
(2017) 03 AHC CK 0008
In the Allahabad High Court
Case No : First Appeal No. 5 of 2017

Harkesh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 94
Land Acquisition Act, 1894 — Section 18, Section 4(1), Section 54, Section 6(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168-A

Citation : (2017) 4 ADJ 566 : (2017) 3 ALLJ 658

Hon'ble Judges : Sudhir Agarwal and Virendra Kumar-II, JJ.

Bench : Division Bench

Advocate : Anil Sharma, Advocate, for the Appellant; Prakash Padia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. As requested and agreed by Sri Anil Sharma, learned counsel for the appellants, learned Standing Counsel for respondent 1 and Sri Prakash Padia, learned counsel for respondent 2, we dispense with the requirement of summoning record of Court below and formal preparation of paper book for the reason that an appeal against the judgement and award in question filed by respondent 2 has already been decided by this Court vide judgement dated 3.11.2015.

2. This appeal has been preferred by claimants appellant under Section 54 of Land Acquisition Act 1894 (hereinafter referred to as "Act 1894") read with Section 94 of Code of Civil Procedure (hereinafter referred to as "CPC") assailing judgement and award dated 3.11.2003 passed by Sri S.K. Bhatt, Additional District Judge, Court No. 3, Bijnor. By the said judgement Reference Court has adjudicated nine Land Acquisition References (hereinafter referred to as "LAR"), partly allowed References of claimants tenure holders and determined market value for the purpose of compensation at the rate of Rs. 120/- per sqr. meter,

besides other amount payable under Act 1894. By means of present appeal the claimants appellants have sought enhancement of amount of compensation.

3. M/s Indian Oil Corporation Ltd. (hereinafter referred as "IOCL") is a company owned by Government of India and on its proposal, Government of India issued a Notification dated 26.06.1991 under section 4 (1) of Act, 1894 proposing to acquire certain land at Village Tatarpur Lalu and Rahukedi Gadhu, Tehsil Najibabad, District Bijnor, for the purpose of constructing a Petroleum Product Depot of IOCL. Notification under section 6(1) of Act, 1894 was published on 19th November, 1991 and possession of acquired land was taken on 5th May, 1992. The Special Land Acquisition Officer (hereinafter referred to as "SLAO") made its award on 19th October, 1993 determining market value at Rs. 150,000/- per bigha (Rs. 59.31 per sq. meter).

4. SLAO had determined market value on the basis of sale deed dated 20.02.1990 executed by Sri Ali Ahmad Son of Rahim Bux in favour of Anil Bhanwar, son of Om Prakash, transferring by sale, Gate No.87 (area 3-12-01) for a total consideration of Rs.5,40,376/-.

5. Dissatisfied with the aforesaid determination of market value, claimant/tenure-holders made application requesting for making Reference under Section 18 of Act, 1894 to the District Judge, whereupon LAR No. 91 of 1994 was registered.

6. Besides LAR No. 91 of 1994 (M/s Indian Oil Corporation Ltd. v. Harkesh Singh and Others), there were two more LARs, namely, L.A.R No. 56 of 1994 (M/s Indian Oil Corporation Ltd. v. Jai Ram and Another) and L.A.R No. 215 of 1995 (M/s Indian Oil Corporation Ltd. v. Hansa and Ors.). All the three L.A.R's were consolidated along with others and decided by a common judgement. L.A.R No. 56 of 1994 was made leading case.

7. Claimants said that acquired land is an abadi, near Degree College, Radio Station, Irrigation Department Residential Colony and Adarsh Nagar Colony. On the other side of acquired land, Railway Station Najibabad, its Residential Colony, Bus Stand and Abadi of Najibabad town exists. On the third side of acquired land there is abadi. It has great potential of development. On the one side of acquired land there existed, factories of Thums Up, Card Board, etc. Therefore land has potential of Industrial development also.

8. On behalf of claimants, besides documentary evidence, four witnesses namely P.W.1 Rajeev Kumar Sharma, P.W.2 Vijay Singh, P.W.3 Bhupendra Singh and P.W.4 A. Rahman were produced.

9. Claimants/Appellant relied on following documents :

i. Copy of sale deed dated 03.04.1991, executed by Amirunnisha in favour of Bhupendra;

ii. Certified copy of sale deed dated 27.09.1990, executed by Sohanlal in favour of Sanjeev Kumar;

- iii. Certified copy of sale deed dated 18.12.1989, executed by Mithlesh Mudgil in favour of Smt. Vidhu Dwivedi ;
 - iv. Certified copy of sale deed dated 15.12.1990, executed by Suresh Chandra in favour of Hargovind ;
 - v. Certified copy of sale deed dated 07.11.1989, executed by Harish Chandra in favour of Smt. Vijay Laxmi ;
 - vi. Copy of Register of CH Form of Village - Dhanaura and Tatarpur Lalu ;
 - vii. Copy of six yearly Khatauni of Village - Tatarpur Lalu from 1395 to 1400 Fasli ;
10. Besides, claimants of L.A.R No. 56 of 1994 laid following documentary evidence:-
- i. Certified copy of sale deed dated 9.8.1989 executed by Harish Chandra in favour of Smt. Vijay Laxmi;
 - ii. Certified copy of sale deed dated 28.10.1998 executed by Smt. Mithlesh Mudgil in favour of Smt. Vidhu Dwivedi ;
 - iii. Certified copy of sale deed dated 27.9.1990 executed by Sohan Lal Kukraiti in favour of Sanjeev Kumar ;
 - iv. Certified copy of sale deed dated 11.12.1990 executed by Suresh Chand in favour of Hargovind ;
 - v. Certified copy of sale deed dated 13.05.1991 executed by Ameerunisha in favour of Bhupendra Singh ;
 - vi. Copies of CH Form of Village Dhanaura, Rahukhedhi Gadhu, and Tatarpur Lalu ;
 - vii. Copy of Khasra of village Tatarpur Lalu ; sviii. Copy of Khatauni of village Rahukhedhi Gadhu, Pargana & Tehsil - Nazibabad from 1394 to 1399 Fasli. six. Copy of CH Form of village Rahukhedhi Gadhu relating to 1360 Fasli;
 - x. Copy of Power of Attorney executed by Jairam Singh in favour of Vijay Singh.
 - xi. Copy of Khasra of village - Rahukhedhi relating to 1389 Fasli, 1397 Fasli and 1398 Fasli.
 - xii. Copy of Plots table prepared on scale.
 - xiii. Certified copy of sale deed dated 30.05.1991, executed by Ganesi Singh in favour of Sushila Singh.
 - xiv. Copy of Khasra of Village - Shekhpur Garhu
 - xv. Copy of CH Form of 1360 Fasli
 - xvi. Copy of map of Village - Tatarpur Lalu of 1360 Fasli

11. Claimants had also relied on following documents vide list, paper no.Ga-112 :
- i. Certified copy of award dated 16.10.2003 passed in L.A.R. No.317 of 1993 (Ganeshi v. State)
12. There are some further documents filed in other connected LAR. We are not giving details thereof, but if necessary, will discuss as and when occasion would arise.
13. On behalf of IOCL, Acquiring Body and State of U.P, oral evidence of DW-1 Sanjay Kumar Agarwal and D.W.2 Virendra Kumar Verma was adduced, besides following documentary evidence :-
- i. Certified copy of Sale deed dated 17.10.94 executed by A. Hakeem and A. Rahman in favour of Smt. Chand Gupta and Smt. Suresh Gupta.
- ii. Certified copy of award dated 02.11.2000, passed by Vth Additional District Judge in LAR No. 133 of 94 (Anil Kumar and Others v. State of U.P.) ;
14. Reference Court found that SLAO has determined market value on the basis of sale deed dated 20.02.1990 relating to Village Rahukhedi Gadhu, executed by Ali Ahmad son of Rahim Bux, in favour of Anil Kumar Bhanwarwal son of Om Prakash, transferring plot no.87, area 3 Bigha 12 Biswa 1 Biswansi (Quality Soil Sawai Avval) at Village Rahukheri Garhu for a consideration of Rs.5,40,376/- and therefrom rate of land transferred, came to Rs.1,50,000.28 per bigha i.e. Rs.59.31 per sq.meter. Reference Court, however, held that said document could not have been made exemplar for determining market value since the aforesaid document was barred by Section 168A U.P. Zamindari Abolition And Land Reforms Act for the reason that Khasra No.87 has a total area of 4 bigha 2 biswa 17 biswansi and a part thereof i.e. 3 bigha 12 biswa and 1 biswansi was transferred by sale to Sri Anil Kumar, which was in violation of Section 168A rendering the document void and a void document cannot be made a representative document for the purpose of determining market value.
15. Proceeding further, it has held total acquired land is of 26 bigha 13 biswa and 13 biswansi situate in Village Rahu Kheri and 25 bigha 12 biswa and 14 biswansi in village Tatarpur Lalu. Both the villages were adjacent to each other. It also observed that market rate on the basis of sale deed dated 20.02.1990 executed by Ali Ahmad comes to Rs.49.55 per sq.meter i.e. Rs.1,50,000.28 per bigha. (Here we find that calculation of Rs.49.55 per sq.meter is erroneous, inasmuch as, the said rate would come per square yard and if it is taken to be in square meter, it comes to Rs.59.31). Therefore, there is an obvious calculation mistake in respect of rate based on the sale deed dated 20.02.1990. However, that would not make much difference for ultimate conclusion in view of our discussion and reason given hereunder.
16. Reference Court, in respect to exemplars placed before SLAO by the claimants, i.e. related to the land of Village Tatarpur Lalu, found that the same were all rejected on the ground that they relates to Abadi. Reference Court took

the view that rejection of exemplars relating to Village Tatarpur Lalu merely on the ground that the same pertains to land sought to be transferred was Abadi was not justified for the reason that the acquired land was appurtenant to the land transferred by such exemplars and it shows that the acquired land has great potential for Abadi, and was adjacent to Abadi. It further held that plot no.87 in Village Rahu Kheri Garhu was appurtenant to plot no.85 and 0.039 area of plot no.85 was Talab, 0.039 was a Gaddha and therefore, land, which was adjacent to Talab and Gaddha cannot be made basis for determining market value of acquired land, which has a great Abadi potential and has no such Talab Gaddha etc. in the adjacent area.

17. Now coming to topography of acquired land, Reference Court found that in Village Tatarpur Lalu, Khet No.66, 69/1, 69/2, 72, 93, 97/1, 97/2, 98, 99, 100, 53 and 57 were recorded as Abadi in Revenue records. Similarly, in Village Rahu Khedi Garhu, in Khasra of 1398 fasli, Khet no.82, 90, 91 and 88 were recorded as Abadi, which shows that on the date of acquisition notification under Section 4(1), acquired land has Abadi around it. The relevant findings are :

"mijksDr ls ;g Kkr gksrk gS fd vftZr dh x;h Hkwfe ds lEcU/k esa /kkjk&4 dh foKfIr ds izdk"ku dh fnukad dks vftZr dh xbZ Hkwfe ds vklikl vkcknh FkhA i=koyh ij xzke "ks[kiqj x<+w] xzke /kukSjk] xzke jkgw[ksM+h x<+w ,oa xzke rkrkjiqj ykyw ds ekufp= miyC/k gSa] ftuds voyksdu ls Kkr gksrk gS fd xzke rkrkjiqj ykyw xzke jkgw[ksM+h x<+w] ftuesa bl eqdnesa dh vftZr Hkwfe fLFkr gS] xzke "ks[kiqj x<+w ls feys gq;s gSaA nksuksa i{kksa dks ;g Lohdkj gS fd xzke rkrkjiqj xzke jkeiqj cuokjh] /kukSjk] Nkij o jkgw[ksM+h x<+w vkil esa feys gq;s gSa vkSj bUgha xzkeksa esa uthckokn dLck clk gqvK gSA uthckokn dLcs dk vyx ls dksbZ Hkwfp= ugha gSA vr% mijksDr rF;ksa ls ;g Hkyh Hkkafr izekf.kr gksrk gS fd vftZr dh xbZ Hkwfe uthckckn "kgj dh ifjlhek ls feyh gqbZ gSA"

"From the above, it transpires that on the date of publication of notification under Section 4 in connection with the land acquired, the area around it was populated. Available on record are the site-maps of Villages Sheikhpur Garhi, Dhanaura, Rahukheri Gadu and Tatarpur Lalu, a perusal whereof shows that Villages Tatarpur Lalu and Rahukheri Gadu, wherein located is the acquired land of this case, are adjacent to Village Sheikhpur Garhi. It is admitted to both the parties that Villages Tatarpur, Rampur Banwari, Dhanaura, Chhapar and Rahukheri Gadu are adjacent to each other; and Najibabad locality is based in these very villages. There is no separate sitemap of Najibabad locality. Hence, from the aforesaid facts, it is well established that the acquired land adjoins the limits of Najibabad city."

(English Translation by the Court)

18. Reference Court has further observed :

"izi= la[;k&x&113 ds voyksdu ls Kkr gksrk gS fd xzke "ks[kiqj x<+w tks xzke rkrkjiqj ykyw dh tehu ls feyk gqvK gS] esa LVhy QSDV~h] xRrk QSDV~h] FkElvi QSDV~h] ugj dkyksuh uflZx gkse o fMxzh dkfyt dh 15&16 lky iqjkuh vkcknh gS

vkSj vkdk"kok.kh Hkh 20 lky ls T;knk iqjkuh gSA bls vfrfjDr xzke rkrjiqj ykyw ds [kljk la0&90 ds iwjc esa IM+d gS vkSj ;g IM+d gfj}kj uthckckn ckbZ&ikl ds uke ls tkuh tkrh gSA ;g IM+d iUnzg&chl lky iqjkuh gSA U;k;ky; esa ih0MCyw0&2 fot; flag us vius c;ku dh eq[; ijh{kk esa ;g dgk gS fd& vftZr vkjkt tykyckn ls ,d IM+d] tks dksrokyh uthckckn jksM+ dks feykrh gS] ij fLFkr gSA ;g IM+d dkQh iqjkuh gSA vftZr vkjkt xzke jkgw [ksM+h ds [kljk ua0&90&91 esa /kkjk&4 dh foKfIr ds izdk"ku ds fnu vkcknh FkhA vftZr vkjkt ml le; vkcknh ds fy;s fcd ldrh FkhA vftZr vkjkt ls iwjc esa vkcknh gSA vftZr vkjkt ds if"pe esa jsyos ykbZu gSA jsyos ykbZu ds if"pe esa jsyos DokVZj cus gSa] mlds ckn fotukSj uthckckn IM+d gS vkSj IM+d ds nwljh vksj dLck uthckckn dh iqjkuh vkcknh gSA jsyos ykbZu ds if"pe esa fjk;"kh DokVZj lB&lRrj lky iqjkus gSa vkSj IMd ds nwljh vksj vkcknh 20&30 lky iqjkuh gSA dLck uthckckn dh vkcknh Hkh vftZr vkjkt ls 250&300 xt dh nwjh ij gSA vftZr vkjkt ds ikl gh vkn"kZ uxj dh vkcknh 100&150 xt dh nwjh ij gS] tks rhl&pkyl lky iqjkuh gSA dLck tykyckn dh vkcknh Hkh vftZr vkjkt ls 250&300 xt dh nwjh ij gSA o"kZ 90&91 esa vftZr vkjkt vkcknh ds fy;s fcd ldrh FkhA dLck uthckckn dh vkcknh xzke jkeiqj cuokjh esa gS] tks xzke jkgw [ksMh x<+w ds mRrj esa gSA lkgw tSu fMxz dhkfyt vftZr vkjkt ls 600&700 xt dh nwjh ij gSA IykbZ&oqM QSDV~h mRrj esa 700 xt dh nwjh ij vftZr vkjkt ls gSA dRFkk QSDV~h Hkh bruh gh nwjh ij gSA bl izdkj vftZr vkjkt] vkcknh dh {kerk j[krh FkhA bl lk{kh ls ;n~;kfIr foLr`r izfr ijh{kk dh x;h gS] ijUrq bl lk{kh dh izfr ijh{kk esa ,slk dksbZ rF; ugha vk;k gS ftlls bl lk{; ij fo"okl u fd;k tk ldsA"

"From the perusal of Form No. Ga-113, it transpires that located in Village Sheikhpur Gadu, which is adjacent to the land of Village Tatarpur Lalu, are steel factory, cardboard factory, Thumbsup factory, Nehar Colony Nursing Home and Degree College having 15-16 years old populace and Aakashwani office is also there for more than 20 years. Apart from this, there is a road to the east of Khasra No. 90 of Village Tatarpur and this road is known as Haridwar-Najibabad Bypass. This road is 15-20 years old. In his examination-in-chief, PW-2 Vijay Singh has stated before the court that the acquired land is located on a road which emerges from Jalalabad and joins Kotwali Najibabad road. This road is very old. The acquired land located in Khasra No. 90-91 of Village Rahukheri was populated on the day of publication of the notification under Section 4. The acquired land could have been sold for habitation at that time. The area to the east of the acquired land is populated. There is railway line to the west of the acquired land. To the west of railway line, there are railway quarters; thereafter, comes the Bijnor-Najibabad road and towards the opposite side of the road, there is old population of Najibabad locality. The residential quarters to the west of the railway line are 60-70 years old and the population on the opposite side of the road is 20-30 years old. The population of Najibabad locality is also located 250-300 yards far from the acquired land. Near the acquired land, there is population of Adarsh Nagar 100-150 yards far from it. The population of Jalalabad locality is also habitated 250-300 yards away from the acquired land. The acquired land could have been sold in the year 90-91 for habitation. The population of Najibabad locality is in Village Rampur Banwari which is to the

north of Village Rahu Kheri Gadu. Sahu Jain Degree College is situated at a distance of 600-700 yards from the acquired land. Plywood factory is in the north 700 yards away from the acquired land. Cutch factory is also situated at the same distance. In this way, the acquired land had the potential to be populated. Though this witness has been cross-examined at length yet nothing has come out during cross-examination of this witness which may render the testimony unreliable."

(English Translation by the Court)

19. Reference Court then has considered sale deed relied on by claimants-tenure holders, in support of their claim and rejected sale deeds dated 08.9.1989 and 23.10.1989 being much prior to the date of notification issued under Section 4 (1) of Act, 1894 i.e. 26.06.1991. The sale deed dated 27.9.1990 was rejected since it pertains to a very small area of land i.e. 12.5 sq. meter, transferred for commercial purposes. Similarly, sale deed dated 11.12.1990 pertains to a small piece of land i.e. 5.01 sq. meter, hence same was rejected. Sale deed dated 03.4.1991 though pertains to 182 sq. meters of land but had a lot of constructions over it and land and constructions, both were sold, for a consideration of Rs.80,000/-, hence was not taken as a valid exemplar. Thereafter it referred to sale deed dated 30.04.1991 whereby 211.50 sq. meters of land was transferred for consideration of Rs.53,000/- but it was also rejected since there did not exist Abadi on the acquired land rather it contains potential for Abadi.

20. The exemplar relied by State of U.P. i.e. sale deed dated 17.10.1994 was also rejected being more than three years subsequent to the date of acquisition notification under Section 4(1) of Act, 1894.

21. Court below then has relied on the award dated 16.10.2003 in LAR No.317/93, which pertains to acquisition notification dated 06.07.1991 issued under Section 4(1) of Act, 1894 acquiring certain land in Village Tatarpur Lalu. It observed that most of the land acquired in question also belong to Village Tatarpur Lalu. In the award dated 16.10.2003 in LAR No.317/93, Reference Court had determined market value at Rs.150/- per sq. meter.

22. We find that in the award dated 16.10.2003 in LAR No.317/93, the Court relied on exemplar (Paper No.87), a sale deed dated 14.01.1991 executed by Ganeshi Singh, transferring 85 square meters of land in Village Tatarpur for a consideration of Rs.15,000/- (i.e. Rs. 176.47/- per Sqr. Meter). There was another exemplar i.e. sale deed dated 10.6.1991 which was also executed by Ganeshi Singh, transferring 223 sq meter of land of village Tatarpur to one Ghasita, for consideration of Rs. 39,000/-, which brings rate to Rs. 174.85 per sq. meter. Relying on the aforesaid two exemplars and applying deduction of 15%, Court below determined market value of acquired land at Rs. 150/- per sq. meter and made its award accordingly. The acquisition in question has just ten days difference vis-a-vis the acquisition, which was considered in LAR No.

317/93. Reference Court, therefore, followed the said award but applied a further deduction of 20% and thereby determined market value at the rate of Rs.120 per sq. meter.

23. Sri Anil Sharma, learned counsel for claimant appellants submitted that Reference Court has determined market value at a much lower rate and there was no justification for allowing any deduction whatsoever, hence appellants are entitled for compensation at the rate of Rs. 176.47 per sqr. mtr. as per the exemplars relied by Court in L.A.R No. 317 of 1993 vide award dated 16.10.2003 and in any case, Court below was not justified in applying 20% deduction even in respect of the rate accepted in judgement and award dated 16.10.2003 in LAR No. 317 of 1993, hence compensation at the rate of Rs. 150/- ought to have been determined by Reference Court. It is contended that in the present case rate determined by Court below at the rate of 120/- Per Sqr. Meter is highly inadequate and unjust. Appellants are entitled to higher rate of compensation which cannot be less than Rs. 150/- Per Sqr Mtr.

24. He further contended that the notification under Section 4 (1) of Act 1894 was published on 26.6.1991 and appellants have relied on sale deed dated 3.4.1991, executed by Amirunnisha in favour of Bhuperdra Singh which was just two months prior to the date of notification under Section 4 (1) of Act 1894 and therefore, the said exemplar ought to have been followed by Court below and it has erred in law in not following the same.

25. Sri Prakash Padia, learned counsel for respondent no. 2, on the contrary submitted that award determining compensation at the rate of Rs.120/- Per. Sqr. Meter has been upheld by this court vide judgement dated 3.11.2015 in First Appeal No. 719 of 2004, which was between the same parties, filed by Indian Oil Corporation Ltd. and said judgement has attained finality, after dismissal of appeal by Supreme Court also. Therefore, there was no justification to allow any higher compensation to appellant and this Court should follow its judgement dated 3.11.2015 and dismiss appeal.

26. Two questions up for consideration in the case in hand are "whether market value determined by Reference Court at Rs. 120/- per sqr. meter is adequate and shows fair and just market value on the date of notification under Section 4 (1) of Act of 1894 or needs be enhanced, as claimed by appellant to at least Rs. 150/- per sqr. meter" and, secondly, "whether Court below was justified in applying 20% deduction in the rate accepted by Court in L.A.R No. 317 of 1993 decided on 16.10.2003".

27. Before coming to discuss the aforesaid points for determination, it would be appropriate to place on record that total area acquired by respondents included 26 bigha, 13 biswa, 13 biswansi land in village Rahukhedra and 25 bigha, 12 biswa, 14 biswansi in village Tatarpur. Both the villages are adjacent, and entire land formed a single unit though belong to different tenure holders. Total area of land of claimant appellants, which has been acquired, and is subject matter of

this appeal is, 10897.5 sqr. meter.

28. In LAR No. 317 of 1993, Reference Court relied on exemplars, including sale deed dated 14.1.1991, whereby a small piece of land measuring 85 Sqr. Meters in village Tatarpur, was transferred by sale for a consideration of Rs. 15,000/-. The rate of land thus came to Rs. 176.47 per sqr. meter. Another, exemplar sale deed relied in the award dated 16.10.2003 is dated 10.6.1991, whereby also a very small piece of land, measuring 230 sqr. meters in village Tatarpur was transferred by sale for consideration of Rs. 39,000/- only (i.e. Rs. 174.85 per sqr. meter).

29. When a small piece of land is transferred and exemplar sale deed of such land is relied for the purpose of determining compensation of a very big piece of land, it has been held time and again that appropriate deduction with respect to largeness of area must be applied. It would be pertinent to recapitulate relevant statutory law on the subject before coming to a particular conclusion on the subject.

30. In *Shaji Kuriakose and another v. Indian Oil Corporation Ltd.* (2001) 7 SCC 650, a large tract of land in village Manakunnam, District Cochin was proposed to be acquired for setting up a bottling plant by Indian Oil Corporation and notification under Section 4 (1) was issued on 23.08.1990. Acquired land included 7.13 acres of land of claimant/landowner-Shaji Kuriakose. Collector vide award dated 05.05.1992 offered compensation at Rs. 1,225/- per acre i.e. Rs.500/- per cent which was enhanced to Rs.7,000/- per cent by Reference Court. High Court reduced compensation to Rs.4,000/- per cent for wet land and Rs.6,500/- for dry land. Appeal preferred by claimants before Apex Court failed. Court found that land which was sold vide exemplar sale deed was not similarly placed with acquired land inasmuch as there was no access to acquired land, there existed only an internal mud road which belonged to one of the claimants, whose land was acquired, the land covered by exemplar sale deed was a dry land, whereas acquired land was mostly wet land. After acquisition, acquired land has to be reclaimed and a lot of amount would be spent for filling it. The exemplar sale deed related to a small piece of land while acquired land was quite large. Sale for smaller plot fetches more consideration than larger or bigger piece of land. Looking to all these facts, Court found that determination made by High Court was justified and dismissed appeal.

31. In *Kasturi & others v. State of Haryana* (2003) 1 SCC 354, 84.31 acres of land in State of Haryana was proposed to acquire for development of residential and commercial area at Sector 13 and 23 Bhiwani by publishing notification under Section 4 on 04.04.1986. Collector made awards dated 10.11.1987 and 31.03.1988, determining compensation at Rs.57,500/- per acre and Rs.55,200/- per acre which comes to around Rs. 11.81 per square yard. Reference Court enhanced compensation to Rs.125/- per square yard. Landowners as well as State, both preferred appeal in High Court. Landowners sought compensation at Rs.500/- per square yard while State appealed for restoration of Collector's

award. High Court reduced compensation to Rs.79.98 per square yard applying 20% deduction towards development charges. It partly allowed appeal of State but dismissed appeals preferred by claimants/landowners. Division Bench confirmed judgment of Single Judge hence matter was taken to Apex Court by claimants/ land owners. It was contended that High Court erred in applying deduction of 20% towards development charges and also by not enhancing compensation to Rs.500/- per square yard as claimed by landowners. Supreme Court found that land acquired comprised a large area and was not developed though has potential for residential and commercial purposes. For its development roads were to be laid, provision for drainage was to be made and certain area was to be earmarked for other civic amenities. The acquired land is not a small plot located in such a way that no other development was required at all and it could be utilized as it is, being a developed building site. In respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 33% amount was processed for deduction subject to variations depending upon nature of land, location, extent of expenditure involved for development and area required for roads and other civic amenities to develop land so as to make plots for residential or commercial purposes. Whether land is plain or uneven, soil of land is soft or hard having bearing on foundation for the purpose of making construction; whether land is situated in the midst of a developed area all around or may have a hillock or may be low lying or may be having deep ditches, are all relevant considerations since that would have consequences in the land to be spent for development. Court relied on various decisions and thereafter upheld deduction of 20% towards development and dismissed appeal of landowners.

32. In *Lal Chand v. Union of India and another* (2009) 15 SCC 769, Court noticed that deduction for development constitutes two components-one is with reference to area required to be utilized for development work and second is the cost of development work. It further held that deduction for development in respect of residential plot may be higher while not so where it is an industrial plot. Similarly, if acquired land is in a semi-developed urban area or in any undeveloped rural area, then deduction for development may be much less and vary from 25 to 40 percent since some basic infrastructure will already be available. The percentage is only indicative and vary depending upon relevant factors. With reference to exemplars of transfer of land between private parties, Court would also look into intrinsic evidence, i.e., the exemplar sale deed where it recites financial difficulties of vendor and urgent need to find money as a reason for sale or other similar factors, like litigation or existence of some other dispute. These are all the factors constituting intrinsic evidence of a distress sale.

33. In *Lal Chand v. Union of India* (supra), Court also observed, if acquisition is in regard to a large area of agricultural land in a village and exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of prevailing market value even if such land is at the other end of village, at a distance of one or two kilometers.

But, the same may not be appropriate where acquisition relates to plots in a town or city where every locality or road has a different value. A distance of about a kilometer may not make a difference for the purpose of market value in a rural area but even a distance of 50 meters may make a huge difference in market value in urban properties. Thus, distance between two properties, the nature and situation of property, proximity to the village or a road and several other factors may all be relevant in determining market value.

34. In *Valliyammal and others v. Special Land Acquisition 2011* (8) JT 442, Court has looked into various earlier judgments laying down guiding principles for determination of market value of acquired land. Court has observed that comparable sales method of valuation is preferred since it furnishes evidence for determination of market value of acquired land at which a willing purchaser would pay for acquired land if it had been sold in open market at the time of acquisition. However, this method is not always conclusive and there are certain factors, which are required to be fulfilled and on fulfilment of those factors, compensation can be determined. Such factors are (a) sale must be a genuine transaction; (b) sale deed must have been executed at the time, proximate to the date of issue of notification under Section 4; (c) land covered by the sale must be in the vicinity of acquired land; (d) land covered by the sales must be similar to acquired land; and (e) size of plot of the land covered by the sales be comparable to the land acquired. If there is dissimilarity in regard to locality, shape and size or nature of land, court can proportionately reduce compensation depending upon disadvantages attached with the acquired land. Further, for determining market value, potentiality of acquired land should also be taken into consideration. The "potentiality" means, capacity or possibility for changing or developing into state of actuality. It is well settled that market value of property has to be determined having due regard to its existing condition, with all its existing advantages and its potential possibility when let out in its most advantageous manner. Court also said, when undeveloped or underdeveloped land is acquired and the exemplar is in respect to developed land, deduction can be made. Normally, such deduction is 1/3, but it is not a hard and fast rule.

35. In *Bhupal Singh and others v. State of Haryana*, (2015) 5 SCC 801 while the above principles laid down in various cases were reiterated, Court in para 18 of judgment, said:

"Law on the question as to how the court is required to determined the fair market value of the acquired land is fairly well settled by several decisions of this Court and remains no more res integra. This Court has, inter alia, held that when the acquired land is a large chunk of undeveloped land having potential and was acquired for residential purpose then while determining the fair market value of the lands on the date of acquisition, the appropriate deductions are also required to be made."

36. It is also reaffirmed that an exemplar when relates to small piece of developed land and is sought to be relied to determine market value of large

tract of undeveloped acquired land, deduction can be applied ranging between 20% to 75%. The Court in para 20 of judgment relied upon its decision in Chandrashekar v. Land Acquisition Officer (2012) 1 SCC 390 stating that deduction has two components, one is "development" and another with respect to the "size of the area". Percentage of deduction was restricted in Subh Ram v. State of Haryana, (2010) 1 SCC 444 stating that deduction of both components should be around 1/3 each in its entirety, which would roughly come to 67% of component of sale consideration of exemplar sale transaction.

37. In Trishala Jain and another v. State of Uttranchal and another (2011) 6 SCC 47, for the purposes of construction of Government Polytechnic Institute at Dehradun, notification under Section 4 was published on 30th January, 1992, proposing to acquire 12.85 acres of land situated in village Sewala Kalan, Pargana Kendriya Doon, District Dehradun. The area of land belong to claimants-landowner, Trishala Jain and others, was 4.58 acres and 3.031 acres respectively. Collector offered compensation applying "belting system" and the first belt at Rs.9,78,223.40 per acre, second belt at Rs. 6,52,482.27 per acre and third belt at Rs. 4,39,362.70 per acre. Reference Court held belting system applied by Collector improper observing that entire land having been acquired for one purpose, there was no justification for application of belting system. Relying on two exemplar sale deeds dated 26.11.1991 and 17.11.1991 it awarded compensation at Rs. 5,12,000/- per bigha after applying 20% deduction to gross market value of Rs.6,40,000/- per bigha. In appeal, High Court upheld view taken by Reference Court that there was no justification for applying "belting system" but raised deduction from 20% to 33.33% and hence determined market value at Rs. 4,26,667/- per bigha. The aforesaid deduction was applied on account of "development charges". Appeal was taken to Supreme Court by claimants/landowners. The four questions formulated by Court are as under:

"I. Whether or not the belting system ought to have been applied for determination of fair market value of the acquired land?

II. What should be the just and fair market value of the acquired land on the date of issuance of notification under Section of the Act?

III. Whether in the facts and circumstances of the present case there ought to be any deduction after determining the fair market value of the land? IV. What compensation and benefits are the claimants entitled to?"

38. Court upheld the view taken by courts below that application of "belting system" was unjustified since land as a whole was similarly placed and surrounded by developed areas and proposed to be used for one purpose, i.e., construction of Government Polytechnic Institute. Court then also held that deduction towards development is justified in certain circumstances but how much deduction is to be applied, will depend upon individual facts of the case. In para 39 of judgment, Court said:

"39. The law with regard to applying the principle of deduction to the determined

market value of the acquired land is quite consistent, though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. In other words, it is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases. Normally the rule stated by this Court consistently, in its different judgments, is that deduction is to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects. It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the acquisition relates to a large tract of land."

(emphasis added)

39. Further in paras 41 and 44 of judgment, Court said:

"41. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of 'no deduction'. Furthermore, where the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features comparable to the proposed acquired land, including that of size, is another category of cases where principle of 'no deduction' may be applied. These may be the cases where least or no deduction could be made. Such cases are exceptional and/or rare as normally the lands which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at the time of issuance of notification under Section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes and intents for determining the market value of the land in question."

"44. It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits."

(emphasis added)

40. In Chandrashekar v. Land Acquisition Officer (supra) for residential layout issued by Gulbarga Development Authority acquisition proceedings were initiated by publishing Notification dated 13.5.1982 proposing to acquire 144 acres of land in villages Rajapur (71 acres) and Badepur (73 acres). The land of claimants-appellants measured 8 acres, 4 guntas in village Badepur and in connected

appeal it measured 7 acres, 7 guntas. Collector made award determining compensation at Rs.4100/- per acre for land in village Badepur and Rs.13,500/- for land in village Rajapur. Reference Court enhanced compensation to Rs.1,46,000/- per acre in place of Rs.4100/- per acre for land in village Badepur. On appeal, High Court remanded matter, where after Reference Court determined compensation at Rs.1,45,000/- per acre vide order dated 21.12.2002. High Court reduced compensation in appeal at Rs. 65,000/-. The view taken by High Court was upheld by Supreme Court by dismissing appeal of landowners. The issue raised before Court was the extent of deduction to be applied while determining market.

41. It would be interesting to notice review of various cases by Supreme Court demonstrating that deduction applied has varied in all cases.

(a) In *Brig. Sahib Singh Kalha v. Amritsar Improvement Trust*, (1982) 1 SCC 419, the Court said where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly, deduction of 20 percent of total acquired land should be made for land over which infrastructure has to be made (space for roads etc.). Besides, cause of raising infrastructure like roads, electricity, water, underground drainage, etc. is also to be considered and for this purposes deduction would raise from 20% to 33%. Thus, in all the Court upheld deductions between 40% and 53%.

(b) In *Administrator General of West Bengal v. Collector, Varanasi*, (1988) 2 SCC 150, the Court upheld deduction of 40%.

(c) In *Chimanlal Hargovinddas v. Special Land Acquisition Officer*, (1988) 3 SCC 751, the Court upheld deduction between 20% to 50%.

(d) In *Land Acquisition Officer Revenue Divisional Officer, Chottor v. L. Kamamma (Smt.) Dead by and others*, (1998) 2 SCC 385, Court upheld deduction of 40% as development cost.

(e) In *Kasturi and others v. State of Haryana (supra)*, 7th deduction was upheld on development, clarifying that deduction can be more or less of 7th depending upon facts of the case.

(f) In *Land Acquisition Officer v. Nookala Rajamallu and others*, (2003) 12 SCC 334, Court upheld 53% deduction.

(g) In *V. Hanumantha Reddy (Dead) v. Land Acquisition Officer*, (2003) 12 SCC 642, Court upheld 37% deduction towards development.

(h) In *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789, Court observed that deduction of 20 to 50% towards development is permissible.

(i) In *Atma Singh v. State of Haryana and another*, (2008) 2 SCC 568, 20% deduction towards largeness of area was applied.

(j) In *Subh Ram and others v. State of Haryana and others*, Court observed that

where valuation of a large area of agricultural or undeveloped land has to be determined on the basis of sale price of a small developed plot, standard deductions would be 1/3rd towards infrastructural space and 2/3rd towards infrastructural developmental cost, i.e. 67%.

(k) In Andhra Pradesh Housing Board v. K. Manohar Reddy and others, (2010) 12 SCC 707, it was observed that deductions on account of development could vary between 20% to 75%.

(1) In Special Land Acquisition Officer and another v. M.K. Rafiq Sahib, (2011) 9 SCC 714, Court was upheld 60% deduction.

80. In this background of authorities, Court in Chandrashekar v. Land Acquisition Officer (supra), observed that quantum of deduction towards development is on account of two components. In this regard it said in para 19.1 and 19.2 as under :

"19.1. Firstly, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. This "first component", may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure.

19.2 Secondly, deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like. This "second component" may conveniently be referred to as deductions for developmental expenditure /expense."

42. Having said so Court in para 23 said:-

"23. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33-1/3 percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33-1/3 percent, the two

components under the head of "development" put together, should not exceed the upper benchmark."

43. The above principles have further been followed and reiterated in *Atma Singh v. State of Haryana and another* (supra), *Nirmal Singh v. State Of Haryana* (2015) 2 SCC 160 and *Major General Kapil Mehra and others v. Union Of India and another* (2015) 2 SCC 262.

44. The decisions of this Court in *National Thermal Power Corporation through its General Manager* (supra) and *Power Grid Corporation of India v. State of U.P. and others* 2015 (5) ADJ 138 (All) also reiterate the said principles.

45. In *Sabhia Mohammed Yusuf Abdul Hamid Mulla (d) by LRS and others v. Special Land Acquisition Officer and others* (2012) 7 SCC 595 Reference Court while determining market value observed that though land was agricultural but had non-agricultural potential and determined market value. High Court made a deduction of 15% towards development charges.

46. Referring to an earlier decision in *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789, Court in *Sabhia Mohammed Yusuf Abdul Hamid Mulla* (supra) said that development charges may range between 20% to 50% of the total price. Court further observed:

"in fixing market value of the acquired land which is undeveloped and under-developed the courts have generally approved deduction of 15% of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired."

(emphasis added)

47. In L.A.R No. 317 of 1993, which related to another acquisition, though it had gap of just 10 days with the acquisition in question, Reference Court therein applied only 15 % deduction and determined market value at Rs. 150/- per sqr. meter, looking to the size of the land of individual tenure holders acquired in the acquisition in question. Reference Court in its award dated 3.11.2003 has found that a further deduction of 20% would justify to arrive at an appropriate market value for the reason that the area of acquired land of tenure holders in question is very large, inasmuch as, exemplar sale deed related to area of land sold out thereunder to the extent of only 85 sqr. meter and 223 sqr. meter while area of acquired land of appellants is more than 10,000/- sqr. meter. Rates which are applicable to smaller piece of land, which is also capable of use for residential and commercial purposes, may not be applicable to a bigger chunk of land, since number of buyers in such a case would be much less. This is what has been discussed and observed by Courts, time and again, average deduction, comes out to about 31% to the rates at which the 85 sqr. meter and 223 sqr. meter land was sold under exemplar sale deed dated 14.1.1991 and 18. 6.1991, which were relied in LAR No. 317 of 1993 decided on 16.10.2003.

48. Looking to these facts and in the entirety of the circumstances, we have no

hesitation in holding that Reference Court in allowing 20% deduction, and thereafter determining market value at Rs. 120 Per Sqr. Meter, has not committed any manifest error to such an extent that it may require a degree of reversal or any variation in this appeal. The Appellate Court should not interfere with judgement of Court below, simply as a matter of right. It is only when Appellate Court finds it necessary, looking to the findings recorded by Court below that there are reasons justifying reversal to such findings.

49. In *S.V.R. Mudaliar (Dead) by Lrs. and Ors. v. Rajabu F.Buhari (Mrs) (Dead) by Lrs. and Ors.* AIR 1995 SC 1607, Court in paras 14 and 15 of the judgment has upheld the contention that though Appellate Court is within its right to take a different view on the question of fact, but that should be done after adverting to the reasons given by Trial court in arriving at the findings in question. Appellate Court before reversing a finding of fact has to bear in mind the reasons ascribed by Trial Court. Apex Court relied and followed earlier decision of Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath*, 10 CWN 630 and in para 15 of the judgment said:

"There is no need to pursue the legal principle, as we have no doubt in our mind that before reversing a finding of fact, the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath*, (1906) 10 Cal.W.N. 630, wherein, while regarding the appellate judgment of the High Court of judicature at Fort William as "careful and able", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge."

50. Following the above decision, Hon^{ble} B.L.Yadav, J in *Smt. Sona Devi v. Nagina Singh and Ors.* AIR 1997 Patna 67 observed that whenever judgment of Appellate Court is a judgment of reversal, it is the primary duty of Appellate Court while reversing findings of Trial Court, to consider the reasons given by Trial Court and those reasons must also be reversed. Unless that is done, judgment of Appellate Court cannot be held to be consistent with the requirement of Order 41, Rule 31 , which is a mandatory provision.

51. The above view has also been followed in *Jaideo Yadav v. Raghunath Yadav & Anr.*, 2009(3) PLJR 529 wherein the Court said that Trial Court recorded its findings but lower Appellate Court had not reversed the said findings and rather on the basis of some findings of its own, appeal was allowed by lower Appellate Court without appreciating findings of Trial Court on the concerned issue. Court then said :

"The law is well settled in this regard that where the judgment of the lower appellate court is a judgment of reversal it is primary duly of the appellate court to consider the reasons given by the trial court and those reasons must also be reversed."

52. This court has also followed same view in Doodhnath and another v. Deonandan AIR 2006 Allahabad 3.

53. Lastly, we are also of the view that in the appeal preferred by defendant i.e. Indian Oil Corporation, we have discussed the matter at length and found that market value of Rs. 120/- determined by Court below, is just and valid. This is another factor for which we are not inclined to tinker with the judgement of Reference Court so as to enhance rate of compensation when we find no adequate reason for taking different view than that has been taken in earlier judgement of this Court, upholding judgement/ award in question.

54. In these facts and circumstances, we answer both the points of determination, formulated above, against appellants and in favour of respondents.

55. Appeal lacks merit and is dismissed without there being any order with regard to costs.