

(1987) 04 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 40 and 168 of 1988

Bhagwan Das and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:

Constitution of India, 1950 — Article 254

Citation : (1988) 2 WLN 674

Hon'ble Judges : Farooq Hasan, J

Bench : Single Bench

Judgement

Farooq Hasan, J.—The aforesaid two appeals are directed against the common judgment dated 5-11-1985 passed by the Civil Judge, Jaipur District Jaipur (trial court) and the same are filed u/s 54 of the Rajasthan Land Acquisition Act, 1953, (here in after for brevity, "the Act"). Both these appeals are disposed of by one and single judgment as they are almost identical to each other.

2. Briefly stated the facts of the case are that the State of Rajasthan issued a notice u/s 4 of the Act on April 30, 1964 for acquisition of the lands for educational institutions. The declaration u/s 6 of the Act was made and the same had been published in the Rajasthan Patrika of August 6, 1964; in that declaration, the lands bearing Khasra No. 61 having its area as 43 bighas 15 biswas, Khasra No. 65 having its area as 64 bighas total area of which is 107 bighas & 15 biswas, situated in village Jhalana Doongar, Tehsil Sanganer, Distt. Jaipur have also been included and the same have been claimed to be land of Late Dwarka Das Kotewala; and similarly the following lands which are claimed by the appellant-T.N. Sawhney as its Khatedar were mentioned in the declaration:

Out of Khasra No. 22 - 15 Bighas, 1 Biswa; and

Khasra No. 68 - 112 Bighas & 13 Biswas.

3. The aforesaid lands were acquired by the State Government under the provisions of the Act in the year 1964 and the possession of which had been

taken by the Government from the appellants in both these appeals, on April 23, 1965....

4. The Land Acquisition Officer awarded compensation for acquisition of the land to the various concerned persons vide his Award dated September 24, 1965 @Rs. 350/- per bigha. So far as the claim of Late Dwarka Das Kotewala and T.N. Sawhney (appellants) is concerned, no compensation was granted to them on the ground that the land claimed by them had been recorded in the Revenue records as Siwai Chak and as such, they were not held to be entitled to any compensation, what so ever.

5. Late Dwarka Das Kotewala and T.N. Sawhney had taken proceedings in the Revenue courts for getting their rights decided in respect of the land which had been wrongly recorded according to the appellants in the Revenue record as Siwai Chak by two different suits. There is no dispute that these matters had been taken upto this Court by way of filing writ petitions (No. 1214/69 filed by T.N. Sawhney; and No. 1085/69 filed by Dwarka Das Kotewal. Both the aforesaid writ petitions were allowed by this Court vide its judgment dated 18th October, 1979 and thereby both the present appellants (Late Dwarka Das Kotewal & T.N. Sawhney) were declared as Khatedars of the land claimed by them the details of which have been given above and which are disputed in the present proceedings. On the basis of the aforesaid decision by this Court in writ proceedings, the compensation has been claimed by the appellants.

6. At the instance of Late Dwarka Das Kotewal and T.N. Sawhney, a reference has been made by the Land Acquisition Officer u/s 18 of the Act to the District Judge on 27-1-1966 registered on 30-5-1966. The following issues were framed on the petitions of the parties:

[1] Was the objector, the owner of the land and as such an interested person in the compensation of the land acquired?

[2] If so, whether he is entitled to compensation as detailed in para No. 8-A of his application?

[3] What relief?

The following additional issues were also framed:

[4] Whether the petitioner is the rightful owner of the property acquired?

[5] What is the effect of the decision of the court of reference?

7. In both the two cases, the claimants-appellants claimed compensation in respect of their land @Rs. 10/- per sq. yard in addition to solatium @ 15% and so also the costs of dola and levelling charges. The appellants also claimed interest on the amount of compensation.

8. Reference was contested by the State of Rajasthan in both the cases, viz; reference No. 6/83 filed by Dwarka Das Kotewala, and reference No. 7/83. filed

by T.N. Sawhney, which were consolidated vide order dated 24-7-1976. In both the reference cases affidavits, registered sale-deeds and other documentary evidence were produced by the appellants. From the perusal of the record, it appears that the State Government was given a lot of opportunity to produce affidavits in rebuttal and ultimately two affidavits-one of Baluram, Additional Collector. Jaipur and other- of the Tehsildar, Sanganer were filed.

9. During the pendency of the reference cases, Dwarka Das Kotewala died on 6-6-1980. His legal representatives (present appellants in Civil Misc. Appeal No. 40/1986) were brought on record,

10. Both the reference petitions came up for disposal before the Civil Judge, Jaipur District Jaipur who vide his order dated 5th November, 1985 has allowed the reference petitions of the appellants by a common order and has awarded a sum of Rs. 4000/- per Bighas as compensation 10% as solatium and interest @4% and further a sum of Rs. 500"- as costs.

11. In reference petition No. 7/83 the claim was of Rs. 44,46,000/-excluding the interest @6 % from the date of possession; and similarly, in reference petition No. 6/83, Rs. 37,54,000/- had been claimed as compensation excluding the interest.

12. The crux of the matter with regard to the claim of compensation in both the cases is thus.

13. The land so acquired is situated within the Municipal limits of Jaipur City. The land acquired is proved very potential. In order to strengthen this point certain precedents and instances are given out; such as that, in the vicinity of the acquired land. Malviya Regional Engineering College, (constructed on the land claimed by T.N Sawhney) Malviya Housing Board Colony, Hotel Clark Amber (a Five-star Hotel), Khetan Polytechnic College, Godowns of Food Corporation of India Mahavir Udyan Bajaj Nagar Colony and a numerous establishments, organisations, and institutions are in existence; that, the land so acquired is situated at a distance of about six kilometers from Sanganeri Gate of Jaipur City, about 2 kilometers from the University of Rajasthan, about 1 kilometer from the Collage of Commerce and less than an half kilometer from Khetan Polytechnic College; that in the near vicinity of the land in question, the land were/are being acquired and sold from time to time. viz. the land where Mahaveer Udyan is situated, is just in front of the land in question and is divided only by a road known as "Jawahar Lal Marg" Mahaveer Udyan is situated at about 5.5 kms. from Singaneri Gate, the land nearby Mahaveer Udyan (after acquisition) was divided in plots by the then Urban Improvement Trust, Jaipur (now, Jaipur Development Authority) the plots were auctioned at the rates varying from Rs. 13/- to Rs. 15/- per sq. yards in the year 1964 it has been contended that there is no distinction what so ever in the nature situation or distance or potential value of, both the lands i.e. lands in question and the land known as Mahaveer Udyan; (ii) the land acquired in the year 1960 for the purpose of construction of

godowns of the Food Corporation of India is situated at a distance of about 61.5 Kms. from the Sanganeri Gate of the Jaipur City-the compensation in respect of this land was granted by the Court on the reference, at rate of Rs. 3.50 per sq. yard; (iii) the land acquired in the year 1963 for the construction of Gandhi Nagar Railway Station and the compensation of which was given, at rate of Rs. 8,000/- per Bigha.

14. On the basis of the numerous documents (certified copy of its have been produced by the appellants in support of their case with regard to the rate of compensation) viz. (i) Judgment dated 15-3-1967 in Thakur Raghuvver Singh v. State of Rajasthan passed by the District Judge. Jaipur City; (ii) judgment dated 9-5-1980 passed by this Court in D B. Civil First Appeal No. 54 of 1971-Rao Narain Singh Masuda v. Union of India, (iii) Award dated 4-6-64 given by the Additional Collector (Land Acquisition) Jaipur, District Jaipur in the case of Smt. Leelawati; (iv) sale deed dated 17th December, 1966 of Smt. Thakurni Anand Kanwar; (v) sale deed dated 27th March, 1964 of Smt. Surjeet Sahai; (vi) sale deed dated 18-7-1965 of Maharaj Kumar Jai Singh; (vii) sale deed dated 24-3-1964 of Smt. Chanan Devi; and (viii) sale deed dated 26-7-1969 of Smt. Tara Devi, it has been contended that the trial Court committed an error in awarding the compensation.

15. I have heard the learned Counsel for the parties. The learned Counsel for the appellants in both the two cases, based their arguments on the grounds urged in the appeals as well as taken before the trial Court. In support of their arguments, the learned Counsel for the appellants cited series of judgments of various High Courts and so also of the Supreme Court.

16. Shri Nathulal Jain, learned Advocate General who is associated by Shri L.K. Sharma, Deputy Government Advocate, on the other hand, based his arguments on the provisions of Sections 23 & 24 of the Act, and submitted that the Civil Judge committed no error in awarding the compensation and being the reasonable compensation, no interference is warranted in the Award under challenge by the appellants in the appeals. Merely because, the land in question is in the Abadi Area it does not mean that land can be treated as Abadi one and so, the land in question can never be treated as "Abadi" land, added Shri N.L. Jain.

17. Learned counsel for the appellants in replication submitted that where the agricultural land is converted into "Abadi", one has to pay expenses of the conversion and development, and so, while determining the compensation of an agricultural land, the only consideration before the Authorised Officer would have been that the expenses of conversion and development could have been reduced but, in the instant case, the trial Court ignored this aspect of the matter, and decided the compensation without considering the evidence, oral or documentary, produced by the defendant, in as much as without discussing evidence on record it decided the case summarily, after placing reliance on the decision in Hansraj Bahl v. State of Rajasthan and Anr. 1980 WLN 119 : ILR 1980

Raj. 670.

18. Now the decks are clear. The points emerges for consideration in the facts and circumstances and on the arguments urged by the learned Counsel for the parties in these appeals, are thus:

[1] Whether, the market value of land in question at rate of Rs. 4000/-per Bigha awarded by the learned Civil Judge is grossly inadequate?

[2] Whether, the solatium at rate of 30% on the market value should have been awarded to the appellants because the acquisition was compulsory in nature?

[3] Whether, the amount of interest on the amount of compensation should also be awarded?

19. According to the appellants, on account of charge made in law regarding land acquisition, they are now entitled to claim solatium @30% on the amount of compensation awarded to them, and so also the interest @9% on the said amount of compensation from the date of which the State Government had taken the possession of the land from the appellants, and 15% from the date of expiry of one year after the date of taking possession.

20. In Rajasthan, the acquisition of the land is governed by the Rajasthan Land Acquisition Act, 1953. There is Central Law for acquisition of land under the title, Land Acquisition Act, 1894, and prior to it, the title of the Act was Land Acquisition Act, 1876. It extended to the whole of British India and the Act of 1894 was made applicable to the whole India except few States The Central Law was amended from time to time and finally it was amended by the Land Acquisition (Amendment) Act, 1984.

21. Learned counsel for the appellants also submitted (hat according to the Land Acquisition Act, 1894 which stands now amended by the Land Acquisition (Amendment) Act, 1984, the solatium is payable @30% as is evident from Section 15 of the Land Acquisition (Amendment) Act, 1984 which amends Section 23. Section 15 of the Amending Act reads as under:

13. Amendment of Section 23.-In Section 23 of the principal Act:

(a) after Sub-section (1), the following sub-section shall be inserted, namely:

(1-A) In addition to the market value of the land, as above provided the Court shall in every case award an amount calculated at rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (I), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, which ever is earlier.

Explanation: In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded."

(b) in Sub-section (2), for the words "fifteen per centum", the words "thirty per centum" shall be substituted.

22. Section 28 which provides for payment of interest also stands amended by virtue of Section 18 of the Amending Act, 1984 which is reproduced as under:

18. In Section 28 of the principal Act:

(a) for the words "six per centum" the words "nine per centum" shall be substituted;

(b) the following proviso shall be inserted at the end, namely:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken interest at rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry.

23. In these circumstances, the learned Counsel for the appellants submitted that in view of the amendments made in the central law by virtue of the Amending Act, 1984, the appellants were entitled to get solatium and interest at the enhanced rate as the amended provisions are applicable for the Rajasthan State, as a whole.

24. Now, two fold questions arise; first is whether the amended provisions of Sections 23 & 28 of the Act were applicable to the proceedings in hand; and second is, whether after the Central Act of 1984 came into force it would be applicable in Rajasthan where there is State legislation in existence.

25. As regards the first question, the controversy has been settled by their Lordships of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, where in it has been held that the amended provisions of Section 23(2) and Section 28 of the Land Acquisition Act are applicable to all the proceedings relating to the compensation pending at the date of commencement of the amending Act or are filed subsequent to the date, whether before the Collector or before the Court or before the High Court or the Supreme Court. In view of the aforesaid principles of law laid down by the Apex Court, the provisions of the Land Acquisition Act (Central) amended by virtue of Amending Act, 1984, are applicable to the acquisition of the land of the appellants in both the appeals as the matter is pending before this Court.

26. In Prahladi and Ors. v. State of Rajasthan (S.B. Civil First Appeal No. 115 of 1972 decided on May 14, 1986) this Court observed that the amended provisions of the Central Act will be applicable in the State of Rajasthan.

27. In Bhag Singh v. Union Territory, Chandigarh (supra) their Lordships of the Apex Court observed that u/s 30 Sub-section (2) of the Amending Act the

provisions" of the amended Section 23 Sub-section (2) and Section 28 are made applicable to all proceedings relating to compensation, pending on 30th April, 1982. In *Prahladi v. State of Rajasthan* (supra), this Court observed that it is obligatory for the Court to give affect to the provisions of the amended Section 23(2) and Section 28 in determining the amount of compensation provided the Land Acquisition (Amendment) Act, 1984 is applicable.

28. On the point, whether the provisions of the Central Act will be applicable in the State of Rajasthan where already there is in force a separate law this Court in *Prahladi v. State of Rajasthan* (supra) after placing reliance on the following decisions:

Lalbhai Talsibhai Patel Vs. Additional Special Land Acquisition Officer, ; Mohammed Sheriff and Others Vs. State of Kerala, Zaverbhai Amaidas Vs. The State of Bombay, ; and T. Barai Vs. Henry Ah Hoe and Another,

Observed that it is clear that subsequent legislation made by the Parliament providing for higher rate of interest and solatium had the effect of repealing the repugnant State law providing lesser amount of compensation by virtue of proviso to Article 254(2) of the Constitution. The proviso to Clause (2) lays down that the Parliament has the authority to supersede State Legislation, which has been amended by the President by making a law on the same matter. The Parliament can enact a law adding to varying or repealing a law of the State which related to a matter mentioned in the concurrent List. It is not necessary for the Parliament to expressly State that it repeals the law made by the State. If there is repugnancy between subsequent legislation made by the Parliament and the law operating in the State, the law enacted by the Parliament would prevail to the extent of such repugnancy.

29. I am in perfect agreement with the proposition of law laid down by my brother-P.C. Jain, J. in *Prahladi v. State of Rajasthan* (supra) and the proposition laid down by Kerala and Gujarat High Courts. As the provisions of the Act, 1953 (Rajasthan State Legislation) provide lesser amount with respect to interest and solatium, they are repugnant to the Central Act and as such the law enacted by the Parliament would prevail.

30. The State of Rajasthan has, itself accepted that the Central Act is applicable to all the acquisition made by it, as is apparent from the order of the Secretary to the Government of Rajasthan, Revenue Department vide No. D.O. Tip/1(2) Raj./4/84 dated 30-1-1986 (a photo state copy of the same has been submitted as Scheduled B to the written arguments by the appellants).

31. The appellants, thus, are entitled to solatium @.30% of the total compensation to be awarded to the appellants for their land acquired, and so also the interest at rate of 9% per annum on the enhanced amount of compensation from the date on which the possession was taken by the State Government from the appellants and at rate of 15% per annum from the date of expiry of one year after the date of taking possession till the date of payment of

compensation.

32. Now, the next question remains to be decided and arises for consideration is, as to what should be the reasonable compensation.

33. I have already mentioned the evidence in substance produced by the appellants in these appeals.

34. Before I deal with the evidence of the claimants and that of the State Government, it appears appropriate to mention that the market value which is payable to a person whose land is acquired is not what the persons who take the land will gain by taking it but what the person from whom it is taken will lose by having been taken from him. The meaning of the expression "market value" and the factors to be considered in determining it have been stated in certain decisions of the Apex Court.

35. In *Raghubans Narain Singh v. State of UP* AIR 1967 SC 465, it has been observed that market value on the basis of which compensation is payable means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition with all its existing advantages and its potential possibilities when laid out in its most advantageous manner excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. "For the purposes of determining potentiality, the Apex Court said that it is not the fancy or the obsession of the vendor that enters the market value but the objective factor namely, whether the said potentiality can be turned to account within a reasonably near future.

36. It is, therefore, a question of fact in each case as to whether a particular land has the potentiality of being used as a building site. This factor has to be decided on the basis of the evidence led by the parties. In this connection, the observations made by the Apex Court in *Chaturbhuj Pande and Others Vs. Collector, Raigarh*, are relevant which read as under:

The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into and their experience of life.

37. It is settled that to determine compensation is not an exact science. The question of fair compensation is not algebraic problem to be solved by abstract formula. There is an element of guess work inherent in most cases involving determination of market value of the acquired land. The basic thing, however, is to keep into account the relevant factors while so doing.

38. In *Ahmed Yar Jung Vs. The Collector Land Acquisition, Hyderabad*, the Supreme Court laid down that where there was little evidence to support the conclusions of the Land Acquisition Officer and the trial Court, the rate or market value at which the land near the acquired land was sold at the time of the notification u/s 4(1) was the safe guide even if it involved some guess work.

39. In *Vijay Kumar Moti Lal Vs. State of Maharashtra*, it has been laid down that with regard to the locality, character of land, building potentiality, coming up of various constructions etc. as also the testimony of the President of the Municipality accepted by the High Court, the value of the land must be at rate of 15/- per sq. yard and not Rs. 2/- per sq. yard as awarded by the High Court. But, in that case, the Apex Court awarded compensation at rate of Rs. 10/- per sq. yard holding that the area not being fully developed a deduction of one third has to be made.

40. In *Adusumilli Gopalakrishna Vs. Special Deputy Collector (Land Acquisition)*, , it has been observed that an assessment of the compensation payable for the land acquired must take into account several factors, including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use of which neighbouring land has been put and the impact of such use on the land acquired and so on.

41. In *Quinquennial Digest 1976-1980 Vol. 4 pp. 861, 862 & 863* on the basis of the principle laid down by the Courts of this land, the Author has occasion to write down on the question of potentiality as under:

The land being included within Municipal limits of the City "L" which was a developing City as an Industrial Town the land in dispute had great potentialities as residential area and had acquired an urban character which could not be ignored. It had to be assessed as Urban land and not on the basis of agricultural qualities. Bona fide transactions subsequent to the notification could also be taken into consideration. The compensation treating the land as agricultural was, therefore, improper;

The estimation of market value in many cases, must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess;

The market value which is payable to a person whose land is acquired is not what the person who takes the land will gain by taking it, but what the person from whom it is taken will lose by having been taken from him. Further, it is settled that to determine compensation is not an exact science.

42. In the decision reported in *K. Subrahmanyamma Vs. District Welfare Officer, Eluru*, , it has been laid down that the fact that on all sides it (land acquired) is surrounded by houses, makes it a house site, though on the date of the notification it was agricultural land. It has also been held that the land acquired had not only a potential value as a house site but in fact it was a house site.

43. In the decision reported in *Dadu Yogendra Nath Singh and Others Vs. The Collector, Seoni*, it has been observed that the building in the immediate vicinity, was sufficient to establish its potential value as building sites.

44. According to the decision in *AIR 1965 SC 1026* , in awarding compensation if the potential value of the land is excluded it cannot be said that the

compensation awarded is the just equivalent of what the owner has been deprived of. As per the decision of the Punjab High Court in Gurdial Kaur Vs. Mukand Singh, potential value of the land as building site is not to be excluded while deciding compensation. The Delhi High Court in the decision reported in AIR 1984 Delhi 208 observed that the fact that prices of land have shown increase year by year must be taken judicial notice by the Court.

45. According to the decision of the Supreme Court in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, the land acquired has to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account; and these methods do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. It has been further observed that the High Court took judicial notice and in their view rightly so, that after the termination of Second World War in 1945 there was a rise in land values due to the increased demand of homes and residential plots for building purposes.

46. No coming to the facts and circumstances of the present case and keeping in view the afore quoted matrix on the crucial point involved in the present appeals. I would then like to discuss the evidence of the claimants (appellants) on record. The evidence adduced by the appellants can be divided into three parts, first part consists of sale deeds, second is of judgments and awards and third is with respect to the oral evidence in the form of affidavits produced by both the parties.

47. The trial Court while deciding the compensation did not at all discuss the evidence produced by the parties. It instead of deciding the matter on the evidence on record preferred to decide the case on the decision of this Court in Hansraj Bahl v. State of Rajasthan (supra), in as much as the Reference Court did not care of read the evidence on record and even the conditions pointed out in the aforesaid decision.

48. The appellants produced cogent and satisfactory evidence to show that even in respect of the land situated in village Bhojpur, the compensation has been paid at rate of Rs. 13,000/- and odds per Bigha. I have gone through the judgment reported in 1980 WLN 119 which relates to the land of village Bhojpura. The trial Court did not mention in its order the similarity of the case so as to conclude that the principles laid down in Hansraj Bahl v State of Rajasthan 1980 WLN 119 are applicable in the present case. It has not been mentioned by the trial Court as to what evidence was led by the parties and what was the consideration of the Court in awarding the compensation. In Hansraj Bahl v. State of Rajasthan certain documents were produced and after considering the documents so produced it has been observed that it is interesting to note that assuming for the sake of arguments the land covered by the Awards relied upon, is comparable with the land in question, the rate of market value adopted in one award is so much at variance with that in another which the Court considered it highly unsafe to place reliance on them. In that case, it has been further observed that even

though the awards may constitute a relevant piece of evidence but the Court showed inability to consider them as a reliable material to afford a basis for determination of market value. It is thus clear that brother Judges of this Court in *Hansraj v. State of Rajasthan*(supra) determined the compensation on estimate basis and did not place much reliance on the documents produced because of the variances in the documents produced. But, at the same time, the learned Judges further observed that it is true that the land in question is agricultural land but it is common knowledge that with the expansion of City of Jaipur big plots of land which were erstwhile put to agricultural use, were being converted into residential area; and it cannot be denied that the land in question like many other plots of agricultural land was acquired for construction of residential houses and business premises. It has further been observed that the land acquired should be valued not only with reference to its condition at the time of declaration but its potential value should also be taken into consideration to a certain degree, and for the purposes of market value to be determined, the Court shall take into consideration the transfers of land similarly situated in similar, use."

49. In the light of the observations made in the cases, referred to above, now it is to be determined as to whether the learned Reference Court was justified in awarding the compensation at the rate mentioned in its order and for that purpose, I will have to consider the documents brought on record.

50. As mentioned Wore, the documentary evidence produced by the appellants consists of the judgments of the Land Acquisition Officer, Reference Court, and the High Court; and sale-deeds and agreement to sell. So far as the judgments are concerned, those are not required to exhibit and they are admissible in evidence without there being any proof of them. But as regards the sale-deeds, it is true that the appellants did not produce the concerned persons for the purposes of proving execution of the sale-deeds but now as the law stands after the introduction of amendment made in the year 1984 in the Central Act such type of documents require no proof at all and they are admissible in evidence and the same may be accepted in evidence per the provisions of Section 51A of the Act which read as under:

51 A. Acceptance of certified copy as evidence:

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908) including a copy given u/s 57 of the Act may be accepted as evidence of the transaction recorded in such document.

51. It has been contended by the learned Counsel for the appellants that throughout the proceedings, the insistence was given regarding the value of land with reference to the situation of the same from Sanganeri Gate which according to the learned Counsel is the central point of City of Jaipur. According to the learned Counsel for the appellants, the potential value of land depends principally on its location apart from other factors, i.e. the-purpose for which it was

ultimately used.

52. There is no dispute that the land in question is situated hardly at a distance of about 2-1/2 kms. from Aerodrome, on the important road known as Jawaharlal Nehru Marg; and it is hardly at a distance of 1 km. from Gandhi Nagar Railway Station & 1-1/2 km. from the educational institutions viz. Commerce College, Khetan Polytechnic College, Poddar College of Management. Poddar Higher Secondary School Rajasthan College, Kanodiya College of Girls, and University of Rajasthan Campus. It has also not been disputed that the land in question is at a distance of about 1-1/2 kms. from the biggest housing colony of Jaipur known as Malviya Nagar Housing Board Colony, and one km. from Bajaj Nagar and Gandhi Nagar Colonies and, so also adjacent to the Harish Chandra Mathur Public Administration Institution Bapunagar, Tilak Nagar and numerous other Co-operative Housing Societies Developed nearby areas. It is situated in close vicinity of Amber Clark Hotel and other Industrial establishments. It is closely situated with the Eye Hospital and several Offices such as Khadi Board, Geological Survey of India, CPWD Television Studio, Panchayat Bhawan etc.

53. In view of the aforesaid circumstances, it appears that the land in question is well adjacent to the important places both, residential as well as commercial. As per the principles laid down in Mani Ram Sharma Vs. Union of India, , in assessing value for purposes of compensation, the essential inquiry must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but also with reference to the uses to which it may be devoted in future, potentiality is a true element of value. It includes probabilities, possibilities and prospects. The value of the land in the neighbourhood or adjoining areas is also to be taken into consideration for it may be relevant to a greater or lesser degree. The possibility that the authorities under the Reforms Act would have taken permission to building on the land has also to be taken account.

54. Apart from the oral evidence, the appellants have also placed on record the copies of the Awards in respect of the similarly situated lands which were acquired at or about the time when the land in question was acquired. The learned Counsel for the appellants in this connection placed reliance on the Award dated 4-6-1964 given by the Additional Collector (Land Acquisition) Jaipur District, Jaipur in the case of Smt. Leelawati. This Award pertains to the acquisition of land for providing good facilities Gandhi Nagar Railway Station and it is claimed to have been situated in the vicinity of the land in question; and the Award had been given at rate of Rs. 7692.30p. per Bigha

55. Judgment of Shri O P. Jain in Land Acquisition Ref. No. 13/70 Vasudeo Prasad v. State dated 12-4-1972 - the land was acquired for construction of food-grain godowns notice u/s 4 of the Act was issued on 18-2-1960 and u/s 6 was issued on 13-4-1960-the compensation was awarded at rate of Rs. 3.50p. per sq. yards and the land acquired is also claimed to have situated near the land in question

56. Award in case No. 81/81 Thakur Raghuveer Singh and Ors. v. State of Rajasthan decided on 15-3-1967 the land which was subject matter in acquisition was situated in village Bhojpura under the vicinity of the land in question-the land was acquired in the year 1953-the Award has been passed on 9-1-1966 and the compensation was awarded at rate of Rs. 1800/- per Bigha at the relevant time-on reference to the Civil Court enhancing the rate of compensation, it awarded at rate of Rs. 4.50 per sq. yard.

57. Judgment of the Division Bench of this Court in D.B. Civil First Appeal No. 54/71-Rao Narain Singh Masuda v. Union of India (decided on 9-5-1980) has also been produced. In that case, the compensation has been -awarded for the agricultural land at rate of Rs. 4 00/- per sq. yard.

58. Now I would like to deal with sale-deeds produced on behalf of the appellants.

59. According to the sale-deed of Smt. Thakurani Anand Kanwar dated 17-12-1966, agricultural land was sold at rate of Rs. 18300/- per Bigha equivalent to about Rs. 6/- per sq. yard. Sale-deed by Smt. Surjit Sahai dated 27-3-1964 shows that an agricultural land had been sold at rate of about Rs. 22160/-per Bigha. By the sale-deed executed by Maharaj Kumar Jai Singh dated 18-7-) 965, for an agricultural land Rs. 40,000/- per Bigha which comes about Rs. 13/-per sq yard was the sale consideration. Sale-deed dated 24-3-1964 executed by Smt. Chanan Devi, shows that agricultural land has been sold at rate of about Rs. 22 160/- per Bigha. According to the sale-deed executed by Kalyan s/o Bhairu, the agricultural land had been sold at rate of about Rs. 8,000/- per Bigha. By sale-deed dated 26-7-1969, executed by Smt. Tara Devi the agricultural land had been sold at rate of about Rs. 15,000/- per Bigha which comes about Rs. 5/-per sq. yard. The lands mentioned in the aforesaid sale-deeds are situated in the vicinity of the land in dispute in the present case.

60. The appellants also filed the record of the Everest Housing Cooperative Society which shows that the land had been allotted at rate of Rs. 8/- per sq. yard. The appellants have also filed documentary evidence with regard to the auction of plot by the Urban Improvement Trust conducted in the year 1961 and the Urban Improvement Trust fetched the price of land at rate of Rs. 13/- to Rs. 15/- per sq. yard. The appellants have also filed the record of Bajaj Nagar Housing Society from which it appears that the land was allotted at the rate Rs. 13/- per sq. yard. The appellants have also an agreement dated 20-1-1964 made between T.N. Sawhney (the appellant) and Shri Ram Rikshpal, which also shows that the land in question was agreed to be sold at rate Rs. 30,000/- per Bigha. The land auctioned by the Urban Improvement Trust was also acquired.

61. On behalf of the appellants, it has also been submitted that the land in question had been declared to be urban by a notification issued by the State Government on 7-10-1964 issued under the provisions of the Urban Improvement Act, 1959. From this notification which has not been denied by the learned Advocate General, it appears that the land in question falls within the

boundaries of the city of Jaipur which has been notified by the State Govt. under the said notification. I am unable to agree with the contention of the learned Counsel for the appellants that after the issuance of the notification dated 7-10-1964, the land in question has thus ceased to be agricultural, merely because the aforesaid notification had been issued, it did not mean that the land in question which has been recorded in the Revenue records as Agricultural land had been converted into Abadi or was ceased to be an agricultural land. No order has been placed on record by the appellants that the land in question has been converted into Abadi by the authorities concerned. But by this notification it may be assumed that the potentiality of the land in question has increased, because the land in question which though was agricultural land in nature, falls in Abadi area as declared by the State Government. Similar is the consideration with regard to the notification dated 12-10-1964 issued by the State Government with regard to the Municipal limits of the City of Jaipur and by this notification, the land in question falls within the Municipal limits of Jaipur and because of this circumstance, this can definitely be assumed that the potentiality of the land has increased.

62. On the basis of the documents discussed above, the learned Counsel for the appellants submitted that it has been proved by the appellants that the rate of compensation for the land in question could in no case be less Rs. 10/- per sq yard. It has further been argued that the evidence of the appellant has neither been controverted nor denied by the respondent in as much as this evidence goes unrebutted & can be held conclusive evidence. It has further been contended that the appellants have abandoned their claim and have restricted to Rs. 10/- per sq. yard because of their weak financial position. It is settled that to determine the compensation is not an exact science. The question of fair compensation is to be determined on the basis of the evidence brought on record. There is an element of guess work inherent in most of the cases involving determination of market value of the acquired land. The basic thing is how ever to keep into account the relevant factors while so doing.

63. In my opinion, the documents-specially the agreement dated 20-1-1964 in favour of T.N. Sawhney (appellant) are material for determining the compensation in the present case. The judgments of the Courts are best evidence in assessing the value for the purpose of compensation, whereas the Officer or the Reference Court are not required to close its mind to the value of the land in the neighbourhood or adjoining areas for, they may be very relevant or of assistance to greater or lesser degree. The potentiality is an element of value to be taken into consideration. It is true element of market value. As I have already observed that the potentiality, the probability of a, more advantageous use to which the land is put in true have all to be taken into consideration while determining the market value of the land. As discussed above, important buildings such as the Regional Engineering College are constructed on the land in question and the lands in the vicinity of the land in question are transferred by sale at a very high rate and compensation of the

same has also been awarded at a very high rate. On consideration of all these factors, I come to this conclusion that the land in question is assessed for the purpose of compensation by the Reference Court at a very low rate and deserves to be enhanced.

64. For the reasons given above, I am of the opinion that instead of Rs. 4000/- per Bigha (compensation awarded by the Civil Judge) the appellants are entitled to get the compensation of land in question at rate of Rs. 10,500/- (Rupees ten thousand five hundred only) per Bigha.

65. What ever amount has already been paid to the appellants will be adjusted from the compensation which is being awarded by this, judgment. The appellants are also entitled to the solatium at rate of 30% of the total compensation awarded for the land acquired. The appellants are also entitled to interest at rate of 9% per annum u/s 28 of the Central Act on the enhanced amount of Compensation from the date when the possession of the land was taken by the State from the appellants and at rate of 15% per annum from the date of expiry of one year after the date of taking possession till the date of payment of compensation.

66. In view of the foregoing discussions, both the appeals (No. 40/86 and No,168/1986) filed by Bhagwan Das and Ors. and T.N. Sawhney respectively are allowed. The amount compensation, awarded by the learned Civil Judge is, therefore, enhanced to the extent stated above. The appellants shall be entitled to recover from the respondents the amount of courts fee paid by them in this Court as costs of their appeals.