
(2009) 10 BOM CK 0038

In the Bombay High Court

Case No : First Appeal No's. 141 and 240 of 2002

Executive Engineer (C), Maharashtra State Electricity Board,
EHV Civil Construction Division

APPELLANT

Vs

Uttamrao Raut, The State of Maharashtra and The Special
Land Acquisition Officer
 Uttamrao Raut Vs The State
of Maharashtra and Executive Engineer (C), Maharashtra
State Electricity Board, EHV Civil Construction Division

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6

Citation : (2010) 2 BomCR 204 : (2009) 111 BOMLR 4045

Hon'ble Judges : F.M. Reis, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.V. Purohit, in First Appeal No. 141 of 2002, S.P. Dharmadhikari, Uday Dastane, B.B. Mehadia and D.V. Chauhan, in First Appeal No. 240 of 2002, for the Appellant; S.P. Dharmadhikari B.B. Mehadia, D.V. Chauhan for Respondent No. 1, T.A. Mirza, Asstt. Govt. Pleader for Respondent Nos. 2 and 3 in First Appeal No. 141 of 2002, T.A. Mirza, Asstt. Govt. Pleader for Respondent Nos. 1, 2 and S.V. Purohit, in First Appeal No. 240 of 2002, for the Respondent

Judgement

F.M. Reis, J.—Heard learned Advocates for the parties.

2. The appellant " Executive Engineer in First Appeal No. 141 of 2002, and the Appellant " Uttamrao Bapurao Raut in First Appeal No. 240 of 2002, are hereinafter referred to as " the Acquiring Body" and " the claimant" respectively, while the respondent . State of Maharashtra is hereinafter referred to as " the State Government..

3. While First Appeal No. 141 of 2002 has been preferred by the Acquiring Body against the Judgment dated 31st December, 2003, delivered by learned Civil Judge [Senior Division], Pusa, in Land Acquisition Case No. 229 of 1995, whereby the Reference u/s 18 of the Land Acquisition Act made by the claimant was partly allowed and a compensation to the tune of Rs. 14,49,744-00 was

awarded along with other statutory benefits, the claimant has filed First Appeal No. 240 of 2002 challenging refusal of part of his claim for enhancement of compensation in the said impugned Judgment dated 31st December, 2001.

4. The brief facts of the case are as follows:

By a Notification u/s 4 of the Land Acquisition Act published in the Official Gazette dated 17th March, 1994, an area of 3 hectares and 29 Are from the property Surveyed under No. 7/1 was sought to be acquired by the State Government for the Acquiring Body for a public purpose, namely for establishment and construction of 132 KV Sub-station and for a residential use, at Mouza " Ramnagar, Tq. Digra, Distt. Yavatmal. After the said Notification u/s 4, a Notification u/s 6 of the Land 19th Acquisition Act was published in the Gazette on May, 1994. After complying with the formalities as provided under the Land Acquisition Act, an Award was passed determining the compensation payable to the claimant in respect of the said land, whereby the compensation was fixed at the rate of Rs. 13,000-00 per hectare for 2.85 HR of acquired land, and Rs. 200/- per hectare for 0.34 HR of " Pot-kharab" land.

5. As far as the claimant is concerned, he was awarded compensation for an area of 2.85 HR at the rate of 13,000-00 per hectare and Rs. 200/-per hectare for the said Pot-Kharab land admeasuring 0.34 HR. The claimant sought a reference u/s 18 of the Land Acquisition Act, claiming compensation at the rate of Rs. 100/ per sq. ft., for the land acquired, and by the Judgment dated 31st December, 2001, the Reference Court, Pusad, namely Civil Judge [Senior Division] enhanced the compensation and awarded a sum of Rs. 14,49,744-00 for the land acquired, besides the statutory benefits. While determining the said compensation, the learned Judge of the Reference Court determined the market value of the land at the rate of Rs. 10/-per sq.ft., and awarded compensation for the land under residential plots only admeasuring an area of 18,606.74 sq. meters, besides deducting a sum of Rs. 5,00,000-00 towards expenditure for carrying out the development.

6. Being aggrieved by the said Judgment, the present appeals have been filed by the Acquiring Body as well as by the claimants.

7. The learned Counsel appearing for the Acquiring Body contended that the impugned Judgment deserves to be quashed and set aside, as, according to him, the land of the claimant could not be considered as a non-agricultural land, since no development was done by the claimant in the land acquired. It is his further contention that at the time of the inspection of the property, the Land Acquisition Officer did not find any development having been made by the claimant in the said land. He also submitted that the learned Judge of the Reference Court wrongly relied upon the sale-deed at Exh.43 dated 23rd Feb., 1994, which is in respect of a portion of the same land acquired, as the said document was sought to be fabricated by the claimant. He further submitted that as no development was made by the claimant, the permission for non- agricultural use of the land

obtained by him had lapsed and consequently no benefit on that count could have been taken by the claimant. The learned Counsel argued that on going through the evidence adduced by the claimant, it is apparent that the claimant failed to establish that compensation awarded by the Land Acquisition Officer was not adequate and consequently the question of enhancing the same did not arise at all. The learned Counsel further submitted that the report of the valuer examined by the claimant cannot be considered in view of the inconsistencies therein. The learned Counsel submitted that market value of a large track of land cannot be ascertained on the basis of small plots, as sought to be done by the learned Judge in the impugned Judgment. The learned Counsel further contended that the evidence of the claimant and his witnesses cannot be relied upon, as each of them has given different versions as far as the distance of the land acquired from Digra town is concerned. He submitted that an area of 0.34 Are from the land acquired was a Pot-kharab land, which is totally useless, low lying and unfit for any purpose. He further submitted that the claimant failed to discharge the burden cast on him to bring forth evidence to establish that he was entitled for enhancement of compensation as awarded by the Land Acquisition Officer. In support of his contention, the learned Counsel relied upon the two Judgments of the Hon"ble Apex Court in the case of [a] Ratan Lal Gupta and Others Vs. Union of India (UOI), and [b] P. Rajan and Another Vs. Kerala State Electricity Board and Another, . As such, the learned Counsel submitted that the impugned Judgment deserves to be quashed and set aside and Reference made by the claimant deserves to be dismissed.

8. Learned Asstt. Govt. Pleader appearing for the Respondents-State supported the submissions advanced by the learned Counsel for the Acquiring Body, and stated that the claimant had failed to discharge the burden cast on him to establish that the market value determined by the Land Acquisition Officer was inadequate. He further submitted that there are inconsistencies between the sale-deed relied upon by the claimant pertaining to Plot No. 1 of the land acquired and the agreement for sale, which was executed in October, 1993. Learned AGP argued that there is no reference to the agreement for sale in the Deed of Sale in respect of Plot No. 1, which was a part and parcel of the land acquired and as such the same cannot be relied upon.

9. On the other hand, learned Senior Adv. Mr. S.P. Dharmadhikari appearing for the claimant disputed the contentions advanced by the learned Counsel appearing for the Acquiring Body. He submitted that there is no question of coming to the conclusion that the sale-deed at Exh.43 is not genuine. He further submitted that the said sale-deed preceded with an agreement for sale dated 22nd October, 1993 which is at Exh.58. He contended that the question of disputing genuineness of the sale-deed does not arise at all, as, admittedly, in October, 1993, the claimant had no knowledge or information about any intended acquisition of his land. He submitted that the claimant had examined the purchaser of the said plot and even in the cross-examinations of the claimant as well as that of the purchaser, who was witness No. 2 " Pankaj Shivajirao Mohite,

the genuineness of the sale-deed was not at all impeached, nor the contents and recitals thereof were sought to be challenged. He further contended that he does not wish to rely upon the evidence of the valuer, as, according to him, the valuation of the land of the claimant is to be evaluated on the basis of comparable sale-deeds, specially the plot which was sold pursuant to the sale-deed at Exh.43 that being a part and parcel of the land acquired. The learned Counsel further contended that in any event, even assuming that the sale-deed at Exh.43 is not considered, still examination of Shri Usman Sheikh Sultan as a Witness No. 6, who had purchased a plot in Digras town at the rate of Rs. 50/- per sq. ft., in the year 1993 is quite sufficient to support the claim of the claimant. Considering the said plot, the rate whereof was fixed at Rs. 50/-per sq.ft., the learned Counsel submitted that having regard to the distance from the acquired land to Digras town, which is about one kilometer, the same can be taken into account as a comparable sale- deed and the compensation is to be determined after making suitable deductions on account of development charges. He further contended that it is well settled that deductions on account of development are fixed from 20 per cent to 70 per cent, and even assuming the maximum deduction of 70 per cent, the rate for the land of the claimant is to be fixed at Rs. 15/-per sq.ft.. The learned Senior Counsel also pointed out that the learned Judge of the Reference Court has committed an error in awarding compensation only for the area of 18,606.74 sq. meters, when, on the contrary, he ought to have awarded compensation for the entire acquired land of the claimant considering that he had already made deduction of Rs. 11/-per sq.ft. towards development charges and consequently, there was no question of awarding compensation only for the said residential area. In support of his submissions, the learned Senior Counsel relied upon the Judgment of Hon''ble Apex Court in the case of Ratan Lal Gupta and Others Vs. Union of India (UOI), .

10. Having heard the learned Counsel, we find that the following points for determination arise in the present appeals:

[i] Whether the learned Judge of the Reference Court was justified in determining the compensation on the basis that land of the claimant was non-agricultural land?

[ii] Whether the learned Judge of the Reference Court was justified in determining the compensation for the land acquired at the rate of Rs. 10/per sq. ft., only for the plotable area, besides a deduction to the tune of Rs. 5,00,000/- on account of expenditure?

11. Dealing with the first point for determination, on perusal of record, we find that there is no dispute that the claimant had made an application to the Sub-Divisional Officer at Darwha on 17th June, 1988 for converting his land under Survey No. 7/1 admeasuring 3 H 1 R for non-agricultural purpose, namely for a residential layout. By an order dated 2nd November, 1988, such permission to convert the land of the claimant for non-agricultural purpose was granted by the Sub-Divisional Officer, Darwha, subject to the conditions and other obligations as

stipulated in the said permission. In his deposition, the claimant has stated that after obtaining the said permission, he was paying non-agricultural tax for the years 1989-90 and 1990-91, and that he had taken steps for preparation of roads and that there was correspondence with regard to the sale of the plots. He further deposed that by a 23rd sale-deed dated February, 1994, he had soled a plot admeasuring 4900 sq.ft., for a consideration of Rs. 1,03,831/-. He has claimed that the land was being used for non-agricultural purposes in view of grant of the said permission. Even in the Award of the Land Acquisition Officer, some agreements pertaining to the plots in respect of the land acquired were also sought to be relied upon by the claimant for the purpose of determining the compensation.

12. PW 5 -Parashram Hemaji Jadhao, who is the Talathi of village Ramnagar, has stated that the claimant had paid the tax of his land till 1992-93.

13. DW 1 " Sanjaysing Gopalsingh Gautam, who, at the relevant time, was the Land Acquisition Officer, has stated that in the year 1988, the then Sub-Divisional Officer had permitted use of the land, subject-matter of acquisition, for non-agricultural purpose and that such permission was at Exh.38. He admitted in his cross-examination that the land, in question, was a non-agricultural land at the time of issuance of notification u/s 4 of the Land Acquisition Act. He has stated that the land was assessed as non-agricultural land at the time of grant of such permission, and that from the date of permission, the status of the land as agricultural one came to an end. He has admitted that adjoining land under Survey Nos. 6 and 10 was used for industrial purposes.

14. From these admissions on the part of Land Acquisition Officer to the effect that on the date of Section 4 notification, the status of the land was non-agricultural, coupled with the fact that no evidence is produced to show that the permission for non- agricultural use was withdrawn in terms of grant of such permission, we find that the land of the claimant is to be valued on the basis of its non-agricultural status. The contention of the Acquiring Body that the permission had lapsed cannot be accepted, as no evidence has been brought on record to show that such permission had, in fact, lapsed, or had been withdrawn. The Talathi of the village examined by the claimant has also stated that upto 1992-93, non-agricultural tax was recovered from the claimant. As such we find that from the material on record, it cannot be accepted that the non-agricultural permission granted by the authorities had lapsed. In any event, while determining the compensation as contemplated u/s 23 of the Land Acquisition Act, the potentiality of the land acquired will have to be taken into consideration to ascertain the market value of the land as on the date of Section 4 notification. As the permission for non- agricultural use shows that the said land was suitable to be used for residential purposes, this itself would be sufficient to come to the conclusion that the land acquired is to be valued as non-agricultural land. The Reference Court has rightly relied upon the non- agricultural permission to determine the compensation on the basis that the land acquired as a non

agricultural land. As such the first point for determination is answered accordingly.

15. With regard to determining the market value of the land as on the date of Section 4 notification, the Hon'ble Apex Court in the Judgment in case of Mahesh Dattatray Thirthkar v. State of Maharashtra 2009 AIR SCW 2962 has held at para 37 that the compensation provision of the Land Acquisition Act is in the nature of a welfare stipulation and thus the State Government must be just and fair to those whose land is acquired. It is not just and fair to deprive the owner of any property without payment of its true market value, especially when the law provides that the same shall be paid.

16. For the purpose of determining the compensation of the land acquired, in the present proceedings, the learned Senior Counsel appearing for the claimant has relied upon the sale-deed at Exh.43 23rd dated February, 1994, whereby a plot of land bearing No. 1 having an area of 4911 sq.ft., which was a part and parcel of the acquired land, was sold at the rate of Rs. 21/- per sq.ft.

17. The next document relied upon by the learned Senior Adv., is the Sale-Deed [Exh.51] indicating a sale transaction dated 13th January, 1993 in respect of a plot admeasuring 1,000 sq.ft., at Digras town at the rate of Rs. 50/- per sq.ft....

18. Admittedly, the said two plots are small developed plots and the area, which is acquired in the present proceedings, admeasures more than three hectares. The learned Counsel appearing for the Acquiring Body submitted before us that the prices fetched for small developed plots cannot be considered for the purpose of determination of compensation where large tracks of land are acquired. On the other hand, the learned Senior Counsel relied upon the same judgment referred to by learned Counsel for the Acquiring Body, namely Ratan Lal Gupta and Others Vs. Union of India (UOI), 3 wherein it has been held that though the price fixed for a small developed plot cannot be expected to be the price of a large track of land, suitable deductions on account of development will have to be made from the price of developed plots to determine the market value of the land on the date of Section 4 notification.

19. In case of Smt. Basavva and others Vs. Special Land Acquisition Officer and others, the Apex Court has held that the Court, in the first instance, has to consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect of comparable lands. In the event the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deduction should be made to arrive at the just and fair market value of a large tracks of land. The time-lag for real development and the waiting period for development are also relevant considerations for determination of just and adequate compensation. For deduction of development charges, the nature of the development, conditions and nature of the land, the land required to be set apart under the building rules for roads, sewerage, electricity, parks, water etc., and all other relevant circumstances involved are to

be considered. In the case of Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, the Apex Court has held that for ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. It has further been held that the exemplars filed by the appellants therein of the small pieces of land could not be a ground to discard them specially when exemplars of large pieces of land were not available. They could, therefore, be used as a safe guide for determining the market value of the land.

20. As such the judgments relied upon by the Acquiring Body are not applicable in the peculiar facts of the present case, as the land acquired in the present case is not an agricultural land and no sale- deeds of large tracks of land are available to determine the market value of the land acquired and it is an admitted fact that non-agricultural land is valued on per sq.ft., or per sq. mtr. basis. In view of the judgments of the Apex Court referred to herein above, there is no bar on relying upon the sale-deeds of small developed plots for the purpose of determining the compensation of a large track of land, provided that suitable deductions are made for the purpose of development and other charges, which would be required for such development.

21. The learned Counsel for the Acquiring Body submitted that the sale-deed at Exh.43 cannot be relied upon, as, according to him, the same has been prepared only to inflate the market value, as the claimant was very well aware about the intended acquisition of his property. The claimant [PW 1] in his evidence has stated that he had obtained the permission for non- agricultural use of the land in the year 1988 and thereafter he had taken steps for the purpose of developing the said property. He has further stated that he had sold one plot of land having an area of about 4900 sq.ft., to one Pankaj Shivaji Mohite on 23rd February, 1994, for a sum of Rs. 1,03,831/-. On perusal of the said sale-deed, we find that the same was executed pursuant to an agreement, which was entered 22nd into on October, 1993, much prior to the notification u/s 4 of the Land Acquisition Act. In fact, the Land Acquisition Officer in his deposition has stated that he received the proposal for acquisition only on 4th December, 1993, which discloses that the agreement was entered into much before the land was intended to be acquired. In the cross- examination of the claimant, neither the genuineness of the said sale-deed has at all been disputed, nor has the Acquiring Body disputed the receipt of the consideration by the claimant, as also the execution of the sale-deed, nor the location of the said land. The Acquiring Body has only restricted itself in putting suggestions in the cross-examination and it has failed to derive any admissions on the basis of these suggestions. As such, considering that the said sale 23rd deed dated February, 1994 is preceded by an Agreement for Sale, which was executed in October, 1993, the genuineness of the said sale-deed

cannot be doubted in view of the evidence on record.

22. Apart from that, the claimant has also examined the purchaser -Shri Pankaj S. Mohite of the said plot, who has deposed that he had purchased the plot from the claimant pursuant to the agreement which took place in October, 1993. He has further stated that he had purchased the same for a consideration of Rs. 1,03,131/-. In the cross-examination of the said witness, the State Govt., and Acquiring Body have not been able to impeach the genuineness of the sale-deed. On the contrary, a suggestion has been given to the effect that he had purchased the land though there was no need, as he was having a house and that the land was purchased for the purpose of fetching more price of the land in question. Merely because the claimant was 1st present at the time of inspection on February, 1993, would not by itself be sufficient for us to infer that the claimant had fabricated the said sale-deed to inflate the price. In fact, on perusal of the sale-deed of developed plot at Exh.51, which is at Digras, where the price is at the rate of Rs. 50/- per sq.ft., we find that the price of Rs. 21/- per sq.ft., mentioned in Exh. 43 cannot be considered to be inflated. In the circumstances, the Reference Court has rightly accepted the genuineness of the sale-deed at Exh.43.

23. The next aspect to be considered is which of the said two sale-deeds sought to be relied upon by learned Senior Counsel appearing for the claimant is to be accepted for determining the compensation for the land acquired. It is an admitted fact that the land, subject-matter of sale-deed at Exh.43, is a part and parcel of the land which has been acquired. The other sale-deed at Exh.51 pertains to the land at Digras town. Both the lands sold by said sale-deeds are developed plots. The learned Counsel appearing for the Acquiring Body has highlighted before us that the claimant in his deposition has admitted that his land is about 2 to 2.5 kms., away from the Old Bus Stand. He further stated that PW 6 " Sheikh Usman Sheikh Sultan has stated that his Gadi Karkhana is one-and half- kilometer away from the new Bus Stand. According to him, as such the evidence of the witness cannot be relied upon in view of such discrepancies, as far as the distance of the land acquired from the main Digras town is concerned.

24. In the Judgment of Hon"ble Apex Court in the case of Mahesh Dattatray Thirthkar v. State of Mah. [cited supra] at para 32, it is emphasized that the burden of proof in civil cases is that of " balance of probability" and not that of " beyond reasonable doubt" . Thus, minor inconsistencies in evidence are not relevant in civil cases in considering the question of discharge of this burden. It has been held that all inconsistencies in evidence cannot impeach the credit of the witness and hence reliability of the testimony. It has been further held that only contradictory statements would so affect the witnesses' credit. Inconsistencies pointed out, which are only minor inconsistencies, do not warrant non-reliance on the same. As such merely because some witnesses have given different distances from Digras town does not mean that their evidence deserves to be discredited. In any event, the Land Acquisition Officer in his cross-

examination has admitted that Digras Municipal Council area is about half a kilometer away from the land acquired. This establishes that the land, which has been acquired, is at a distance of about half a kilometer away from the Municipal limits of Digras town.

25. As held by the Apex Court in its Judgment in case of Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram, the law is well settled that the best evidence of the market value of the acquired land is afforded by transactions of sale in respect of the very acquired land. Further, the Apex Court in para 10 of its judgment rendered in case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, has observed that when the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in the absence of the sales of the neighbouring lands. In the verdict delivered in case of Ranvir Singh and Another Vs. Union of India (UOI), the Apex Court has held that it is the well settled principle that the sale deeds pertaining to the portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. As such, considering the Judgments of the Apex Court referred to 23rd herein above, we find that the sale-deed dated Feb., 1994 at Exh.43 would be the most relevant piece of evidence for assessing the market value of the acquired land. Once a sale-deed in respect of the land acquired having similar features is available, one need not cross the boundaries of said property to search for sale transactions of other properties to determine the market value of the land, which has been acquired.

26. The Apex Court in its Judgment passed in case of Mahesh Dattatray Thirthkar v. State of Mah. [cited supra] has held that the burden of proving the true market value of the acquired property is on the State that has acquired it for a particular purpose. When the land owner has been able to show by testimony and valuation report of the expert valuer that the amount of compensation awarded by the Land Acquisition Officer was inadequate, the onus now shifts on the State to adduce sufficient evidence to sustain the Award.

27. In the present case, the claimant has adduced evidence to establish that the land, which was acquired, was a non-agricultural land. The claimant has also produced the sale-deed of a developed plot whereby the plot was sold at the rate of Rs. 21/-per sq.ft. The Land Acquisition Officer in his cross- examination has admitted that while determining the price, he had not taken into consideration the market price of the land. He has further stated that he had not taken into consideration the status of the land as non-agricultural one. He has admitted that three sale transactions in respect of the same land took place and such transactions were provided to him. He has further admitted that he did not consider the said documents while determining the price, as he did not find potentiality of the land in question as non- agricultural one. He has further admitted that Non- agricultural permission is given after considering all the

possibilities, namely availability of water, locality etc. He also admitted that the land in question was on both sides of Digras-Akola road. He has admitted that land bearing Survey Nos. 6 and 10 is adjoining the land in question and the same is for industrial purposes.

28. PW 1, who is the claimant, has also deposed that after obtaining the Non-agricultural Permission, he had started developing the said property. He has further stated that the Land Acquisition Officer had not taken into consideration the market value of the land and the facilities available to the land while determining the amount of compensation as schools, colleges and other amenities were available in the land acquired. This admission of the Land Acquisition Officer coupled with the evidence adduced by the claimant establishes that the claimant has been able to show that the valuation done by the Land Acquisition Officer was inadequate and as such the onus shifted on the Acquiring Body and the State Govt., to adduce sufficient evidence to sustain the Award passed by the Land Acquisition Officer. However, the Acquiring Body and the State Govt., completely failed to discharge this burden and had been unable to adduce any evidence at all to support the claim of sufficiency of the amount awarded by the Land Acquisition Officer. As such, considering the material on record, we find that the claimant is entitled for enhancement of compensation. We, therefore, find that the Reference Court was justified in coming to the conclusion that the claimant is entitled for enhancement of compensation for the land acquired.

29. Dealing with the amount to be awarded for the land acquired, we find that considering the judgments of the Apex Court, necessary deductions on account of developments will have to be made for arriving at a fair and just market value of the land acquired. The comparable sale-deed to be considered in the 23rd circumstances is the one dated February, 1994 which is at Exh.43, relied upon by the Reference Court, whereby a developed plot of land was sold at the rate of Rs. 21/-per sq.ft. For the purpose of determining the amount to be deducted for development, we find that in the Non-agricultural Permission, out of the total area of the land of claimant admeasuring 32,900 sq. meters, the plotable area available for residential plots was 18,606.74 sq. meters, area provided for open space is 3316.25 sq. meters and area provided for roads is 10,977.01 sq. meters. As such, out of the total area of 32,900 sq. meters owned by the claimant, only an area of 18,606.74 sq. meters was available for residential plots. Hence area to be reserved for open spaces and roads works out to about 45 per cent of the total area of land with the claimant. In view of this, 45 per cent would have to be deducted from the said amount for the areas of open space and roads for ascertaining the market value. On perusal of the conditions imposed for grant of non-agricultural permission, we find that a plot would have to be reserved for public/primary school which had to be handed over to Zilla Parishad, Yavatmal, free of price. So also the open space would be vested in the local authorities. There are also conditions that the roads to be laid would be used for access to adjoining lands. On account of such conditions, a further

deduction of 10% would have to be made from the said amount. Apart from that, the land acquired is more than 3 hectares, and considering the largeness of the property, a further deduction of 5% would have to be made from the said amount, for determining the compensation as on the date of Section 4 notification. Considering the said factors, the value of the land as on the date of Section 4 notification, after deducting 60% towards development charges, works out to Rs. 8/-per sq. ft., which is equivalent to Rs. 86/-per sq. meter. As such the market value of the land determined by the Reference Court at the rate of Rs. 10/- per sq. ft. will have to be reduced to Rs. 8/-per sq.ft., in view of what is stated herein above.

30. The Reference Court has further deducted a sum of Rs. 5,00,000-00 on account of Development expenses. On perusal of Non-agricultural permission, we find that there are many conditions stipulated, whereby the claimant was supposed to sub-divide the land into plots and incur expenditure on preparation of roads, drainage, culvert water supply, electric lines etc. from his own costs and will hand over the same to the authorities concerned for public use. The permission further contemplates that further expenditure was to be incurred for the purpose of such development. The delay in being able to sell plots will also incur expenditure for the purpose of marketing the same to prospective purchasers. On all such activities, the claimant will incur a substantial expenditure. As such the Reference Court was justified in deducting a further sum of Rs. 5,00,000-00 towards development expenses from the value of the land acquired.

31. The Reference Court has confined payment of compensation to the claimant, only to an area of 18,606.74 sq. meters. The Apex Court in its judgment delivered case of Ratan Lal Gupta and Ors. v. Union of India [cited supra] and relied upon by learned Counsel appearing for claimant held that after deducting Development Charges, the Court is not justified to award compensation only for the area which can be used for building purposes.

32. In the present case, the amount, which has been determined, is after deductions towards development charges as well as the expenses and time consumed for the purpose of development. As such the claimant is entitled for the whole area of the land which would be suitable for the purpose of development. The Award of Land Acquisition Officer shows that the acquired area of the claimant admeasures 2.87 H.R., and 0.34 Are for Pot-kharab land. The claimant is not entitled for any enhancement of compensation for the Pot-kharab land, as, such land is low lying and has no value for the purpose of development, nor has the claimant brought any evidence on record to justify any enhancement of compensation for such Pot-kharab land. Consequently, the claimant is entitled for a compensation at the rate of Rs. 8/-per sq.ft., for an area of 2.87 H.R. after deducting development expenses of Rs. 5,00,000-00. The next point for determination is answered accordingly.

33. In view of the above, both the appeals are partly allowed. The impugned

Judgment and Order dated 31st December, 2001 stands modified. The claimant is, therefore, entitled to compensation at the rate of Rs. 8/-[rupees eight only] per square feet for an area of 2.87 H.R. after deducting the said amount towards Development Expenses as stipulated at para 30 herein above with all the statutory benefits in accordance with law. In the circumstances, there shall be no order as to costs.