
(1961) 04 MP CK 0005
In the Madhya Pradesh High Court
Case No : F.A. No. 180 of 1959 (J)

Collector Raigarh

APPELLANT

Vs

Chaturbhuj Panda

RESPONDENT

Date of Decision : 28-04-1961

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 54

Citation : (1964) J LJ 288

Hon'ble Judges : T.C. Shrivastava, J; S.P. Bhargava, J

Bench : Division Bench

Advocate : H.L. Khaskalam, A.G.A and Ku. Rama Gupta, for the Appellant; R.K. Verma, V.D. Mishra, Y.S. Dharmadhikari and N.P. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.

1. This appeal by the Collector, Raigarh, u/s 54 of the Land Acquisition Act (hereinafter referred to as the Act) is directed against the award of the 2nd Additional District Judge, Raigarh, in Misc. Judicial Cases Nos. 13 and 14 of 1958. The award was made on a reference u/s 18 of the Act by the Collector, Raigarh in Land Acquisition cases relating to village Rengalpali, Tahsil Raigarh, District Raigarh. The respondents have filed a cross-objection requesting for raising the compensation awarded to them by the 2nd Additional District Judge. This judgment governs the disposal of both the appeal and the cross-objection.

2. The Orissa Government has constructed an irrigation tank under the Hirakund Dam Project. Several villages of the Raigarh Tahsil have been fully or partly submerged under water of the tank. At the instance of the Orissa Government, the State Government of Madhya Pradesh issued notifications under sections 4 and 6 of the Act for acquisition of lands in those villages for the tank. The lands belonging to the respondents and several other persons have been acquired giving rise to a number of acquisition cases from each village. Several appeals

have been filed against the awards in this Court. The claimants from Raigarh Tahsil had agreed that the evidence, oral and documentary, adduced in these miscellaneous judicial cases before the Additional District Judge shall be read for all other cases. It has also been accepted by the learned counsel for the parties that the evidence in other cases may also be read for the decision of these two appeals. Decision on certain issues between the parties as recorded in this case will be read in the connected appeals and will be referred to at appropriate places in those judgments.

3. The properties of the respondents acquired in these two cases are: (i) Lands (ii) A fruit garden (iii) Houses (iv) Wells and (v) Trees, plants etc. The Collector awarded the total amount of Rs. 56,254-6-0 in one case and Rs. 3,240 in another case. These amounts have been withdrawn by the respondents under protest. They requested the Collector to make a reference u/s 18 of the Act to the Court claiming the value of their lands, at Rs. 2,000 per acre and also claimed enhanced values for trees, plants and other properties acquired. The learned Additional District Judge raised the total compensation to Rs. 3,19,480-10-0 in respect of the several items. The Collector has, therefore, come up in appeal.

4. On behalf of the respondents, Shri R.K. Verma has raised a preliminary objection that the appeals should have been filed in the name of the State Government and as they have been preferred by the Collector, Raigarh, they should be dismissed. It is true that the State Government is the real party aggrieved and the appeals should have been filed in the name of the State Government through the Collector as their agent. However, the defect does not appear to us to be fatal. The Collector has a right to act for the Government under the specific provisions of the Act. For instance, it is the duty of the Collector to make an award and after he has done so, it is he who takes possession of the land u/s 16. The duty of paying the compensation is laid on the Collector u/s 31. Section 28 requires the Collector to pay interest on the amount awarded by the Court in excess of his award. In fact, all these amounts have to be paid by the State Government; but under the special provisions of the Act it is the Collector who has to perform that duty. Now, if the Collector wants to be relieved of a part of the statutory liability created by the award of the Court. He should, in our opinion, be entitled to prefer an appeal against the award. We do not think that it is necessary to file the appeal formally in the name of the State Government. Incidentally we may mention that the titles of several cases reported in the law reports from different High Courts as also of cases which were decided by the Privy Council and the Supreme Court, show the Collector alone as a party. Though the question regarding the tenability of the appeal in the name of the Collector has not been specifically discussed in any of these cases, it is apparent that this practice has been in existence for a long time.

5. Before we take up the points urged in support of the appeal, it would be desirable to make a few observations regarding the nature of proceedings before

the Collector or and the subsequent proceedings before the Court. In *Ezra Vs. Secretary of State for India*, ILR 32 Cal. 605 PC, the following observations appear regarding the nature of the proceedings before the Collector:

When the sections relating to this matter are read together, it will be found that the proceedings resulting in this "award" are administrative and not judicial; that the "award" in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector; to the Court.

In *The Assistant Development Officer Vs. Tayaballi Allibhoy Bohori*, , the nature of the Collector's award is explained thus:

The acquiring officer's award is, of course, strictly speaking not an award at all, but an offer. It is based on enquiry and inspection and the officer responsible for it is usually a man of experience and local knowledge. He may take evidence, but he is not bound to do so, and his proceedings are administrative rather than judicial. But if his award is not accepted and the matter is taken into Court, the proceedings are thenceforward, judicial in- character. The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence.

(see also *Dhurabhai Vs. Special Land Acquisition Officer*, AIR 1959 Bom. 52)

6. In *Naresh Chandra Bose Vs. State of West Bengal and Others*, , the position of the claimant challenging the award of the Collector before the Court was stated thus:

No doubt when a reference is made by a claimant the onus is upon him to prove by evidence that may be adduced by him that the market-value as fixed by the Land Acquisition Collector was not the proper one. If, however, the compensation is fixed by the Land Acquisition Collector either without any evidence but merely on conjecture, or on materials which appear to be irrelevant once the onus which lies on the claimant as having made the reference is a very slight one. Such onus would be discharged on the claimant proving that the Collector had proceeded either without any legal evidence or the materials on which he had relied were not relevant ones.

7. From these decisions it is clear that the burden of proving that the award is wrong always rests on the claimant before the Court. The weight of the burden depends upon the thoroughness of the enquiry made by the Collector and where the proceedings of the, Collector, disclose that the award of the Collector is not reasonably supported by the material before him, the burden can be discharged by slight evidence adduced by the claimant. Further, the proceedings before the Collector are not judicial. He is not handicapped by strict rules of evidence and is

entitled to satisfy himself about the reasonableness of the offer to be made by him on his personal knowledge or other sources which reasonably satisfy him. The nature of the award made by the Collector is that of offer made by the Government wishing to purchase the property. Nothing that the Collector says binds the claimant, but the State Government is bound by the offer made the Collector and cannot before the Court contend that the amount of compensation should be less than the award. On the other hand, the claim it is entitled to satisfy the Court about what he considers to be adequate compensation. Once the proceedings commence before the Court, they are strictly judicial. Nothing that is inadmissible according to the Indian Evidence Act can be considered by the Court in coming to its conclusion. Once the claimant has discharged the initial burden resting on him, it is for the Collector to adduce properly admissible evidence rebutting the conclusions drawn from the evidence adduced by the claimant. The proceedings before the Court are not a continuation of the proceedings before the Collector and the, earlier record does not form a part of the case; before the Court except by agreement of the parties.

8. We now pass on to the contention raised on behalf of the respondents that the award of the Collector in the instant case was bad and the burden which rested on the claimants before the Court was very light. The attack on the award of the Collector is on the method by which he arrived at the value of the acquired properties after taking the average of the sale prices of some transaction of sale which took place within five years before the date of the notification. The process followed by the Collector for determining the price in this case is outlined in paragraph 34 of the Land Acquisition Manual. Briefly stated, the method adopted consisted the following steps:

- (i) A statement of the area, rental and prices of lands sold within five years before the date of notification was prepared
- (ii) On the basis of this statement, the total deduced rent, which is arrived at by multiplying the area of land by the standard acreage rent rate, was determined.
- (iii) The total of the sole prices was divided by the deduced rent and thus a multiple indicating the ratio of the average price to the deduced rent was determined.
- (iv) The deduced rent of the lands acquired was then determined and multiplied by the multiple so arrived at giving the market price of the acquired lands.

9. In order to appreciate the reasonableness of the method prescribed under paragraph 34 of the Land acquisition Manual, it is necessary to give a outline of the method followed at the time of settlement in fixing rents. The Settlements in Central Provinces were passed on J.B. Fuller's Settlement Code published in 1903 and the Settlements in the neighbouring State of Raigarh were on the lines indicated in that Code. For determining the rent appropriate to a particular piece of land, it is necessary to reduce the different qualities of land to a common denominator and for this purpose the concept of "soil unit" has been evolved.

The method is explained in paragraphs 191 to 199 of the Settlement Code. The first step in working this system is to ascertain the various classes of land occurring in the districts. Land is classed (i) according to its agricultural capacity; (ii) according to its natural soil, and (iii) according to qualities in position, lie of surface irritability and so forth, which affect it advantageously or the reverse. A scale of factors is then framed showing the number of soil-units per acre of each land class when compared with other classes. The number of soil-units in each piece of land thus forms a basis for determining the productiveness of the land. The rent to be fixed per soil-unit is then fixed. The number of soil-units in holding multiplied by the standard rent for one soil-unit gives the deduced rent for the holding. The actual rent is then fixed in the neighbourhood of the deduced rent.

10. It will thus be seen that the deduced rent of a holding represents the sum total of all the qualities on which the productiveness of the land depends and may be taken to be an approximately correct measure of the relative fertility of lands. The method indicated in paragraph 34 of the Land Acquisition Manual is based upon this assumption. The multiple indicated in that paragraph denotes the proportion which the total sale price of transactions of sale bears to the total deduced rent or the area sold and the price of the acquired land is determined by multiplying the area of the acquired land with the multiple. In attacking this method of valuation, Shri Verma has relied upon the observations of Bose J. in *Sadasheorao Vs. The Collector Nagpur*, ILR 1942 Nag. 740. viz.,

But however that may be, even if these instructions had been followed to the letter they do not bind the civil Courts and in my opinion the directions given in them are not only complicated but appear to be based on no principle.

The learned Judge was considering the instructions in paragraph 34 of the Land Acquisition Manual in the context of the apportionment of the compensation between the landlord and the tenant. The proportion of the compensation to be given to the landlord and tenant in that paragraph is not supported by any reasons given therein and therefore appears to be arbitrary. In that case, the criticism made by Sulaiman C.J. in *Shayam Lal Vs. Collector of Agra* ILR 55 All. 897 F.B., was referred to. That case also dealt with the question of apportionment of the compensation between the landlord and the tenant. On page 901, the following criticism was made by Sulaiman C.J. against the Circulars of the Board of Revenue:

The Board of Revenue have, in their Circulars, issued certain directions to Collectors fixing maximum both for the amount to be awarded to the Zamindar and the amount to be awarded to an occupancy tenant in the case of culturable lands. An occupancy tenant is allowed four times the rent-rate payable by a statutory tenant, plus 10 times the difference between that rate and the rent actually paid by the occupancy tenant; whereas the Zamindar is allowed no more than 16 times his net profit. The method is not only a complicated one, but it is also difficult to see on what principle it is based.

It is this criticism which has been repeated in Sadasheorao's case (supra against the instructions in paragraph 34 of the Land Acquisition Manual.

11. It does not appear that the question of the reasonableness of the instructions so far as this relate to fixing market value in proportion to rents assessed on different lands on the basis of market price indicated by actual sales within a reasonable time before the acquisition, was directly argued in that case. It appears to us that rents fixed at the time of Settlement reasonably represent the relative fertility of the soil and other advantages attached to it and therefore they form a reasonably good measure for comparison. Viewed that way it does not appear that the instructions in paragraph 34 of the Land Acquisition Manual are unreasonable. It is true that when the enquiry comes before the civil Court nothing that is said in that paragraph is binding and the market value of the acquired land must be determined on the evidence adduced before the civil Court. All the same, so far as the Collector is concerned, we think that the offer of the price for the acquired land made on that basis would be reasonable.

12. The sale statement relied upon by the Collector was prepared by Jujhar Singh (N.A.W. 4). This forms the basis of the multiples determined by the Collector for ascertaining the market price of the acquired lands. Unfortunately, the value of the soil statement is vitiated by the admission of Jujhar Singh that he had excluded some sales of high value and some of low value. It is difficult to find out the effect of these exclusions on the averages. It is true that only those sales can be considered to be representative which are made under average circumstances and accordingly paragraph 34 of the Land Acquisition Manual provides for exclusion of sales for extraordinary high or low value. However, it was necessary for Jujhar Singh to prepare a list of all the sales that had taken place during the period under investigation and to place all of them before the Collector. The Collector should have considered the sales which required to be excluded for extraordinary reasons and should then have excluded them after giving these reasons. The Collector did not give any instructions on this point to Jujhar Singh, and it is not known for what reasons particular sales were excluded. The respondents have adduced evidence of 11 sales from those villages from which Jujhar Singh had collected examples of sales in the sale statement. Many of these sales did not find place in the sale statement and no attempt has been made to show why these particular sales had been excluded from the sale statement. Another reason why the value of the conclusion derived from the sale statement is greatly reduced is that the sales proved by the respondents show, as would appear from our discussion later, a much higher average than has been deduced by Jujhar Singh from the sale statement. The averages deduced on the basis of the sale statement suffered from the infirmities and the matter had therefore to be considered afresh by the Court.

13. Shri Khaskalam for the State contends that in determining the market price, the sales mentioned in the sales statements prepared by the Collector should have been considered by the Court in any case. Jujhar Singh, who prepared these

statements, has been examined by the State and has stated that he prepared it from the index of sales maintained in the office of the sub registrar. The learned Government advocate argues that the statement has been duly proved and should be admitted in evidence u/s 65 (g) of the Evidence Act.

14. That section provides as follows:

Section 65 Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

* * * * *

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

To attract the provisions of this section it is necessary that the originals must consist of numerous documents, the fact to be proved must be the general result and the originals must have been examined by an expert. None of these conditions are satisfied in the present case. The sale deeds are not so numerous that they could not be produced in the Court or proved by witnesses. The fact to be proved is not a general result but the price of land in each case. It is true that ultimately this was to find the average market price but that is an inference for the Court. The material on which the inference is to be based is to be placed before the Court. Then Jujhar Singh has not been shown to be an expert on the matter.

15. Reliance was placed on *Sher Muhammad Vs. Dost Muhammad*, AIR 1925 Lah. 291 and *Sunder Kuar Vs. Chandreshwar Prasad Narain Singh*, ILR 34 Cal. 293. In the first case, the witness had examined the mutation records to state the number of transactions of sale and other transfers to prove a custom about the transferability of land. In the second case, the record-keeper was examined about the identity of land in dispute after examining several records. We do not see how the appellant can derive support from these decisions. Further, it has been held in *Kishanlal Vs. Sohanlal*, AIR 1955 Raj. 45, that the documents must be available to Court before the expert can be asked to examine. Although in the first two cases, the documents were not before the Court, this point was not specifically considered. On the wordings of section 65 (g) of the Evidence Act, we find ourselves in respectful agreement with the Rajasthan view and hold that the statement cannot be admitted in evidence.

16. As we have said, the Collector could validly consider such a statement in proceedings before him but when the matter came to Court the fact had to be proved in the manner applicable to judicial proceedings. The Collector should have called the vendors or vendees to the sale deeds and should have proved the transactions. The petitioners could then have had an opportunity to cross-examine them to find out how far the prices of their lands could be compared with those of acquired lands. The sale statement alone is of no value and is not

admissible.

17. Before the scrutinize the instances of sale relied upon by claimants, we may say a few words about the qualities of land in Raigarh Tahsil. It appears from paragraph 14 of the Raigarh State Settlement Report of 1925 that in the earlier Settlement, the land was classified both according to quality of soil and position and soil factors were given on both these considerations. According to quality of soil, land is classified into: Kanhar, Dorasa, Matasi and Bhata: and according to position, into: Bahra. Dhodi, Khar and Tikra. This scheme was abandoned in the Settlement of 1925 in which the classification has been made only on the consideration of position as would appear from the following observations in that paragraph:-

In this settlement, classification by soil has been omitted and classification by position alone has been maintained. As mentioned above rice is the principal crop in this State and the cultivation of rice solely depends for its success on the position of land, irrespective of poverty or richness of soil it can grow well in any soil if it gets sufficient moisture and manure. This is the reason why the classification of land by position alone has been maintained.

The four positions are described as follows:-

Bahra-It is a low level land, forming into a channel, in which there is a regular flow of water.

Dhodi: -It is a low lying land, situated lower down on a slope.

Saman Khar: It is an ordinary undulating land and is situated on a higher level.

Tikra Khar:-It is situated on a higher slope." The soil factors respectively allotted to these four positions are tabulated as follows:-

Position

Factor

Bahra

25

DhodiKhar

15

SamanKhar

10

TikraKhar

7

Badi

15

Badi irrigated

20

Tikra I

5

Tikra II

3

Bharri

12

Constant factor for dofasli, gouras and irrigated lands are 3, 3 and 6 respectively. The words "Gabhar Khar" do not appear in this classification; but in the Rent Statement (p. 225 of the paper book) it is the same given to the second class of land falling between Bahra and Saman Khar and obviously it refers to what is termed as "Dhodi Khar" in this paragraph. The rent rates of Bahara, Gabhar Khar, Saman Khar and Tikra as given in the rent statement are respectively Rs. 2 1 0. Rs. 1-4-0, 0-1 3-0 and 0-9-0 which are roughly proportionate to the suit factors for each position.

18. The first four classes are for rice lands and the last five are for non-rice lands. The report gives the following crops usually grown on different of non-rice land:

Badi irrigated

- Bhaji, Tarkari, Santra.

Badi

- Makai, Juari.

Bharri

- Wheat, gram, linseed, Santra

Tikra I

- Masur

Tikra II

- Urda, Mung, cotton, and til.

We have referred to the crops sown on each class of land as the crops actually sown in the acquired lands near about the year 1953 as shown in the khasras or proved by other evidence will show the qualities of land.

19. Turning now to the qualities of lands acquired, we find that the Collector has accepted the qualities as they were entered at the time of the last Settlement. The learned Additional District Judge has not analysed the qualities of the lands at all. At the time of the land acquisition, a land acquisition Khasra was prepared. It was verified first by Rasiklal Dubey (N.A.W. 2) then by J.P. Khare (A.W. 29) and lastly by Jujhar Singh (N.A.W. 4.). The original Khasra which is on record shows that the entries have been extensively corrected. At the end when Jujhar Singh made the verification, almost all the improvements have been shown to have been incorrectly recorded. Jujhar Singh admits that some of these entries have not been initialed by anyone. We also find that the entries have been painted with ink so as to make them illegible and this has also not been initialed by anyone. The form has to be checked as provided in paragraphs 18 and 22 of the Land Acquisition Manual before the notification u/s 9 of the Land Acquisition Act is issued. It appears from the order-sheet, dated 25-7-1956 in the Land Acquisition case that this had already been done. Jujhar Singh has stated that as there was some suspicion about the correctness of the entries, it was ordered by the Collector to duly check them over again. We do not find any order in writing to this effect in the record of the Land Acquisition case. There was no necessity for having a checking after the notification u/s 9 had been published. There is some substance in the suggestion of the respondents that after calculating the compensation on the basis of the land acquisition Khasra as then existing, a necessity was felt to under-rate the improvements in order to lower down the amount of compensation. J.P. Khasra (A.W. 29) states that he had noticed some improvements in the Khasra. Some of these entries have been erased by Jujhar Singh. It will therefore, be necessary for us to find out whether any of the acquired lands had been improved. As already stated, the learned Additional District Judge has not considered the qualities of the lands at all and has accepted the general statement of the respondents that the lands had been improved for holding that almost all the acquired lands had been improved. After the merger of the States in 1948, Khasras were prepared annually in the Tahsil of Raigarh. The crops sown on different fields have been noted therein and improvements are also shown in the remarks column. The entries therein have been made according to rules in discharge of official duties and at a time when there was no motive to make incorrect entries as the land acquisition was not then in sight. The attack which is made against the Land Acquisition Khasras which were prepared for the specific purpose of valuation cannot be made against the annual Khasras. The Land Acquisition Khasras were made on the basis of annual Khasras. The entries in the former being suspicious, the latter can be relied upon to indicate the correct position. The nature of the crops, sown indicates the quality of the land and annual Khasras are thus helpful in determining the improvements which have been made on the acquired lands.

20. The learned Additional District Judge has observed that the last quality of the land is worth Rs. 1,000 per acre. There is no justification for this statement, for the sale deed Ex. P-11 in which the land has been sold at that rate does not

relate to the last quality of land but to Gabbar Khar land which is the second class of land in order of productivity. The learned Judge has also observed that the highest quality land would be worth Rs. 3,000 per acre, and after having said that he did not care to find out the different qualities of lands acquired, he valued the lands at Rs. 2,000 per acre on the basis of average and on the ground that this was the rate at which the respondents have valued the lands. This method of taking averages would be approximately correct only upon the assumption that the lands of higher quality and lower quality are roughly equal. Without analysing the qualities of the lands, we cannot say that the method adopted by the learned Additional District Judge was correct.

21. We shall now examine the sale deeds produced by the respondents.

(a) Ex P 1-This is a sale deed for 0.08 acre, bearing a rental of Rs. 2-6-0, sold for Rs (sic)00. From the Khasra we find that the quality of the land is Saman Gaurasa. The price works out to Rs. 3,400 per acre.

(b) Ex. P-2--relates to the sale of 0.30 acre for Rs. 600. This land is Saman, but was used for growing vegetables. The price works out to Rs. 3,000 per acre.

(c) Ex. P-3 and P-4-together cover 0.20 acre of land sold for Rs 400. From the Khasra the quality of land appears to be Saman.

(d) Ex. P-5-is for 0.05 acre of land sold for Rs 1,000. The quality in the Khasra is shown as Tikra Khar, Gourasa and Abpashi. The price is Rs. 2,000 per acre.

(e) Ex. P-6 and P-7 - cover 1.22 acres of land sold for Rs. 1,800 in all, that is, at Rs. 1,(sic)00 per acre. In the Khasra this is shown as Bahra Abpashi land.

(f) Ex. P-8-is for 0.21 acre of land sold for Rs. 300, that is, at Rs. 1,500 per acre.

(g) Ex P-9- is for 1.24 acres of land, rental Rs. 1-4-0, sold for Rs. 1,000, that is, at Rs. 800 per acre. This land would thus be slightly below Gabbar quality and above Saman quality. Two-third of this land is Gobhar and one-third is Saman.

(h) Ex. P-10-is for 0.07 acre sold for Rs. 200, that is, at Rs. 2,800 per acre. This land is grown with vegetables.

(i) Ex. P-11 - is for 2 acres of land sold for Rs. 2,000. that is, at Rs. 1,000 per acre. This is shown as Saman and Tikra Khar land in the Khasra; but A.W. 18 Goklo, who is the vendor, admits that this land is of Gobhar quality. This is also supported by the rental of Rs 1-4-0 per acre on this land.

22. As we have already said, the gradation of land in order of qualities is Bahra, Gabbar, Saman and Tikra. The sale deeds disclose certain anomalies inasmuch as in Ex. P-1 Saman Gourasa land has been sold at a very high price, whereas Bahra Abpashi covered by Exs. P-6 and P-7 has been sold at the low rate of Rs. 1,500 per acre. Ex. P-9 covers land which is mostly Gabbar, but the price is only Rs: 750 per acre. Saman land under Ex. P-11 is sold at Rs. 1,000 per acre and under Exs. P-3 and P-4 at Rs. 2,000 per acre. The difference in price per acre may be

due to the additional facilities of irrigation, double cropping, etc., which may have existed on the different khasra numbers and may also be party due to the rising trend in prices. However, in the light of these sale deeds, we consider the following range of prices as reasonable for the four qualities of land, viz.,

Range

(i)

Bahra

Rs

2,000-2,800.

(ii)

Gabhar (Dhodi)

Rs.

1,200-2,000.

(iii)

Saman

Rs.

800-1,600.

(iv)

TikraKhar

Rs.

600-1,400.

We shall allow Rs. 2,200 per acre for sugar cane land, Rs. 1,200 per acre for land grown with vegetables and Rs. 400 per acre for non-rice Tikra land. For the advantages of irrigation, double cropping and gourasa, we shall allow of further sum of Rs. 400, Rs. 200 and 200 per acre respectively, over and above the lowest rate for each class.

23. We are conscious that the rates allowed by err on the high side. The learned Government Advocate was right in contending that the respondents have selected sale deeds of land sold at high prices for their purpose. This is natural; but as we have said, it was the duty of the Collector to prove some of the numerous sale deed which are covered in the sale statement prepared in the land acquisition proceedings to show that the prices were lower. In the absence of any evidence produced before the Court, we cannot but confine our finding regarding the prices of lands on the basis of the sale deeds produced by the respondents.

24. House Property: - The respondents alleged that they hid one Pacca and four Kachha houses but the Court below has found that there were only one Pacca and three Kachha houses. The Collector allowed Rs. 4,051-7-0 as compensation for these houses and the respondent claimed Rs. 11,000 in their statement u/s 9. Chaturbhuj (A.W. 1) stated that he had constructed the Pacca house for Rs. 10,000 and the others for Rs. 10,000. The respondent admitted that he had account-books in which all these expenses were entered but has not produced them. The reason given by him is that although the account-books were with him till three or four years ago, yet on the Collector giving notice to him to acquire the lands, he became careless and the account books were thus lost. The explanation is hardly satisfactory; as in fact, that should be the reason why he should have continued to keep the accounts carefully so as to help him in claiming compensation. It appears to us that the account-books have been deliberately suppressed. The valuation made by the Collector was based on the report of the overseer, B.D. Sahu (N.A.W. 1) and Assistant Engineer Sarbhansingh (N.A.W. 5). It is true that they made estimates on the basis of plinth area and did not make detailed measurements of the walls, etc. The valuation by plinth-area basis is a recognized mode of valuing house property when only approximate estimates are required. As against the statement of the respondent, which is not supported by any accounts and which is wholly unreliable the statement of these expert witnesses should have been accepted. We hold the value of the houses to be Rs. 4,051-7-0.

25. There are three wells and a dam on the site for which the Collector awarded Rs. 2,852-2-0 and Rs. 11,435-2-0 respectively. The Court below has allowed Rs. 15,000 for both the items. The difference is not much and the learned Government Advocate did not press for the amount being reduced. Accordingly, we fix the compensation for these items at Rs. 15,000.

26. The next item of importance is the value of the garden on Khasra No. 392, area 2.49 acres. There are several varieties of fruit trees which were planted on this land between 1948 and 1953. There is no dispute about their number. The Collector has valued these trees on the basis of information received by him from the Superintendent of Gardens at Pachmarhi and the Land Acquisition Officer at Bhilai. However, these papers have not been placed on record. The Collector has not placed any material on record to enable valuation of the trees on the basis of annual income or on any other basis.

27. Orange and Mosambi trees:-The respondent has examined Maniklal Shrivastava (A.W. 1) who has filed a report after inspecting the garden. It appears from his statement that the garden was well maintained and irrigation facilities were available. He has stated the life of the orange and mosambi trees to be 18 to (sic) 0 years. He has not said anything about the annual income from the trees.

28. The only documentary evidence adduced by the respondent is a lease deed in favour of Vishambar (A.W. 32) who says that he took the crop at Rs. 160 per

tree in 1954. This document was executed after the notification for acquisition was made. It is not supported by the account-books of the respondent-plaintiff and is not therefore of much value.

29. The respondent Chnturbhuj has examined himself as (A.W. 2). Durgachand (A.W. 3), Bhadursingh (A.W. 4), Bihari (A.W. 5) and Mukund Singh (A.W. 6) who have given the annual income varying from Rs. 160 to Rs. 70 per tree. The respondent and some of these witnesses admit that they maintained regular accounts about the gardens. However, none of these have been produced. The respondent explained that he had account-books till the date of acquisition but misplaced them as he lost interest in the garden thereafter. The learned Additional District Judge has accepted this explanation as natural. However, as we have already said earlier, it is not at all a satisfactory explanation. The acquisition was all the more a reason for him to reserve the accounts as they would have enabled him to shew the true state of affairs before the Collector and he would have been able to justify his demand for compensation. The failure on the part of the respondent to produce the accounts leads to an adverse inference that they would not have justified his claim if they were produced. The learned Additional District Judge has accepted that the annual income from a tree was Rs. 100 on the basis of the statements made by these witnesses; but we have no doubt that this is a highly exaggerated estimate. The respondent and his witnesses have stated that the price of orange is about Rs. 10 per hundred. Jujhar Singh (N.A.W. 4) hesitated that the retail price of oranges in Raigarh is from two-pice to four-pice, that is, about Rs. 3 to Rs. 6 per hundred.

30. We have looked up the Report on the Marketing of Agricultural Committees (No. 6-orange) by P.B. Dixit, published by the Government of Madhya Pradesh. It appears from this Report that the market price of orange is considered in three aspects, viz., (i) orchard price, being the price in the garden; (ii) wholesale price, being the price in a recognised wholesale market and (iii) retail price. The ratio given by Shri Dixit on page 46 about these prices is; 100:154:271. While valuing an orchard, it will be the orchard price which should really be made the basis of assessing the profits. On page 46 it is observed that the average orchard price was from Rs. 49 to Rs. 105 per cart-load of oranges. A cart-load consists of 2500 to 3000 oranges. The orchard price would thus work out on an average to Rs. 2-8-0 per hundred. On page 66 in Appendix XII of the report of whole-sale prices of oranges per cart in Nagpur Market are given. On the prices prevailing in 1950, 1951-52, and 1952-53 the wholesale prices averaged to Rs. 108 per cart or 2500 to 3000 fruits which works out to Rs. 4 per hundred. Orchard prices would be about two third which is about Rs. 2-8 per hundred. The correctness of this figure is supported in another way. In Appendix XI-A to XI-D, Shri Dixit sums up the results of this survey of produce in four villages Pandhri, Pardi, Bhugaon and Wadva. In column 8, the whole sale price from 1952-53 is given below Rs. 2 per hundred in three villages and Rs. 2-9-0 per hundred in one village. An estimate at Rs. 2-8-0 per hundred is thus liberal.

31. In Mohammad Hussain Khan Vs. The State of Orissa, Miscellaneous Appeal No. 24 of 1953, decided on 20th September 1957. the question of valuation came before the Orissa High Court in connection with lands acquired for the Hirakund Dam for which the lands of the respondents have also been acquired. In paragraph 6 of the judgment the gross yield of 21 orange trees was found to be worth Rs. 600, that is, about Rs. 25 per tree which is exactly what is indicated by the orchard price averages from the report of Shri Dixit.

32. Manaklal (A.W. 1) has estimated the yield of an orange tree to be 1800 to 2000 fruits, Mukund Singh (A.W. 6) estimated the yield to be 1000 to 1200 fruits and Girdharilal (A.W. 7) at 1200 to 1400 fruits. The Court below did not record any finding about the yield per tree. P.B. Dixit in his Report states on page 2 that an orange tree yields a crop of 800 to 1000 fruits in the eight year and it is so far ten years. Thereafter, the yield declines to 200 fruits in descending order. The average yield for 20 years of a tree comes to 600 to 700 per year. Dr. V.G. Vaidya in his paper of Valuation of Fruit Trees and Orchards, published in 1948, says the following about citrus fruits:

Life of plant 25 years. Starts bearing at the age of 6 years and attains full bearing from 11th to 20th year, giving fruits annually. Average number of fruits per tree is 600 and net value per plant works out to Rs. 2-8-0 after deducting all expenses.

The net profit at Rs. 2-8-0 per tree appears to error on the lower side.

33. On the whole we consider that Shri Dixit has made a correct estimate of the life of an orange plant and its yield. We, therefore, hold that the trees yield good fruits for about 10 years and during the next 10 years its yield is reduced to about half on an average. It would thus be safe to put the yield period to be 15 years. For the purpose of valuation, the yield can reasonably be taken to be 1000 fruits per tree which at the rate of Rs. 2-8-0 per hundred would be worth Rs. 25. The expenses of cultivation have been stated by the witnesses at about Rs. 10 per tree. The Court below has allowed Rs. 20 per tree on that account. We would allow only 20 per cent for expenses. Thus the net yield of a tree would be Rs. 20 per year for a period of 15 years.

34. Capitalization of profits is generally done on the assumption at the rate of interest at 5 per cent per annum. In the case of properties yielding income permanently, capitalized value is measured by twenty times the annual profit. When an income is derived annually for several years to come, it is necessary to find the present worth of the income to be derived in future years at a reasonable rate of interest. In Appendix III on page 93 of the Land Acquisition Manual, a table is given showing what an annuity of Re. 1 at the rate of 5 per cent per annum for a certain number of years is worth today. Thus, if one expects an income of rupee one per year for 15 years, the value of the annuity would be 10,380. At the rate, an annuity of Rs. 20 per year for 15 years would capitalize approximately to Rs. 210 only.

35. There were 116 and 41 mosambi trees in the garden. The income from mosambi trees, according to all the witnesses of the respondent, is the same as from orange trees. The compensation for 157 trees thus works out to $157 \times 210 = \text{Rs. } 32,970$.

(b) Value of guava trees:-There were 250 guava trees in the garden. The witnesses for the respondent have given figure varying from Rs. 25 to Rs. 90 per tree. The respondent stated that he sold the fruits of some of these trees to Pitwas (A.W. 33) for Rs 4,000 at the rate of Rs. 20 per tree. The learned Additional District Judge has accepted this figure and after allowing 20 per cent as costs of upkeep etc., has valued the income from each tree at Rs. 16 per year.

36. The respondent has examined (A.W. 33), Pitwas who says that he took the crop of 200 trees for Rs. 4,000 and passed a receipt on 13-(sic)1953. This was after the proceedings for valuation had started. The witnesses for the respondent have given a highly exaggerated estimate of the produce which looks abjured on the face of it and is too high even for the respondent to adopt.

37. We find the following passage in the paper written by Dr. V.G. Vaidya in 1948:

Guavas:-Life of the plant is about 20 years. Starts bearing at the age of 5 years and attains full bearing from the 11th to the 20th year. The average per value is about Rs. 2 per plant per year.

W.B. Hays in his "Fruit Growing in India" states on pages 298 and 299 that the average value of guava fruits from a tree was Rs. 3 in 1936 and in 1943 the income was Rs. 20 to 30 per acre for inferior varieties and Rs. 100 to Rs. 150 per acre for better varieties. That would be for about 60 trees and would work out to Rs. 3 per tree on a liberal calculation. The number of fruits, according to him varies between 300 to 500 per tree.

38. The respondent states that his trees produce about 1500 fruits per plant. This is more than three times the normal produce. If 1500 of his fruits were worth Rs. 16 on the orchard, the value per trees would hardly be Rs. 5 on the assumption that a tree yielded 500 fruits. On a liberal estimate, we would value the yield of each tree to be Rs. 10 and deducting 20% for costs of production, we would estimate the net yield to be Rs. 8 per tree. The fruit bearing period being fifteen years i.e., about the same as of orange, the capitalized value of a tree would be Rs. 85. As there were 250 trees, the compensation would be 250×85 or Rs. 21,250 only.

39. Besides these, there are 3 anar, 6 lemon, 8 plum, 3 jamun, 24 date and 47 sitaphal trees. The Court has valued them at Rs. 100 per tree except in the case of dates which have been valued at Rs. 75 per tree. As the Court has pointed out, there is no evidence about the value of these trees except a remark by A.W. Maniklal in his report. He says nothing in the witness-box about the yield but has said in his report "it would not be unnatural to expect Rs. 15 to 20 per year per tree from these trees." This is statement for the accuracy of which the witness

says nothing on oath. It is vaguely worded. There being no other evidence, we should, strictly speaking, accept the estimate of the Collector who has fixed the yield of these trees from rupee 1 to Rs. 2-8-0 per tree. Considering, however, that the estimates of the Collector err on the low side, we would allow an average of Rs. 3 per tree as net income per year. Taking the average fruit-bearing period to be 15 years, the capitalization of profits (i.e. multiplying by 10.3) would bring the value of the trees to Rs. 31 per tree. There are 91 trees. Their total value is Rs. 2,821.

40. The value fixed at Rs. 1,390 for medicinal plants was not disputed. As regards trees valued as fuel, the Collector had valued them at annas eight per cart. R.P. Khare (A.W. 6) had originally valued it at Rs. 1-4-0 per cart according to the forest notification rates at which removal of fuel from forest is permitted. The Court valued on the basis of headloads, arguing that one head load is worth six to 0-12-0 annas and a cart has 8 to 10 headloads, which brings the value to Rs. 6 per cart. This is an unsatisfactory way of valuing fuel. The retail price of a headload can hardly indicate the price of fuel at the place of cutting. We do not see any reason to fix a cartload at anything more than Rs. 1-4-0 per cart. The value of the 65 trees valued in para 38 of the judgment thus comes to Rs. 80 only. The fuel referred to in para 41 is 44 careloads which will be worth Rs. 55.

41. Thus the value of the orchard on plot No. 392 is as follows: -

Orange and Mosambi

... Rs

32,970

Guavas

... Rs.

21,250

Other fruit trees

.. Rs.

2,821

Trees valued as fuel

... Rs.

80

Medicinal trees

... Rs.

1 390

Other minor tree as fuel

... Rs.

55

Rs

58,566

42. The respondent has filed a cross objection for raising the value of the orchard. The main ground in the cross-objection is that the orange and Mosambi trees should have been capitalized at twenty times the annual income. We have already discussed that the question is to be answered with reference to the (sic) fruit-bearing life of a tree and in capitalizing the multiple is reduced on account of determining the present worth a reasonable rate of interest. The cross-objection also states that there are 300 guava trees and not 250 but nothing was addressed to us on this point. The cross-objection thus fails totally.

43. There are trees on other acquired lands for which the Court allowed Rs. 836 (vide paras 43, 44 and 45). On the valuation made above, the fuel value of 47 trees would be about Rs. 65. The fruit yield of a Mahua tree is about the same as that of a Sitaphal or a Jamun tree. Sitaphal and Jamun trees have been valued at Rs. 31 per tree for their fruit (sic) Mahua trees. The value of fuel wood in a Mahua tree is fixed at Rs. 4, Thus, the total value of a Mahua tree comes to Rs. 35. We allow Rs. 70 for two Mahua trees and Rs. 31 for one plum tree (total Rs. 101), For 11 cartloads of fuel referred to in para 45. a sum of Rs. 20 would be enough. Thus, the compensation for these trees comes to Rs. 186 only.

44. That ends the discussion on the question of valuation of the properties. However, one more point is to be considered. The Court has allowed the extra 15% admissible u/s 23 (2) on all items. This additional sum is available on the items covered by clause firstly only. The other clauses do not deal with market price. The sum awarded under them is by way of damages. The amount of damages awarded in accordance with clause secondly to sixthly is not to be increased by adding 15 %.

45. The amount payable to the respondent works out as below:

For land

Rs.

58,276-0-0

For Houses.....

Rs.

4,051-7-0

For wells and dam

Rs.

15,000-0-0

Total

Rs.

77,327-7-0

Extra 15%

11,599-0-0

Total

88,926-7-0

For the orchard

58,560-0-0

For trees on other lands.

186-0-0

Expenses for removing Rahat,

7(sic)-0-0

Grand Total, 1,47,(sic)51-7-0

Less amount paid

59,494-6-0

Amount payable.

88,257-1-0

46. In the result, the appeal is partly allowed and the cross objection is dismissed. The amount of compensation is fixed at Rs. 1,47,751-7-0 and deducting the amount of Rs. 59,494-6-0 already paid, we order that the Collector do pay a further sum of Rs. 88,257-1. Any amount paid to the respondents after the award of the Court shall be duty adjusted. The amount shall carry interest at 6 per cent per annum from the date on which the Collector took possession of the properties to the date of payment of the excess amount into Court. Considering the success and failure of the parties, we direct that the costs incurred by them in the lower Court and the costs of the appeal and the cross-objection shall be burnt as incurred. Hearing fee is fixed at Rs. 1000 only.