
(2010) 07 BOM CK 0057

In the Bombay High Court

Case No : First Appeal No's. 300 and 317 of 2003

Managing Director, Goa IDC

APPELLANT

Vs

Comunidade of Nagoa and Another

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4, 4(1)

Citation : (2010) 5 BomCR 143

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

Bench : Division Bench

Advocate : M.S. Sonak and J. Supekar, in FA No. 300/2003 and F.E. Noronha, in F.A. No. 317/2003, for the Appellant; M.S. Sonak and J. Supekar, in F.A. No. 317/2003, Respondent No. 2, F.E. Noronha in F.A. No. 300/2003 for Respondent No. 1, S. Vahidulla, G.A. in F.A. No. 300/2003 for Respondent Nos. 1 and 2, for the Respondent

Judgement

Reis F.M., J.—The above appeals have been taken up for final disposal together as both challenge the same judgment and Award dated 8th August, 2003, passed by learned District Judge at Margao, in Land Acquisition Case No. 136/1997.

2. The parties shall be referred to as they so appear in the cause title of the impugned Award.

3. Both the above appeals have been preferred challenging the judgment and Award passed by the learned District Judge, Margao, in Land Acquisition Case No. 136/1997 dated 8th August, 2003, whereby the reference preferred by the applicant was partly allowed and the market value of the land acquired was fixed at Rs. 24/- per square metre in respect of 30,650 square metres of survey No. 40/part and for the balance land at a uniform rate of Rs. 14/- per square metre.

4. By a Notification u/s 4 of the Land Acquisition Act, 1894, (hereinafter referred to as the said Act"), published in the Official Gazette dated 22nd March, 1990, the land belonging to the applicant admeasuring 4,60,375 square metres was acquired from survey Nos. 40/part, 30/part and 34/part, situated at Nagoa

Village for the expansion of the Verna Industrial Estate (Verna Plateau) Phase-II. After complying with the formalities under the Land Acquisition Act, by an award dated 19th April, 1993, the Land Acquisition Officer awarded different rates from Rs. 2.20 to Rs. 10/- per square metre for different types of land belonging to the applicant. Being dissatisfied with the amount of compensation awarded, the applicant sought a reference u/s 18 of the said Act for enhancement of compensation and claimed the compensation at the rate of Rs. 200/- per square metre for the land acquired. After recording the evidence and examining the witnesses, the Reference Court by the impugned judgment and Award dated 8th August, 2003, partly allowed the reference and awarded a compensation for the land acquired at the rate of Rs. 24/- per square metre in respect of an area of 30,650 square metres from survey No. 40/part and for the balance land at a uniform rate at Rs. 14/- per square metre.

5. Being aggrieved by the said judgment and Award, the Respondent No. 2, who is the Acquiring Body and Appellants in First Appeal No. 300/2003, have preferred the said appeal. On the other hand, the applicant, who is the appellant in First Appeal No. 317/2003, has also challenged the said judgment and Award passed by the learned Reference Court

6. The learned Counsel appearing for the Respondent No. 2 has assailed the judgment passed by the Reference Court and submitted that there is no material on record for the Reference Court to enhance the compensation for the land acquired at the rate of Rs. 24/- per square metre. He submitted that the sale instances sought to be relied upon by the applicants are not at all comparable with the land acquired. He further submitted that the Reference Court has erroneously relied upon the Award at Exhibit 24 to enhance the compensation as there is no evidence on record that the land in the said Award was similar to the land acquired though it forms part of the same survey No. 40/part. He further submitted that the acquired land is a Comunidade land and in view of the restrictions imposed under the Code of Comunidade, such land cannot be used for any construction purpose without complying with the provisions of the Code of Comunidade. He further submitted that the lands of Comunidade have got restrictions from being transferred and, as such, the question of awarding the compensation at the rate of Rs. 24/- per square metre for the land acquired, does not arise at all. He further submitted on account of such restrictions, deduction of 50 percent is to be effected to arrive at the market value of land. He also pointed out that such restrictions were not considered in the Award at Exhibit 24. The learned Counsel further submitted that apart from the land surveyed under No. 40/part, the remaining portion of the land acquired in the present proceedings is waste land and the same has no potentiality for being used for non-agricultural purpose. He further submitted that there is no challenge by the applicants to the classification done by the Land Acquisition Officer in the Award u/s 11 of the said Act and as such, the question of awarding compensation at uniform rate cannot be accepted. He further submitted that the other sale instances relied upon by the applicant have no nexus with the land

acquired and no evidence has been adduced by the applicant to substantiate their claim for enhancement of compensation. The learned Counsel further submitted that as potentiality of the land acquired has not been established, the question of enhancing compensation for the land acquired at the rate of Rs. 24/- per square metre as well as the remaining portion of land at the rate of Rs. 14/- per square metre, cannot be accepted. The learned Counsel took us through the evidence adduced by the applicant as well as the impugned judgment and submitted that the well recognized settled principles of on the date of Section 4 Notification was at the minimum rate of Rs. 100/- per square metre. The learned Counsel has submitted that besides producing the Award at Exhibit which was the subject-matter of the Award 24, wherein an area of 25,000 square me- at Exhibit 24 was a Comunidade land. He tres was acquired from the property surveyed further submitted that even the land which under No. 40/0, the applicant has also pro- was the subject-matter of the said Award and produced the document at Exhibit 25, whereby the land acquired in the present proceedings an area of 13,255 square metres was awarded were Comunidade land and the question compensation at the rate of Rs. 55/- per of effecting any deduction on that count square metre at Verna Village. The learned would not arise at all. He further submitted Counsel has further submitted that the land that the market value of the land fixed by acquired in the said proceedings is from the Exhibit 24 is binding on the State and the property surveyed under Nos. 56, 23, 48/question of the Respondent No. 2 now con-part situated at Verna Village, which is ad- tending that the amount fixed therein is not joining to the land acquired. He further sub- acceptable, does not arise at all. He further mitted that the applicant has also produced submitted that as the State is a party to the law for determination of compensation under the provisions of the said Act, have not at all been considered by the Reference Court to enhance the compensation payable to the applicant for the land acquired. He accordingly submitted that the impugned judgment and Award deserves to be quashed and set aside as valuation done by the Land Acquisition Officer was just and proper.

7. On the other hand, the learned Counsel appearing for the applicant has disputed the contentions raised by the learned Counsel for the Respondent No. 2 and submitted that the applicant has adduced cogent evidence on record to substantiate that the value of land as on the date of Section 4 Notification was much higher than the one awarded by the Reference Court. The learned Counsel has submitted that the applicant has established that the market value of land as on the date of Section 4 Notification was at the minimum rate of Rs. 100/- per square metre. The learned Counsel has submitted that besides producing the Award at Exhibit 24, wherein an area of 25,000 square metres was acquired from the property surveyed under No. 40/0, the applicant has also produced the document at Exhibit 25, whereby an area of 13,255 square metres was awarded compensation at the rate of Rs. 55/- per square metre at Verna Village. The learned Counsel has further submitted that the land acquired in the said proceedings is from the property surveyed under Nos. 56, 23, 48/part situated at

Verna Village, which is adjoining to the land acquired. He further submitted that the applicant has also produced document at Exhibit 26, the Sale-Deed dated 21st September, 1989, which was a small piece of land situated next to the highway which was located at a distance of 750 metres away from the acquired land as deposed by Aw. 5. He further submitted that another sale instance at Exhibit 27 dated 6th November, 1989, has also been produced whereby an area of 150 square metres was sold and was located about 200 metres from the Municipal road. He further submitted that the sale instance at Exhibit 28 is dated 23rd April, 1991, whereby the area involved was 325 square metres sold at the rate of Rs. 200/- per square metres and located at a distance of 1.5 kilometres from the acquired land. He has, as such, submitted that the applicant has adduced cogent evidence on record to substantiate the claim that the market value of the land as on the date of Section 4 Notification was Rs. 100/- per square metre. He further submitted that the classification done by the Reference Court with regard to the determination of compensation for different portions of land does not arise at all as the whole area of the land acquired in the present proceedings was similar in nature and a uniform rate of Rs. 100/- per square metre ought to have been awarded by the Reference Court. He has further submitted that the Reference Court has totally misdirected in carrying out the deductions by considering that the land which was the subject-matter of the Award at Exhibit 24 was a Comunidade land. He further submitted that even the land which was the subject-matter of the said Award and the land acquired in the present proceedings were Comunidade land and the question of effecting any deduction on that count would not arise at all. He further submitted that the market value of the land fixed by Exhibit 24 is binding on the State and the question of the Respondent No. 2 now contending that the amount fixed therein is not acceptable, does not arise at all. He further submitted that as the State is a party to the said Award and, as such, the amount fixed in the said Award can be a safe basis for the purpose of determining the compensation in the present acquisition. He further submitted that the land acquired in the present proceedings was superior to the land acquired in the said Award considering that the land herein was abutting the main National Highway. He has, as such, submitted that the applicant is entitled for a higher compensation as one awarded by the Reference Court of atleast at the rate of Rs. 75/- per square metre. He has as such submitted that the appeal preferred by the applicant deserves to be allowed and the amount awarded be enhanced by this Court.

8. Having heard the learned Counsel and on perusal of the record, we find that following points for determination arise in the present appeals:

POINTS FOR DETERMINATION

1. Whether the Reference Court was justified to fix the compensation for the part of the land surveyed under No. 40/part at the rate of Rs. 24/- per square metre?
2. Whether the Reference Court was justified to fix the compensation for the remaining portion of land at the rate of Rs. 14/- per square metre?

3. Whether the classification of different portions of land acquired effected by the Land Acquisition Officer is to be accepted?

9. As the points for determination are interconnected, the same are taken for consideration together.

10. On perusal of the record, we find that the applicant has examined their Attorney as well as four witnesses and has produced five Awards/Sale-Deeds in support of their claim for enhancement of compensation.

11. Aw. 1/Jose Philip Pereira, has deposed that the acquired land was flat and rocky land which was suitable for construction purposes. He further deposed that a road of I.D.C. was touching the acquired land and they had already constructed a structure in the land acquired having facilities of electricity, water, road and etc. He further deposed that the acquired land was at a distance of 500 metres from Nagoa market and is at a radius of about 500 metres to 1 kilometre from the shops, schools, Church, Bank, Petrol Pumps, etc. He further deposed that the acquired property as per Exhibit 24 was part of the property surveyed under No. 40/part which was acquired for a 20 point program by the State Government. The said land was adjoining to the acquired land and the market value of the said land was fixed at Rs. 40/- per square metre.

12. The next document produced is at Exhibit 25, whereby the Government acquired an area of 13,258 square metres from survey Nos. 56, 23 and 48/part in Village Verna for the construction of a road to old Margao-Cortalim road whereby the compensation was fixed at the rate of Rs. 55/- per square metre. The applicant has also produced a sale instance at Exhibit 26 wherein, an area of 34.32 square metres was sold at Rs. 70/- per square metre at Cortalim Village. The document at Exhibit 27 is in respect of the sale instance wherein an area of 175 square metres was sold at the rate of Rs. 225/- per square metre. Exhibit 28 is pertaining to a sale instance dated 23rd April, 1991, where the price fixed was at the rate of Rs. 200/-per square metre at Cortalim Village. From the sale instances produced by the applicant, we find that the exemplars at Exhibits 26, 27 and 28 are in different Villages and in respect of smaller pieces of land which cannot be comparable with the acquired land. The evidence does not demonstrate any similarity with the lands which are subject-matter of the said sale instances. The document at Exhibit 25 is located at Verna which is not within the vicinity of the acquired land. As Aw. 1 has himself stated that the said land is at a distance of 2 kilometres from the acquired land even in his deposition, the similarity of the land in the sale instances and the acquired land has not been established. No evidence has been adduced by the applicant to show the similarity with the land acquired and the land which was acquired in Exhibit 25. As such, the Reference Court was justified in discarding the said sale instances as a base to determine the compensation of the land acquired.

13. The only Award that remains to be considered is the one at Exhibit 24. There is no dispute that the subject-matter of the land acquired in the said Award is a

property surveyed under No. 40/0, admeasuring an area of about 25,000 square metres. The subject-matter of the acquisition in the present proceedings also includes a portion of the property surveyed under No. 40/part. Both the lands belong to the applicant herein and are part of the same property. The Apex Court in the case of Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram, , has held that best evidence of the market value of the land is afforded by transactions of sale in respect of the very acquired land. Further, the Apex Court at Para 10 of its judgment rendered in the case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , has observed that when the courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of the property is the sale of the acquired land to which the claimant himself is a party in the absence of sales of neighbouring lands. In the present case, there is no dispute that the property at Exhibit 24 is part and parcel of the same survey number. The Apex Court in the judgment reported in 1992 DGLS (soft) 565 ; Pal Singh and others Vs. Union Territory of Chandigarh, held thus:

5. No doubt, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in Hemanta Kumar Mallick and Others Vs. State of West Bengal, Based on the authority of the Judicial Committee of the Privy Council in (Secretary of State v. Indian General Steam Navigation and Railway Co.) I.L.R 1909 Cal. 967 , where the Judicial Committee did refuse to interfere with the High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it.

It can thus be seen that the courts in principle recognize the admissibility of such judgments in subsequent cases as far as the market value of the acquired land was concerned. However, the Apex Court has further held in Pal Singh case, at para 5 pp. 402-03.

5. ...But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land.

14. In the present case, there is no dispute that the claimants in the Award at Exhibit 24 and the applicant herein, are the same. As such, the said Award can safely be the basis for the purpose of determining the market value of the land in the present proceedings. Though there may be some dissimilarities between the two lands, nevertheless as the market value determined in the said proceedings has been accepted by the State, there is no reason not to accept the market

value determined as a base to determine the market value of the land acquired. The Reference Court whilst passing the impugned judgment has rightly relied upon the document at Exhibit 24 for the purpose of determination of the market value of the land acquired. There is no dispute that when a large chunk of undeveloped land is acquired and the market value is sought to be determined on the basis of a smaller pieces of land suitable deduction have to be effected for the purpose of arriving at the market value of the land acquired. The Reference Court has after relying upon the Award at Exhibit 24, has increased by 10 percent per annum on account of escalation and fixed the price at Rs. 58/- per square metre. Thereafter, the Reference Court has deducted on account of largeness at 60 percent to work out a compensation at the rate of Rs. 24/- per square metre for the portion of the property surveyed under No. 40/part. We find that the said deductions are excessive and ought to be reduced in the facts and circumstances of the case.

15. The Apex Court in the judgment reported in 2009 DGLS (soft) 1217 ; Subh Ram and Others Vs. Haryana State and Another, has held at Paras 12,13, 14 and 15 as under:

12. In a standard layout with plots measuring say 2500 sq ft (50" x 50") each, to provide road access to each plot, it will be necessary to provide a road after every two rows of plots. If the depth of each plot is 50, and if the road width is 25 ft, then for every two strips of plots, there will have to be a strip of road of 25 ft. This means a minimum of 25% of the total land area will be utilized for roads. A typical layout will also have cross-roads, and areas earmarked for park, and/or community areas. Consequently non-saleable area (area which cannot be sold as plots) would be around 30% to 40% of the total area.

13. Therefore, in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/ playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one-third (33%).

14. But merely deducting the areas required for roads, drains, parks and community areas, will not convert a large tract of agricultural or undeveloped land into a developed residential layout. For that, considerable financial outlay has to be made. The land will have to be levelled. The land will have to be converted from agricultural use to non-agricultural residential use by paying necessary fees/fine to the Revenue/development authorities. Then the roads will have to be asphalted or concreted. Drains will have to be dug and lined with reinforced cement concrete or stone, for drainage of rainwater. Electricity, water, and sewage lines will have to be laid. Deposits will have to be made to the authorities dealing with electricity, water and sewage removal. The development will also involve the service of surveyors, engineers and developers. All these involve considerable expenditure. Further, as there will be a time gap between the expenditure for development and the actual sale of plots, the cost of development will also have an element of interest on investment. The developer

who undertakes the development and invests the monies for development would also expect a reasonable profit when the plots are sold. All these expenditure and factors are standardised into another one-third (33%) deduction towards expenses of development.

15. Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development), in all two-thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances see *Lal Chand Vs. Union of India (UOI)* and *Another*, for illustrations of such circumstances).

16. In the present case, the land which has been acquired in the Award at Exhibit 24 was admeasuring 25,000 square metres while the area acquired in the present proceedings is about 4,67,375 square metres from different survey numbers. Even with regard to the property surveyed under No. 40/part, the area is 60,250 square metres. There is no dispute that the best part of the land which was subject-matter of the acquisition is the one surveyed under No. 40/part. The learned Counsel appearing for the respondents has submitted that in the previous Award at Exhibit 24, the deductions on account of restrictions imposed under the Code of Communitade with regard to transfers has not at all been considered and, as such, a deduction of 50 percent on that account is to be effected. We do not agree with the said submissions of the learned Counsel. Once the Award is in respect of a portion of the same property, the market value fixed therein having been accepted by the State, cannot be thereafter disputed as being not acceptable for the purpose of determining compensation in subsequent acquisition since judgments are also relevant for determining the market value of the land acquired as they are binding on the State and, as such, can form the basis for determining the market value of the land acquired. The restrictions on transfer of lands of Communitade, were very much existing when the said Award at Exhibit 24 was passed. There is no evidence on record adduced by the respondent to establish that such restrictions were not considered by the Court whilst passing the Award at Exhibit 24. In any event, it is not open for the Respondent No. 2 to now contend that the market value fixed therein is not in accordance with the legal propositions as the Award is binding on State as being the market value of land prevailing as on the date of Notification in the said Award. The price fixed in the said Award is at the rate of Rs. 40/- per square metre. The Notification in Exhibit 24 was issued on 6th August 1985, whereas the Notification in the present case was published on 8th January, 1990 i.e. within a gap of about four and half years. After allowing an escalation of 10 percent per annum on cumulative basis, the amount works out to Rs. 61/- per square metre. Now, we shall proceed to consider the deduction on account of classifications, etc., with the acquired land.

17. This Court in the judgment passed in First Appeal No. 103 of 2003, in the

case of (Goa Industrial Development Corporation v. Comunidade of Marcim and Anr.) has held at paras 15 and 17 as under:

15. ...In the case of Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others, , the Apex Court held that the process of determination of the market value invariably involves the evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. Therefore, we find that the submission that the market value of the land vesting in Comunidade cannot be determined on the basis of sale instance of a comparable freehold land, will have to be rejected by holding that the market value of a land vesting in Comunidade can be determined on the basis of comparable sale instance of a freehold land by making appropriate deductions considering the peculiar facts of the case on account of restrictions on transferability of the acquired land vesting in Comunidade.

16.

17. Exhibit 20 is an award made by the Land Acquisition Officer in respect of a plot of land owned by the first respondent admeasuring 4000 square meters. The land subject-matter of the award was notified for acquisition by publication of notification u/s 4(1) of the said Act of 1894 on 7th May, 1992. The acquisition relates to the land bearing Survey No. 391 (part) of the same village. It must be noted here that another part of same survey No. 391 is the subject-matter of acquired land in the present case. Thus, as the subject-matter of Exh. 20 is a land held by the first respondent - Comunidade, which was having the same negative factor of the restriction on transfer. Therefore, in the present case, no deduction is required to be made on account of restriction of transfer, while determining market value of a land of Comunidade on the basis of market value of a comparable land. The land bearing Survey No. 391 was the subject-matter of the said award at Exh. 20 . A part of the same survey number is the subject-matter of acquisition in the present case. Therefore, there is no difficulty in holding that the land subject-matter of award at Exh. 20 is comparable to the land subject-matter of the appeal. However, existence of other negative factors relating to the acquired land will have to be considered. The appellant No. 3 in the cross-examination admitted that the land subject-matter of award at Exh. 20 was a rectangular plot, which was touching the main road, which proceeds to Tonca. As against this, the shape of the acquired land was not rectangular and it is having a slope. He admitted that a part of the acquired land was a rocky land. He admitted that there was existing kachcha road for approaching the acquired land and it was not a tar road before the acquisition. Apart from these minus factors the area of the acquired land is 80 times more than the area of the land subject-matter of Exh. 20. Moreover, there was no direct access to main road from the acquired land, which was available to land subject-matter of Exh. 20. The land subject-matter of Exh. 20 was having a rectangular shape, which advantage the acquired land does not have. This minus factor will have to be

taken into consideration and on account of said minus factor, certain deduction will have to be made. Considering these minus factors, we are of the view that the deduction of 20 % will have to be made from the market value reflected from the award at Exhibit 20 and, therefore, the market value will have to be reduced to Rs. 12/- per square meter.

18. The area involved in the said Award at Exhibit 24 is 25,000 square metres whereas the area involved in the present acquisition proceedings to survey No. 40/part is 60,000 square metres. Aw. 1 states that it is accessible by the I.D.C. road. There is no evidence whether the area in 1st Belt admeasuring 29,600 square metres which is mostly rocky and bharad land, is by itself adjacent to the road. The land acquired in Exhibit 24 was adjoining the road. All these factors will have to be taken into consideration to determine the deduction to be effected. Considering the development charges as well as the other restrictions imposed with regard to the lands of the applicant, we find that a reasonable deduction of 20 percent is to be effected from the said value of Rs. 61/- per square metre. The market value as such for the said portion of 29,600 square metres of the property surveyed under No. 40/part is fixed at Rs. 48/- per square metre.

19. Dealing with the remaining portions of land which are subject-matter of the present acquisition, we find that in the Award passed by the Land Acquisition Officer u/s 11 of the said Act, a belting chart has been prepared and the land acquired has been classified as per its nature. The bharad land has been classified into four different types dependent upon their nature. Such land consists of partly rocky and barren and undulating condition. The land which is located in Green Belt, cannot be used for any better purpose other than paddy cultivation. Considering such classification, the Land Acquisition Officer has classified the lands as Belt I, Belt II, Belt III and Belt IV and Under Green Belt. The sloppy lands, have been classified into three different Belts, consisting of Low lying forming valleys, Valleys, sloppy land/nullah about 3 to 6 metres deep and low lying areas about 2 to 3 metres deep. In such circumstances, the Land Acquisition Officer has fixed the compensation at the rate of Rs. 5/- for the first Valley, Rs. 5/- for the Green Belt and Rs. 10/- for the first bharad land in respect of survey No. 40/part. The compensation was fixed at Rs. 2.50 in respect of IVth bharad land in survey No. 30/part as well as Rs. 2.20 IVth Valley in respect of property surveyed under No. 34/part. The said classification done by the Land Acquisition Officer has not been disputed by the applicants before the Reference Court Even in the Reference application u/s 18 of the said Act, no ground has been raised disputing the said classification. We find that even in the evidence of Aw. 1, such classification has not been disputed. No evidence has been adduced by the applicant to disclose any error in the said classification done by the Land Acquisition Officer. Hence, we accept the classification done by the Land Acquisition Officer for the purpose of determining the compensation of the land acquired.

20. In respect of the property surveyed under No. 40/part, the area which has been classified is under the first Belt admeasures an area of 29,600 square metre. As such, we find that the market value of the land for the said area of land would be Rs. 48/- per square metre. The remaining portion of the property surveyed under No. 40/part which is subject-matter of the present acquisition, consists of an area of 6,650 square metres which comes within the 50 metres Green Belt for which the Land Acquisition Officer has fixed the compensation at Rs. 5/- per square metre. Considering that the said land cannot be used for any non-agricultural purpose in view of the restrictions imposed therein, we find that the compensation awarded by the Land Acquisition Officer in respect of the said land should be fixed at Rs. 5/- per square metre as there is no evidence on record to substantiate that the said price is inadequate. To that extent, the amount fixed by the Reference Court deserves to be modified. The remaining area of 24,000 square metres which forms part of the survey No. 40/part is sloppy land which is undeveloped land and not suitable for allotment. This land has potentialities of being developed after substantial expenditure. Considering the judgment of the Apex Court in Subh Ram and Ors. (supra), the deduction on account of development in view of the dissimilarities, would be 60 percent and, as such, the market value of the land with regard to the said area of 24,000 square metres is fixed at Rs. 24/- per square metre. To that extent, the judgment of the Reference Court has to be modified.

21. In respect of the land surveyed under No. 30/part, we find that the Land Acquisition Officer has classified the said land as IVth Belt. The area involved therein is admeasuring 85,225 square metres and the amount awarded is Rs. 2.50 per square metre. The land in IVth Belt is considered to be low lying area about 2 to 3 metres deep. Considering the nature of the said land, the development charges would be quite excessive. In view of the said judgment of the Apex Court in Subh Ram and Ors. (supra), we find that deduction of 67 percent is to be effected with regard to the said land. Accordingly, we fix the compensation at the rate of Rs. 20/- per square metre for the said portion of the property admeasuring an area of 85,225 square metres. The impugned Award to that extent is to be modified.

22. The remaining portion of the land acquired in the present acquisition is surveyed under No. 34/part. The said land has been classified as IVth bharad in Belt V for an area of 89,075 square metres and in IVth Belt for an area of 2,29,821 square metres. For the area located in the IVth Belt, we have fixed the compensation at Rs. 20/- per square metre for an area of about 85,000 square metres. However, the area involved in this survey number is over two lakhs square metres. As such, we find that the maximum deduction of 75 percent is to be effected as per the judgment of the Apex Court in Subh Ram and Ors. (supra). Hence for the said area of 2,29,821 square metres, we fix the market value at the rate of Rs. 15/- per square metre. The remaining portion of land having an area of 89,079 square metres, from the property surveyed under No. 34/part, is located in IVth bharad land which is under developed and not suitable

for allotment. Considering the said nature of the land, we fix the compensation at the rate of Rs. 20/-per square metre with regard to the said land. To that extent, the impugned judgment and Award is to be modified. The points for determination are answered accordingly.

23. In view of the above, we pass the following:

ORDER

(1) Both the above appeals are partly allowed.

(2) The impugned judgment and Award passed by the Reference Court is modified as under:

(i) With regard to the property surveyed under No. 40/part, for the area of 29,600 square metres, compensation is fixed at the rate of Rs. 48/- per square metre.

(ii) With regard to the area of 6,650 square metres, in survey No. 40/part, the compensation is fixed at the rate of Rs. 5/- per square metre.

(iii) The remaining area of 24,000 square metres of survey No. 40/part, is fixed at the rate of Rs. 24/- per square metre.

(iv) In respect of the property surveyed under No. 30/part, we determine the compensation for the land acquired admeasuring 85,225 square metres at the rate of Rs. 20/- per square metre.

(v) With regard to survey No. 34/part, we determine the compensation in respect of an area of 2,29,821 square metres at the rate of Rs. 15/- per square metre; and

(v) In respect of the area of 85,079 square metres, we determine the compensation at the rate of Rs. 20/- per square metre.

(3) The remaining part of the impugned judgment granting the statutory benefits is upheld.

(4) The appeals stand disposed of accordingly with no orders as to costs.

(5) Decree to be drawn accordingly.