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(2023) 06 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : CFA No. 251 Of 2015

Hindustan Petroleum Corporation Ltd — APPELLANT

Vs

Bashandgan Namblabal Pampore And Anr — RESPONDENT

Date of Decision : 06-06-2023

Acts Referred:

Jammu And Kashmir Land Acquisition Act, 1934 — Section 4, 4(1), 6, 7, 8, 9, 9A, 11, 11(2), 11(3), 14, 17, 18, 23, 24
Jammu And Kashmir Transfer Of Property Act, 1920 — Section 140

Citation : (2023) 06 J&K CK 0008

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M.M. Dar, M.Y. Bhat, Farooq Ahmad, Shakeel Qadiri

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. The appellant has challenged the judgment dated 05.11.2015 passed by the learned Principal District Judge, Pulwama, whereby in a reference made under Section 18 of Jammu & Kashmir Land Acquisition Act compensation for land belonging to respondent No. 1 has been enhanced from Rs. 2 lakhs per kanal to Rs. 5 lakhs per kanal. Besides this, respondent No. 1/land owners have been held entitled to interest @ 6% and jabirana @ 15% per annum on the enhanced amount from the date of notification.

2. It appears that at the request of the appellant-corporation the acquisition proceedings with respect to the land measuring 213 kanals 11 marlas situated in estate Kadlabal and Namblabal, Pampore were initiated. The land was to be acquired for the purpose of setting up of LPG Bottling plant. Respondent No. 2/ Collector, Land Acquisition Pulwama issued notification bearing No. 223-25/LA dated 19.03.1993, notifying therein acquisition of land measuring 229 kanals and 1 marla for public purpose, i.e., for relocating LPG Bottling Plant. Later on, area under notification was reduced and land measuring 14 kanals 10 marlas was de-

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notified in terms of Corrigendum No. 289-90/LA dated 27.04.1995. The particulars of the land notified for acquisition are given as under:-

S.No. Village Tehsil
Distt. Survey No.s
Area.

1. Kadalbal Pampore Pulwama
801/min, 803, 804, 805, 86-06

802/min & 809/min.

2. Numbalbal -do- -do-
2846/331/min/2887/338

2888/338, 2899/338,

2978/338, 332, 340,

2037/333, 334, 335,

336, 3213/339, 3216/337,

339, 3001/339, 341, 342/min.

Total Land : 213 kanals 11 marlas

3. It appears that the land owners filed their objections to the notification under Section 4 of the Act, whereby they claimed compensation @ Rs.3.00 lakhs per kanal. After consideration of the objections of the land owners and after seeking certain clarifications from the Revenue Deptt., notifications under Sections 6 and 7 of the Act were issued vide No.147/RD of 1995 dated 14.04.1995. The Government sought a report with regard to invocation of provision of Section 14 of the Act, pursuant whereto, tentative rate of Rs. 1.15 lacs per kanal was fixed for payment of 80% of the compensation amount. Notices under Section 9 of the Act were issued to the interested persons and in their objections the land owners made a demand of compensation @ Rs. 3.00 lakhs to Rs. 5.00 lakhs per kanal and in addition to this they also demanded compassionate appointment of at least one person/member from each of the affected families. The Collector made his final award on 30.03.2000 and awarded the compensation in favour of the land owners @ Rs. 2.00 lakhs per kanal.

4. It seems that the land owners felt dissatisfied with the amount of compensation awarded by the Collector in their favour and they filed a writ petition bearing OWP No. 14 of 2003 seeking a direction upon the Collector, Land Acquisition, Pulwama to make the reference. The writ petition was disposed of by this Court vide its order dated 06.02.2003 and the Collector was directed to deal with the application in accordance with the relevant provisions of Land Acquisition Act. It is pertinent to mention here that the land owners had accepted the amount of compensation awarded by the Collector under protest.

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5. Pursuant to the directions of the High Court the Collector made reference to the Principal District Judge, Pulwama on 26.03.2005. The learned District Judge before calling upon the parties to lead evidence in support of their respective cases framed the following issues.

“1. Whether the quantum of compensation awarded by Collector is inadequate? OPP

2. If Issue No. 1 is proved in affirmative, what is the adequate/proper compensation to which the petitioners are entitled to? OPP

3. Relief.”

6. The respondent No. 1/land owners examined PWs Mohd. Sidiq Sheikh, Haji Gh. Rasool Pir, Mohd. Amin Mir, Mohd. Sultan Mir, Ab. Aziz, Gh. Hassan Mir, Mehraj Din Wani, Gh. Hassan Dar, Ab. Hamid Shah, Bashir Ahmad Bhat, Gh. Mohi-Ud-Din Shah, Gulzar Ahmad Wani and Mst. Haleema as witnesses in support of their case, whereas the appellant examined DWs Ajaz Ahmad Kachroo, Ravinder Nath, Kupal and Sayed Sajad in support of its case.

7. On the basis of the evidence led by the parties and the record of reference the learned District Judge has vide the impugned judgment come to the conclusion that the market value of the acquired land at the relevant time was much more than what has been awarded by the Collector. According to the learned trial Court, the market value of the land in question at the relevant time was Rs.5.00 lakhs per kanal as against Rs. 2.00 lakhs per kanal awarded by the Collector. Accordingly, the impugned judgment came to be passed by the learned District Judge.

8. The appellant has challenged the impugned judgment on the grounds that the evidence led by the parties has not been properly appreciated by the learned trial Court. It has been submitted that the witnesses produced by the land owners before the trial Court had no personal knowledge about the market value of the land in question and no documentary evidence was produced by the land owners before the trial Court. It has been submitted that the learned trial Court has relied upon the documents which pertain to the years 1998 to 2002, whereas the relevant year for the purpose of determining the market value in the instant case is 1995. It has been contended that the trial Court has relied upon the documents which have come into existence after the year 1995. It has been further submitted that even in the sale deed produced by the land owners as evidence in support of their claims, the rate of land is shown far less than what was deposed to by the witnesses to these documents and as such their statements as regards the market value of the land could not have been relied upon. It has also been submitted that the trial Court has enhanced the compensation from Rs. 2.00 lakhs to Rs. 5.00 lakhs per kanal without there being any material to substantiate this conclusion of the trial Court. It has been contended that the land in question is flood prone and there was no potential for cultivation of saffron on the said land and the learned trial Court has, without

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there being any basis, concluded that the acquired land is saffron growing land. It has also been contended that the trial Court has erred in law by not appreciating the fact that at the relevant point of time the provision regarding grant of employment in lieu of the land was not in existence.

9. I have heard learned counsel for the parties and perused the record of the case.

10. In order to understand the legal position as regards the principles relating to determination of market value of acquired land, Section 23 and Section 24 of the J&K Land Acquisition Act, which are relevant to the context, are required to be noticed. The same are reproduced as under:-

"23. Matters to be considered in determining compensation.

(1) In determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration.––

first, the market value of the land at the date of the publication of the declaration relating thereto under section 6 ;

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration, under section 6, and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition."

"24. Matters to be neglected in determining compensation.

But the Court shall not take into consideration––

first, the degree of urgency which has led to the acquisition;

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secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any out-let or improvements on, or disposal of the land acquired, commenced, made or effected, without the sanction of the Collector, after the date of the publication of the declaration under section 6;

eighthly, any increase to the value of the land on account on its being put to any use which is forbidden by law or opposed to public policy"

11. From a conjoint reading of the aforesaid provisions, it is clear that the crucial date for determining the market value of the acquired land is the date of publication of declaration relating thereto under Section 6 of the Act. It is also to be noted that any potential increase in the value of the acquired land will be put when acquired, has to be ignored. So, the main consideration for determining the amount of compensation of acquired land is its market value as on date of declaration under Section 6 of the Act.

12. Before proceeding to decide as to whether or not the learned trial Court has determined the compensation of the acquired land in accordance with the settled legal principles as contained in Section 23 and 24 of the Land Acquisition Act and the legal precedents on the subject, it would be apt to notice the case law in this regard.

13. The Supreme Court in the case of "Chimanlal Hargovinddas v. Land Acquisition Officer" (1988) 3 SCC 751 has summed up the principles for assessing the compensation in the following manner:-

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

(1) -(4)……………………..

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications 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 under Section 4) as if the valuer is a

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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 not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(I0) 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.

(11) 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 factors 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 a 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 distances from the road

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3. frontage on a road.

3. narrow strip of land with very small frontage compared to depth

4. nearness to developed area

4. lower level requiring the depressed portion to be filled up

5. regular shape

5. remoteness from developed locality

6. level vis-a-vis land under acquisition

6. some special disadvantageous factor which would deter a purchaser

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 land say 500 to 1000 sq. yd cannot be compared with a large tract or block of land of say l0,000 sq. yd 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 purchasers (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 approximately 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 looked 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."

14. Relying upon the aforesaid judgment the Supreme Court in the case of Union of India v. Raj Kumar Baghal Singh (2014) 10 SCC 422 has observed as under:-

"10. It is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being for land adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is

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permissible to take into account transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or subtraction from the value of the relied upon transaction."

15. From the foregoing analysis of law on the subject it is clear that the market value of the land under acquisition has to be determined with reference to the crucial date of issuance of notification under Section 6 of the J&K Land Acquisition Act. Factors like market value of the most comparable instances has to be taken into account together with considerations from the proximity from time angle and proximity from situation angle. The various factors which enhance the value of the land and which work out towards decreasing the value of the land have also to be taken into account and the balance sheet of plus and minus factors has to be drawn. While comparing price of small patches of land for the purpose of calculating the market value of a large tract of land deduction @ 20% to 50% has to be made. In short it has to be ascertained as to what would be the value of the land which a willing buyer would be able to offer to a willing seller.

16. For analyzing the facts of the instant case in the light of foregoing legal position certain dates are required to be noticed. The appellant issued the indent on 08.05.1993. Notification under Section 4 of the Act was issued on 19.03.1994. Notification under Sections 6 and 7 of the Act was issued on 14.04.1995. Notification under Section 17 of the Act was issued on 19.04.1995. Tentative award was passed on 02.09.1995. The final award was passed on 30.03.2000.

17. In the final award passed by the Collector, it is indicated that in the year 1993 rate of Rs. 1.15 lakhs per kanal had been paid to the land owners, whose land came under acquisition for construction of grid station for similar category of land. The award further provides that Rs. 70,000/- per kanal was paid to the land owners whose land came under acquisition of 220 KV transmission line in the year 1989. It is recorded in the award that the Tehsildar, Pampore vide his letter dated 30.11.1993 furnished 3 yearly average sale rates for the years, 1987, 1988 and 1989 of Village Numbalabal as Rs. 58,525.80 per kanal and it was also indicated in the report that no sale deed had been executed in these two Villages for the last three years. The Tehsildar, Pampore vide his letter dated 02.08.1995 submitted his report that the land in the vicinity of the acquired land has market value of Rs. 2.00 lakhs per kanal. The Collector after taking into account the rate of the land that was acquired in the year 1989 and in the year 1993 in the vicinity of the acquired land as also the report of the Tehsildar dated 02.08.1995 together with calculation of value of the land by adding 10% per annum on account of inflation, ultimately adopted the rate of Rs. 2.00 lakhs per kanal which was approved by the competent authority. While calculating the market value of the land in question, the Collector has, in his award indicated that he has taken note of the kind of soil, i.e., Maidani/Saffron/Abi Awal/Abi Wari/

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Girmumkin/Labroo etc. It is also noted in the award that the land under acquisition is the prime land situated in between the Gas Turbine Divn. II and Sericulture Research Institute, Pampore on left side of Srinagar Jammu National High way.

18. Learned trial Court has, on the basis of the evidence led by the respondent No. 1/land owners, come to the conclusion that the market value of the land in question is much more than Rs. 2.00 lakhs per kanal. This conclusion has been drawn by the learned trial Court on the basis of the testimony of the witnesses produced by the land owners as also the record of Reference. It would be apt to refer to the relevant excerpts of the statements of the witnesses examined by the land owners.

19. PW-Mohd. Sidiq Sheikh has stated in his examination in chief that at the relevant time the market value of the land was Rs.5.00 lakhs per kanal. He has stated that in the year 1998 the PHE Deptt. acquired land @ Rs.6.00 lakhs per kanal in the same vicinity. In his cross-examination he has stated that he has not produced any sale deed to support his assertion.

20. PW-Haji Gh. Rasool Pir has, in his examination in chief, stated that at the relevant time market value of the land in question was Rs. 5.00 lakhs to Rs. 6.00 lakhs per kanal. In his cross-examination he has stated that he has not produced any agreement or sale deed to support his assertion.

21. PW-Mohd. Amin Mir has stated that market value of the land adjacent to the land in question is Rs. 7.00 lakhs per kanal. According to him PHE Deptt. acquired land by paying compensation @ Rs. 6.00 lakhs per kanal. In his cross-examination he has stated that neither he nor his attorney holder produced any sale deed that would show that the value of the land is more than what was awarded by the Collector.

22. PW-Mohd. Sultan Mir has stated that the value of the land adjacent to the acquired land is Rs.6.00 lakhs to Rs.7.00 lakhs per kanal and Electricity Department has acquired land @ Rs. 6.00 lakhs per kanal in the same vicinity. Similarly, PHE department has also acquired land @ Rs. 7.00 lakhs per kanal in the same vicinity. In his cross-examination he has stated that he did not produce any documentary proof with regard to his assertion regarding the market value of the land.

23. PW Ab. Aziz has stated that market value of the land in question in the year 1994-95 was Rs. 6.00 lakhs per kanal. He has stated that for laying HT Transmission Line compensation @ Rs.7.00 lakhs per kanal was paid in the same vicinity.

24. PW Gh. Hassan Mir has stated that market value of the land in question was more than Rs. 6.00 lakhs per kanal and that PHE Department has acquired land @ Rs. 6.00 lakhs per kanal in the same vicinity. In his cross-examination he has stated that the land that was acquired for PHE Department in the year 1996 is

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located at a distance of 1 km from the acquired land and that he has only heard about the amount of compensation that has been paid for acquired land of PHE Department and for installation of Tower.

25. PW Mehraj Din Wani has stated that at the relevant time the rate of land in the said vicinity was Rs.4.00 to Rs.5.00 lakhs per kanal. In his cross-examination he has stated that he has only heard about the value of the land and neither he nor any of his relatives or friends has purchased the land in the vicinity of the acquired land.

26. PW Gh. Hassan Dar has stated that market value of the land in question at the time of its acquisition was Rs. 10.00 lakhs per kanal. In his cross-examination he has stated that he does not own any land in the acquired land. He has further stated that he has heard that the land was purchased for setting up of petrol pump near the acquired land @ Rs. 8.00 lakhs per kanal. However, he has no personal knowledge about it. He has further stated that in order to save the stamp duty the value of the land was shown as Rs. 30,000/- per kanal.

27. All the aforesaid witnesses have made oral assertions in their statements, that value of the land in question is more than what has been actually paid to the land owners. According to them the value of the land is Rs. 5.00 lakhs to 6.00 lakhs per kanal but none of these witnesses has produced any document to support his assertion in this regard, nor has any of them given any specific instance regarding purchase of land in the vicinity of the acquired land at the rates stated by them, though, they were specifically asked to do so during their cross-examination. The witnesses have not produced any document to support their assertions. Their statements as regards the market value of the acquired land are, therefore, of no help and cannot be taken into account for the purpose of determining the market value of the land in question. The learned trial Court has fallen into error by relying upon these bald assertions of the witnesses without there being any material to support these assertions. In fact the learned trial Court has not referred at all to the cross-examination of these witnesses. The credibility of statements of these witnesses as regards the rate of acquired land has been severely shaken in their cross-examination. The learned trial Court has, therefore, not appreciated the statements of these witnesses properly and in right perspective.

28. In addition to above evidence on record, the land owners have also examined PWs Gh. Mohi-Ud-Din Shah, Gulzar Ahmad Wani and Mst. Haleema as witnesses. PW-Gh. Mohi-Ud-Din Shah has stated that he has purchased three marlas of land at Namblabal about 25 years back @ Rs. 13,000/- per marla. He has also produced a copy of the sale deed. PW-Gulzar Ahmad Wani has stated that his father had sold 4 marlas of land for an amount of Rs. 44,000/- about 25 years back. He has produced copy of the said sale deed. PW Haleema has stated that she has sold land measuring 4 marlas for an amount of Rs. 48,000/-. This was done by her about 25 years back and the land is situated at Namblabal, Pampore.

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29. The sale deed EXPW-II produced by PW Bashir Ahmad Bhat shows the amount of sale consideration as Rs. 28,000/- and not Rs. 48,000/-as has been claimed by him. The copy of sale deed produced by PW-Mst. Haleema shows the amount of consideration as Rs. 28,000/-. The sale deed produced by PW- Gh. Mohi-Ud-Din Shah relates to 3 marlas of land situated at Village Namblabal, Pampore and the amount of sale consideration is shown as Rs. 39,000/-. The sale deed is dated 03.01.1989. Another sale deed produced by PW- Gulzar Ahmad Wani is dated 25.01.1989 and it relates to 4 marlas of land situated at Village Namblabal, Pampore and amount of sale consideration is shown as Rs. 44,000/-, i.e., @ Rs. 11,000/- per marla.

30. The sale deeds produced by the land owners relates to a period which is about 6 years prior to the relevant date. The sale deeds pertain to very small parcels of land ranging from 3 marlas to 4 marlas. When we are assessing the market value of the land measuring more than 230 kanals it will be very difficult to rely upon the value of small parcels of land measuring 3 to 4 marlas that too for a period which has no proximity with the crucial date. In presence of the more credible material in the shape of rate of land acquired in the year 1993 which is proximate to the crucial date of issuance of notification under Section 6 of the Act and other relevant material including the report of the Tehsildar, it was not open to the learned trial Court to rely upon the aforesaid sale deeds to assess the market value of the land. It is true that in a case where there is no material before the Collector or before the Reference Court from which the market value of the acquired land can be determined, even the value of small parcels of land can be a guiding factor. However, while placing reliance on sale deeds relating to small parcels of land, appropriate deductions have to be effected. In the instant case the Collector had the benefit of material depicting rates of comparable lands that were acquired two years prior to the date of issuance of notification under Section 6 of the Act. In such a situation it was not open to the learned trial Court to rely upon the sale deeds of the year 1989, that too for small parcels of land measuring 3 and 4 marlas.

31. The learned trial Court while enhancing the compensation for the acquired land has also relied upon the documents relating to acquisition of land for setting up of 132 KV transmission line at Galander, Pampore, as also the land acquisition case relating to construction of bridge at Kadlabal, Pampore. The trial Court has also relied upon the statement of Sayed Sajad Qadri, Collector ACR Pulwama. During his examination as a witness, he has been shown photocopies of certain documents which provide that in the year 1997 the rate of land at Namblabal was assessed as Rs.6.00 lakhs per kanal. The photocopies of the documents relied upon by the learned trial Court are not certified true copies and therefore, it was not open to the learned trial Court to place reliance upon these documents. Even otherwise, the period for which the rate of land is depicted in these documents pertains to the year 1997, i.e., 2 years after the crucial date of issuance of notification under Section 6 of the Act. It is also revealed from perusal of these documents that small parcel of land measuring 1 kanal 2 marlas

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have been acquired for construction of transmission line at Galander, Pampore, and a few marlas of land have been acquired for construction of bridge at Kadlabal, Pampore and for construction of PHE reservoir. The rates of these small parcel of land which relate to a period after 2 years of issuance of the notification under Section 6 of the Act, could not have been taken as a basis for ascertaining the market value of the acquired land. The trial Court has fallen into error by relying upon these documents.

32. One of the factors that seems to have persuaded the learned trial Court to enhance the compensation for the acquired land is its future potential by referring to its proximity to the National Highway and its potential to grow saffron. As already noted, the Collector while assessing the compensation has taken all these factors into account and it is clearly indicated in the award that the land in question is located adjacent to the National Highway and that some part of the land is zaffrani in nature.

33. The market value of the land has to be assessed keeping in mind the factors mentioned in Section 23 of the Act. Though, a guess work is permissible but the same is allowed only to a limited extent. The market value of the land has to be determined after taking into consideration the existing use of the land, its location, its advantages and disadvantages. The court, however, cannot take into consideration the use for which the land is sought to be acquired and its remote potential value in future. My aforesaid view is supported by the judgment of the Supreme Court in the case of "Bhule Ram v. Union of India & anr." (2014) 11 SCC 307. The learned trial Court has, while assessing the compensation, taken into account the future potential of the acquired land in view of the setting up of proposed LPG Booking Plant. By doing so, the ld. trial court has taken into account the factors which relate to remote potential value of the land in future. The same is impermissible in law.

34. It is a settled law that it is for the land owners to produce evidence and prove before the Reference court that the market value of the land is more than what has been awarded in their favour by the Collector. In arriving at the market value it is duty of the land owners to lead evidence in support of their case. In absence of any such evidence the Court cannot determine the market value merely as per the prayer of the land owners. In the instant case the learned trial Court has, while assessing the compensation, ignored this very important aspect of the case and without being alive to the fact that the land owners have not been able to produce any cogent and convincing evidence to show that the land in question bears a market value of Rs. 5.00 lakhs per kanals and not what has been awarded by the Collector, passed the impugned judgment. In fact, the land owners while responding to notices under Section 4 of the Act claimed compensation only @ Rs.3.00 lakhs per kanal, but the learned trial Court ignored this admitted position of land owners and proceeded to award the compensation @ Rs. 5 lakhs per kanal, which is contrary to even the claim of the land owners.

35. There is, however, yet another aspect of the matter which is required to be

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noticed. A perusal of the record of the reference court shows that after the passing of the tentative award by the Collector, the matter was referred by him to the Revenue Minister in terms of provisions contained in sub-section 2 of Section 11 of the Jammu & Kashmir Land Acquisition Act for approval. It further appears that the Revenue Minister after going through the record submitted by the Collector and making an enquiry, proceeded to determine the value of the land under acquisition as Rs.3.00 lakhs per kanal in exercise of his powers under Sub-section (3) of Section 11 of the J&K Land Acquisition Act. While making final award the Collector has not touched this aspect of the matter at all and has proceeded to assess the market value of the land under acquisition as Rs. 2.00 lakhs per kanal instead of Rs. 3.00 lakhs per kanal as was done by the Revenue Minister.

36. In the above context it would be apt to refer to provisions contained in Section 11 of the J&K Land Acquisition Act. It reads as under:-

“11. Enquiry and award by the Collector

(1) On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which—

(a) any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under sub-section (1) of section 4 and into the respective interest the persons claiming the compensation ;

(b) the Head of the Department or his nominee has stated pursuant to a notice given under section 9-A; and shall tentatively assess the compensation which in his opinion should be allowed for the land.

(2) Where the amount of compensation tentatively assessed under sub-section (1) exceeds [the amount specified by the Government by notification] the Collector shall refer the record of the case along with the statement of the tentative assessment of compensation for approval of the Revenue Minister or an officer specially empowered by him in this behalf.

(3) In a case referred by the Collector under sub-section (2) the Revenue Minister or an Officer empowered by him in this behalf shall, after considering the report of the Collector and after making such further enquiry as may be necessary, determine the proper value of the property to be acquired and communicate it to the Collector and the value so determined shall form the basis of compensation to be allowed for the land.

(4) The Collector shall thereupon make an award under his hand of—

(i) the true area of the land ;

(ii) the compensation payable for the land ; and

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(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

(5) An award made in contravention of the directions of the Revenue Minister or an officer specially empowered by him in this behalf with respect to the value of the land shall be void.]

(6) Notwithstanding anything contained in the aforesaid sub-sections, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the Government he may, without making further enquiry, make an award according to the terms of such agreement :

Provided that no agreement shall be valid if it violates provisions of any law for the time being in force.

(7) The determination of compensation for any land under sub-section (6) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(8) Notwithstanding anything contained in the Registration Act, 1977 no agreement made under sub-section (6) shall be liable to registration under that Act."

37. From a perusal of the aforesaid provisions it is clear that once the Collector refers the record of the case along with the statement of his tentative assessment of compensation for approval of the Revenue Minister in terms of sub-section (2) of Section 11 of the Act, the Revenue Minister after considering the report of the Collector and making such further enquiry as may be necessary, is empowered to determine the proper value of the property to be acquired and communicate the same to the Collector. The provisions further provide that the value so determined has to form the basis of compensation to be allowed for the land. Sub-section (5) goes on to provide that an award made in contravention of directions of the Revenue Minister with respect to the value of the land shall be void.

38. In view of the aforesaid legal position it was incumbent upon the Collector to award compensation in favour of the land owners by taking the market value of the land as Rs. 3.00 lakhs per kanal on the basis of the determination made by the Revenue Minister. The Collector could not have made an award in contravention of the determination made by the Revenue Minister. Therefore, the award made by the Collector, whereby the value of the acquired land has been fixed at Rs. 2.00 lakhs per kanal instead of Rs. 3.00 lakhs per kanal is not sustainable in law and the same is required to be brought in consonance with the determination arrived at by the Revenue Minister. Accordingly, the compensation

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awarded in favour of the land owners is required to be enhanced from Rs. 2.00 lakhs per kanal to Rs. 3.00 lakhs per kanal. Besides this, the land owners shall also be entitled to jabirana @ 15% per annum and interest @ 6% per annum on the enhanced amount from the date of issuance of notification under Section 4 of the Act.

39. Learned counsel for the respondent No. 1/land owners has contended that the appeal is not maintainable because the appellant has not sought leave to file appeal. In this regard, the learned counsel has relied upon the judgment of the Supreme Court in case titled "U.P Awas Evam Vikas Parishad v. Gyan Devi & Ors." (1995) 2 SCC 326.

40. It is correct that the appellant has not sought leave of this Court for filing the appeal, but then a perusal of minutes of the proceedings reveals that the instant appeal has been admitted to hearing in terms of order dated 25.05.2016 and no objection to the maintainability of the appeal has been raised by the respondent No. 1 at the relevant time. In fact, even during the course of arguments no such objection was raised by the respondent No. 1 and it is only in the written arguments that the respondent No. 1 has raised this objection. Once the appeal has been admitted to hearing by this Court without any objection about the maintainability of the appeal from the respondents, it is deemed that leave has been granted to the appellant to file the instant appeal. Therefore, the objection raised by the respondent No. 1 to the maintainability of the appeal is without any substance.

41. Lastly, it has been contended by learned counsel for the respondents that whole acquisition proceedings are illegal, inasmuch as, appellant could not have acquired the land in question because the appellant corporation is not a state subject nor it has been exempted in terms of Section 140 of the Jammu & Kashmir Transfer of Property Act.

42. I am afraid the argument raised by respondent No. 1 at this stage of the proceedings cannot be considered by this Court. The respondent No. 1 has not filed an appeal either against the award or against the judgment of the trial Court. Even during its earlier round of litigation before this Court, respondent No 1 did not raise this contention and in fact vide OWP No. 14 of 2003, respondent No. 1 had sought direction from this Court upon the Collector to make reference under Section 18 of the Act to the District Judge. Even at the time of filing of the said writ petition, respondent No. 1 did not raise this issue. Now, it is too late to raise the issue as regards the validity of the acquisition of the land by the appellant after nearly about 30 years of issuance of notification for acquisition. The argument of learned counsel for the respondent No. 1 is, therefore, bound to fail.

43. For the foregoing reasons, the instant appeal is partly allowed and the impugned judgment passed by the learned trial Court is modified to the extent that the respondent No.1/land owners shall be entitled to compensation @ Rs.

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3.00 lakhs per kanal instead of Rs. 5.00 lakhs per kanal as has been awarded by the trial Court. In addition to this, the respondent No.1/land owners shall be entitled to jabirana @ 15% and interest @ 6% on the enhanced amount from the date of issuance of notification under Section 4 of the Act till the actual payment of the enhanced compensation. The decree sheet be prepared accordingly.

44. The Registry shall send back the deposited amount to the Reference court, who shall release the same in favour of the land owners in accordance with the apportionment statement made by the Collector.

45. Disposed of as above.

46. The original record along with a copy of this judgment be sent back to the trial court.

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