(2015) 10 AHC CK 0064

In the Allahabad High Court

Case No : First Appeal Nos. 289, 290, 291, 292 and 293 of 2004

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Dharamvir and Others	RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 24, 4

Citation : (2015) 10 ADJ 574 : (2015) 113 ALR 806 : (2016) 1 AWC 288 : (2016) 130 RD 502

Hon'ble Judges : Sudhir Agarwal and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Navin Sinha and Vikas Budhwar, for the Appellant; Anil Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—All these five appeals under section 54 of Land Acquisition Act, 1894 (hereinafter referred to as Act, 1894) read with section 96 C.P.C., have arisen from a common Award/judgment and decree dated 01.11.2003 passed by Additional District Judge, Court No. 3 Bijnor in Land Acquisition References mentioned below:

2. Since common questions of facts and law are involved in all these appeals, they have been heard together and are being decided by this common judgment. For the purpose of convenience and with the consent of parties, facts from the record of First Appeal No. 289 of 2004 (Hindustan Petroleum Corporation Ltd. v. Dharamvir & Another), have been taken.

3. The Court below has determined market value for the purpose of compensation of acquired land @ 135/- per sq. meter besides solatium @ 30% under section 23 of Act, 1894 and interest at the rate of 12% as per statute.

4. The actual dispute raised before this Court is about rate of market value

determined by the Court below.

5. M/s. Hindustan Petroleum Corporation Ltd. (hereinafter referred as "HPCL") is a company owned by Government of India and on its proposal, Government of India issued a Notification dated 07.07.1991 under section 4 (1) of Act, 1894 proposing to acquire certain land at Village Tatarpur, Rahukhedi Kora and Rahukedi Gadhu, District Bijnor, for the purpose of constructing a Petroleum Product Depot of HPCL. Notification under section 6(1) of Act, 1894 was published on 31st August, 1991/5th October, 1991 and possession of acquired land was taken on 17th December, 1992. The Special Land Acquisition Officer (hereinafter referred to as ''SLAO'') made its award on 5th October, 1993 determining market value at the following rates :--

6. 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. 72 of 1994, 13 of 1994, 90 of 1994, 17 of 1995 and 175 of 1997, with which we are concerned in these Appeals, were made.

7. The claimants said that acquired land is an abadi, near Degree college, Radio Station, Irrigation Department Residential Colony and Adarsh Nagar Colony. On the northern side, Railway Station Najibabad, its Residential Colony, Bus Stand and Abadi of Najibabad town exists. On the western side of acquired land there is abadi. It has great potential of development. On the eastern side of acquired land, exist, factories of Thums Up, Card Board, etc. Therefore the land has potential of Industrial development also.

8. On behalf of claimants, besides documentary evidence, five witnesses namely P.W.1 Dharamveer, P.W.2 Rajiv Kumar, P.W.3 Smt. Vijay Laxmi, P.W.4 Amarjeet Singh and P.W.5 Tahir Hussain were produced.

9. All the References were consolidated together and LAR No. 72 of 1994 was made "leading case". Documentary evidence adduced by claimants included the following:--

"i. Certified copy of sale deed dated 2.7.1982 executed by Surendra Kumar in favour of Ameerunisha;

ii. Certified copy of sale deed dated 9.8.1989 executed by Harish Chandra in favour of Vijay Laxmi;

iii. Copy of sale deed executed by Smt. Mithilesh Mudgil in favour of Smt. Vidhu Dwivedi;

iv. Certified copy of sale deed dated 27.9.1990 executed by Sohan Lal Kukraiti in favour of Sanjeev Kumar;

v. Certified copy of sale deed dated 11.12.1990 executed by Suresh Chand in favour of Hargovind;

vi. Certified copy of sale deed dated 3.4.1991 executed by Ameerunisha in favour of Bhupendra Singh;

vii. Copies of Khasra of village Tatarpur Lalu, Shekhpur Gadhu and Tatarpur Lalu of 1399 Fasli;

viii. Copy of CH Form 41 of village Tatarpur Lalu.

ix. Copies of CH Form 45 of village Tatarpur Lalu. Shekhpur Gadhu and Shekhpur Dhanaura;

x. Copies of map of Village Tatarpur Lalu, Shekhpur Gadhu, Rahukhedi Gadhu, Dhanaura, Rampur Banwari and Chapar."

10. Claimants had also relied on following documents vide list, paper No. Ga-97 and list Ga-103:

"i. Copy of sale deed executed by Ganeshi Singh in favour of Smt. Sushila; and

ii. Certified copy of Khasra of village Rahukhedi of 1398 Fasli;

iii. Certified copy of award dated 16.10.2003 passed in L.A.R. No. 317 of 1993 (Ganeshi v. State)"

11. On behalf of HPCL, the Acquiring Body and State, oral evidence of DW-1 Virendra Kumar Verma and D.W.2 Sardar Baljeet Singh were adduced, besides following documentary evidence :--

"i. Copy of Sale deed dated 17.10.94 executed by Hakeem etc. in favour of Smt. Chand Gupra."

12. The Reference Court observed that SLAO 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) for a consideration of Rs. 5,40,376/- and therefrom the rate of land transferred came to Rs. 1,50,000.28 per bigha i.e. Rs. 49.55 per sq.meter. With respect to exemplars placed before SLAO, by the claimants, i.e. one which related to the land of Village Tatarpur Lalu, the same were all rejected on the ground that they relates to Aabadi. The Reference Court took the view that rejection of exemplars relate to Village Tatarpur Lalu merely on the ground that the same pertains to land sought to be transferred for 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. The same was the view taken in respect of the land acquired in Village Rahukhedi Kaura and then it said :

"In view of the fact that prior to the publication of the notification u/s. 4 as to acquisition of both these villages, most of the bainamas (sale deeds) have been executed for the purpose of human settlements, it can be easily inferred that the acquired land had the potential to be developed into human settlements. Thus, the bainamas (sale deeds) executed for the human settlement should have been taken to be a representative bainama (sale deed)."

(English Translation by the Court)

13. It also noticed that exemplars, relied on by the State, relates to the land in Village Rahukhedi Gadhu, which shows the minimum rate and that was made exemplars, which was not justified.

14. Now coming to the matter placed before Reference Court, it found that topographically, acquired land of all the three villages was connected. It has said :

"Plot Nos. 37, 38 and 39 of the village Tatarpur Lalu have been acquired; adjoining to these plots is situated village Rahukhedi Kaura, of which 10 bighas 10 biswas and 3 biswansi of land has been acquired. Apart from it, village Rahukhedi Garhu also adjoins plot Nos. 37, 38 and 39 of the village Tatarpur Lalu; and araji 3-0-12 of this village is acquired. From the aforesaid, it is known that all the plots of the acquired land form one and the same ridge."

(English Translation by the Court)

15. It further observed that entire land, which has been acquired, has Abadi in the vicinity. The relevant findings are :

"From the aforesaid it transpires that as on the date of the publication of notification u/s. 4 as to the acquired land, there was human settlement near the acquired land. A major stretch of the acquired land is situated in the village Tatarpur Lalu which adjoins other village Shekupur Garhu. The maps of villages Shekhupur Garhu, Dhanaura and Rahukhedi Garhi are available on records; on perusal thereof, it is found that village Tatarpur Lalu, village Rahukhedi Garhu and village Rahukheda Kaura - wherein is situated the acquired land of the present suit - adjoin the village Sekhupur Garhi. It is accepted by both the parties that villages Rampur Banwari, Dhanaura, Rahukhedi Garhu and village Chhapar and Rahukhedu Kaura are interconnected with one another; and Nazibabad locality is located among these very villages."

(English Translation by the Court)

16. The entire land was adjoining to the boundary of Nazibabad City. It has further observed :

"From the aforesaid facts, it is clear that the acquired land of the reference applicants, which was acquired for the construction of Hindustan Petroleum Depot, had the potential to be developed as human settlement and its vicinity was densely populated at the time of publication of notification u/s. 4 ."

(English Translation by the Court)

17. The Court below then considered the sale deed relied on by the claimants-tenure holders in support of their claim and rejected sale deeds dated 02.7.1982, 08.9.1989 and 23.10.1989 being much prior to the date of notification issued

under Section 4 of Act, 1894 i.e. 07.07.1991. 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 the same was rejected. The sale deed dated 03.4.1991 though pertains to 182 sq.meters of land but it had a lot of constructions over it and the land and construction 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 it relates to a small piece of land.

18. The exemplars 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.

19. The Court below then 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.

20. 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/-. The rate per sq. meter came to Rs. 176.47. 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%, the Court below had determined market value of acquired land at Rs. 150/- per sq. meter and made its award accordingly. The acquisition in question has just one day difference vis-?-vis the acquisition, which was considered in LAR No. 317/93. The Court, therefore, followed the said award but applied a further deduction of 10% and thereby determined market value at the rate of Rs. 135 per sq. meter.

21. The learned counsel for the appellant contended that market value determined by Reference Court is highly excessive. It has relied on exemplars of small pieces of land, whereas area of acquired land was more than 42 Bigha and, therefore, 50% to 70% deduction ought to have been applied.

22. Sri Anil Sharma, learned counsel appearing for the claimants-respondents, on the contrary, submitted that there was no question of applying any deduction in the case in hand, yet the Court below has applied deduction.

23. The only point of determination for deciding the appeal is whether determination of market value at the rate of Rs. 135/- per sq. meter is justified

or not.

24. Before considering the aforesaid question, it would be appropriate to consider legal principles laid down in last several decades on the question, how market value of land acquired forcibly under the provisions of Act 1894 should be determined. These principles have been settled in a catena of decisions of various Courts.

25. So far as observation made by Reference Court on the material placed before SLAO and award of SLAO is concerned, we find that the same could not have been considered by Reference Court while deciding reference under Section 18 of Act, 1894 for the reason that proceedings in reference are treated to be fresh proceedings and not an appeal from award of SLAO. An award passed by SLAO is like an offer and not to be treated as a judgment of Trial Court. It is well settled, when land holders are not agreeable to accept offer made by SLAO, they have a right to approach Collector under section 18 of the Act, 1894, by a written application, for referring the matter to Court, for determination of amount of compensation or if there is any dispute regarding measurement of land, for that also. In the present case References in question were made at the instance of claimants for determining the amount of compensation.

26. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , the Court has said that a Reference is like a suit which is to be treated as an original proceeding. The claimants are in the position of a plaintiff who has to show that price offered for his land in award is inadequate. However, for the said purpose Court would not consider the material, relied upon by Land Acquisition Officer in award, unless the same material is produced and proved before the Court. The Reference Court does not sit in appeal over the award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before Reference Court. Determination of market value has to be made as per market rate prevailing on the date of publication of notification under section 4 of Act, 1894. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. the Court is a hypothetical purchaser, willing to purchase land from the open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under section 4 of Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. The Court, therefore, would co-relate market value reflected in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would

provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words a balance sheet of plus and minus factors may be drawn and the relevant factors may be valuated in terms of price variation, as a prudent purchaser would do. The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors.

27. Some of the illustrative examples of plus and minus factors given by the Court in Chimanlal Hargovinddas (supra) are as under:

28. The size of the land, therefore, would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. The Court said that in such matters, factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

29. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number of land holders and size of their plots. When we talk of concept of a prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller the individual land holder will come. It is the area of his holding which will be relevant for him and not that of actual total and collective large area which is sought to be acquired.

30. In V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), the land acquired by notification dated 06.07.1970 in village Chicalim near Goa Airport belonged to a single owner. The Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of fetching higher price in comparison to the plot which are much higher in size. Having said so the Court further said " though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined".

31. Again in Shakuntalabai (Smt) and Others Vs. State of Maharashtra, acres of land in Akola town was sought to be acquired by notification published on 11.08.1965 under section 4(1) of Act, 1894 which was owned by a single person. It is in this context the Court said "the Reference Court committed manifest error in determining compensation on the basis of sq. ft. when land of an extent of 20 acres is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider valuation sitting on the armchair

of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously no".

32. We need not go into a catena of other decisions rendered in the last several decades since we have benefit of a recent Division Bench decision of this Court in First Appeal No. 454/2003 and other connected matters, Meerut Development Authority through Its Secretary v. Basheshwar Dayal (since deceased) Through His L.Rs. and another decided on 01.08.2013 wherein the legal principles settled by Apex Court in various judgments, relevant for determination of market value have been crystallized as under:

"(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification under Section 4(1) ,

(ii) The method for determination of market value may be :

(a) Opinion of experts,

(b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

(Ref. Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others,)

(iii) While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:--

(a) Sale must be a genuine transaction,

(b) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,

(c) the land covered by the sale must be in the vicinity of the acquired land,

(d) the land covered by the sales must be similar to the acquired land

(e) the size of plot of the land covered by the sales be comparable to the land acquired.

(f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land.

(iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition which are as under : -

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd 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. (Ref. Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., .

(viii) When there are several exemplars with Reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition.(Ref. Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, .

(ix) In view of Section 51A of the Act certified copy of sale deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word ''may''. A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. (Ref. Cement Corporation of India Ltd. Vs. Purya and Others,).

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors : -

(a) Existing geographical situation of the land.

(b) Existing use of the land.

(c) Already available advantages, like proximity to National or State Highway or road and/or developed area,

(d) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

(xi) Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd 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. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with Reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others,)."

33. In Bhupal Singh and Others Vs. State of Haryana , the Court said that the fair market value of acquired land is required to be determined under Section 23 of Act, 1894 on the basis of market rate of adjacent land similarly situated to the acquired land prevailing on the date of acquisition or/and prior to acquisition but not subsequent to the date of acquisition. In appropriate cases, addition of 10% per annum escalation in the prices specified in the sale deeds (if filed and relied

on) in relation to adjacent, similarly situated, lands for fixing market value of acquired land may be permitted.

34. Similar view was expressed earlier also in The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, ; Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., ; and K. Devakimma and Others Vs. Tirumala Tirupati Devasthanams and Others .

35. In Bhule Ram Vs. Union of India (UOI) and Another, , the Court said :

"The market value of the land should be determined taking into consideration the existing geographical situation of the land, existing use of the land, already available advantages, like proximity to National or State Highway or road and/or notionally or intentionally renowned tourist destination or developed area, and market value of other land situated in the same locality or adjacent or very near to acquired land and also the size of such a land."

36. The Court further held that Court should not take into consideration the use for which land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of party to lead evidence in support of its case, in absence of which the court is not under a legal obligation to determine market value merely as per the prayer of the claimant.

37. In the light of above general guidelines and also considering the fact that claimants have to be considered as plaintiffs before Reference Court, therefore, onus initially lay upon them to prove what is the appropriate market rate, we proceed to consider first whether in the present case such onus has been discharged by plaintiffs or not.

38. In the present case, the exemplars relied by State have been rejected validly since pertained to sale deeds of 1994 while acquisition was made in 1991. The Court thereafter has followed its own award dated 16.10.2003 in LAR No. 317/93 wherein it had relied on exemplars placed before Reference Court therein by the defendant itself.

39. But even then, instead of applying same rate, in the present case, the Reference Court has applied a further 10% deduction and determined market rate at Rs. 135/- per sq.meter. In both the matters, acquired land was/is in Village Tatarpur Lalu, and acquisition is also simultaneous i.e. 06.7.1991 and 07.7.1991. That being so, no valid objection, in our view, is available to the appellants when Reference Court has already made a further deduction of 10% in the present case.

40. The contention of Sri Anil Sharma, learned counsel appearing for the claimants, that no deduction ought to have been made and Court below has erred in law by applying 10% deduction would not help him, since no cross objection or appeal has been filed by claimants-respondents against deduction applied by Reference Court. The award cannot successfully be assailed by

claimants on that count. The impugned award, however, having already shown favour to appellant in our view warrants no interference.

41. The rate determined by Court below is not very adequate so far as claimants'' point of view is concerned, still it cannot be said to be excessive or unjust or unreasoned as claimed by appellant.

42. Here, we would also like to observe that these appeals have actually arisen from acquisition of land of respondent(s), who is/are basically farmer(s). The State, in exercise of its statutory powers, has taken away valuable source of earning livelihood and rather, the only source of livelihood available to respondent(s), and in lieu thereof, compensation is sought to be paid. It is true that acquisition of land is a statutory right of State and therefore, respondent(s), by itself, may not oppose it successfully. But the fact remains that action of State has deprived respondents from having the solitary means of earning livelihood, which is being pursued, by farmer(s), normally from generation to generation. The cash amount, paid to them, does not result, normally, in acquisition of another land by these persons. Experience has shown that most of time, cash money is spent on material luxuries and thereafter these poor farmers, deprived of their land, come on road, find it difficult to sustain a bare two times meal for themselves as also the family. The conflict of development of nation and right of individual, relating to his very sustenance, has a long chequered history of litigation as also legislation, giving rise to multifarious amendments in Land Acquisition Act. Now, a new enactment has come up.

43. The fact remains that agricultural land is continuously reducing though population of country is increasing and thereby creating another complication in the field of agricultural produce. The Court also finds that in the matter of compensation, if amount, thought to be adequate by State, is not accepted by Court below and compensation is increased, almost invariably land holders/ farmers are dragged to higher Courts with continued litigation, which result in exhaustion of such person(s) not only in respect of their labour and energy but residuary worth and financial capacity etc. also. Sufficient amount of compensation, they are compelled to spent, in such litigation also.

44. The appeals normally are filed by State and its instrumentalities, as a matter of course, without any proper initial scrutiny whether it is worth filing or not and that is how a very huge chunk of appeal, in such matters, are filed by State against land holders/farmers, who are already denuded of their most valuable possession i.e. land/agricultural land. The State has constitutional obligation of a welfare State, must think over such aspect seriously. There should be an honest attempt to curtail frivolous, unfruitful litigation, particularly, if it can save innocent and poor citizens from litigious harassment.

45. Be that as it may, since we have already noticed that Reference Court has already shown due lenient view in favour of appellant, we do not find any justification to interfere with the award in question so far as it determined

market value for the purpose of compensation payable to the claimants-respondents. In the circumstances, we do not find any error in the impugned award requiring interference.

46. The point for determination above, is answered against the appellant and in favour of the respondents- tenure holders.

47. In the result, all the appeals lack merit, hence, dismissed with costs throughout.

