

(1994) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1899 of 1994

KRISHNA KUMAR RAWAT AND OTHERS

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 14-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 23, 24, 269UC, 269UD, 4

Citation : (1995) 123 CTR 61 : (1995) 214 ITR 610 : (1995) 78 TAXMAN 142

Hon'ble Judges : V. K. Singhal, J

Bench : Division Bench

Judgement

V. K. SINGHAL J. - The petitioners have entered into an agreement to purchase a plot of 9,500 sq. yards (7,945 sq. metre) with two godowns having an area of 2,920 sq. metres with respondent No. 3 for a consideration of Rs. 99,84,500 out of which a sum of Rs. 40,00,000 was paid by cheque and the possession of the two godowns, guard-room, office premises along with 1/4th Undivided share of the remaining open land was delivered. From No. 37-I along with a copy of the agreement was submitted u/s 269UC on December 31, 1993. The Valuation Officer of the appropriate authority of the Income Tax Department, vide his letter dated January 18, 1994, informed the petitioner and the seller for inspection of the property on January 21, 1994. The appropriate authority, after receiving the report from the Valuation Officer, issued a show-cause notice on March 8, 1994, u/s 269UD(1A) of the Act on the ground that the apparent consideration was lower for various reasons mentioned therein and the value of the land is much higher than the agreed rate. An example of a plot of land at A-90, Triveni Nagar, near Durgapura Station, sold by the Jaipur Development Authority on November, 7, 1992, at Rs. 1,781 per. sq. metre was taken. Adjustment of five per cent. on account of less development of the plot and ten per cent. on account of general condition of the plot was given and 12 per cent. was added on account of the time gap. On the basis of the rate of Rs. 1,692 per sq. metres, the value of the land of 7,943 sq. metres was calculated at Rs. 1,34,39,556. The petitioner was

asked as to why the order for per-emptive purchase u/s 269UD be not made and the case was fixed for March 21, 1994. Objections were submitted by the vendor as well as the petitioner that 40 per cent. of the land would be required to be left for amenities like parks and roads besides the cost of development of roads, electricity, water supply, etc. The sub-division has not been effected. It was also stated that the market price of the land in Durgapura notified by the sub-Registrar as on April 1, 1991, for the first category has been fixed at Rs. 550 an the second category at Rs. 450; and if 12 per cent. is added, it would come to Rs. 690 per sq. metre. This is besides the various objections mentioned above and also the fact that the cost of demolition and removal of debris would be substantial and the cost of investment for six months has to be taken into consideration. An example in the representation dated March 24, 1994, was given of a plot of 116.13 sq. metres sold at Rs. 861.10 per sq. meter situated in Triveni Nagar Scheme. The market rate fixed by the Sub-Registrar for registration purposes was stated to be Rs. 1,043.05 per sq. metre. A copy of the office order dated November 4, 1992, of the Jaipur Development Authority fixing the reserve price at Rs. 600 per sq. metre was pointed out. The appropriate authority passed the order u/s 269UD(1) and exercising the powers vested in it ordered purchase of the property by the Central Government at an amount equal to the apparent consideration shown in the agreement. The appropriate authority directed delivery of possession of the said property to the Departmental Valuation Officer of the Income Tax Department whereupon the petitioner applied for time.

The submission of learned counsel for the petitioner is that the total land is 17 bighas 12 biswas having Khasra No. 126 owned by the partnership firm, Messrs. Rajasthan Industrial Company, which submitted a plain for development of an amusement park, commercial complex and residential colony. The Jaipur Development Authority approved the plain for the commercial complex and amusement park. The partnership was dissolved and, as such, the single integrated complex for which the plans were approved could not be acted upon. According to the submission of learned counsel for the petitioner, out of the total area of 7,943.48 sq. metres only 1,087.74 sq. metres is capable of being developed commercially and the saleable area comes to 13.693 per cent; and the rest of the area would form part of the roads, parking and other open spaces. If the rate of Rs. 1,800 per sq. metre is applied, the total value of the land would come to Rs. 19.58 lakhs.

The godowns are being used for storage purposes and if the industrial use of the land is taken into consideration, then it should be on the basis of the rate charged by the RIICO for industrial land which is Rs. 100 per sq. metre for fully developed land. Even if the valuation is to be taken on the basis of the residential plot, the cost of development and reduction of area on account of the facilities have to be taken into consideration besides the fact that it would take around 12 months to develop the property over which at least Rs. 18 lakhs would have to be deducted on account interest alone. Possession has been taken only of land

covered under godowns and the open area is said to be under the co-ownership of Smt. Krishna Kumari. The final agreement with the co-owner has not been arrived as yet, and there can be a change of site also. No notice was issued for treating the property as a commercial property. The value of the godown was also not mentioned in the notice issued.

The grievance of the petitioner is also that they were given only ten days time for filing the reply and thus the principles of natural justice have been violated. A reasonable opportunity as directed by the apex court has also not been given. The notice was received on March 11, 1994, and there was a strike by Government staff from March 16, 1994, to April 3 1994, and therefore, the copies of similar sale transactions could not be obtained. The action of the appropriate authority has been challenged on the ground that there was no material available with the Department to the effect that there was any evasion of tax in the transaction. Notice to the co-owners who are interested persons was not issued. The goods were shifted to the godown in several months and it will take a few months now to vacate it. The apparent consideration shown is not less than apparent consideration if 15 per cent. is added thereon. The orders have been passed on grounds different than those for which the notice was issued. The copy of the valuation report was not supplied. The comparison with the land situated at Triveni Nagar which is fully developed has wrongly been made. The value of the structure should have been taken as nil. While valuing the godown incorrect facts with regard to the tubular trusses, A. C. sheet roofing having CC floor, electric installations, iron etc., have been taken and it has wrongly been mentioned that commercial use of the property has been allowed by the District Magistrate and the Jaipur Development Authority. The proper norms for valuation of the property have been not been adopted. A single instance cannot be the basis for valuation of the property. The property is near the vegetable factory which is emitting a foul smell and incapable of developing into a residential colony. The instance of sale of plot given by the petitioner has wrongly been ignored. The salable area is only 66 per cent. of the total area and the calculation should have been made on that basis.

It is submitted that the market rate notified by the Sub-Registrar under the provisions of the Rajasthan Stamps Act as on April 1, 1991, was Rs. 777 per sq. metre and if 12 per cent. is added for the time-gap, it would come to only Rs. 963 per sq. meter. The rate notified by the Jaipur Development Authority on November 4, 1992, was Rs. 600 per sq. metre and if 12 per cent. is added thereon it would come to Rs. 672 per sq. metre. The average of the two plots in Triveni Nagar which have been sold at Rs. 1,043 per sq. metre and Rs. 1,781 per sq., metre comes to Rs. 1,411 per sq. metre and on that basis also the total cost of 5,242 sq. metres comes to Rs. 74.02 lakhs. The cost of laying roads and other amenities should be deducted therefrom.

On the basis of the land approved by the Jaipur development Authority, for commercial use to the extent of 1,087 sq. yards, it is submitted that the cost

should be calculated at Rs. 1,800 per sq. metre as fixed by the Jaipur Development Authority November 4, 1992, and if 12 per cent. is added for the time-gap, it comes to Rs. 2,016 per sq. metre and the total cost of this land comes to Rs. 21.93 lakhs from which deduction for demolition an interest charges should be given.

I have considered the arguments of both learned counsel for the petitioner. The objection which has been taken by learned counsel for the respondents is that the writ petition is not maintainable as the petitioner and the vendor have contravened the provision of the Act by transferring the property before any permission could have been given by the appropriate authority and for which reliance has been placed on the decision given by a Division Bench of this court in the case of RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS., (D.B. Civil Writ Petition NO. 3426 of 1991) decided on April 22, 1994. It is observed that so far as the preliminary objection is concerned, the respondents are to blame themselves. By none of the orders of the court, were the respondents restrained from taking any action if they were legally entitled. The decision relied on by learned counsel is not on the proposition that in such a situation, the writ petition is not maintainable. In that case, the order passed by the appropriate authority was not under challenge, by it was the prosecution of the petitioner in which the court refused to interfere. The writ petition against the order passed by the appropriate authority is maintainable and, therefore, the preliminary objection having no force is rejected.

In the agreement dated December 31, 1993, the sale price of the land has been mentioned as Rs. 1,051 per sq. yard. Possession of the two godowns having Nos. 13 and 14, guard-room, office premises and symbolic possession of 1/4th undivided share of the open land was taken by the petitioner. In clause 12 of the agreement, it was mentioned that the said land is approved and covered for the purpose of construction of commercial and residential units by the Jaipur Development Authority and the dues for conversion have been deposited. if there is any liability in future in respect of such conversion charges, the vendor has to bear it. The show-cause notice which was issued by the appropriate authority on March 8, 1994, has mentioned that the land rate has been shown at Rs. 1,051 per sq. yard in the agreement, whereas the Jaipur Development Authority has shown the land at Rs. 1,781 per sq. metre on November 7, 1992. Certain additions and deductions were made and the total cost arrived at was Rs. 1,34,39,556 at Rs. 1,692 per sq. metre. This was besides the cost of the existing godowns which were mentioned to have commercial potential. In the reply, the vendor has only stated that full consideration has been shown and the development needs 40 per cent. of the land to be left out for amenities, sub-division has to be approved by a large number of Governmental agencies. The petitioner has also submitted objections to the proposed notice as stated above. A certificate of sale of land in Triveni Nagar at Rs. 1,300 per sq. metre of July, 1993, was also submitted. Further reply was submitted on March 24, 1994, and the copy of sale deed dated May 26, 1993, was also submitted.

In the order dated March 30, 1994, the appropriate authority has taken the figure as mentioned in paragraph 2 of the order. On the basis of the reply submitted, the various contentions raised therein were also taken into consideration. The case was adjourned on the request of the parties from March 21, 1994, to March 24, 1994. The opportunity which has been given in the present case cannot be said to be not a reasonable one.

The appropriate authority has also taken into consideration the fact that the transferor has assured the purchaser that the property sold is free from all encumbrances and the responsibility to get the land partitioned was also undertaken; the fact of conversion was also stated. There are residential colonies adjoining the present land. As per cost of construction on the basis of norms applicable in the case of CPWD structures the value of godown was estimated at Rs. 42 lakhs. The submission of learned counsel for the petitioner is that the fact that the future of Rs. 42 lakhs was not mentioned in the notice does not vitiate the order because, even the cost of land itself was considered as more than the apparent consideration shown in the agreement and the fact that the cost of the godown has to be separately considered was also mentioned in the notice. The contention of learned counsel for the petitioner that the cost of removal of the debris will be more than the cost of the structure was rejected. This conclusion of the appropriate authority is also correct as the petitioner has himself stated in the petition that the godowns are being used for storing goods and is used for business purposes, and, therefore, there is no necessity for demolishing them. The value of the godown was taken at Rs. 42 lakhs and the value of the land was estimated at Rs. 1,37,21,532, at 1,727 per sq. metre. The total value has been taken at Rs. 1,79,21,532 as against Rs. 99,84,500. The contention of the petitioner with regard to the deduction of 40 per cent. for roads and park, etc., was not accepted and for the sake of the argument, it was considered that if the salable area as per rule 11 of the Rajasthan Urban Areas (sub-division) Rules, 1975, is taken to be 66 per cent., then it will come to 5,242.38 sq. meters to which if the sale instance was taken into consideration of Rs. 1,718 per sq. metre on which 12 per cent. for the time-gap is added, it will come to Rs. 1,994.72 per sq. metre. Even on that basis, the value comes to Rs. 1,04,58,548 and Rs. 42 lakhs for the building which is much more than the declared apparent consideration. It was also found that the area of Triveni Nagar is on the interior side of the main Tankroad, whereas the present land is having a better situation. The property being commercial has about 50 per cent. more value, which was not added for computation purpose. The decision of the Allahabad High Court in the case of Daya Engg. Works (P.) Ltd. v. Union of India (C.W.P. No. 4240 of 1993) decided on July 15, 1993, was also relied on for the point that the rate determined under the Stamp Rules cannot be determinative of the actual value of the property. The claim of Rs. 10 lakhs as registration charges and Rs. 15 lakhs of roads, water supply and electricity and for interest were also held untenable.

The property was approved by the Jaipur Development Authority and for the

reasons as stated by learned counsel for the petitioner that, on account of dissolution of the firm, the park project could not be implemented, Smt. Mithilesh Kumari sold her share. There is no restriction in respect of sale of the property which is privately sub-divided by different owners. Even the contention that the other co-owner may object to the area sold has been not proved by any evidence on record. The vendor has taken up the obligation on her part not only for sub-division but has assured the petitioner that the property under the agreement is free from all encumbrances and the conversion charges in respect thereof have already been paid. It is not on record as to how much conversion charges have been paid but, it is the responsibility of the vendor that, if the conversion charges are found to have been not paid she has to bear the same. A notice was given to the Jaipur Development Authority in order to find out as to whether the plan which was earlier approved is the final plan or they have the power to revise the plan once approved. It is stated by Mr. R. D. Rastogi on behalf of the Jaipur Development Authority that even if a plan is approved, the Jaipur Development Authority has the jurisdiction to revise the said plan. The property which has been directed to be purchased by the appropriate authority is on the basis of the agreement entered into and on the same terms and conditions. The dispute with regard to the possibility of a different area of land or the other questions which have been raised by learned counsel do not require to be gone into.

The principles for valuation in respect of an immovable property under the Wealth-tax Act or other taxation laws are different from the principles which are applicable to acquisition proceedings. The proceedings under Chapter XX-C are akin to the acquisition proceedings and not to the valuation principles which are applicable for assessing the tax on the basis of the valuation of the property.

The valuation has no doubt to be made objectively and not on the subjective satisfaction of the appropriate authority. The figure which is arrived at has to be based on the material on record. There may be a certain element of arbitrariness while estimating the market value and it is for that reason alone, that without there being any mandate of the Act, the respondents have issued a circular that the acquisition of the property under Chapter XX-C would be if the difference of the market value and agreed value shown in the instrument is more than 15 per cent. Thus, the 15 per cent. margin covers the estimation part of the valuation, so that no injustice is done while acquiring any property. The right of pre-emptive purchase by the Central Government of immovable property is at an amount equal to the amount of apparent consideration so as to relieve the transferor of any grievance. The order u/s 269UD has to be passed in a time-bound programme. The appropriate authority consists of three persons; two of whom are to be members of the Indian Income Tax Services Group A holding the post of the Commissioner of Income Tax or, any equivalent or higher post and, one has to be a member of the Central Engineering Services Group A holding the post of the Chief Engineer or, any equivalent or higher post. The transferor and transferee are to be given the opportunity and a reasoned order has to be passed. The respondents have to make the valuation of the property by taking

into consideration all relevant facts and thereafter a decision has to be taken by the appropriate authority. Viscount Simon J., in *Gold Coast Selection Trust Ltd. v. Humphrey* [1949] 17 ITR (Suppl) 19 observed that, "valuation is an art, not an exact science, mathematical certainty is not demanded, nor is it possible ?" A certain element of guess has to be there based on objective factors having reasonable nexus with the evidence on record. The various factors are there on the basis of which out of the various methods by which the valuation of the immovable property can be made, appropriate method is to be adopted. It depends on the location of the property, the purpose for which the property is used, the nature of the property, the time when the agreement is entered into and similar other objection factors. The valuation, therefore, has to be done by a method which is more objective and could furnish reliable data to arrive at a just conclusion.

In respect of land, comparable cases provide the better guide. The comparable cases could be which are in respect of the land having similar character and is in the proximity of the land under agreement having similar advantages and amenities. The proximity in time is also an important factor in such a case. The location, frontage, transport facilities and other amenities besides the size of the plot are relevant considerations. The method of belting is also applied in respect of and having a large area as the front of the land on the main side fetches a higher price than the next belt and so on. In this method, the plot is divided into belts on the basis of distance from the main road and the value of such belts has to be determined separately.

In *Raghubans Narain Singh v. U. P. Govt.*, AIR 1967 SC 465 it was observed by the apex court that the value to be ascertained is the price to be paid for the land with all its potentialities and with all the use that can be made of it by the vendor. Similarly, in *Uttar Pradesh Government Vs. H.S. Gupta*, the market price was considered the highest value the property could fetch when laid out in the most advantageous manner. The potentialities or the capacity to use therefore is also an another relevant factor. The instances of comparable cases which are taken into consideration must be of genuine cases.

There may be different methods for valuation of the property, i.e., land and building, which depends on multiplicity of situations and one of such principles is comparable transaction which is mainly applicable to valuation of land only, the others use :

(i) Return basis :

Under this system the value is determined on the basis of the amount of rent which a tenant is ready to pay and that rent is considered a return on the investment of capital which is applicable on the properties which are on lease/rent/easement.

(ii) Direct capital comparison :

This method is rarely applied for valuing the property, as under this method the two objects, namely, the property and other similar object like shares, etc., are taken into consideration and the price which could be obtained therefore is taken into consideration. The identification of the object itself is problematic and the property is rarely identical with other object and, therefore, this method is rarely used.

(iii) Residual method :

Under this method, the valuation of lands or buildings is taken if they are developed or redeveloped. It is on the basis that the inevitable process of development or demolition and redevelopment goes to meet the changing demands of the society. The value by direct comparison of sale of similar property which is developed in a similar manner is taken into consideration. This method is also known as the development method of valuation. The method is applied mainly in respect of old buildings which are demolished and new construction is raised thereon.

(iv) Profit basis :

Where the comparison of one with another is different since each property is susceptible to different factors which may have a dramatic effect on the figure of sale achieved. Even in the same market, the value of shops may differ on account of location. The profit which is derived on account of situation, location or special circumstances of the property is taken as basis for valuing the property. It is considered appropriate in respect of hotels, cinemas, shops, petrol pumps and other commercial properties.

(v) Cost of replacement :

This method is applicable in respect of property which is to be designed or used for a special purpose to meet specific requirement and the valuation of such property is derived from the value of alternative sites plus cost of building. The property in such cases have no sale instances in the market and thus no comparable cases could be found. The price of an alternative site and cost of erection of the building is taken into consideration. This cost of replacement is also referred as contractors method.

(vi) Break-up method :

The break-up method or asset breaking method is adopted for loss incurring concerns which have no chance of revival.

(vii) Municipal valuation :

Under this system taxes which are calculated by municipal authorities as a percentage of rent realised or realisable are taken into consideration and on that basis the annual value of the property is determined.

(viii) Land and building method :

Under this method, the valuation of the land is done separately on the basis of comparable instances of sale of other plots and the cost of construction as prevailing is taken from which the depreciation looking to the year of construction is reduced. This method is normally applied in cases of compulsory acquisition.

The objection that solitary instance rate cannot be adopted for the purpose of comparison cannot be considered to be an absolute proposition of law. It depends on the facts and circumstances of the case and even where there is no other comparable case available a single solitary instance can be taken into consideration. The objection that the land should be considered to be agricultural land or that the rate of industrial land should be made applicable or that since the value of the building has been taken then the cost of land should be taken as nil cannot be accepted, as factually it could neither be considered as agricultural land nor a industrial land and the potentiality of the land has to be taken into consideration as observed by the apex court in the case of Raghubans Narain Singhs case AIR 1967 SC 465.

The various propositions with regard to the costing of land or restricting the saleable area on the basis of the already approved map can also not be taken into consideration as in accordance with the approved map the seller has not taken any action and learned counsel for the Jaipur Development Authority who was issued notice in this matter has admitted that the map could be revised by the Jaipur Development Authority.

So far as the valuation of constructions is concerned, it is not proved by any evidence on record that the valuation has incorrectly been arrived at. The only thing which has been said is that the valuation was not depicted in the notice so that the petitioners could have submitted their reply. Even if for the sake of argument, the contention is accepted, nothing is stated by the petitioner in the petition itself as to how the valuation has not correctly been arrived at or there is any mistake apparent, so that the order of valuing the cost of built-up area at Rs. 42 lakhs would be considered to be illegal or a mistake apparent from record or an arbitrary figure. The contention of the petitioner that the said godown is to be demolished is contrary to his own averment in the petition that the godowns are used for storing the goods and it will take a number of months in transporting the goods and that the petitioner is carrying on his business there, which is near to the airport as well. In an area which is already constructed long-back and the business is being carried on neither there is any possibility of any authority demolishing the structure or restraining the purchaser from carrying on the activities. The contention that the building is to be demolished cannot be taken into consideration at this stage, even if the construction is finally demolished after a number of years. The valuation which has been arrived at by the appropriate authority of the constructed area, therefore, cannot be said to be unreasonable or requiring any interference by this court as there is no evidence on record by which it could be concluded that the petitioner has no intention to

carry on the business in the said premises where it is being carried on by him under the agreement. The method of valuation of the godown has rightly been taken on the basis of land and building method.

In *Commissioner of Wealth-tax Vs. Mrs. Sara Varghese*, the Kerala High Court has observed that for valuation a hypothetical market is contemplated. Imponderables are involved in the matter of valuation. The market value of the property is the price which a willing buyer will pay to a willing seller. It will vary from case to case. Valuation is not an exact science. Mathematical calculation is not possible. The money value attributable to the asset should be decided and estimated by the concerned statutory authority in a reasonable and judicial manner on the basis of the facts and circumstances available. The valuation should be made objectively and should be based on some material. The qualitative and quantitative analysis in the matter of valuation will differ from asset to asset, from place to place, and also considering the particular statute for which the valuation and price of the property have to be determined. It could be a wooden rule. Different methods and approaches, necessary in the context of different statutes under which the market value of an asset has got to be determined, pose difficult problems. The market value has got to be fixed with reference to the particular statute. The approach will differ, according to the nature of the statute, between fiscal statutes or non-fiscal statutes. Among the non-fiscal statutes, the Land Acquisition Act is an important legislation. Among the fiscal statutes, the Income Tax Act, the Wealth-tax Act, the Gift-tax Act, the Municipalities Act, etc., are important. In fixing the market value of a particular asset or property, the approach and analysis are likely to vary according to the subject-matter of legislation. The principles that are ordinarily applied in the case of non-fiscal statutes like the Land Acquisition Act cannot be applied mechanically to cases arising under the fiscal statutes.

In *Mani Singh Avtar Singh Vs. Inspecting Asst. Commr. of Income Tax (Acquisition Range)*, it was observed that a plot built upon cannot be compared with an unbuilt not on which the purchaser has the opportunity of exercising a wide choice of building.

In *Debi Prosad Poddar Vs. Commissioner of Wealth Tax*, the following principles were laid down for the valuation of immovable property under the Wealth-tax Act (at page 773) :

"(i) Attempt must be made to find out the price which the immovable property would fetch on the valuation date imagining a willing buyer to purchase the property from a willing seller in respect of the property;

(ii) In respect of the immovable property, there is no fixed market such as market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property, there must necessarily be certain element of guess. But the guess must be based on certain facts and according to certain principles which would be, in the facts and circumstances of each case, as

fair as possible to the Revenue as well as to the assessee in trying to imagine reasonably and intelligently the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(iii) Such a determination, therefore, involves adopting certain methods in determining the valuation and there are different kinds of methods, as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the court as noticed before.

(iv) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible a guess as to the valuation on the valuation date.

(v) Another factor that has to be borne in mind is that such a method should be preferred which has more objective and reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective and reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow."

In *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, it was observed by the apex court that (at page 1419) : "the general principles for determining compensation have been set out in sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act, but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which, according to the present prevailing rate of interest, is 20 times the annual rent. But this also is not a conclusive method. This court had in *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, indicated at page 412, the methods of

valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4(1) which are : (i) opinion of experts; (ii) 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; and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonably correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined."

So far as the question of valuation of land is concerned; reliance has been placed on the decision of Mathura Prasad Rajgharia and Others Vs. State of West Bengal, wherein it was observed that (at page 469) : "the market value according to the disposition of the land apparently means the value of the land in a hypothetical market which willing purchaser may in the prevailing conditions pay for the land to a willing vendor, taking into consideration its situation and advantages. In determining the disposition the hypothetical purchaser would normally take into consideration the advantages of the situation and the potentialities of the land, for the market value of land, especially in urban areas, depends upon its situation, special adaptability, advantages and inherent potentiality in the light of the demand for land. Where a large area of land in an urban locality is sought to be acquired in determining the market value the method of belting is appropriate. It is common knowledge that lands having frontage on the main roads in urban areas are always more attractive than the lands which have no such frontage."

In Sahib Singh Kalha v. Amritsar Improvement Trust [1992] Supp. ACC 593 it was held by the apex court that where there is a large area of undeveloped land under acquisition, provision has to be made for providing the minimum amenities of town life such as water connections, well laid-out roads, drainage facility, electric connections, etc. The process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on par with the developed lands. An extent of 20 per cent. of the total land acquired was taken as a reasonable deduction for the space required for road. Apart from it, the cost of laying roads and other amenities like electricity, water, underground drainage, etc., was taken at 33 per cent." A distinction was also drawn between a tiny plot and a large area. In the case of Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad, the apex court observed that : "there is no doubt that the value of an extensive plot of land in a city, the strip that adjoins an important road will have a higher value than what is in the rear, for obvious reasons of potential user or commercial exploitation." In State of Kerala v. P. P.

Hassan Koya, AIR 1968 SC 1201 it has been observed : "in determining compensation payable in respect of land with buildings, compensation cannot be determined by ascertaining the value of the land and the break-up value of the buildings separately. The land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities." The method of capitalisation of return actually received or which might reasonably be received from the land and the buildings in respect of a property which is used for business purposes was approved. In Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, it was held by the apex court that the market value of an asset would be a question of fact, but if the Tribunal has arrived at its conclusion by taking wrong principles into consideration, then such a finding would not be binding on the High Court.

The contention that the area is in the vicinity of a factory which is emitting a foul smell and chemicals cannot be considered because it is mentioned in the order that a number of other colonies have also been developed and had it been the position the residents of the colonies would have approached the environmental authorities of the State of Rajasthan for taking necessary action. The contention that the entire land cannot be used for residential purposes as part of it is to be left out for facilities and roads are to be developed may affect the market value. The question whether the instance of sale should be relied upon is also a question of fact. It may be the correct depiction of the market value (rate) or may not be so and, therefore, the market value is to be adopted looking to the rates prevailing in the locality, situation of the plot, the potentiality and use of it.

The valuation of the land could be on the basis of comparable cases of which one example has been given by the respondent while the other has been given by the petitioner. The total value for which the agreement was entered into was of Rs. 99,84,500. If the value of the godown of Rs. 42 lakhs is reduced therefrom, the value of the land remains only at Rs. 57,84,500 in respect of 9,500 sq. yards. The value comes approximately to Rs. 600 per sq. yard. It may be observed that in the case of RAJENDRA GIRIRAJ PRASAD TIWARI (S. B. C. W. P. NO. 3492 OF 1993) SONA BUILDERS (S. B. C. W. P. NOS. 4667 OF 1993 AND 1093 OF 1994) Vs. UNION OF INDIA AND OTHERS, S. B. Civil Writ Petition No. 3492 of 1993 decided on April 18, 1994, it was observed that judicial review is limited only to the extent of examining as to whether any finding is perverse or there is non-application of mind or the order is contrary to the established principles of law. It was further observed that this court is not sitting in appeal over the order passed by the appropriate authority and the satisfaction has to be arrived at by the appropriate authority on the basis of the valuation report and the relevant documents which have been taken into consideration.

It is not the calculation or the manner which could be examined under article 226. The calculation is always a question of fact. Principles of valuation alone have to be considered. The respondents have taken into consideration the sale of the plot by the Jaipur Development Authority, at Rs. 1,781 on December 7, 1992.

The said colony is situated in the inferior than the present land and necessary deductions have already been given to the petitioner. The land is said to be in the vicinity of the main road. The various arguments which have been raised by learned counsel for the petitioner to arrive at the value of the land are only hypothetical. The deduction as contemplated in the case of Sahib Singh [1992] Supp. ACC 593 referred to above is given, still the value exceeds more than 15 per cent of the apparent consideration.

In these circumstances, I am of the view that the action of the appropriate authority in making the order of the pre-emptive purchase is not contrary to law.

The reliance on the letter dated November 4, 1992, with regard to the reserve price is of no avail because it is not the market value but is only the reserve price below which the Jaipur Development Authority cannot sell or allot a plot to any person even of a reserved category and such price cannot be taken into consideration while determining the market value for pre-emptive purchase under Chapter XX-C.

The market rates for the purpose of registration of an immovable property as notified by the Sub-Registrar can also have no application for determining the market value under Chapter XX-C of the Act. It is limited only for payment of the stamp duty. The said notification also does not take into consideration the difference of value, even of the plots in the same locality having different situation. As such the value notified for the purpose of registration cannot be a proper guide for valuation in respect of pre-emptive purchase.

An objection was also taken that the land is not an identifiable separate piece of land as the other co-owners may object or give another land in lieu of the land shown in the map. This argument is also of no avail to the petitioner, because the other co-owners have not raised any objection when the possession was taken over by the petitioner from the vendor and a number of vehicles must have come to unload his goods and, therefore, it could be a case of implied consent. Even if it is not a case of implied consent, the responsibility has been taken by the seller that the conversion charges of the land have been deposited and the land as shown in the map is to be sold by the vendor. The agreement reciting the obligation of the seller is the complete answer to the argument raised by learned counsel for the petitioner.

Shri B. L. Sharma, appearing on behalf of the vendor, has submitted that on account of the stay order the seller could not get the remaining sale consideration and thus in view of the decision in *C. Dass v. Appropriate Authority*, (1993) 199 ITR 9 (SC) at least direction for interest should be given. This matter has also been considered by me. The seller has already received a sum of Rs. 40,00,000 as an advance under the contract itself, and even after the clearance by the appropriate authority certain obligations are to be fulfilled by the seller. Directions for payment of interest could be given in an appropriate case but I do not consider that the present one is an appropriate case for giving directions to

the Central Government for making payment of interest in addition to the consideration and hence this plea is accordingly rejected.

In view of the observations made above, there is no mistake apparent from the record nor could the order be said to be without application of mind or perverse nor could the order be said to be contrary to the established principles of law.

The writ petition having no substance is hereby rejected. The respondent-Central Government shall make the payment to the seller within a period of 15 days on fulfilling the various obligations as contemplated in the agreement and under law.