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(2010) 08 BOM CK 0201

In the Bombay High Court

Case No : First Appeal No. 142 of 2007

Jacinto Barreto Miranda — APPELLANT

Vs

Special Land Acquisition Officer, Selaulim Irrigation Project, Water Resources Department, Chief Officer, Margao Municipal Council, Collector of South Goa and State of Goa — RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Land Acquisition Act, 1894 — Section 11, 16, 18, 23, 23(1)

Citation : (2010) 08 BOM CK 0201

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : M.B. da Costa and J.A. Lobo, for the Appellant; S.D. Padiyar and M. Salkar, A.G.A. for Respondent Nos. 1, 3 and 4, for the Respondent

Judgement

A.S. Oka, J.—The Appellant has taken an exception to the judgment and award dated 9th March, 2007 passed by the learned District Judge in a reference u/s 18 of the Land Acquisition Act, 1894 (for short the said Act). The reference is made at the instance of the Appellant has been rejected by the impugned judgment and award.

2. The acquisition relates to lands under Chalta No. 376 P.T. Sheet No. 254 admeasuring 12 square metres, Chalta No. 348 P.T. Sheet No. 254 admeasuring 365 square metres and Chalta No. 96 P.T. Sheet No. 259 admeasuring 362 square metres situated at Margaon. The acquisition is for construction of road starting from Roque Correira road, Khareband to Sirvodem at Margao, in Salcete Taluka. The notification u/s 4(1) of the said Act was published in Official Gazette on 20th June, 2002. By an award u/s 11 of the said Act, the market value was offered at the rate of Rs. 71/- per square metre. In the reference u/s 18 of the said Act, the Appellant claimed compensation at the rate of Rs. 3000/- per square metre for the acquired land. It is pointed out that the possession was taken over of the acquired land in the year 1984 before Notification u/s 4(1) of

the said Act was issued. The Appellant claimed the compensation and damages on that count. The Appellant claimed the compensation at the rate of Rs. 5000/- per coconut tree.

3. The Appellant examined himself and no other witness was examined by both the parties. The Appellant produced the documentary evidence apart from his deposition.

4. The learned Senior Counsel appearing for the Appellant has taken us through the notes of evidence and relevant documents on record. He invited our attention to the document at Exhibits 18 to 21 and 40 and 41. He submitted that the acquired land is situated either in S-1 zone or C-2 zone. He submitted that, therefore, every part of the acquired land is either settlement area or commercial area. The learned Senior Counsel pointed out that the possession of the acquired land was taken over in the year 1984 long before the Notification u/s 4(1) of the said Act was published. He invited our attention to the decision of the Apex Court in the case of Special Land Acquisition Officer Vs. Karigowda and Others, . He pointed out that the Appellant was deprived of the possession of the land in the year 1984 and as compensation was not paid immediately after taking over the possession, the Appellant is entitled to the interest on the said amount of compensation till the date of payment as held by the Apex Court. He also relied upon a decision of the Apex Court in the case of Madishetti Bala Ramul (D) by LRs. Vs. The Land Acquisition Officer, . He submitted that following the said decision, the Appellant is entitled to the interest at the rate of 15% per annum on compensation amount from the date on which the Appellant was dispossessed. The learned Senior Counsel appearing for the Appellant invited our attention to the evidence of the Appellant. He pointed out that the acquired land was in the city of Margao within radius of 200 metres from the centre of Margao city. He invited our attention to the sale deed dated 3rd February, 1999 (Exhibit 18) in respect of a land admeasuring 1012 square metres situated in the city of Margao. He pointed out that the said land was situated at a distance of 1.5 Km from the acquired land and 1 Km from the Municipality and centre of Margao city. He pointed out that the acquired land was far better than the sale deed land as sale deed land was hilly and it was not abutting a road. He pointed out that even in respect of such a land as of February, 1999, the market value at the rate of Rs. 1,976.28 per square metre was paid. He invited attention of the Court to the sale deed dated 15th March, 1999 (Exhibit 19) in respect of a land admeasuring 1421 square metres situated in the city of Margao. He stated that the land was sold along with a dilapidated structure which is valued at Rs. 10 lakhs and the market value of the land reflected from the said transaction is Rs. 5,629.84 per square metres. He stated that the sale deed land was comparable to the acquired land and was situated within a radius of 500 metres from the acquired land. He relied upon a sale deed dated 6th March, 2002(exhibit 20) in respect of the land admeasuring 316 square metres bearing Chalta No. 11 of P.T. Sheet No. 276 of Margao City. He pointed out that the consideration reflected from the said document is at the rate of Rs. 1000/- per square metre. He pointed out that after

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deducting the amount paid to the developer, the market value of undeveloped land reflected from the said document is Rs. 858.69 per square metre. He stated that the said land subject matter of the sale deed was also comparable to the acquired land. He relied upon a sale deed dated 12th February, 2001 (Exhibit 21) in respect of 1/3rd share in the property under Chalta Nos. 81, 82, 83 and 84 of P.T. Sheet No. 254 admeasuring 285 square metres. He relied upon the said sale deed which shows the market value of Rs. 3105.26 per square metre. Lastly, he relied upon the agreement for sale at Exhibit 40 and an award in Land Acquisition Case No. 77/03(exhibit 41) which according to him are in respect of comparable lands.

5. The learned Senior Counsel appearing for the Appellant pointed out that the purpose of acquisition is for construction of a road. He relied upon a decision of the Apex Court in the case of Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, and submitted that for determining the market value of the acquired land even the purpose of acquisition will have to be considered. Inviting our attention to the findings recorded by the reference Court. He submitted that the learned Reference Court has committed an error by putting the burden on the Appellant to prove that there was no road outlined in the outline development plan in the Appellant''s land. He submitted that this was a case where the burden was discharged by the Appellant to show that the market value offered by the Land Acquisition Officer was inadequate. He submitted that the Respondents have led no evidence. He submitted that the sale deed dated 12th February, 2001(exhibit 20) was the best piece of evidence produced by the Appellant. He pointed out that the award at Exhibit 41 was also in respect of a comparable land in the city of Margao and in respect of the said land, the market value of Rs. 71/- per square metre was offered by the Special Land Acquisition Officer which was enhanced to Rs. 2866/- per square metre. He, therefore, submitted that the Appellant is entitled to the substantial enhancement in the market value.

6. The learned Counsel appearing for the second Respondent (the acquiring body) pointed out that none of the sale instances are in respect of any comparable land. He invited attention of the Court to the various findings recorded by the Reference Court. He pointed out that the fact that there were mundcarial houses, tenanted houses as well as a fair price shop, a bakery and a timber depot in the remaining property of the Appellant. He pointed out that the acquired land was situated in red light area. He submitted that the acquired land was being used by people as a road for approaching the fair price shop which was existing from 1972. He pointed out that the road through the acquired land was constructed in the year 1989-90. He pointed out that considering the aforesaid aspects, no willing buyer would have purchased the acquired land. He pointed out that a part of the acquired land was in road widening area and it had no building potential. He submitted that the sale instances produced by the Appellant were in respect of the lands having building potential. He pointed out that most of the civic amenities such as Police Station, post office, municipal

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building, banks, schools, Government offices, petrol pumps, etc. are on the northern side of the railway line and acquired land was on the southern side of the railway line. He submitted that the sale deed lands in respect of Exhibits 18, 19 and 21 were on the northern side of the railway line and hence were not comparable. He pointed out that the sale deed at Exhibit 20 was in respect of a developed plot admeasuring 316 square metres and therefore, the same was hardly comparable. He pointed out that the Appellant was not aware about the features of the land subject matter of the award Exhibit 41. He relied upon a decision of the Apex Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, . He submitted that the burden on the Appellant/claimant has not been discharged to prove that the market value offered by the award u/s 11 of the said Act was inadequate. He, therefore, submitted that no interference is called for. The learned Additional Government Advocate supported the impugned judgment and award.

7. We have given careful consideration to the submissions made by the learned Counsel appearing for the parties. We have perused the record of the case. Before dealing with the issue of market value of the acquired land on the date of the Notification u/s 4(1) of the said Act, the claim for compensation made by the Appellant on the basis of an act of taking possession of the acquired land in the year 1984 will have to be considered. The present Appeal is a continuation of a reference u/s 18 of the said Act. The factors which are required to be considered by the Collector and the Court are set out in Section 23 of the said Act. As per the said provision, the market value of the acquired land on the date of publication of Notification u/s 4(1) has to be considered. In a case where the possession of the acquired land is taken over before the publication of the Notification u/s 4(1) of the said Act, Section 23 does not provide for grant of any compensation or interest. Apart from the compensation incorporated in Sub-section (1) of Section 23 of the said Act, the claimant is entitled to the statutory benefits of interest u/s 23(1-A) of the said Act and the solatium of 30% u/s 23(2) of the said Act on the market value of the acquired land on the date of publication of notification u/s 4(1). In a reference u/s 18 of the said Act, if a case for grant of enhancement is made out, the Reference Court has to grant interest u/s 28 under the said Act. The said interest is payable only on the compensation payable u/s 23 of the said Act. It must be stated here that under no provision of the said Act, the prayer made by the Appellant in the reference u/s 18 for grant of additional compensation and damages on account of taking possession of the land in the year 1984 can be considered. Reliance was placed by the learned Senior Counsel appearing for the Appellant on the decision of the Apex Court in the case of Madishetti Bala Ramul (supra). This was a case where the first Notification u/s 4(1) of the said Act lapsed and subsequently a second notification under the same provision was issued. The possession was taken over under the first notification. The compensation was claimed on account of the fact that the claimant was dispossessed on the basis of the first notification. The

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learned Senior Counsel appearing for the Appellant relied upon what is observed by the Apex court in paragraph 20 of the decision which reads thus:

20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation to which the Appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum on the amount awarded in terms of award dated 2-1-1999 for the period 16-3-1979 till 22-12-1991, should be granted, which, in our opinion, would meet the ends of justice.

On a plain reading of what is held by the Apex Court in paragraph 20 of the judgment, it is apparent that the Apex Court has exercised powers under Article 142 of the Constitution of India and, therefore, the said decision will not help the Appellant. Another decision relied upon by the learned Senior Counsel appearing for the Appellant in that behalf was in the case of Special Land Acquisition Officer Vs. Karigowda and Others, . The Apex Court has considered its earlier decisions on this aspect and followed its earlier decision of the larger Bench in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, . The Apex Court considered the remedies available in the case where the possession of the acquired land is taken over prior to issuance of Section 4 Notification. In paragraphs 100 and 101, it was held thus:

100. We are bound by the decision of the larger Bench in R. L. Jain case which had considered Satinder Singh, on which reliance has even been placed by the claimants in the present appeal. The larger Bench after detailed discussion on the subject rejected the claim for payment of interest claimed by the respondents in those cases prior to the date of issuance of the notification u/s 4 of the Act.

101. As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the landowners to take action in accordance with law. Once notification u/s 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The Court, in situations where possessions have been taken prior to issuance of notification u/s 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the Court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R. L. Jain case as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken and accept the contention of the appellant State that the Reference Court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification u/s 4 of the Act. However, following the dictum of the Bench in R. L. Jain case, we direct the Collector to examine the question of

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payment of rent/damages to the claimants, from the period when their respective lands were submerged under the backwater of the river, till the date of issuance of the notification u/s 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation.

Thus, in view of what is held by the Apex Court, the Reference Court could not have granted any interest under the provisions of the said Act for a period anterior to the issuance of Notification u/s 4(1) of the said Act. However, remedy of the claimant of making a claim of payment of rent/damages as observed by the Apex Court in paragraph 101 of the aforesaid decision always remain open. Therefore, the said claim made in the reference by the Appellant could not have been granted by the Reference Court and to that extent, the Reference Court has correctly decided the matter.

8. For determining the market value of the acquired land, it will be necessary to scan the evidence on record as regards the nature and location of the acquired land. As stated earlier, parts of Chalta No. 376 and 348 of P.T. Sheet No. 254 and a part of the land bearing Chalta No. 96 of P.T. Sheet No. 259 are the subject matter of the acquisition in the present case. The Appellant is the owner of the remaining parts of land under Chalta Nos. 376 and 348 of P.T. Sheet No. 254 and Chalta No. 96 of P.T. Sheet No. 259. Apart from the said lands, the Appellant is the owner of the structures on the larger property. The Appellant himself has produced a plan of the acquired land at Exhibit 16. The said plan shows existence of various structures on larger property. The plan shows that the portions of only three or four structures are affected by the acquisition and the substantial part of the acquired land does not have structures. In the award u/s 11, it is stated that the land under acquisition is partly bharad, coconut and mixed garden land. Award records that Chalta Nos. 376 and 348 of P.T. Sheet No. 254 are earmarked for commercial C-2 zone in the outline development plan (for short O.D.P.). The Chalta No. 96 of P.T. Sheet No. 259 appears to have been earmarked for settlement S-1 zone in the O.D.P. It is stated that the acquired land has facility of tar road, electricity and water. It must be stated here that the award does not take into consideration that the possession of the acquired land was taken over prior to Notification u/s 4(1) of the said Act.

9. In the examination-in-chief, the Appellant stated that the first Notification u/s 4(1) of the said Act was published in 1984 and the possession of the acquired land was taken over as far as back in the year 1989. The Appellant stated that the acquired land abuts Margao-Banaulim-Varca road. He stated that all the amenities such as water, electricity and telephone were available in the property much prior to the publication of Notification u/s 4(1). The transport was available and there were shops, hotels, lodging houses, temple, Chapel, restaurants, commercial buildings, clinics, residential houses within a radius of 100 metres from the acquired land. The buildings of college, municipality, old bus stand, post office, schools, Health Centre and market are within 30 metres radius of acquired land. There is extensive cross examination about the acquired land made by the

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learned Counsel appearing for the acquiring body. In the cross examination he has admitted that he had granted N.O.C for construction of the road on the acquired land subject to acquisition. He pointed out that the buildings under Chalta Nos. 370 and 376 of P.T. Sheet No. 254 were in his property in which there are six tenaments. He had admitted that south of his structure there are two structures forming part of P.T. Sheet No. 254. The witness admitted that in structures bearing Chalta No. 359 of P.T. Sheet No. 254 there was a bakery in existence for last 40 years. He pleaded ignorance about the statement that it was a famous bakery at Margao. He stated that to the south of Chalta No. 359, there is a well in existence. He admitted that his tenants were using the said well. He stated that there were two structures towards the south of the well under Chalta No. 349 of P.T. Sheet No. 254. He admitted that there were tenanted structures in Chalta No. 351 to 358 of P.T. Sheet No. 254 and under Chalta No. 1 to 10 of P.T. Sheet No. 259. He admitted that from the year 1989, there is a fair price shop in the structure in Chalta No. 10 of P.T. Sheet No. 259. He admitted that it is possible that the residents of the locality were drawing their ration of the commodities from the said fair price shop. He admitted that two structures under Chalta No. 133 of P.T. Sheet No. 259 belong to his mundkars who have been residing there since Portuguese time. He admitted that there is a timber depot in land bearing Chalta No. 348 of P.T. Sheet No. 254. A suggestion was given to the Appellant that surroundings of Khareband locality are dirty. He denied the correctness of the said suggestion. In fact it was tried to be suggested in the cross examination that the acquired land is situated in an area which is known for flesh trade. The Appellant did not accept the correctness of the said suggestion. In short what has been established in the cross examination of the Appellant is that there were various structures on larger property held by the Appellant. The said structures include the structures in possession of the mundkars and tenants and there was a bakery and fair price shop in the said structures. Thus, what has been established is that the acquired land may have been used by the members of public for approaching the said structures and the well. However, it is not established that any right of way was created over the acquired land in favour of the members of public. The fact that the acquired land was being used by the members of the public and especially the occupants of the structures on the property of the Appellant will be a factor to be considered. However, the same would not have affected the use of FAR of the acquired land while carrying on construction on the remaining land of the Appellant. It must be also noted that a part of the acquired land falls in commercial C-2 zone and part in settlement S-1 zone and, therefore, there was no restriction on the development. Even assuming that a part of the acquired land was shown reserved for road, the remaining land was available for utilizing FAR of the acquired land.

10. That takes us to the consideration of the sale instances relied upon by the Appellant. The first sale instance is of sale deed dated 3rd February, 1999 (Exhibit 18). Even according to the case of the Appellant, the sale deed plot was

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situated about 1.5 Km from the acquired land and 1 Km from the centre of Margao. Moreover, it is stated that the sale deed plot was hilly land. In the cross examination, the Appellant admitted that most of the civic amenities such as police station, post office, college, municipality building, banks, schools and petrol pumps are to the northern side of railway line and the acquired land falls to the south of the railway line. The Appellant admitted that the land subject matter of the sale deed at Exhibit 18 was on the northern side of the railway line. Apart from that, it is at a distance of 1.5 Km from the acquired land. The acquired land is situated in city of Margao, and in cities like Margao such a long distance brings out a major change in the rates of the market value. Therefore, the sale instance of the sale deed at Exhibit 18 will have to be kept out of consideration. The second sale deed is dated 15th March, 1999 (Exhibit 19). It is in respect of an area of 1421 square metres along with a dilapidated structure. In the cross examination, the Appellant admitted that the sale deed plot was at a distance of 1.2 Km from the acquired land. Moreover, it is on the northern side of the railway line. Therefore, the said sale instance cannot be said to be in respect of a comparable land. The third sale instance is of a sale deed dated 12th February, 2001 (Exhibit 21). The perusal of the said sale deed shows that what was sold was an undivided 1/3rd share equivalent to 95 square metres. The said 1/3rd share was out of a land below a building constructed by the developer having ground plus two upper floors. So what was sold was an undivided 1/3rd share which will be equivalent to 95 square metres. Even the property subject matter of said sale deed is on the northern side of the railway line. Therefore ,the said sale deed will have to be kept out of consideration. Reliance is placed on agreement for sale deed dated 24th December, 1996 which is at Exhibit 40. Firstly, it must be noted that the agreement is of the year 1996 and in the present case we have to determine the market value as of June, 2009. The Appellant stated that the land subject matter of agreement at Exhibit 40 was a bharad land which was situated at a distance of 340 metres. The Appellant stated that at the relevant time, the land was a barren land. The Reference Court has discarded the sale instance for two reasons. First is that there is no evidence to show that ultimately a sale deed was executed in respect of the land subject matter of the agreement at Exhibit 40. The second reason given is that the land subject matter of the agreement was fit for construction. The agreement shows that the purchaser under the said agreement agreed to develop the land by constructing multi storyed building. The Appellant has not stated whether a conveyance was ultimately executed in terms of agreement at Exhibit 40. The fact that land was agreed to be sold for construction of a building shows that the same could have been constructed upon. Therefore, the trial Court was justified in keeping the said document at Exhibit 40 out of consideration.

11. Another document relied upon by the Appellant is a judgment and award in Land Acquisition Case No. 77/03(exhibit 41). The land subject matter of the award was notified u/s 4 of the said Act on 12th February, 2002. The land admeasuring 415 square metres under Chalta No. 54 of P. T. Sheet No. 238 was

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acquired. By the said judgment and award, the market value of the part of the acquired land admeasuring 317 square metres was fixed at Rs. 2866/- per square metre. As far as this land is concerned, it must be noted that the affidavit in lieu of examination in chief of the Appellant is silent about the location and features of the said land. In the cross examination of the Appellant, he admitted that the land subject matter of Exhibit 41 was at a distance of 800 metres from the acquired land. In the cross examination, he admitted that he was not aware about the length and breadth of the land subject matter of the Exhibit 41. He admitted that the distance between the municipal building and the land subject matter of Exhibit 41 was only 40 metres. He admitted that the land was towards the northern side of the railway line and the same was located in the centre of Margao. He admitted that around the land subject matter of Exhibit 41, there were buildings, banks and the market area of Margao. In view of these factual aspects, even the land subject matter of award at Exhibit 41 cannot be treated as a comparable land.

12. That leaves the sale deed dated 6th March, 2002 at Exhibit 20 for consideration. It is a sale deed in respect of land admeasuring 316 square metres. The said land is on the southern side of the railway line and is at a distance of 600 metres from the acquired land. The Appellant admitted that the land subject matter of the said Exhibit 20 was a sub-divided plot. The Appellant himself stated that the value of the undeveloped land works out to Rs. 858.69 per square metre. The said land is situated in settlement S-1 zone. The recitals in the sale deed show that it was a sub-divided plot under the approved sub-division. The recitals show that the vendor had entrusted the work of development of the suit property to a developer who was the confirming party and, thereafter, the developer got sub-division approved. The purchaser approached the vendor for purchase of a plot No. 5-B admeasuring 316 square metres. Though the total price was fixed at Rs. 3,16,000/- which is at the rate of Rs. 1000/- per square metre, the sale deed shows that a sum of Rs. 79,000/- was paid by the purchaser to the developer which can be taken as cost incurred by the developer on the development work. In fact said amount will also represent to some extent the profit margin of the developer. After deducting the said amount of Rs. 79,000/- which can be taken as cost of sub- division, the market value works out to be Rs. 858/- per square metre. As stated earlier, the sale deed land is situated on the southern side of the railway line and is situated at a distance of 600 metres from the acquired land. The only positive factor in respect of the land subject matter of Exhibit 20 is that it was a developed plot out of a lay out. While comparing with the acquired land with the land subject matter of Exhibit 20, there are two negative factors in respect of the acquired land. One is that the area of the acquired land is much more than the area of sale deed plot and the other is that the acquired land was used by people for approaching various structures on the remaining part of the property of the Appellant. However, these factors were not sufficient to discard the sale deed at Exhibit 20. Suitable deductions could have been made while determining the

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market value of the acquired land on the basis of Exhibit 20. The learned Senior Counsel appearing for the Appellant tried to submit that the purpose of acquisition is a factor which will have to be considered while determining the market value. He placed reliance on the decision of the Apex Court in the case of Nelson Fernandes and Ors. (supra). However, the said decision of the Apex Court has been explained in the subsequent decision in the case of Subh Ram and Others Vs. Haryana State and Another, . The Apex Court observed that the purpose of acquisition cannot be used to increase the market value. However, the said decision of the Apex Court in the case of Subh Ram and Ors. (supra) is relevant for considering the deductions to be made. As stated earlier, the land subject matter of Exhibit 20 is a developed lay out plot. The Apex court has observed that the percentage of deduction on account of development costs may vary between 20% to 75%. In the present case, as pointed out earlier, the acquired land has various negative factors. The acquired land was not a developed plot of land. Moreover, the acquired land was used as a passage by various persons for approaching the tenanted and mundkarial structures as well as fair price shop and bakery. These factors will certainly affect the market value which could have been offered by a prudent buyer. Therefore, this is a case where for determining the market value of the acquired land on the basis of sale instance at Exhibit 20, maximum deduction of 75% will have to be made. But the market value of Rs. 858/- per sq. metre has been arrived at after considering the expenses of sub-division. Therefore, after considering the other negative factors, deduction at the rate of 66 % will have to be made. By deducting 66% from the price of Rs. 858/- per square metre, the market value comes to Rs. 291.72 which can be rounded off to Rs. 292/- per sq. metre. To that extent, the Appellant will be entitled to enhancement. Hence, the Appeal must succeed in part and we pass the following order:

ORDER

(A) The impugned judgment and award is quashed and set aside.

(B) The market value of the acquired land is fixed at the rate of Rs. 292/- per square metre.

(C) In addition to the market value, the Appellant will be entitled to statutory benefits u/s 23(1-A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894.

(D) The Appellant will be entitled to the proportionate costs of the reference and this Appeal from the Respondents.

(E) The computation of compensation payable to the Appellant shall be made by the Reference Court after hearing the respondents. Time of 12 weeks is granted to deposit enhanced compensation with the reference Court from the date of determination of the amount.

(F) The remedy of the Appellant to take proceedings for recovery of rent/

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damages on account of loss of possession in the year 1989 is kept open. All the contentions of the Respondents on this aspect are also kept open.

(G) The Appeal is partly allowed in above terms.

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