
(1992) 04 AHC CK 0105
In the Allahabad High Court
Case No : First Appeal No. 653 of 1991

Collector, Varanasi

APPELLANT

Vs

Ekram Shah

RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 27, 96
Land Acquisition Act, 1894 — Section 1, 10, 12, 14, 17

Citation : (1992) 3 AWC 1364

Hon'ble Judges : N.N. Mithal, J; N.L. Ganguly, J

Bench : Division Bench

Advocate : V.K.S. Chaudhary and Yatinder Singh, for the Appellant; V.P. Pathak and S.N. Shukla, for the Respondent

Final Decision : Disposed Of

Judgement

N.N. Mithal, J.—Ganga, the very soul and heart of the country whose holy waters, according to legends have been likened to nectar having descended from Heavens; so sacred, so revered that a mere sprinkling of its water is considered enough to wash off all sins; river which is the very life line of the country and on whose sacred banks the entire culture of this country has been nurtured and reared for centuries after centuries. Alas the very same waters, whose pristine purity was once eulogised in our scriptures is now full of filth, waste, effluents and sewage; what once gave life and sustenance to the people has now reversed its role to become the life extinguisher, life perisber. Ganga now stood in need of aid from an international body, the World Bank, to fund the scheme to rid its waters of impurities and pollution all man-made, and ugly result of mad man's greed much beyond his need. Towards, this goal a unit of U.P. Jal Nigam was entrusted with the task of devising a scheme and setting up plants for cleansing the waters that flow in this ancient river at Varanasi.

2. The preliminary notification u/s 4 was made on 22-8-1986. Since the Governor was satisfied as to the urgency in the matter enquiry u/s 5-A of the

land Acquisition Act was also dispensed with by applying the provision of Section 17(1) of the Act. This notification was followed by a declaration u/s 6 of the Act on 16-2-1987 and consequent delivery of possession on 27-4-1987. Award of the Collector was made on 8-12-1987 determining compensation for the acquired land at the rate Rs. 1418.34 per Biswa.

3. Aggrieved by the Collector's award reference was made to the Court at the instance of the claimants and compensation has been enhanced to Rs. 19, 237/- per Biswa. Hence this first appeal by the State of U.P.

4. In the appeal U.P. Jal Nigam (hereinafter also referred to as the applicant) has applied for being impleaded as a co-Appellant on the ground that the Nigam having been entrusted with the task of executing and carrying out the scheme at Varanasi it came within the meaning of the term "person interested" and hence it was legally entitled to a notice from the Court u/s 20 of the Land Acquisition Act before the Court could hear and dispose of the reference. This was more so, because ultimately the applicant will have to pay the entire compensation as may be determined by the Court. It is pleaded that absence of notice has caused serious prejudice because the Court has enhanced the compensation by several times as applicant had no opportunity to adduce evidence in the absence of the notice. Learned Counsel submitted that the entire scheme was likely to be frustrated as the applicant may find it hard to pay the enhanced compensation frustrating the entire scheme only because the Court had failed to issue mandatory notice to "all persons interested" He also pointed out that in a few references where the Jal Nigam got an opportunity of contesting the reference either the compensation amount has not been altered at all or it has been enhanced only nominally.

5. The main thrust of the argument, therefore, is that the applicant was "person interested" being the actual acquirer of the land, and had vital stakes involved in the reference even through to resist the enhancement of compensation for the acquired land. It is, therefore, urged that issue of notice to it was mandatory and its absence has vitiated the entire proceeding which is liable to be set aside.

6. Before we proceed to examine of the merit of the contention raised by Sri Yatindra Singh, Advocate it will be beneficial to first glance through the scheme of the Land Acquisition Act (hereinafter also referred to as the Act). Part I of the Act consisting of Sections 1 to 3 is placed under the heading "preliminary." Section 3 therein defines certain terms used in the Act including expression "person interested". Part II of the Act comprising of Sections 4 to 17 deals with proceedings relating to acquisition of land before the Collector these sections deal with the various steps required to be taken by the Collector in this connection and procedure to be followed by him in the matter. Part III, which consists of Sections 18 to 28, deals with objections, if any, filed by the erstwhile owners against the offer of compensation made by the Collector in his award and for determination of proper compensation by the Court. Part IV pertains to apportionment of the compensation amongst the rival claimants inter se; while

Part V deals with procedure for payment of compensation Parts VI and VII deal with temporary occupation of land and acquisition of land for companies and local bodies respectively. Last Part VIII deals with certain miscellaneous matters.

7. Section 3(b) defines the term "person interested" as including all persons claiming an interest in compensation to be made on account of acquisition of land under this Act, and a person shall be deemed to be interested in the land if he is interested in an assessment affecting the land. It is significant to notice that the definition makes a pointed reference to those persons who "claim" an interest in the compensation or those who have an interest in the land because of its effect on the easement in relation to it. Thus the persons interested may be categorised in only two classes; one, who claim interest in the compensation and second, who claim an interest in the land because of an easement.

8. In the instant case the claim of the Jal Nigam is not founded on any easement. What is asserted is that the Jal Nigam is "person interested" because it wanted to oppose the claim of the land-owner for enhancement of compensation. No the question is whether those who only want to oppose the enhancement of compensation can be said to be one "claiming an interest in the compensation to be made" due to acquisition of land? The use of the word "claiming" in this connection is not without significance, "Claim" according to Chambers dictionary means "demand for something supposedly due" In Blacks Law Dictionary 4 Edition, page 313 this word is shown to mean "to demand as one's own, to assert. Similarly in Volume XIV of Corpus Juris Secundum" this word is shown as meaning "a calling on another for something due or supposed to be due; when used in connection with property, "claim" has been held to signify a demand and nothing more The term has been defined as meaning a demand of a right, or of an alleged or supposed right.

9. Thus one can be said to claim something only if he demands something which, according to him, is due. The right of a person to oppose the enhancement of compensation is hardly consistent with the very concept of claim. Thus the Jal Nigam for that purpose cannot be "person interested within the meaning of Clause 3(b) since it claims to interest in compensation.

10. It was next urged that this definition is not exhaustive being Inclusive and is therefore extensive in nature. According to principles of interpretation of Statutes whenever a word or term is defined as including something the legislature intention is to enlarge its scope rather than limit or restrict it. In this connection we may in passing refer to M/s. Deypack Systems (P.) Ltd v. Union of India AIR 1988 SC 182 In that case at page 803, paragraph 65 of the report the Supreme Court observes:

It is well settled that the word "includes" is an inclusive definition and expands the meaning.

For this the Supreme Court relied upon two of the earlier decisions rendered in the Corporation of City of Nagpur v. Its employees AIR 1960 SC 672 and Vasudev

Ramchandra Shelat Vs. Pranal Jayanand Thakar and Others, --Thus, however, would, in no way. advance the applicants case even if we take a liberal view of the language employed in Section 20 of the Act, to which our attention was pointedly drawn by the learned Counsel. The section reads as under:

Section 20

Service of notice:

The court shall thereupon cause a notice, specifying the day on which the court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

11. The point pressed before us is that under Clause (b) a notice is required to be served on all persons interested in the objection, excluding only those who had accepted the compensation as awarded without protest. His submission is that to be a person interested in the objection it is not necessary that one should invariably be one to whom compensation is payable The language is wide enough to include even those who oppose the objection i.e. those who resist enhancement of compensation offered by the Collector.

12. Firstly our attention was drawn to the phraseology employed in Section 20(b) which, according to the applicant, makes a distinct departure from the language used in the earlier sections in that it refers to persons interested "in the objections" and not "in the land". This obvious variation in language, according to learned Counsel, suggests that legislature infact intended to widen the scope of this term so as to include even those persons who only want to oppose the enhancement.

13. It is difficult for us to accept this submission on its face value. To us, it appears that this change was necessiated not for the reason pointed out by counsel but more appropriately due to the place this section occupies in the Act. Up to the stage of part II of the Act, the emphasis is on interest in the land However, Section 20 comes under part III of the Act which prescribes the procedure in proceedings before the court on receipt of the reference. So long as the land is not finally acquired its erstwhile owner keeps alive his title to the land. It is only after the award has been made and possession over the land is delivered that the property legally becomes vested wholly in the State free from all encumbrances and thereupon title of the erstwhile owner comes to an end. Section 16 makes this position all the more clear. It reads:

Section 16

When the Collector has made an award u/s 11, he may take possession of the land, which shall, thereupon vest absolutely in the Govt., free from all encumbrances.

Therefore, right up to the stage of Section 16 in part II of the Act the owner of the land can legally continue to assert his right as owner. His title to the acquired property gets obliterated once the land vests in the State absolutely. Therefore, when that stage has once been reached the land-owner can no longer assert any ownership interest in the land. The only right that is left with him as to the acquired property thereafter is only confined to compensation that may be determined by the Court for the property which was once his own. It is for this reason that in Section 20 the expression used is person interested "in the objection" as his erstwhile title to the land had ceased already. This change in expression is therefore not enough to lead us to the conclusion that the scope of "person interested" in Section 20(b) gets widened so as to include persons like the applicant also. The legislature must have thought it necessary to make this distinction between the two stages more pronounced i.e. the stage when one, could claim ownership interest in the land and later when ownership or interest in the land ceases after it gets vested in the Government and the erstwhile owner is left with some what limited interest only in the amount of compensation payable there for.

14. A person who files the objection i.e. the erstwhile owner of the acquired property is clearly covered by Clause (a) of Section 20 being the applicant himself. Similarly the Collector is covered by Clause (c) of Section 20 if the objection relates to the area "or as to the amount of compensation. The point stressed by the learned Counsel is that if Clauses (a) and (c) of this section specifically relate to the claimant and the Collector, Clause (b) must necessarily relate to those who are neither claimants nor the Collector and must belong to a different category. According to him this can only relate to that person for whose benefit the land had been acquired. On this premise he further urged that as a necessary consequence of this a notice to such a person would become mandatory and the failure to do so must result in vitiating the entire proceeding.

15. When examined in the light of the above submissions one will notice that Section 20 begins by saying that the court shall "thereupon" cause a notice to be served. The significance of the word "thereupon" cannot be under estimated. This necessarily refers to something which must have happened earlier i.e. prior in time to the stage when the Court decides about person to whom the notice should be sent. For this we must revert back to Sections 18 and 19 of the Act.

16. Section 18 empowers "all persons interested" who have not accepted the award to make a written application to the Collector within six weeks of the award to refer the matter for determination by the court. This application should state the grounds on which the objection to the award is taken. It is argued that the use of the expression "any person interested" does not necessarily rule out the person for whose benefits the land was acquired, the only restriction being

that the party filing the objection must not have accepted the award. Section 50(2) places a total bar on the person or authority for whom the land is acquired to demand a reference u/s 18. This will be clear from the proviso to Section 50(2). When the Collector and the acquiring body are debarred from applying u/s 18 its necessary implication is that the term "any person interested who has not accepted the award" must remain confined to only those persons who are staking a claim in the compensation to enhanced compensation. This expression cannot in any case, cover those who stand on the opposite side i.e. Collector or the authority or Company for whom the land was acquired. Section 18 objection can be filed only by the land owners or those who claim some kind of interest in the land.

17. Section 19 of the Act provides that the Collector when making the reference shall forward a statement containing certain information for the opinion of the court and Clause (b) thereof reads:

the names of the persons who he has reason to think interested in such land.

This again points out that only names of those persons have to be indicated who appear to the Collector to be interested in the land. After this statement, along with the objections to the award, is received by the court then only Section 20 comes into operation it is in this context that we ought to examine the expression "all persons interested in the objection". If we read Sections 18, 19 and 20 together the irresistible conclusion would be that those persons alone who are competent to file an objection against the Collector's award are entitled to a notice as contemplated by Section 20(b) and this does not include those who are merely interested in resisting the objection.

18. Apart from those who claim to have some kind of title to the acquired land there may be many others who may not be the owners but may have some other kind of interest in the land, such as reversioner of life interest of a Hindu widow, a female member of Hindu Joint family, an attaching creditor, mortgagee, a person having an agreement of sale in his favour, a lessee and a variety of rights or interests in the land or in the compensation payable there for. Section 20(b) may therefore include such persons. It may also cover those person also who claim apportionment of compensation on some ground. Thus, the applicant is not justified in submitting that only because Sub-clauses (a) and (e) specifically cover the claimant and the Collector as a necessary corollary thereof Clause (b) must refer to the beneficiary of the acquisition. In fact, the correct legal position appears to be that the Collector acquires the land for and on behalf of the acquiring body and therefore, fully represents it in proceedings before the court. When notice has been served on the Collector it must be deemed to be notice to the acquiring body as well and no separate notice to it is contemplated.

19. Manual of Orders of the Government of U.P. in the Revenue Department, "Revenue Manual" in short, containing Chapter XIV in Part IV thereof gives detailed provisions laying down the procedure to be followed by the Collector

when taking acquisition proceedings for the Government or a Company. A look at these provisions will also make the position clear that in these matters the Collector does not act as a Judicial Officer nor are the proceedings before him judicial proceedings. The Collector acts only as the agent of the Government or of the Company for which Government take up the land, and they are accordingly bound by the award of their agent. Here reference to the Privy Council decision in *Ezra v. Secretary of the State for India* ILR 32 Cal. 605, may be apt and useful. In that case it was observed by the Privy Council;

The Collector or other acquiring officer duly empowered under the Act is, in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding. He acts as the agent of the Government or of the Company for which the Government take up the land, and they are accordingly bound by the award of their agent; while if a judicial decision as to the value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the court. The enquiry and valuation made by the Collector are therefore, departmental in their character, for the purpose of enabling the Government to make a tender through him to the persons interested, and it is open to him, in making his award as to the compensation to be offered, to consider all available information on the question.

20. From this decision the position of the Collector in acquisition proceedings stands clarified as an agent of the Government and it is for this reason that the Government or the Company have been debarred from demanding any reference u/s 18.

21. So far as the question of prejudice to the body for whose benefit acquisition has been made is concerned, we may point out that para 439 of the Revenue Manual clearly ordains that in a reference u/s 18 where amount of compensation is in question a copy of notice of the date of bearing must be sent by the Collector to the concerned company or local authority. It is for the Collector to follow these instructions. But if he fails to do so it does not follow that the court was under an obligation to send a notice to it u/s 20(b). The duty to inform the ultimate beneficiary of acquisition has been cast on the Collector and therefore Collector must ensure notice to it for adducing necessary evidence. Lapse on the part of the Collector cannot therefore be fastened on the court.

22. We may now refer to certain decisions to which reference has been made by the learned Counsel for the Appellant in support of his plea that the beneficiary of acquisition of land was also a person interested within the meaning of Section 20(b) of the Land Acquisition Act. The learned Counsel relied upon the case of *National Thermal Corporation v. Raghunath Prasad* AIR 1981 All. 334, in which a Division Bench of this Court was considering the question whether the beneficiary of acquisition could file an appeal u/s 54 of the Land Acquisition Act. No question arose in that case that a notice u/s 20(b) of the Act to the beneficiary of acquisition was mandatory. The right of appeal u/s 54 of the Act read with Section 96 of the CPC has been granted to any person who is aggrieved

by the award and is not limited to those who are "persons interested."

23. To the same effect is AIR 1991 All. 69 where another Division Bench of this Court was construing Section 54 along with Sections 18 and 3(b) of the Land Acquisition Act in connection with an appeal filed against enhancement of the compensation amount by the Corporation for whose benefit the land had been acquired. Relying upon the decision reported in AIR 1981 All. 334 (supra) the court held that the appeal could be filed by such a Corporation. Both these cases therefore, do not touch upon the controversy raised before us in this appeal.

24. Reliance was then placed on a Full Bench decision of Gujrat High Court in Gujrat Housing Board v. Nagaji Bhai Laxmanji AIR 1986 Guj. 81, The facts of that case were also quite different and are clearly distinguishable. There the preliminary notification issued u/s 4 and declaration made u/s 6 were challenged by way of suit. During the pendency of the suit an application was moved by the Housing Board, for whose benefit the land was being acquire, for being impleaded as Defendant under Order 1 Rule 10 Code of Civil Procedure. The application having been rejected the matter came up in Civil Revision before the High Court. In that case the land had not been acquired and the proceedings were still pending before the Collector for acquisition of the land. At that stage Section 20(b) could not come into play at all. Besides considerations for impleading a party under Order 1 Rule 10 CPC are entirely different than the question of issuing a notice to a party interested under the provisions of Section 20(b) of the Land Acquisition Act. This case therefore, cannot give any assistance to the plea raised on behalf of the applicants.

25. Reference was also made to the case of Sunder Lal Vs. Paramsukhdas, , with particular emphasis on the portion of the report where the Supreme Court observed as under:

The definition of "person interested" is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in the land which has been acquired. A person interested if he claims an Interest in compensation to be awarded.

However, if we look into the facts of the case is will be obvious that the emphasis given by the learned Counsel was misplaced and appears to have been quoted entirely out of context The narration of facts discloses that the Appellants were owners of certain land which they had lapsed out to one Kushal Singh. On acquisition of this land a certain amount of compensation was determined which was apportioned between the owner of the land and the lessee. There was some litigation between the parties in this regard. At one stage both the parties entered into a compromise according to which Kusbal Singh purported to surrender all his rights in the compensation amount in favour of the owner Sunder Lal although, previously, in all the earlier proceedings, the claim of Eushal Singh had been upheld by the courts below. The Respondents had obtained a decree against Kushal Singh and before the aforesaid compromise could be

verified and formalised he objected to the same being accepted on the plea that the same was malafide and its only purpose was to defeat the execution of the same against any amount that may be found payable to Khushal Singh. He therefore, challenged the alleged compromise between the Appellant and Khushal Singh and craved leave to be Impleaded as an interested person in appeal. It was in the background of these facts that the Supreme Court held that the applicant was interested in the compensation payable in respect of the land. In substance the Respondents plea was accepted only because he had acquired an interest in the compensation for land determined by the court in acquisition proceeding as judgment creditor of lessee. The case of the respondent in that case was quite distinguishable and cannot be equated to the case of the applicant in this appeal, whose only interest lies in defeating the claim for enhancement of compensation. The ratio of decision in 1968 SC 366, therefore, cannot help the applicant at all.

26. Lastly a reference was made to case *Himaliya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho* AIR 1990 SC 1118. This case again is also clearly distinguishable. Notifications Under Sections 4 and 6 of the Land Acquisition Act were challenged by the respondent in a writ petition and also for quashing the acquisition proceedings on the plea that the land was not needed for any public purposes. The learned Single Judge accepted the plea and quashed the notifications. In appeal that decision was reversed by a Division Bench of the High Court holding that the Appellant had no locus standi being mere beneficiary of the acquisition. On appeal the Supreme Court held the Appellant to be a person interested since it had to pay the compensation. It appears, though not very clearly stated in the judgment, that the Appellant before the Supreme Court was already a party before the High Court, when the writ petition challenging the notification was filed. In these circumstances it could certainly be said that it was an interested person. Otherwise also the Appellant was an interested person at that stage as a person interested in the acquisition. The meaning and purpose of interested person in Section 20(b) is entirely different than in a writ petition. This case also cannot be any help to the applicant.

27. Having given our thoughtful consideration to the matter, we are unable to agree with the applicants' submission that a notice to it u/s 20(2) being person interested was mandatory. Hence the application to implead the U.P. Jal Nigam as a Co-Appellant has no merit and deserves to be and is hereby rejected.

28. An application to admit additional evidence under Order 41, Rule 27 CPC has also been moved by the applicant but in view of dismissal of application for impleadment as co-Appellant, this application must also see the same fate and deserves to be rejected.

29. Before coming to the merits we may first look into the legal aspect as to show the market value ought to be determined, but for doing so we do not consider it necessary to refer to catena of cases on the point. We think we may first refer to only one judgment of the Supreme Court in which this aspect has

been elaborately considered. In *Chaman Lal Hergo-vindas v. Special Land Acquisition Officer* AIR SC 1652. Justice M.P. Thakkar speaking for the court classified the various aspects which ought to be considered while determining the market value of any land. It would be proper if we quote here what the court had observed in para 4 of the judgment:

4. The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the award of the land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the collusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a Plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (dates of Notification Under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4 as if the valuer is hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account, (sometimes instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has motivated the purchaser

to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) Proximity from time angle.

(ii) Proximity from situation angle.

(iii) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant facts may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in common sense manner as a prudent man of the world of Business would do. We may illustrate some such illustrative (not exhaustive) factors;

Plus factors Minus factors

1. Smallness of size.
1. Largeness of area.
2. Proximity to a road.
2. situation in the interior at a distance from the road.
3. Frontage on a road.
3. narrow strip of land with very small frontage compared to depth.
4. nearness to developed
4. lower level requiring the area. depressed portion to be filled up.
5. regular shape.
5. remoteness from developed locality.
6. level vis-a-vis land
6. some special disadvantage under acquisition.
- geous factor which would deter a purchase.
7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of say 500 to 100 sq. yds. cannot be compared with a large tract or block of land of say 10000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchaser (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx, between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up,

and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

30. In the present case the documentary evidence of the parties on record consists of certified copy of the sale deed dated 10-3-1986 and a certified copy of the sale deed dated 10-3-1986 and a certified copy of the sale deed dated 3-4-1986 By the first sale deed only a small area abutting the road has been sold. The sale deed was executed by Laxmi Narain in favour of one Ram Lal on 10-3-1986 for a consideration of Rs. 20,000/- in respect of 803 Sq. ft, (less than 90 Sq. yards) land situate in another village Salarpur while the land under acquisition is situated in village Dinapur.

31. The second sale deed was executed by one Vishwa Nath and another favour Tara Shankar regarding plot No. 251/6 measuring 1 Biswa 15 Biswansi equivalent to 23800 sq ft. or 2644 4/9 sq yards and was sold for a consideration of Rs. 45,000/-. This sale deed also is in respect of land of village Salarpur.

32. On behalf of the State it has been urged inter alia that these sale deeds do not form the correct basis for determining the market value of the acquired land.

33. It was submitted that reliance upon the sale deed executed by Laxmi Narian was improper and the reasons advanced for discarding this sale deed may be summarised as under:

1. The sale deed is in respect of land situate in another village.
2. It is situated at a distance of 2 K.M. from the acquired land and was very close to Varanasi City.
3. The land lies by the side of the road in the midst of Abadi area and was purchased for construction of a residential building.
4. The area sold is very small and therefore, fetched comparatively higher price, and lastly,
5. The price paid for the land included value of certain construction existing thereon.

34. The later sale deed dated 3-4-1986 can be rejected at the very outset for the simple reason that apart from the price of land the sale consideration also included the value of the boundary wall and two rooms existing thereon. There is no evidence on record to show as to how much was paid for the land and how much for the construction. In the absence of such evidence we do not consider it safe to rely on this sale deed for the purposes of determining the prevailing

market value of the land in the locality.

35. As regards the sale deed executed by Laxmi Narain on 10-3-1986 is concerned it may be pointed out that the copy of Sajra map of village Dlnapur attached to the statement forwarded by the Collector along with the reference shows that the acquired land is situate just on the western edge of village Dinapur and is located by the side of road running north to south. The land of village Salarpur lies on the other wise of the said road to its west. The sale deeds in question had been executed on 10-3-1986 and 3-4-1986 i.e. before the date of preliminary notification u/s 4 which was made on 22-8-1986.

36. In the statement of PW 1 it has been extracted that land transferred by this sale deed was quite adjacent to the acquired land although it was in village Salarpur. There is no evidence from the side of the State to contradict this. It is not denied that the acquired land is situated within the Master Plan area of Varpnasi City and many public buildings. Schools and hospitals already exist nearby It is also not denied that there is a pacca road running by the western side of the acquired land.

37. The argument that merely because the land sold on 10-3-1986 was situated in anther village in our opinion cannot, by itself, be a justifiable ground for discarding the sale deed without some thing more. We cannot rule out the possibility that the plots which may be in two adjacent villages yet may be adjacent or so proximate to each other that they may still have the same or atleast substantially similar potentialities. In the present case the evidence clearly establishes that land sold by sale deed dated 10-3-1986 was adjacent to the acquired land and normally one would except them to possess same market value. Nothing more has come on record to show how the two lands can have different market value. This sale deed cannot therefore, be rejected solely only on the ground that the land sold was of an adjoining village. Artificial barriers like village boundaries cannot be given undue importance because the land in any particular area or in close proximity normally possesses similar potentiality and market value. The market value of the land is generally governed by market pressure which is usually uniform for adjoining land in the area irrespective of revenue demarcations It has not been suggested that the land of village Salarpur had any different potential than the acquired land Being adjacent to the acquired land we consider that the two ought to have similar potentiality and market value.

38. An attempt was made to urge that the acquired land was 2 K.M. away from the land sold on 10-3-1986. without referring to any evidence on record. In the absence of any such material we find it difficult to accept this submission. It was also suggested that the land sold was situationally better as compared to the acquired land as the former was situated by the road side. This argument also has no force as we have already seen that a pacca road runs north to south by the side of the acquired land also It was then pointed out that the plot was sold for building purpose and the price paid also included the value of construction standing thereupon. We have perused the sale deed and we find that recitals

therein reveal nothing that may bear out any of these submission. Even if the land sold had a regular shape and may be fit for construction purposes but the sale deed does not indicate that it was actually purchased for raising any construction. Nor does it reveal the existence of any structure over it when the sale deed was executed.

39. Lastly it was urged that since the area of the land sold was too small as compared to the acquired land it should be rejected--It is true that only 80.3 sq ft land had been sold which will be equivalent to approximately 90. sq. yards. The boundaries of the land sold also indicate that the plot had a regular shape check. There was open land to the east the plot sold and to wards its west the house of Lallan was situated. Towards north a public road is shown while to its south an open piece of land belonging to another was situated, This plot has been sold for Rs. 20,000/--according to which the value of land per sq. yard comes to Rs. 222,25 approximately. The law is that instead of rejecting such a sale deed some deduction on this account should be made even if we make a deduction 33% on account of smallness of the area sold the market value of the land per sq. yard will work out to be nearly Rs. 147.50 per square yard.

40. The court below has worked out the market value of the land as Rs. 18, 237- per Biswa i.e. 151 sq. yards of Rs. 13-0-40 per eq. yard. Even though there is apparently some variation in the two rates the same is immaterial as there is no cross appeal for enhancement of compensation by the claimants. Accordingly the compensation determined by the court below does not suffer from any illegality.

41. Since there is no evidence, either oral or documentary from the side of the State and the only material before us being a sale deed dated 10-3-1986 which, for the reasons already discussed by us earlier, cannot be ignored, we hold that the court below was right in determining the market value of the land on the basis of this sale deed. We are, therefore, in agreement with the court below in the light of the evidence before us. We hold accordingly.

42. The court below has also awarded compensation for 1000 papaya trees at the rate 25/- per tree. On behalf of the State it is urged that the award of compensation for papaya trees was unjustified as the value of the land already determined includes the tree also. In the alternative it is urged that compensation for trees can be awarded only as regards its timber value and not for fruit bearing plants like papaya which had no timber value at all. In case of *Jogender Singh Saini v. State of Haryana* AIR 1990 SC 1219, the Supreme Court held that when agricultural land is treated as urban land for assessing its market value, trees standing on the land are to be valued as wood and no compensation can be paid in respect of nursery plants.

43. There are several modes available for determining the market value of any land. One of the modes is by multiplying the profit which the land annually yields by a certain years of purchase or on the basis of exemplar sale deeds in respect of similar land in the locality executed near about the date of preliminary

notification or by assessment of market value as given by experts. All these three modes can be utilised only in the alternative but not together. The alternative mode also can be utilised by the court but only for the purposes of cross-checking the market value determined by the method actually adopted. Therefore, once, the court adopts one of the above methods the value determined by any other mode cannot be added to it. It is for this reason that the market value of the land determined on the basis of the exemplar sale deeds cannot be supplemented by adding to it the price of papaya trees calculated on the basis of its yield. The Court below has clearly erred in awarding additional compensation for the papaya trees standing on the land in question which neither had any timber value nor value as fuel wood. There is nothing on the record to suggest that ripe fruits existed at the time of delivery of possession or whether the claimants were prevented from plucking the same. Accordingly the award of the court below to this extent is unjustified and cannot be sustained.

44. Having regard to the discussion made above we are of the opinion that the claimants Respondents are only entitled to compensation of the land calculated at the rate of Rs. 19,237/- per biswa together with solatium and interest as payable in accordance with law.

45. The claim as regard the value of papaya trees is rejected and the award of the court below is modified and to that extent the appeal succeeds.

46. Before we part with this appeal we want to draw the attention of the courts below about the sketchy manner in which decrees in land acquisition references are being prepared, In the present case we find that the decree does not mention any relevant detail with the result that it is not possible to correctly determine the value of the appeal. It must be borne in mind by all concerned that in these matters one common unit for calculating the compensation must be adopted. If the compensation is being awarded in yards, meters or bighas then at every place rate in the same unit should be worked out. However, it may be more convenient to calculate the rate in square yards or in square meters, being the smallest unit in which area can be depicted The decree of the court below must indicate the following particulars:

1. The total area of the land involved in the reference.
2. The rate and total amount of compensation offered by the Collector in respect of the land;
3. The rate and the amount at which enhancement of compensation is sought in the reference (difference of 3 and 2 will help in determining the valuation of the reference);
4. Rate per unit and the total amount awarded by the District Judge (difference of 4 and 3 will determine the enhancement made by the court which will help in determining the costs to be awarded to the parties);
5. Compensation awarded for buildings, wells or trees etc. by the court and by

the Collector;

6. Proportionate amount of success and failure of the parties to the reference;

7. The rate and amount of solatium payable to the claimants.

8. The rate and period which interest is payable to the claimants;

9. Grand total.

47. On the basis of these particulars the decree should also indicate the cost incurred by either side in the column meant for the purpose.

48. We are mentioning this only because we have noticed that in a large number of cases the decrees are not being prepared by giving the aforesaid details which are very essential for the purpose of calculating the extent of the claim accepted by the court and for fixing the valuation of the appeal in accordance therewith. Office will issue necessary circular letter to all the District Courts drawing their attention to the observations made by us in this respect and to ensure compliance thereof.

49. The appeal is disposed of accordingly and in view of partial success of the parties they are left to fend for their respect costs.