

(2016) 01 DEL CK 0225
In the Delhi High Court
Case No : LA. App. 62/2013

Balwant Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 17, Section 18, Section 23(1A), Section 23(2),
Section 4, Section 4(1), Section 54, Section 6

Citation : (2016) 3 ADDelhi 704 : (2016) 226 DLT 626 : (2016) 154 DRJ 276

Hon'ble Judges : Vipin Sanghi, J.

Bench : Single Bench

Advocate : N.S. Vasisht, Vishal Singh, and Jyoti Kataria, Advocates, for the Appellant; Sanjay Kumar Pathak, Sunil Kumar Jha and K. Kaomudi Kiran Pathak, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Vipin Sanghi, J.—1. The present appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") is directed against the award dated 18.12.2012 passed by Ld. Additional District Judge-02, South, Saket Court Complex, New Delhi, in LAC No. 41/11, titled "Balwant Singh Vs. Union of India & Ors.", whereby the learned ADJ has decided the reference made under Section 18 of the Act. The learned ADJ has enhanced the compensation for the acquired land, from Rs. 13.82 lacs per acre - as determined by the Land Acquisition Collector (LAC), to Rs. 2,926/- per sq. mtr., along with other statutory benefit. Not satisfied with the same, the appellant has preferred the present appeal.

2. The notification under section 4 of the Act was issued vide notification No. F.9 (44) 2000-L&B/LA/10583 dated 16.10.2000; notification under section 6 of the Act was issued vide notification No. F.9 (44) 2000-L&B/LA/1599 dated 04.05.2001, and; notification under section 17 of the Act was issued vide notification No. F.9(44) /2000-L&B/LA/1600 dated 04.05.2001, for the acquisition of 7 Bighas and 15 Biswas of land in village Chattarpur.

3. The market value of the land was determined by the LAC on the basis of prevailing rules for acquisition of agriculture land @ Rs. 13.82 lacs per acre.

4. Aggrieved by the same, the appellant preferred a petition u/s 18 of the Act, claiming compensation @ Rs. 1,00,000/- per sq. yard. This claim was premised on the consideration that the acquired land was being used as the appellant's house, and a nationalized bank is a tenant in a portion which was unacquired, yielding rent @ Rs. 1,00,000/- per month. All amenities and facilities of life, such as, road, electricity, telephone, public transport, proximity to school, market, park, hospital, etc. already existed on, and in the vicinity of the acquired land, on the date of issue of notification under Section 4 of the Act. The acquired land is situated on the 100" wide main Chhattarpur road. The acquired land is situated at a distance of approximate 500 metres from the upcoming transport office of the Government of NCT of Delhi, and about 500 metres away from Tivoli Garden. The Chhattarpur metro station is around 1 1/2 km. away from the acquired land and Qutub Minar is around 2 km. away from the acquired land. The acquired land is about 2 to 2 1/2 km. away from Chhattarpur Mandir. The appellant also placed reliance on a perpetual lease deed dated 04.09.2000 (Ex.PW1/1) - of which the certified copy was produced. This lease deed pertained to a commercial plot, auctioned by the Delhi Development Authority on 27.11.1995, admeasuring 386.57 sq. mtrs for commercial purposes for a consideration of Rs. 2.87 crores. The said plot is situated in Lado Sarai which is in close proximity to the acquired land at a distance of about 2.5 km. The appellant also claimed that the acquired land was close to residential colonies, such as, Saket, Sarvodaya Enclave, JNU, IIT and Mehrauli town. The appellant claimed that the acquired land, on account of its locational advantage and developed surrounding, had great potentiality and the same could be used for industrial, commercial or residential purpose.

5. The learned ADJ enhanced the compensation awarded by the LAC, from Rs. 13.82 lacs per acre to Rs. 2,926/- per sq mtr. The land rate of Rs. 2,926/- per sq. metre was arrived at by learned ADJ on the premise that, admittedly (as is admitted by PW1 in his cross-examination), the acquired land was being used for agricultural purposes, and the appellant had not obtained permission from the government for converting the land use from agricultural purpose to farm house. The Government of India, Ministry of Urban Affairs and Employment, Department of Urban Development had issued a schedule of rates vide circular No. J-22011/4/95-LD, according to which, the circle rates for residential properties in the year 2000 was fixed for Mehrauli Badarpur road at Rs. 8,360/- per sq. metre. The learned ADJ held that the said rates having been notified for residential properties, a deduction had to be made towards development charges for provision of roads, drinking water, sewage facilities, electricity etc. The learned ADJ observed that as per a catena of judgments decided by this Court and the Supreme Court, (though no specific judgment was referred to in the impugned judgment), deduction @ 65% could be made in order to arrive at the market rate of the land in question on the date of notification. Thus, after applying deduction of 65% on the notified rate of Rs. 8,630/-, the learned ADJ arrived at the figure

of Rs. 2,926/- per sq. metre.

6. The submission of Mr. Vasisht, learned counsel for the appellant is that the learned ADJ has grossly erred in assessing the market rate of the acquired land at Rs. 2,926/- per sq. metre. The learned ADJ has ignored that the acquired land is situated on the 100" wide main Chhattarpur Road. Though, the acquired land was being put primarily for agricultural use, it had great potentiality - which is evident from the fact that it is situated at a distance of 500 metres from the transport office of the GNCTD, and at a distance of 500 metres from Tivoli Gardens. It is presently situated at a distance of 1 1/2 km. away from Chhattarpur Metro Station, and is about 2 to 2 1/2 km. away from Qutub Minar Metro Station. Mr. Vasisht submits that the lease deed dated 04.09.2000 (Ex.PW1/1) pertained to a comparable property inasmuch, as, it pertained to an auction held by the DDA in November, 1995 of a commercial plot admeasuring 386.57 sq. metre, which was sold for a consideration Rs. 2.87 crores. The said land is situated in village Lado Sarai - which is at a distance of 2.5 km. from the land in question, and translates to a rate of Rs. 62,121/- per sq. yard. Mr. Vasisht submits that if 15% increase per annum is applied, the land rate of the said plot would come to Rs. 1,08,711/- per sq. yard in the year 2000. Considering that the said land was given on a leasehold basis, the market value of the same - had it been freehold, would be double, i.e. Rs. 2,17,423/- per sq. yard. As opposed to that, the appellant had made a claim of Rs. 1,00,000/- per sq. yard for the acquired land, which was most reasonable.

7. Learned counsel submits that the learned ADJ has failed to take into account the appreciation of the value of the acquired land, on the account of its potentiality. He submits that the acquired land had a great locational advantage, and the same could have been used for both residential and commercial purpose. In this regard, the learned counsel placed reliance on P. Rama Reddy Vs. LAO, HUDA, , (1995) 2 SCC 305, and Sangunthala Vs. STLA, , (2010) 3 SCC 661, wherein it was held that while determining the value of the property acquired, one has to see whether the acquired land has got the building potentiality - to be used for the building purposes in the immediate, or in the near future. Lastly, Mr. Vashisht submits that learned ADJ has wrongly deducted 65% of the assumed rate for developed residential plot as development charges. Learned counsel submits that the learned ADJ has failed to provide any reasoning for the deduction, which was already developed. He submits that the acquired land was a freehold property and was also subjected to property tax assessment. He submits that the appellant had been residing in the property since 1980. He further submits that the acquired land is situated on the main Chhattarpur Road and the same had modern facilities and infrastructure, i.e. roads, drainage and electricity, etc., at the time of issuance of notification under Section 4 of the Act. In this regard, learned counsel has relied upon Bhawatulla Samanna Vs. STLAO, , (1991) 4 SCC 506, and Trishla Jain & Anr. Vs. State of Uttaranchal & Ors., , (2011) 6 SCC 47, wherein the Supreme Court had laid down the principles/factors to be considered, while applying deductions towards development

charges, and that an already developed land shall not be subjected to any deductions on account of development charges.

8. On the other hand, Mr. Pathak, Ld. Counsel for the respondent, submits that it is an admitted fact that the acquired land was agriculture land, on which a farm house was constructed. In this regard, he draws the attention of this court to the cross examination of the appellant, Balwant Singh (PW-1), wherein he, inter alia, stated:

"It is correct that land was being used for agriculture purposes. It is correct that I did not obtain any permission from the government for converting the land from agriculture land to farm house. There were many trees on the land at the time of acquisition. It is correct that there is no government hospital or college at village Chattarpur. It is wrong to suggest that I was running a farm house on the land acquired illegally and unauthorizedly."

9. Mr. Pathak submits that the statement of Balwant Singh (PW-1) was tendered on 03.08.2009, and the statement of Sh. Om Prakash Gaur (PW-2), Patwari, Village Chattarpur, was recorded on 24.05.2011, whereas the notification under Section 4 of the Act was issued vide notification No. F.9 (44) 2000-L&B/LA/10583 dated 16.10.2000. Therefore, the statements of PW-1 & PW-2 cannot be made the basis for claiming that the said land was fully developed, with all the modern facilities and infrastructure available, at the time notification under Section 4 of the Act was issued.

10. Mr. Pathak submits that the reliance placed by the Ld. Counsel for the appellant on the Perpetual Lease Deed dated 04.09.2000 (Ex.PW1/1) of Lado Sarai, is misplaced, as that is of a smaller plot allotted for commercial purpose by the DDA, and the same cannot be made the basis to arrive at the market value of the acquired land, which is an undeveloped large tract of agriculture land. He submits that the circular rates fixed by the Department of Urban Development, Government of India, for the residential plot in the year 2000 on Mehrauli-Badarpur road was at Rs. 8,360/- per sq. metres. He further submits that the learned ADJ has rightly deducted 65% as development charges, in order to justify the market rate of the acquired land on the date of notification. He has placed reliance on Lal Chand Vs. Union of India and Anr., , (2009) 15 SCC 769. Therefore, after deducting 65% as development charges from the market value of the residential plot of that area, the learned ADJ has rightly arrived at the market value of Rs. 2,926/- per sq. metres. He further submits that the government has invested a huge amount in development of the said area such as developing roads, sewage facilities, electricity etc. and that the appellant cannot take benefit on account of huge investment made by government out of public exchequer.

11. The Supreme Court in Kapil Mehra & Ors. Vs. Union of India & Anr., , (2015) 2 SCC 262, has observed as under:

"10. Market Value: First question that emerges is what would be the reasonable

market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:-

- (i) existing geographical situation of the land;
- (ii) existing use of the land;
- (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and
- (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value."

12. From the statement of PW-2, Patwari, Village, Chattarpur, it is evident that the acquired land is situated on the main Chattarpur Road. The acquired land is 2-2 1/2 kilometers away from Chattarpur Mandir and Qutub Minar. Therefore, it is evident that the acquired land had considerable geographical advantage. The fact that the statement of PW-2 was recorded on 24.05.2011, and the notification under section 4 of the Act was issued in the year 2000, does not take away from the locational advantage that the land enjoyed, as the said facts existed even when the notification under Section 4(1) was issued.

13. The appellant has placed reliance on Ex.PW-1/1 - a lease granted by the DDA, to justify his claim for compensation. The appellant claims that this lease is a comparable sale of a plot in the vicinity and could be looked at to assess the market value of the land in question.

14. In relation to comparable sale transactions, the Supreme Court, in Karnataka Urban Water Supply and Drainage Board and Ors. v. K.S. Gangadharappa & Anr., , (2009) 11 SCC 164, has, inter alia, observed as follows:

"It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

- (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.

It is only when these factors are present, it can merit a consideration as a comparable case (See *Special Land Acquisition Officer v. T. Adinarayan Setty* (, AIR 1959 SC 429) Page 12 These aspects have been highlighted in *Ravinder Narain v. Union of India* , (2003) 4 SCC 481."

15. Perusal of Ex.PW-1/1 shows that the same pertains to a plot auctioned by the DDA on 27.11.1995, for grant of lease hold rights of a commercial plot in a Local Shopping Centre at Lado Sarai. I have difficulty in accepting the said instance as a good exemplar for the present case. Firstly, the same pertains to a commercial plot, whereas the land in question is agricultural. Secondly, the said plot is situated in a fully developed Local Shopping Centre of the DDA, which means that it has the advantage of being developed in a planned manner with proper access through roads, pavements, walkways and all other attendant facilities which a Local Shopping Centre of DDA has. Presumably, it would also have planned parking areas and other commercial plots in the LSC - thus making it a part of a larger commercial complex. The same would, obviously, lead to synergy and enhance the value of the plot. Thirdly, the said commercial plot is much smaller than the land in question. Fourthly, being an auction sale, the sale price cannot be straightaway accepted as the true market price of the said plot on the date of the auction.

16. While considering the competition involved in auction of commercial/residential plot by DDA, the Supreme Court in *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag And Ors.* , (2011) 2 SCC 246, has observed:

"6. But auction-sales stand on a different footing. When purchasers start bidding for a property in an auction, an element of competition enters into the auction. Human ego, and desire to do better and excel over other competitors, leads to competitive bidding, each trying to outbid the others. Thus in a well advertised open auction-sale, where a large number of bidders participate, there is always a tendency for the price of the auctioned property to go up considerably. On the other hand, where the auction-sale is by banks or financial institutions, courts etc. to recover dues, there is an element of distress, a cloud regarding title, and a chance of litigation, which have the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. As a result, courts are wary of relying upon auction sale transactions when other regular traditional sale transactions are available while determining the market value of the acquired land. This Court in *Raj Kumar v. Haryana State* , (2007) 7 SCC 609 observed that the element of competition in auction-sales makes them unsafe guides for determining the market value."

(Emphasis supplied)

17. While dealing with allotment rates of DDA for developed plot, compared to the market value of large agriculture land, the Supreme Court in Lal Chand (supra), has observed:

"12. On careful consideration, we are of the view that such allotment rates of plots adopted by Development Authorities like DDA cannot form the basis for award of compensation for acquisition of undeveloped lands for several reasons. Firstly market value has to be determined with reference to large tracts of undeveloped agricultural lands in a rural area, whereas the allotment rates of development authorities are with reference to small plots in a developed lay out falling within urban area. Secondly, DDA and other statutory authorities adopt different rates for plots in the same area with reference to the economic capacity of the buyer, making it difficult to ascertain the real market value, whereas market value determination for acquisitions is uniform and does not depend upon the economic status of the land loser. Thirdly, we are concerned with market value of freehold land, whereas the allotment "rates" in the DDA Brochure refer to the initial premium payable on allotment of plots on leasehold basis."

(Emphasis supplied)

18. In view of the above discussion, I am of the opinion that the Perpetual Lease Deed dated 04.09.2000 Ex. PW-1/1, relied upon by the appellant, cannot be considered as a comparable sale for determining the market value of the land in question. Pertinently, apart from the Perpetual Lease Deed dated 04.09.2000 Ex. PW-1/1, there is no other evidence lead by the parties in order to assist this Court to arrive at the market value of the land by adopting the comparable sales value method.

19. The learned ADJ, in order to arrive at the market value of the acquired land, relied upon the aforesaid circular No. J-22011/4/95-LD issued by the Department of Urban Development, Government of India. This circular fixed the rates for residential plots in the year 2000 on Mehrauli-Badarpur Road at Rs. 8,360/- per sq. metres. The said land is in close proximity of the acquired land. The learned ADJ deducted 65 % from the said rates as development charges from the circle rate residential properties i.e Rs. 8,360/- as on 16.10.2000, and arrived at the market value to Rs. 2,926/- per sq. metres.

20. In the instant case, having regard to the extent that the land acquired which is situated in the Revenue Estate of Village Chattarpur, Tehsil Hauz Khas and based on the relevant evidence placed on record, it could be said that the acquired land was an urban semi-developed agricultural land. It is also evident that most of the basic amenities were available in the area at the time notification was passed. The land acquired demonstrably had a geographical advantage.

21. In Lal Chand (supra), the Supreme Court considered the issue whether the

circle rates/ guideline value rates can be used to determine the market value of the acquired land. After referring to several other decisions, including the decision in *Jawajee Nagnatham Vs. Revenue Divisional Officer*, (1994) 4 SCC 595, and *U.P. Jal Nigam Vs. Kalra Properties (P) Ltd.*, (1996) 3 SCC 124, the Supreme Court held that there is no statutory basis to consider such circle rates as sacrosanct, as the purpose of the said rates is only to fix the rate at which the minimum stamp duty would be payable on transactions pertaining to the land covered by the circle. Such circulars merely fix the guideline value for the purposes of determining the true market value of the property disclosed in instruments requiring payment of stamp duty. The guideline value is only prima-facie rate prevailing in the area, and it is open to the registering authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline value as the last word on the subject of market value. Thus, the approach of the learned ADJ in pegging the market value of the acquired land on the basis of the aforesaid circular does not appear to be correct. The rate notified in the said circular could, at best, have been used as a guideline and nothing more.

22. There is merit in the submission of learned counsel for the appellant that the aspect of potentiality has altogether been omitted from consideration by the learned ADJ. The land in question is situated on the main Chhattarpur Road. It was a main road when the notification under Section 4(1) was issued in the year 2000, and it was precisely for this reason that the same had been developed as a 100-foot road by the time the statements of the witnesses were recorded. Thus, the accessibility to the land in question was unhindered. Being on the main/trunk road, even though the user of the land had not been changed from agricultural to any other purpose at the time of issuance of notification under Section 4(1) of the Act, the location of the land in question itself enhanced the potential of the said land for being put to other uses such as residential or commercial. It is not even in dispute, and it has been established on record, that the appellant had obtained the requisite permission for setting up a farmhouse on the land in question. The proximity of the land with well-established landmarks such as Chhattarpur Mandir, Qutub Minar, Mehrauli Village and Tivoli Garden also clearly show that most, if not all, facilities and amenities were available on the land such as water, electricity, and obviously, the road.

23. Judicial notice can be taken of the fact that the notified circle rates in Delhi in the past - including the period when the land in question was acquired, were substantially lower than the actual prevailing market rates. It is common knowledge that sale transactions were being registered on the notified rates, whereas the balance consideration would be paid either in cash, i.e. from unaccounted wealth or, even if paid by cheque/ pay order, i.e. through banking channels, would not be disclosed as part of the consideration in the sale document with a view to minimize the liability towards stamp duty. It was the low circle rates notified by the Government which led to generation and utilization of black money in real estate transactions. It is in recognition of this

lacuna that in recent times the circle rates have been raised substantially to bring them in tune with the actual market rates so as to minimize the loss of revenue earned through stamp duty, and also to prevent generation and utilization of black money in Delhi. Reference may be made to the observations made in paragraph 32 by the Supreme Court in *State of Haryana & Others Vs. Manoj Kumar*, (2010) 4 SCC 350:

"32. It is not disputed that the commercial plot of 788 sq.yards located at Delhi-Mathura Mewla Maharajpur, Faridabad was valued by the Circle rate at Rs. 4,200 per sq. yard fixed by the Collector of Faridabad meaning thereby that after the notification, no sale deed can be registered for an amount lesser than Rs. 4,200/- per sq.yard. It may be pertinent to mention that, in order to ensure that there is no evasion of stamp duty, circle rates are fixed from time to time and the notification is issued to that effect. The issuance of said notification has become imperative to arrest the tendency of evading the payment of actual stamp duty. It is a matter of common knowledge that usually the circle rate or the collector rate is lower than the prevalent actual market rate but to ensure registration of sale deeds at least at the circle rates or the collector rates such notifications are issued from time to time by the appellants."

(Emphasis supplied)

24. Considering the fact that the notified circle rate for residential land in the area in question in the year 2000 was Rs. 8,360/- per square metre, and the fact that the said notified rates were subdued from the prevailing market rates by about 30% at the very least, I am of the view that the market rate for residential lands in the area in question in the year 2000 would be Rs. 10,868/- per square metre.

25. Turning to the aspect of deduction for development to be applied in the present case - considering that the land in question was agricultural and for being put to residential or other uses, the same would require incurring of expenditure towards development, I may refer to the judgment of the Supreme Court in *Lal Chand* (supra), the Supreme Court has observed that deduction towards development can range from 20% to 75%, depending on various factors, it has been held:

"13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilized for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilize around 40%

of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of leveling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civil amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

16. On the other hand, if the residential plot is in an unauthorized private residential layout, the percentage of "deduction for development" may be far less. This is because in an unauthorized layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorized layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.

17. The "deduction for development" with reference to prices of plots in authorized private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq. m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary.

20. Therefore the deduction for the "development factor" to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorized private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

21. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout-whether it is residential, residential-cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%."

(Emphasis supplied)

26. In *Sabha Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and Ors. vs. Special Land Acquisition Officer and Ors.*, (2012) 7 SCC 595, while determining the amount of deduction for development for underdeveloped and undeveloped land, the Supreme Court has held as under:

"19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In *Kasturi vs. State of Haryana*, (2003) 1 SCC 354) the Court held: (SCC pp. 359- 60, para 7)

"7... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84

acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

(Emphasis supplied)

The rule of 1/3rd deduction was reiterated in *Tejumaal Bhojwani v. State of U.P.* (, (2003) 10 SCC 525, *V. Hanumantha Reddy v. Land Acquisition Officer*, (2003) 12 SCC 642, *H.P. Housing Board v. Bharat S. Negi* (, (2004) 2 SCC 184 and *Kiran Tandon v. Allahabad Development Authority*. (, (2004) 10 SCC 745"

27. The appellant has placed reliance on *Trishala Jain* (supra). In this decision, to arrive at the fair market value of the acquired land and considering the element of potentiality and location of the acquired land, the Supreme Court has held as under:

"42. The cumulative effect of the documentary and oral evidence on record is that it is a case of acquisition of land which is situated on a reasonably good location surrounded by developed areas having civic amenities and facilities and further development activity was going on in nearby areas. It was also submitted by the claimants that plotting has already been done on the acquired land and some plots of land have been sold immediately prior to the issuance of the Notification under Section 4(1) of the Act. It is evident that the land acquired had the potential of being developed for residential or institutional purposes and as already noticed, the same was acquired for construction of a Government Polytechnic Institute. Therefore, it is a case where the Court should apply minimal deduction which will meet the ends of justice and would help in determining just and fair compensation for the land in question. We are of the considered view that 10% deduction from the market value of the acquired land would meet the ends of justice."

28. In my view, the decision in *Trishla Jain* (supra) cannot be taken advantage of by the appellant for the reason that in that case the acquired land had already been plotted which itself showed that there was minimal development work required to be carried out. The land had been acquired for setting up of a single

institution, namely a Government Polytechnic Institute. On the other hand, in the present case, the land of the appellant admeasures a little less than 8 Bighas (7 Bighas & 15 Biswas). Thus, to carry out developmental work, the deduction would be somewhat higher than 10%. Taking into consideration all aspects such as extent of development which had already taken place in the surrounding areas, the extent of the land acquired and the aforesaid decision of the Supreme Court in Lal Chand (supra) and Sabhia Mohammed Yusuf (supra), in my view, the deduction for development to the extent of 15% would be justified in the facts of the present case to arrive at the market value of the acquired land. Thus, applying the deduction of 15% on the rate of Rs. 10,868/- per sq. mtr., the market value of the land in question would arrive at Rs. 9,237.80/- per square metre.

29. In addition to this, the appellant shall be entitled to all statutory benefits, that being 30% solatium on the market value in view of the compulsory nature of acquisition as per section 23(2) of the Act, and additional 12% per annum on the market value as provided under section 23(1A) from the date of notification till the date of award or possession, whichever is earlier. The appellant is also held entitled to interest on the enhanced compensation @ 9% per annum from the date of award or dispossession, whichever is earlier till expiry of one year. Thereafter, the appellant is entitled to an interest of 15% per annum till the date of payment.

30. In view of the aforesaid discussion, the appeal stands disposed of.