decision in *Viluben Jhalenjar Contractor (Dead) by Lrs. v. State of Gujarat*, 2005 (4) SCC 789, said : "...when comparable exemplars are brought on record, the one carrying the highest market value amongst them may be followed." (emphasis added) Deductions: 54. Whenever the area of acquired land is larger than the area of land which is subject matter of the exemplar and smaller in size, Courts have held the same admissible subject to appropriate deduction. 55. In *Basavva (Smt.) & Others v. Special Land Acquisition Officer and others*, (1996) 9 SCC 640, notification under Section 4(1) of Act, 1894 proposing to acquire 194 acres of land for industrial development near Dharwad was published on 30.10.1981. Collector made award dated 22.8.1985 offering compensation at the rate between Rs. 8,000/- to Rs.8,080/-, which was enhanced by Reference Court vide award dated 11.10.1988 to Rs.1.72/- per square fit (Rs.74,953/- per acre). On appeal High Court reduced compensation to Rs.56,000/- per acre. The appeal preferred by State Government against High Court's judgment was dismissed. 56. In the appeals preferred by landowners, it was contended on behalf of landowners that deduction towards development upto 53% was reasonable but High Court in applying 65% deduction has erred in law. Court observed, while determining compensation, at first instance, it has to be seen whether sales relating to smaller pieces of land are genuine and reliable; and, whether they are in respect of comparable land. If it is found that sales are genuine and reliable and lands have comparable features, sufficient deduction should be made to arrive at a just and fair market value of large tracts of land. The time lag for real development and waiting period for development are also relevant for determination of just and comparable compensation. For deduction of development charges, nature of development, conditions and nature of land, the land required to be set apart under building rules for roads, sewerage, electricity, parks, water etc. and all other relevant circumstances involved are to be considered. 57. The above principles were also laid down in *D. Vasundara Devi v. Revenue Divisional Officer*, (1995) 5 SCC 426 which was relied by Court in *Basavva (Smt.) & Others v. Special Land Acquisition Officer and others* (supra). It then found that exemplar

sale deed was dependable but in respect of a small plot of land situated at a distance of more than 1 k.m., it also found that the land in area is not developed and there is no development towards that area. It was also noticed that it would take years for development in those lands though lands was capable of user for non-agricultural purpose. It is in this background, Court applied 53% deduction for development. It further held that since a long time would take for development and for that purpose additional 12% deduction was allowed making total as 65% deduction. 58. In *Land Acquisition Officer, Kammarapally Village v. Nookala Rajamallu and others*, AIR 2004 SC 1031, Court said as under : "It has been held that the deduction can be made where the land is acquired for residential and commercial purpose with regard to roads and civic amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price, the profits on the venture etc. So far as this Court is concerned, it has discarded the deduction policy on various grounds. One of the grounds is that if the State or its authority acquires the land for the purpose of selling it to the ultimate purchasers upon making available facilities, they normally recover the price inclusive of common facilities, therefore, a Government or its authority cannot be doubly benefited either by deductions from the payment of compensation in one hand and by collections of price of such development from the ultimate purchasers on the other hand. It also to be seen that no law prescribes deduction in paying compensation. It is to be remembered that deduction is an exception not the rule." 59. In *Udho Dass v. State of Haryana and Ors.* 2010 (12) SCC 51, by notification dated 17.5.1990, 162.5 acres of land in village Patti Musalmanan was sought to be acquired for the purposes of housing project in Sonapat (Haryana). Collector determined compensation at the rate of Rs.Two Lacs per acre, but it was enhanced by Additional District Judge on reference under Section 18 of Act, 1894 to Rs.125/- per square yard for the land behind E.C.E. Factory, situated away, and on the left side of the Sonapat Bahalgarh road, and Rs.150/- per square yard on the right side abutting the road. Reference Court held that land on the left side did not abut the road and it had therefore less potential value vis-a-vis land on the right side, which touched the road. In appeal High Court enhanced compensation from Rs.125/- to Rs.135/- and from Rs.150/- to Rs.160/-. Land owners came in appeal before Supreme Court claiming compensation at Rs.200/- per square yard. Court, as a matter of fact, found in that case that even compensation, which was determined by Collector or Reference Court was not paid to land owners immediately, but payment spread over for two decades. Court said if compensation payment continued over a period of almost 20 years, potential of land acquired from land owners must also be adjudged keeping in view development in the area, spread over the period of 20 years if evidence so permits and cannot be limited to near future alone. Court observed that this broad principle would be applicable where possession of land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of Government and is subsequently acquired. 60.

The Court also observed that in case where compensation is based exclusively on sale instances, it creates some time a disadvantageous position to land owners, whose land is forcibly acquired. There is wide spread tendency to undervalue sale prices. Circle rates determined by Collector only marginally correct anomaly, as these rates are also abnormally low and do not reflect true value. These things cause serious disadvantage to land owners, since they have no control over price on which some other land owners sell their property, which is often the basis for compensation payable to land owners, whose land are forcibly acquired. Court also held that there cannot be application of belting system in that case. Normally, land along side the road has more value vis-à-vis the land away from, but that would have been the case where agricultural land, which have no potential for urbanization or commercialisation had been acquired and in such a case, belting system is permissible. 61. In *Udho Dass (supra)* Court held that land was acquired in 1990. It had great potential and had been completely urbanized as huge residential complexes, industrial area and estates, huge education city have come up in the last 10 or 15 years. It further held as under: - "Moreover, insofar as land which is to be used for residential purposes is concerned, a plot away from the main road is often of more value as the noise and the air pollution alongside the arterial roads is almost unbearable. It also significant that the land of Jamalpur Kalan was touching the rear side of the ECE factory and the High Court had granted compensation of Rs.250/- per square yard for the acquisition of the year 1992. We have also seen the site plan to satisfy ourselves and find that the land acquired from Jamalpur Kalan and the present land share a common boundary behind the ECE factory. The belting system in the facts of the present case would thus not be permissible." 62. In *Anjani Molu Desai v. State of Goa and another*, (2010) 13 SCC 710, a very large tract comprising Rs.3,65,375 square meters of land in Balli village, Quepem Taulak, Goa was acquired for the purposes of Konkan Railway for laying down broad gauge line. Acquisition notification was issued on 30.7.1991. Appellant Anjani Molu Desai owned 60,343 square meter of land in Survey No.45/1, 45/5, 45/6, 51/1 and 51/2. Collector awarded compensation at the rate of Rs.12/- per square meter for orchard lands and Rs.6/- per square meter for paddy lands. Reference Court and High Court affirmed said valuation by rejecting reference and appeal. Collector determined market value relying upon two exemplars and taking an average thereof. First exemplar sale deed dated 30.8.1989 relates to 2055 square meters of land situated at the distance of 200 meter away from acquired land and sold at the rate of Rs.43.80 per square meter. Collector deducted 45% from sale price towards "development cost" i.e. for providing approach road and open spaces, expenses relating to development work, conversion charge etc. This reduced price from Rs.24/- per square meter. Since sale deed was of August, 1989 and acquisition commenced in 1991, thus there being gap of 20 months, Collector provided an increase at the rate of 14.5% per annum and thus, arrived at Rs.32.24 per square meter. Exemplar sale deed dated 30.1.1990 relates to sale of 7600 square meters of land at the distance of one kilometer from acquired land sold at Rs.3/- per square meter. Here also, gap

was of 18 months, thus 14.5% increase was allowed, which made sale price at Rs.3.82 per square meter. Collector then averaged two rates derived from two sale deeds and determined Rs.18/- per square meter ($\text{Rs.32.24} + \text{Rs.3.82}/2$). This method adopted by Collector was not approved by Supreme Court. It was held, where there are more than one exemplar, which could be considered for determining market value, the one providing higher rate should be accepted and followed. It is only in exceptional cases where there are several sales of similar land, whose prices range in a narrow bandwidth, the average can be taken as representing market value. But where values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar land or that lower value sale is on account of under valuation or other price depressing reasons. In respect of orchard land, therefore, Court followed exemplar sale deed dated 30.8.1989 providing sale price at Rs.43.80 per square meter and applying appreciation of 14.5% and odd per annum, Court determined market value at Rs.57.50 and to that extent claim of appellant Anjani Molu Dessai was upheld. Here also proposition laid down by Apex Court is not for general application but depends on the facts of that case. 63. In *Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others*, AIR 2007 SC 1414, land was acquired for new broad gauge line of Konkan Railway. Acquisition notification under Section 4, Act, 1894 was issued in August, 1994. SLAO made award of Rs.4/- per square meter. In reference, District and Sessions Judge relying on two sale deeds dated 13.12.1993 enhanced compensation at the rate of Rs.192/- per square meter. Sale price in exemplar sale deed was Rs.449/- per square meter. Land owners as well as acquiring body both preferred appeals. Land owner's appeal was rejected while acquiring body's appeal was allowed to the extent that market value was reduced to Rs.38/- per square meter. Supreme Court found that compensation awarded by High Court by rejecting valuer report is not based on cogent material and not supported by cogent reasons. The injury, which land owner, was likely to sustain due to loss of his future earning from selling land as also damage already suffered due to diminution of profit of land between time of publication of notice and time taken by Collector in possession was not considered. Since land was acquired for the purposes of laying down railway line, no development was to be done. There existed civil amenities like, school, police station, water supply, bank, electricity, highway, transport, petrol pump, industries, telecommunication and other business. Hence it determined compensation at the rate of Rs.250/- per square meter, but then applied 20% deduction, which brings rate at Rs.200/- per square meter. 64. In *Special Land Acquisition Office v. Karigowdo and others*, 2010 (5) SCC 708, total acquired land was 146 acres and 7 guntas. It was owned by 419 claimants owners, whose area vary from 2 to 48 guntas. Acquired land was situated in village Sanaba, Chinakavali Hobli, Pandavapura. These land got submerged in 1993 under backwaters of Tonnur tank due to construction of Hemavathi Dam. Physical possession of land was taken between October, 1996 to December, 1999, while acquisition notification under Section 4 (1) of Act, 1894 was issued on 4.4.2002. Crops standing on land were damaged. SLAO

determined market value at Rs.90,460/- per acre for wet land and Rs.37,200/- per acre for dry land. On reference, compensation was enhanced to Rs.2,92,500/- per acre for wet land (garden land), Rs.1,46,250/- for dry land (lightly irrigated) and Rs.1,20,000/- for dry land (without mulberry crop). In appeal by land owners, High Court enhanced compensation to Rs.5,00,000/- per acre for wet/garden land and Rs.2,53,750/- per acre for dry land. State, therefore, came in appeal before Apex Court. Dispute arose before Court was for computation of compensation payable to claimants and quantum thereof. Argument advanced by State was that method adopted by Reference Court as well as High Court was impermissible in law. Court cannot take into consideration commercial activity, which may result from, and be indirectly incidental to agricultural activity, particularly, when both of them are carried on independent of each other. 65. In that case there were no sale instances from village Sanaba prior to 2002. The exemplars of adjoining villages were produced before Court. After looking into statutory provisions of Act, 1894, Court said (1) provision of Section 23 are mandatory; and (2) it is for claimants to ascertain as a matter of fact - location, potential and quality of land for establishing its fair market value. It is for claimant to show that what is contemplated under conditions attached thereto, has been satisfied. It is also for claimant to show that to award compensation payable under statutory provisions, they have brought on record evidence to satisfy criterion and conditions required to be fulfilled for such a claim. Court has to determine compensation strictly in accordance with the provisions of Sections 23 and 24 of Act, 1894. Potentiality of land should be on the date of acquisition i.e. existing potentiality. Further, potentiality has to be directly relatable to capacity of acquired land to produce agricultural products, or its market value relatable to method of compensation. If there is any existing crops or trees or fruit bearing trees, the same can be taken into consideration, but extent of benefit cannot go to the extent that fruits grown in agricultural land would be converted into jam or any other eatable products. This extension of loss of benefits amounts to remote factors, which is not permitted to take into consideration. The Court thus held that compensation determined by Reference Court and High Court was not justified. State appeal was partly allowed and Court provided for compensation at Rs.2,30,000/- per acre for wet/garden land and Rs.1,53,400/- per acre for dry land. 66. In *Mohinder Singh and others v. State of Haryana*, (2014) 8 SCC 897, by notification dated 2.12.1982, 327.52 acres in village Patti Jhambra, Shahabad in District Kurushetra (State of Haryana) was acquired for development and utilization of land for residential, commercial, industrial purposes etc. Notification under Section 6 was issued on 4.7.1984 in relation to 178.62 acres, and ultimate possession taken was found only 90.07 acres. Collector made award at different rates per acre depending upon quality of soil/land. Reference Court awarded uniform compensation at Rs.2,66,400/- per acre. Stated preferred appeal whereupon High Court reduced compensation to Rs.1,83,080/- per acre. Land owner preferred intra court appeal and Division Bench determined market value at Rs.2,19,696/- per acre. Land owners further went in appeal before Supreme Court, which set aside the

judgment of High Court and restored award passed by Reference Court determining Rs.2,66,400/- per acre as market value. While restoring award of Reference Court, Supreme Court observed that 40% deduction applied by High Court was not justified. Since land was within developed Municipal limit, therefore, deduction of 25% applied by Reference Court was justified. 67. In *Union of India v. Raj Kumar Baghal Singh (deal) through legal representatives and others*, (2014) 10 SCC 422, 72.9375 acres of land in village Bir Kheri Gujran, District Patiala in State of Punjab was acquired vide notification dated 14.3.1989. Collector made award of Rs.Two Lacs per acre. Reference Court enhanced amount of compensation to Rs.9,05,000/- per acre. In appeal, Single Judge of High Court reduced compensation to Rs.105.80 per square yard and it was confirmed by Division Bench also. Union of India preferred appeal, which was dismissed. Court held that there is no rule of thumb for deduction at a particular rate. It varies and depends on individual case. In para 11 Court said "the extent of cut depends on individual fact situation". 68. Deduction for development is different than deduction permissible in respect of largeness of area vis-a-vis exemplar of small piece of land. Many times, land owners relied on the rates on which development authorities used to offer allotment of developed plots carved out by them in residential or industrial area. Such rates apparently cannot form basis for compensation for acquisition of undeveloped lands for reasons more than one. The market value in respect of large tract of undeveloped agricultural land in a rural area has to be determined in the context of a land similarly situated whereas allotment rates of development authorities are with reference to small plots and in a developed lay out falling within urban or semiurban area. Statutory authorities including development authorities used to offer rates with reference to economic capacity of buyers like economic Weaker Sections, Low Income Group, Middle Income Group, Higher Income Group etc. Therefore, rates determined by such authorities are not uniform. The market value of acquired land cannot depend upon economic status of land loser and conversely on the economic status of the body at whose instance, land is acquired. Further, normally, land acquired is a freehold land whereas allotment rates determined by development authorities etc. constitute initial premium payable on allotment of plots on leasehold basis. 69. However, where an exemplar of small piece of land is relied, in absence of any other relevant material, Court may determine market value in the light of evidence relating to sale price of small developed plots. In such cases, deduction varying from 20% to 75% is liable to apply depending upon nature of development of lay out in which exemplar plot is situated. 70. In *Shaji Kuriakose and another v. Indian Oil Corporation Ltd.*(2001) 7 SCC 650, a large tract of land in village Manakunnam, District Cochin was proposed to be acquired for setting up a bottling plant by Indian Oil Corporation and notification under Section 4 (1) was issued on 23.08.1990. Acquired land included 7.13 acres of land of claimant/landowner-Shaji Kuriakose. Collector vide award dated 05.05.1992 offered compensation at Rs. 1,225/- per acre i.e. Rs.500/- per cent which was enhanced to Rs.7,000/- per cent by Reference Court. High Court reduced compensation to Rs.4,000/- per

cent for wet land and Rs.6,500/- for dry land. Appeal preferred by claimants before Apex Court failed. Court found that land which was sold vide exemplar sale deed was not similarly placed with acquired land inasmuch as there was no access to acquired land, there existed only an internal mud road which belonged to one of the claimants, whose land was acquired, the land covered by exemplar sale deed was a dry land, whereas acquired land was mostly wet land. After acquisition, acquired land has to be reclaimed and a lot of amount would be spent for filling it. The exemplar sale deed related to a small piece of land while acquired land was quite large. Sale for smaller plot fetches more consideration than larger or bigger piece of land. Looking to all these facts, Court found that determination made by High Court was justified and dismissed appeal. 71. In *Kasturi & others v. State of Haryana* (2003) 1 SCC 354, 84.31 acres of land in State of Haryana was proposed to acquire for development of residential and commercial area at Sector 13 and 23 Bhiwani by publishing notification under Section 4 on 04.04.1986. Collector made awards dated 10.11.1987 and 31.03.1988, determining compensation at Rs.57,500/- per acre and Rs.55,200/- per acre which comes to around Rs. 11.81 per square yard. Reference Court enhanced compensation to Rs.125/- per square yard. Landowners as well as State, both preferred appeal in High Court. Landowners sought compensation at Rs.500/- per square yard while State appealed for restoration of Collector's award. High Court reduced compensation to Rs.79.98 per square yard applying 20% deduction towards development charges. It partly allowed appeal of State but dismissed appeals preferred by claimants/landowners. Division Bench confirmed judgment of Single Judge hence matter was taken to Apex Court by claimants/ land owners. It was contended that High Court erred in applying deduction of 20% towards development charges and also by not enhancing compensation to Rs.500/- per square yard as claimed by landowners. Supreme Court found that land acquired comprised a large area and was not developed though has potential for residential and commercial purposes. For its development roads were to be laid, provision for drainage was to be made and certain area was to be earmarked for other civic amenities. The acquired land is not a small plot located in such a way that no other development was required at all and it could be utilized as it is, being a developed building site. In respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 33% amount was processed for deduction subject to variations depending upon nature of land, location, extent of expenditure involved for development and area required for roads and other civic amenities to develop land so as to make plots for residential or commercial purposes. Whether land is plain or uneven, soil of land is soft or hard having bearing on foundation for the purpose of making construction; whether land is situated in the midst of a developed area all around or may have a hillock or may be low lying or may be having deep ditches, are all relevant considerations since that would have consequences in the land to be spent for development. Court relied on various decisions and thereafter upheld deduction of 20% towards development and dismissed appeal of landowners. 72. In *Lal Chand v. Union of*

India (supra), Court noticed that deduction for development constitutes two components-one is with reference to area required to be utilized for development work and second is the cost of development work. It further held that deduction for development in respect of residential plot may be higher while not so where it is an industrial plot. Similarly, if acquired land is in a semi-developed urban area or in any undeveloped rural area, then deduction for development may be much less and vary from 25 to 40 percent since some basic infrastructure will already be available. The percentage is only indicative and vary depending upon relevant factors. With reference to exemplars of transfer of land between private parties, Court would also look into intrinsic evidence, i.e., the exemplar sale deed where it recites financial difficulties of vendor and urgent need to find money as a reason for sale or other similar factors, like litigation or existence of some other dispute. These are all the factors constituting intrinsic evidence of a distress sale.

73. In *Lal Chand v. Union of India* (supra), Court also observed, if acquisition is in regard to a large area of agricultural land in a village and exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of prevailing market value even if such land is at the other end of village, at a distance of one or two kilometers. But, the same may not be appropriate where acquisition relates to plots in a town or city where every locality or road has a different value. A distance of about a kilometer may not make a difference for the purpose of market value in a rural area but even a distance of 50 meters may make a huge difference in market value in urban properties. Thus, distance between two properties, the nature and situation of property, proximity to the village or a road and several other factors may all be relevant in determining market value.

74. In *Valliyammal and others v. Special Land Acquisition 2011* (8) JT 442, Court has looked into various earlier judgments laying down guiding principles for determination of market value of acquired land. Court has observed that comparable sales method of valuation is preferred since it furnishes evidence for determination of market value of acquired land at which a willing purchaser would pay for acquired land if it had been sold in open market at the time of acquisition. However, this method is not always conclusive and there are certain factors, which are required to be fulfilled and on fulfilment of those factors, compensation can be determined. Such factors are (a) sale must be a genuine transaction; (b) sale deed must have been executed at the time, proximate to the date of issue of notification under Section 4; (c) land covered by the sale must be in the vicinity of acquired land; (d) land covered by the sales must be similar to acquired land; and (e) size of plot of the land covered by the sales be comparable to the land acquired. If there is dissimilarity in regard to locality, shape and size or nature of land, court can proportionately reduce compensation depending upon disadvantages attached with the acquired land. Further, for determining market value, potentiality of acquired land should also be taken into consideration. The "potentiality" means, capacity or possibility for changing or developing into state of actuality. It is well settled that market value of property has to be determined having due regard to its existing condition, with all its existing advantages and its potential possibility

when let out in its most advantageous manner. Court also said, when undeveloped or underdeveloped land is acquired and the exemplar is in respect to developed land, deduction towards deduction can be made. Normally, such deduction is 1/3, but it is not a hard and fast rule. 75. In *Bhule Ram v. Union of India* and another, JT 2014 (5) SC 110, Court in para 7 has observed that valuation of immovable property is not an exact science, nor it can be determined like algebraic problem, as it bounds in uncertainties and no straitjacket formula can be laid down for arriving at exact market value of the land. There is always a room for conjecture, and thus court must act reluctantly to venture too far in this direction. The factors such as the nature and position of land to be acquired, adaptability and advantages, the purpose for which the land can be used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape of the land, the rise of depression in the value of the land in the locality consequent to the acquisition etc., are relevant factors to be considered. It further said that value, which has to be assessed, is the value to the owner, who parts with his property, and not the value to the new owner, who takes it over. Fair and reasonable compensation means the price of a willing buyer, which is to be paid to the willing seller. Though the Act does not provide for "just terms" or "just compensation", but market value is to be assessed taking into consideration the use to which it is being put on acquisition and whether the land has unusual or unique features or potentialities. Court then also considered as to what is the concept of "guess work" and observed that it is not unknown to various fields of law as it applies in the cases relating to insurance, taxation, compensation under the Motor Vehicle Act as well as under Labour Laws. Having said so, Court further said: - "The court has a discretion applying the guess work to the facts of the given case but is not unfettered and has to be reasonable having connection to the facts on record adduced by the parties by way of evidence. The court further held as under:- ""Guess" as understood in its common parlance is an estimate without any specific information while "calculations" are always made with reference to specific data. "Guesstimate" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time "guess" cannot be treated synonymous to "conjecture". "Guess" by itself may be a statement or result based on unknown factors while "conjecture" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. "Guesstimate" is with higher certainty than more "guess" or a "conjecture" per se." (para 8) 76. In *Bhupal Singh and others v. State of Haryana*, (2015) 5 SCC 801 while the above principles laid down in various cases were reiterated, Court in para 18 of judgment, said: - "Law on the question as to how the court is required to determined 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." 77. It is

also reaffirmed that an exemplar when relates to small piece of developed land and is sought to be relied to determine market value of large tract of undeveloped acquired land, deduction can be applied ranging between 20% to 75%. The Court in para 20 of judgment relied upon its decision in Chandrashekar v. Land Acquisition Officer (2012) 1 SCC 390 stating that deduction has two components, one is "development" and another with respect to the "size of the area". Percentage of deduction was restricted in Subh Ram v. State of Haryana, (2010) 1 SCC 444 stating that deduction of both components should be around 1/3 each in its entirety, which would roughly come to 67% of component of sale consideration of exemplar sale transaction. 78. Thus, with respect to escalation of price where exemplar is much earlier in point of time, Court in K. Devakimma and others v. Tirumala Tirupati Devasthanam and another, 2015 (111) ALR 241 said that recourse can be taken in appropriate cases to the mode of determining market value by providing appropriate escalation over the proved market value of nearby land in previous years where there is no evidence of any contemporaneous sale transaction or acquisition of comparable lands in neighbourhood. The percentage of escalation may vary from case to case so also the extent of years to determine the rates. 79. In Trishala Jain and another v. State of Uttranchal and another (2011) 6 SCC 47, for the purposes of construction of Government Polytechnic Institute at Dehradun, notification under Section 4 was published on 30th January, 1992, proposing to acquire 12.85 acres of land situated in village Sewala Kalan, Pargana Kendriya Doon, District Dehradun. The area of land belong to claimants land owner, Trishala Jain and others, was 4.58 acres and 3.031 acres respectively. Collector offered compensation applying "belting system" and the first belt at Rs.9,78,223.40 per acre, second belt at Rs. 6,52,482.27 per acre and third belt at Rs. 4,39,362.70 per acre. Reference Court held belting system applied by Collector improper observing that entire land having been acquired for one purpose, there was no justification for application of belting system. Relying on two exemplar sale deeds dated 26.11.1991 and 17.11.1991 it awarded compensation at Rs. 5,12,000/- per bigha after applying 20% deduction to gross market value of Rs.6,40,000/- per bigha. In appeal, High Court upheld view taken by Reference Court that there was no justification for applying "belting system" but raised deduction from 20% to 33.33% and hence determined market value at Rs. 4,26,667/- per bigha. The aforesaid deduction was applied on account of "development charges". Appeal was taken to Supreme Court by claimants/landowners. The four questions formulated by Court are as under: "I. Whether or not the belting system ought to have been applied for determination of fair market value of the acquired land? II. What should be the just and fair market value of the acquired land on the date of issuance of notification under Section of the Act? III. Whether in the facts and circumstances of the present case there ought to be any deduction after determining the fair market value of the land? IV. What compensation and benefits are the claimants entitled to ?" 80. Court upheld the view taken by courts below that application of "belting system" was unjustified since land as a whole was similarly placed and surrounded by developed areas and proposed to

be used for one purpose, i.e., construction of Government Polytechnic Institute. Court then also held that deduction towards development is justified in certain circumstances but how much deduction is to be applied, will depend upon individual facts of the case. In para 39 of judgment, Court said: "39. The law with regard to applying the principle of deduction to the determined market value of the acquired land is quite consistent, though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. In other words, it is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases. Normally the rule stated by this Court consistently, in its different judgments, is that deduction is to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects. It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the acquisition relates to a large tract of land." (emphasis added) 81. Further in paras 41 and 44 of judgment, Court said: "41. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of "no deduction". Furthermore, where the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features comparable to the proposed acquired land, including that of size, is another category of cases where principle of "no deduction" may be applied. These may be the cases where least or no deduction could be made. Such cases are exceptional and/or rare as normally the lands which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at the time of issuance of notification under Section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes and intents for determining the market value of the land in question." "44. It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits." (emphasis added) 82. In *Chandrashekar v. Land Acquisition Officer* (supra) for residential layout issued by Gulbarga Development Authority acquisition proceedings were initiated by publishing Notification dated 13.5.1982 proposing to acquire 144 acres of land in villages Rajapur (71 acres) and Badepur (73 acres). The land of claimants-appellants measured 8 acres, 4 guntas in village Badepur and in connected appeal it measured 7 acres, 7 guntas. Collector made award determining compensation at Rs.4100/- per acre for land in village Badepur and

Rs.13,500/- for land in village Rajapur. Reference Court enhanced compensation to Rs.1,46,000/- per acre in place of Rs.4100/- per acre for land in village Badepur. On appeal, High Court remanded matter, where after Reference Court determined compensation at Rs.1,45,000/- per acre vide order dated 21.12.2002. High Court reduced compensation in appeal at Rs. 65,000/-. The view taken by High Court was upheld by Supreme Court by dismissing appeal of landowners. The issue raised before Court was the extent of deduction to be applied while determining market. 83. It would be interesting to notice review of various cases by Supreme Court demonstrating that deduction applied has varied in all cases. (a) In *Brig. Sahib Singh Kalha v. Amritsar Improvement Trust*, (1982) 1 SCC 419, the Court said where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly, deduction of 20 percent of total acquired land should be made for land over which infrastructure has to be made (space for roads etc.). Besides, cause of raising infrastructure like roads, electricity, water, underground drainage, etc. is also to be considered and for this purposes deduction would raise from 20% to 33%. Thus, in all the Court upheld deductions between 40% and 53%. (b) In *Administrator General of West Bengal v. Collector, Varanasi*, (1988) 2 SCC 150, the Court upheld deduction of 40%. (c) In *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another (supra)*, the Court upheld deduction between 20% to 50%. (d) In *Land Acquisition Officer Revenue Divisional Officer, Chottor v. L. Kamalamma (Smt.) Dead by and others*, (1998) 2 SCC 385, Court upheld deduction of 40% as development cost. (e) In *Kasturi and others v. State of Haryana (supra)*, 7th deduction was upheld on development, clarifying that deduction can be more or less of 7th depending upon facts of the case. (f) In *Land Acquisition Officer v. Nookala Rajamallu and others*, (2003) 12 SCC 334, Court upheld 53% deduction. (g) In *V. Hanumantha Reddy (Dead) v. Land Acquisition Officer*, (2003) 12 SCC 642, Court upheld 37% deduction towards development. (h) In *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789, Court observed that deduction of 20 to 50% towards development is permissible. (i) In *Atma Singh v. State of Haryana and another*, (2008) 2 SCC 568, 20% deduction towards largeness of area was applied. (j) In *Subh Ram and others v. State of Haryana and others*, (supra), Court observed that where valuation of a large area of agricultural or undeveloped land has to be determined on the basis of sale price of a small developed plot, standard deductions would be 7th towards infrastructural space and 7th towards infrastructural developmental cost, i.e. 7th % i.e. 67%. (k) In *Andhra Pradesh Housing Board v. K. Manohar Reddy and others*, (2010) 12 SCC 707, it was observed that deductions on account of development could vary between 20% to 75%. (l) In *Special Land Acquisition Officer and another v. M.K. Rafiq Sahib*, (2011) 7 SCC 714, Court was upheld 60% deduction. 84. In this background of authorities, Court in *Chandrashekar v. Land Acquisition Officer (supra)*, observed that quantum of deduction towards development is on account of two components. In this regard it said in para 19.1 and 19.2 as under : "19.1. Firstly, space/area which would have to be left out, for providing indispensable amenities

like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. This "first component", may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure. 19.2 Secondly, deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like. This "second component" may conveniently be referred to as deductions for developmental expenditure /expense." 85. Having said so Court in para 23 said:- "23. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33? percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33? percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33? percent, the two components under the head of "development" put together, should not exceed the upper benchmark." 86. The above principles have further been followed and reiterated in *Atma Singh v. State of Haryana* and another (supra), *Nirmal Singh v. State of Haryana* (2015) 2 SCC 160 and *Major General Kapil Mehra and others v. Union of India* and another (2015) 2 SCC 262. 87. The decisions of this Court in *National Thermal Power Corporation through its General Manager* (supra) and *Power Grid Corporation of India v. State of U.P. and others* 2015 (5) ADJ 138 (All) also reiterate the said principles. 88. In *Sabha Mohammed Yusuf Abdul Hamid Mulla (d) by LRS and others v. Special Land Acquisition Officer and others* (2012) 7 SCC 595 Reference Court while determining market value observed that though land was agricultural but had nonagricultural potential and determined market value. High Court made a deduction of 15% towards development charges. 89. Referring to an earlier decision in *Viluben Jhalejar Contractor v. State of Gujrat*, (2005) 4 SCC 789, Court in *Sabha Mohammed Yusuf Abdul Hamid Mulla* (supra) said that development charges may range between 20% to 50% of the total price. Court further observed: "in fixing market value of the acquired land which is undeveloped and under-developed the courts have generally approved deduction of 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." (emphasis added) 90. In making this observation Court relied on its earlier decisions in *Kasturi v. State of Haryana* (supra), *Tejuma Bhojwani v. State of U.P.*, (2003) 10 SCC 525, *V. Hanumantha Reddy v. Land Acquisition Officer and Mandal Revenue Officer* (supra), *H.P. Housing Board v. Bharat S. Negi*, (2004) 2 SCC 184 and *Kishan Tandon v. Allahabad Development Authority*, (2004) 10 SCC 745, *Lal Chand v. Union of India* (supra), *A.P. Housing Board v. K. Manohar Reddy*, (2010) 12 SCC 707 and *Subh Ram v. State of Haryana* (supra). 91. In *Ashrafi and others v. State of Haryana and others* (2013) 5 SCC 527, Court has observed, if acquired land has potentiality, it would not be justified to apply "belting system". 92. Recently above authorities and several others have been considered in *Major General Kapil Mehra v. Union of India and another* (supra), and Court has observed that while fixing market value of acquired land, Land Acquisition Collector is required to keep in mind the following factors:- (I) Existing geographical situation of land. (ii) Existing use of land. (iii) Already available advantages, like proximity to National or State Highway or road and/or developed area, (iv) Market value of other land situated in the same locality/ village/ area or adjacent or very near the acquired land. 93. Court has further said that market value is determined with reference to the market sale of comparable land in the neighbourhood by a willing seller to a willing buyer on or before the date of preliminary notification i.e. under Section 4(1) of 1894 Act, as that would give a fair indication of market value. 94. With respect to factors of comparable sales, Court in *Major General Kapil Mehra v. Union of India and another* (supra) has referred to its earlier decision in *Urban Water Supply and Drainage Board and Others v. K.S. Gangadharappa and another*, (2009) 11 SCC 164, and has observed that element of speculation is reduced to minimum if underlying principles of fixation of market value with reference to comparable sales are satisfied, i.e., (i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) It should possess similar advantages. 95. Where there are several exemplars showing different rates, it has been said that averaging is not permissible, if land acquired are of different types and different locations. But where there are several sales of similar land, more or less, at the same time, prices whereof have marginal variation, averaging thereof is permissible. It is further held that for the purpose of fixation of fair and reasonable market value of any type of land, abnormally highvalue or abnormally low value sales should be carefully discarded. If number of sale deeds of the same locality and of same period with short intervals are available, average price of available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc. 96. "Freehold land" and "leasehold land", both these terms are conceptually different. If a property, subject to lease and in possession of a lessee, is offered for sale by owner to a prospective private purchaser, the purchaser being aware

that on purchase he will get only title and not possession and that the sale in his favour will be subject to encumbrance namely, the lease, he will offer a price taking note of the encumbrances. Naturally, such a price would be less than the price of a property without any encumbrance. But when a land is acquired free from encumbrances, market value of the same will certainly be higher. 97. In *Urban Water Supply and Drainage Board (supra)*, Court also considered deductions towards competitive bidding and development. In paragraph no. 39, Court said : "We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewerage." 98. Thus, having gone through all the aforesaid decisions, we find that no absolute principle or Rule of Thumb has been laid down in any of the authorities as to how much deduction should be made. The substance of all the decisions is that deduction should be applied where undeveloped and under-developed land is acquired and it can vary from 10% to 70%, depending upon various factors of each case. Similarly, if area of land exemplar is very small, appropriate deduction can be made. 99. Normally, Courts have held that exemplars should be such which are before the date of notification under Section 4(1) of Act, 1894 but an exemplar sale deed of a subsequent period of date of acquisition notification is not completely ruled out to be relevant document provided circumstances to justify the same are available. 100. In *State of U.P. v. Major Jitendra Kumar and others*, AIR 1982 SC 876, notification under Section 4 was published on 6.1.1948. Court determined rate of compensation relying on a sale deed dated 11.7.1959, i.e., a document executed after almost three and half years after the date of acquisition notification. Court upheld reliance of such document observing, if there is no material to show that there was any fluctuation in market rate between the date of acquisition and the date of concerned sale deed, such document may be considered as a relevant material in absence of any other apt evidence. This view was followed in a subsequent decision, i.e., *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1998 SC 943, where it is held: "Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value." 101. Recently a Division Bench decision of this Court *Meerut Development Authority through Its Secretary v. Basheshwar Dayal* (2013) 3 UPLBEC 2469 has crystallized legal principles settled in various judgments, relevant for determination of market value, as under: (i) Function of the Court in awarding compensation under the Act is to ascertain the market

value of the land on the date of the notification under Section 4(1), (ii) The method for determination of market value may be : (a) Opinion of experts, (b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, (c) a number of years purchase of the actual or immediately prospective profits of the land acquired. (Ref. *Jawajee Nagnatham v. Revenue Divisional Officer & others* (supra), para 5). (iii) While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:- (a) Sale must be a genuine transaction, (b) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (c) the land covered by the sale must be in the vicinity of the acquired land, (d) the land covered by the sales must be similar to the acquired land (e) the size of plot of the land covered by the sales be comparable to the land acquired. (f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land. (iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition which are as under:-

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

(vii) Special value for an owner of an adjoining property to whom it may have some very special advantage.

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. (vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount. (vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. [Ref. Valliyammal and another v. Special Tahsildar Land Acquisition (supra)]. (viii) When there are several exemplars with Reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. [Ref. Mehrawal Khewaji Trust v. State of Punjab 2012 (117) R.D. 289]. (ix) In view of Section 51A of the Act certified copy of sale deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word "may". A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. (Ref. Cement Corpn. of India Ltd. v. Purya and others (2004) 8 SCC 270, para 28 and 38,). (x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors : - (a) Existing geographical situation of the land. (b) Existing use of the land. (c) Already available advantages, like proximity to National or State Highway or road and/ or developed area, (d) Market value of other land situated in the same locality/ village/ area or adjacent or very near the acquired land. (xi) Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of

market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. (xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing. (xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with Reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. paras 16, 17, 18, 21 and 22, *Sabha Mohammed Yusuf Abdul Hamid Mulla (dead) and others (supra)*). 102. In the light of above exposition of law we may find out whether question of market value of acquired land has rightly been adjudicated by Reference Court or not. 103. The land in question admittedly have potential for building activities and for that purpose it was chosen by UPSIDC to be acquired for planned industrial development. Reference Court has observed that in sale deed dated 26.06.1964, land also included a Pakka Well and cost of that construction was not separately mentioned in sale deed, therefore, it was not proper to follow the same, but has failed to consider that said sale deed was more than three years before the date of acquisition notification dated 15.12.1967. Claimant would have been entitled for appreciation at-least at 5-7% per annum in respect to rural land, as held by Courts from time to time. If that appreciation is followed, the rates at which sale deed dated 26.06.1964 was executed would have arrived at any rate. 104. Supreme Court's judgment in *M/s Mahamaya General Finance Company Limited (Supra)*, relied by counsel for appellant, however, we find would not apply, since there is a gap of two years in acquisition. In present case acquisition commenced in December, 1967 while in *M/s Mahamaya General Finance Company Limited (Supra)*, it was of October, 1969. 105. Since it is an old matter where land has been acquired, more than four decays ago, in our view, it will not be appropriate to keep matter further pending or remand to Reference Court for reexamination, but to give quietness to the dispute and simultaneously keeping balance of equity and justice to both parties, we find it appropriate to direct payment of compensation to appellant at the rate of Rs.4.35 per square yard. The claimant-appellant shall also be entitled for payment of solatium, interest etc. to enhanced amount of compensation, in accordance with various provisions of Act, 1894. 106. Appeal is accordingly allowed partly with costs, through out to the extent of success. Impugned judgment and decree passed by Reference Court is hereby

set-aside. Appeal Allowed.