

(2012) 11 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 73, 41, 40, 42, 43, 44, 45, 46, 72, 92, 168, 169, 170, 171, 172, 173, 174, 175, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 413 and 427 of 1994

Mohan Lal and Others

APPELLANT

Vs

Rajasthan Housing Board and Another

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1)(b), 151
Land Acquisition Act, 1894 — Section 23(1A), 25, 34, 51A
Limitation Act, 1963 — Section 5
Registration Act, 1908 — Section 57

Citation : (2013) 2 CDR 980 : (2013) 2 RLW 1818

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : J.R. Beniwal, assisted by Mr. Shanker Rajpurohit, for the Claimants, for the Appellant; B.D. Purohit for the Rajasthan Housing Board, for the Respondent

Judgement

Nirmaljit Kaur, J.—All the above mentioned appeals shall stand decided by this common order as they arise out of the same impugned judgment and award. The facts in short are that the respondent-Rajasthan Housing Board acquired about 38].10 bighas of land in village Sunthla Municipal Area, Jodhpur. The notification under Sec. 4 of the Land Acquisition Act, 1953 (hereinafter referred to as "the Act, 1953") for acquiring the said land was issued on 4.8.1979. The notification under Sec. 6 of the Act, 1953 was issued on 14.2.1980. Thereafter, the award was passed on 16.7.1980 and the possession was immediately taken after that on 16.6.1980. The Land Acquisition Officer granted Rs. 2100/- per bigha as compensation to the claimants. Aggrieved, the claimants challenged the said award passed by the Land Acquisition Officer. All the 21 references cases were consolidated and the Civil Judge, Jodhpur, proceeded to decide the said references. The same were decided by the Civil Judge, Jodhpur vide its judgment and order dt. 16.9.1993. While deciding the said references, the Court enhanced

the amount of compensation to Rs. 3100/- per bigha. The claimants being dissatisfied with the said award have filed S.B. Civil Misc. Appeals No. 73/1994, 40/1994, 41/1994, 42/1994, 43/1994, 44/1994, 45/1994, 46/1994, 72/1094, and 94/1994 and the Rajasthan Housing Board on the other hand have filed their counter appeals being S.B. Civil Misc. Appeals No. 168/1994, 169/1994, 170/1994, 171/1994, 172/1994, 173/1994, 174/1994, 175/1994, 177/1994, 178/1994, 179/1994, 180/1994, 181/1994, 182/1994, 183/1994, 184/1994, 185/1994, 186/1994, 187/1994, 188/1994, 413/1994 and 427/1994.

2. While praying for enhancement, learned counsel for the appellants-claimants submitted that the said land was situated within Municipal Limit of Jodhpur Municipal Corporation since the year 1962. The land was building site at the time of acquisition and it was also in close proximity to other residential area at the time of acquisition. The Civil Judge did not consider the same while awarding compensation. The market value of the land at the time of acquisition was high in the year 1979 itself. Reliance was placed on letter Exhibit-3 issued by the Urban improvement Trust, Jodhpur showing that the price of the land sold by UIT, Jodhpur in Kamla Nehru Nagar in the year 1979 was Rs. 41/- per Square Yard i.e. Rs. 79,376/- per bigha, which was on lease basis, whereas, the land acquired in the present acquisition proceedings was free hold. Thus, the value of the land acquired was still higher. The establishment of the University, Engineering College, Medical College, Regional Command of Air Force as well as Boarder Security Force had resulted in the high demand for residential building, which resulted in high market value of the land. Even, as per the Master Plan for Jodhpur, the said area was marked as residential area. As per Exhibit-2, which a registered sale-deed, the value of similar land was Rs. 45000/- per bigha in the year 1981. The land covered by sale-deed Exhibit-2 has the same potential as the acquired land. The land in Exhibit-2 and the land in question is situated at equal distance from the centre point i.e. "Siwanchi Gate" Jodhpur. It was the most comparable instance of sale. The appellants claimed compensation at the rate of Rs. 1.80 per Square feet, which comes to Rs. 16.20 per Square yard, i.e. Rs. 31,363.20 per bigha.

3. The claimants also filed additional documentary evidence under Order 41 Rule 27 read with Sec. 151 of the C.P.C. on 24.4.2007. The said application was allowed by this Court vide order dt. 30.5.2007. The certified copies of the award, certified copies of the registered sale-deeds and other documents, which were taken on record are as under:--

1. Copy of the award dt. 28.12.1988
2. Copy of the award dt. 31.3.1989
3. Copy of the auction order dt. 6.4.1987
4. Copy of the sale-deed dt. 15.10.1980
5. Copy of the sale-deed dt. 30.4.1989

6. Copy of the sale-deed dt. 15.7.1975
7. Copy of the agreement to sell dt. 18.3.1988
8. Copy of the letter of 1979
9. Copy of the award dt. 25.4.1991.

4. Learned counsel for the appellants-claimants accordingly prayed that the said documents may be taken into consideration for assessing the value of the land. Reliance was placed on the judgment rendered by Hon"ble the Apex Court in the case of State of Haryana vs. Ram Singh, reported in (2001) 6 Supreme Court Cases 254 to contend that certified copies of the sale-deeds are admissible in evidence. Reference was also made to the judgment rendered in the case of Ravinder Narain and Another Vs. Union of India (UOI), and in Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others, as well as in the case of Parmeshwari Devi (dead) by LRs. and Ors. vs. Punjab State Electricity Board and Anr., 1994 (Supp. 1) SCC 564 and in Hans Raj Sharma (Dead) by Lrs. Vs. Collector Land Acquisition, Tehsil and District Doda, to argue that the sale-deed of small piece of land cannot be ignored while determining the market price of the acquired land. Judgment rendered by Hon"ble the Apex Court in cases of (1) Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, ; (ii) Trishala Jain and Another Vs. State of Uttaranchal and Another, ; and (iii) Premji Nathu Vs. State of Gujarat and Another, were cited to substantiate the argument that compensation should be calculated considering the market value and future potential of the acquired land.

5. Learned counsel appearing on behalf of the Rajasthan Housing Board on the other hand while vehemently opposing the appeals of the claimants submitted following contentions:--

a. It was contended that the documents placed on record by the claimants cannot be taken into consideration as they are not subjected to scrutiny and verification. They have not been proved in accordance with law. Hence, they should be ignored. Reliance was placed on the judgment rendered in the case of Tulsi Co-operative Housing Society, Hyderabad, Etc. Etc. Vs. State of Andhra Pradesh and Others Etc. Etc., to contend that the High Court cannot take up the task of fixing the compensation upon itself and the compensation is to be decided by the concerned authorities in accordance with law under the prescribed procedure in the Act and that there was no procedure prescribed in the Act whereby the High Court can directly examine the documents concerning execution of sale deed or auction notice etc.

b. it was further contended that the documents produced by the respondents relate to the year 1987, 1988, 1989 and 1991, whereas, the notice for acquisition in the present case was issued on 4.8.1979. Hence, none of these documents are relevant. Reliance was placed on the judgment rendered by Hon"ble the Apex Court in the case Lucknow Development Authority Vs. Krishna

Gopal Lahoti and Others, laying down the guidelines to be followed for fixing of market value of acquired land with reference to comparable documents. It was contended that these guidelines are required to be followed and therefore, simple presentation of documents concerning sale deed of land or auction does not ipso facto confirm the correctness and validity of the said documents. The documents placed on record are not comparable as they are not of the same time as of the acquisition. The documents relate to the acquisition of land which falls 2 to 5 kms. away from the land acquired and that the documents submitted by the claimants relate to land having higher potential in comparison to the banjar and sandy land acquired in the year 1979.

c. Leaned counsel further contended that the said reference was beyond the limitation period. The same was required to be filed within six weeks from the date of the award passed by Land Acquisition Officer. The award was passed on 16.7.1980 but application of reference under Sec. 18 of the Act, 1953 was presented in the Civil Court on 15.1.1981 i.e. much after expiry of the period of limitation, which is six weeks only. The references made by the land-owner were thus barred under Sec. 18(2) of the Act, 1953 [as held in Mohammed Hasnuddin Vs. State of Maharashtra, . Section 5 of Limitation Act is not application to Sec. 18 of the Act, 1953 Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, . The period of limitation of six months for presentation of reference is not applicable when the party is present before the Land Acquisition Officer on the date of announcement of award Poshetty and Others Vs. State of A.P., . It has also been held that receipt of certified copy of judgment has no relevance in the matter Ravi Paul and Others Vs. Union of India (UOI) and Others, .

d. It was further contended that the Court cannot grant compensation higher than the amount claimed by claimants. In the present case, the claimants preferred their claim at the different rates, i.e., 1200 per acre, 5500 per acre, 7500 per acre and even Rs. 17.33 per Sq. yard. The claimants are estopped by law of estoppel to claim higher compensation now because of change of situation or rise in the price of the land, Reliance was placed on judgment rendered by Hon"ble the Apex Court in the case of Ujjain Vikas Pradhikaran Vs. Tarachand and another etc., .

e. It was finally contended that the Civil Judge had erred in awarding solatium at the rate of 30% of the cost of acquired land. They were entitled to solatium at the rate of 10% and interest at the rate of 4% per annum. Reliance was placed on the judgment of Hon"ble the Apex Court in the case of Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, to contend that additional amount under Sec. 23 (1-A) can be allowed only in those cases where proceedings for the acquisition under the Principal Act were pending on 30.04.1982. In present case, the said award is prior to 30.04.1982, as such, additional amount of solatium can not be allowed. Reliance was placed on the judgment of Hon"ble the Apex Court in the case of Union of India (UOI) and

Another Vs. Raghubir Singh (Dead) by Lrs. Etc., while contending that higher solatium at the rate of 30% would be given in cases of award made after 30.4.1982. The present claimants are entitled to solatium at the rate of 10% on the value of the land as decided by the Land Acquisition Officer. Thus, the award requires to be modified. Infact, even the interest granted at the rate of 9% for the period of one year and at the rate of 15% thereafter, was contested. It was stated that the interest can be allowed only at the rate of 4 % per annum. Reliance was placed on the judgment of Hon"ble the Apex Court rendered in the case of Jogender Singh vs. State of Punjab, reported in AIR 1995 SC 382 and Mir Fazeelath Hussain and Others Vs. Special Deputy Collector, Land Acquisition, Hyderabad, and also the judgment rendered in the case of Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, .

6. Heard,

The claimants produced the following documentary evidence; (1) Master Plan Exhibit-1; (ii) sale-deed dt. 28.12.1982 Exhibit-2; (iii) letter issued by Urban Improvement Trust, Jodhpur Exhibit-3; (iv) map showing boundary limit of Jodhpur Exhibit-4, and (v) allotment letter Exhibit-6. Besides, sale-deeds dt. 27.5.1983 & 19.7.1983 of village Pal, sale-deed dt. 17.6.1983 of village Geva sale-deed dt. 24.8.1983 of land in Baldev Nagar and sale-deed of Bhanwar Lal's land dt. 9.7.1981 were produced. The Rajasthan Housing Board on the other hand produced the evidence of DW-1 Shri S.L. Bohra, the Executive Engineer, Rajasthan Housing Board. The documentary evidence is Exhibit-A/1 to A/6 Exhibit-A/1 is registered sale-deed of village Pal, Exhibit-A/2 is registered sale-deed of village Jhalamand, Exhibits-A/3 and A/4 are registered sale-deeds of village. Banar, Exhibits A/5 and A/6 are registered sale-deed of village Sunthla.

7. The Civil Judge while examining the evidence produced by the claimants did not rely on the documents produced by the appellants for assessing the market value of the land. However, the same were duly relied upon to conclude that the said land was agricultural land but it was within the Municipal limit of Jodhpur and had its potential value on the basis of its residential use. The relevant para 12 of the award reads thus:

In these circumstances, it is found that the agriculture land of applicants is situated between Jodhpur-Barmer Main road and Jodhpur-Chopasani Main road. It is also proved that this land is within Municipal limits of Jodhpur and it is shown to be for residential purposes in the Master Plan. It is also proved by evidence that this agriculture land is at distance of 1.5. kilometers from a developed residential area i.e. Kamla Nehru Nagar. All these facts show that the agriculture land of the applicants depicts its potential value on the basis of its residential use.

8. On the other hand, the evidence produced by the respondent was rejected. In spite of the same, the compensation awarded was enhanced from Rs. 2100/- per bigha to Rs. 3100/- only.

9. The appellants-claimants have also placed on record the documentary evidence through an application under Order 41 Rule 27 of the C.P.C. The same was allowed on 30.5.2007. The opportunity was given by this Court to the respondent-Rajasthan Housing Board to file documents in rebuttal. However, no document was produced by them. Learned counsel for the respondent vehemently argued that the said documents cannot be taken into consideration as they have not been proved. Simple submission to place the said documents on record is not sufficient. They have to be proved as per the procedure laid down. Reliance was placed on the judgment rendered *Tulsi Co-operative Housing Society, Hyderabad etc. vs. State of Andhra Pradesh & Ors.* (supra). However, the said argument of learned counsel for the respondent has no merit. The application to take the said documents on record was allowed by this Court by a detailed order. The relevant portion of the order dt. 30.5.2007 passed by this Court reads as under:--

I have considered the rival submissions made by the parties. The appellants by way of the present application prayed to take on record, as additional evidence, the following documents mentioned in the application filed under O. 41 R. 27 CPC. Copies thereof have been filed along with the application. From perusal of these documents, they are seemed to be certified copies of the Awards passed in the Land Acquisition Cases and some of the certified copies of the registered sale-deeds and notices issued by the Urban Improvement Trust. The details of the documents are mentioned as under;

1. Copy of the Award dt. 28.12.1988
2. Copy of the Award dt. 31.3.1989
3. Copy of the Auction Order dt. 6.4.1987
4. Copy of the Sale-deed dt. 15.10.1980
5. Copy of the Sale-deed dt. 30.4.1989
6. Copy of the Sale-deed dt. 15.7.1975
7. Copy of the Agreement to Sell dt. 18.3.1988
8. Copy of the letter of 1979
9. Copy of the Award dt. 25.4.1991

The main contentions of the respondents are that the documents are not related to the adjoining land and are not of relevant time, therefore, they are not relevant and prayer has been made at belated stage, therefore, they may not be taken on record but in my opinion, the relevancy of each documents for the purpose of determination of the fair market value, will be seen at the time of final argument. Apparently, some of these documents are related to nearby areas. The documents submitted along with the application are certified copies of the record kept by Government Departments and they all are seems to be

genuine. They will be helpful appreciating and ascertaining the market value of the land subject to their relevancy. Thus, the contentions of the respondents are not forceful and liable to be rejected. The learned counsel for the respondents placed reliance on *Koyappathodi M. Ayisha Umma Vs. State of Kerala*, but in that case, the prayer for taking additional evidence was made to establish new facts with regard to short term crops that is not the position in the present case. Thus, I am of the view that this authority do not help his contentions.

Among the authorities cited by the learned counsel for the appellants in case of *K. Venkataramiah (supra)*, the scope of taking additional evidence at the appellate stage, has been described. The relevant portion is quoted below:--

Apart from this, it is well to remember that the appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause." There may well be cases where even though the Court finds that it is able to pronounce judgment on the state of record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under R. 27(1)(b) of the Code.

Likewise, in the case of *Major Kanhaiyalal (supra)*, looking to the relevancy of the documents, the additional evidence was allowed to be taken on record at the appellate stage. These authorities support the appellant's contentions.

On the basis of the aforesaid discussion, the application filed by the appellants under O. 41 R. 27 CPC read with Sec. 151 CPC deserves to be accepted and the documents filed along with the application are allowed to be taken on record as they are certified copies of the record kept by the Government Departments. They need not any formal proof. The view finds support from the law laid down in the case of *Land Acquisition Officer (supra)*. Section 51-A of the Act of 1894 is also relevant in this respect, that is reproduced below:--

51-A. Acceptance of certified copy as evidence.--In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Sec. 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

All the connected appeals have been clubbed, therefore, these documents have been taken on record for all pending appeals filed by the claimants. It is further directed that the respondents are free to file documents in rebuttal subject to admissibility.

In the result, the application under O. 41 R. 27 CPC is allowed. The documents mentioned in the application are taken on record.

10. No rebuttal evidence was produced by the respondent. The aforesaid order

was not challenged. The same has attained finality. Thus, the respondent cannot turn around to say that the said documents should not be taken into consideration. Moreover, the said question has been settled by Hon''ble the Apex Court in the case of State of Haryana Vs. Ram Singh, , vide which, the matter was remanded back to the High Court for fresh decision on the market value of acquired land after ascertaining if the copy of the sale-deeds issued by the appellant-State were certified, Para 6 of the said judgment reads as under:--

6. Section 51-A of the Act is to the same effect In Land Acquisition Officer & Mandal Revenue Officer vs. V. Narasaiah, (1998) 2 SCC 388, it was held that by virtue of Sec. 51-A, a certified copy of a document registered under the Registration Act, 1908 including a copy under Sec 57 of the Act may be accepted as evidence of the transaction recorded in such documents. It is open to the Court to accept the certified copy as reliable evidence and without examining parties to the documents. This does not however preclude the Court from rejecting the transaction itself as being mala fide or sham provided such a challenge is laid before the Court.

11. In the present case, admittedly, all the documents are certified. However, whether these documents have relevancy for the determination of the fair market value or not require to be still considered. All these documents placed on record through application under Order 47 Rule 27 of the C.P.C. are not in the proximity to time when the land in question was acquired. The said documents are of much later time and therefore, it may not be possible to consider them for assessing the market value but they can definitely be considered for seeing its potential.

12. Hon''ble the Apex Court in the case of Udho Dass Vs. State of Haryana and Others, while laying down the principal qua determination of the potential of the land at appellate stage held that the potential can be examined and recognized only sometime in the future and it is in these circumstances held that the land acquired must also be adjudged keeping in view the development of the area suppressed over the period of 20 years, if the evidence so permits, and cannot be limited to near future alone. The compensation was, accordingly, enhanced from Rs. 2 lacs per acre in the May, 1993 to Rs. 10 lacs. Para 16, 24 and 25 of the said judgment reads as under:--

16. Although, in the present matter, sale instances around or near about the date of the notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognised only sometime in the future and it is open to a claimant landowner to contend that the potential can be examined first at the time of the Sec. 18 reference, the first appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the landowners have to fight for decades before they are able to get their due. We take the present case as an example.

24. In the case before us, admittedly the land was acquired in the year 1990, had great potential value, and has been completely urbanised as huge residential complexes, industrial areas and estates and a huge education city have come up in the last ten or fifteen years. Moreover, insofar land which is to be used for residential purposes is concerned, a plot away from the main road is often of more value, as the noise and the air pollution alongside the arterial roads is almost unbearable. It is also significant that the land of Jamalpur Kalan was touching the rear side of ECE Factory and the High Court had granted compensation of Rs. 250 per square yard for the acquisition of the year 1992. We have also seen the site plan to satisfy ourselves and find that the land acquired from Jamalpur Kalan and the present land share a common boundary behind ECE Factory. The belting system in the facts of the present case would thus not be permissible.

25. We are, therefore, of the opinion as the said award pertained to the year 1992, a sum of Rs. 225 per square yard which would come to Rs. 10,89,000/- per acre would be the adequate compensation in the present case and for arriving at this figure not only have we computed the value of the land on the date of the notification under Sec. 4 but have also recognised its potential on the basis of evidence of development in the area around the Bahalgarh Sonapat Road,

13. Coming back to the potential of the land in the present case, it is admitted that the same is now a residential area. The award Annexure-A/1 pertains to the land acquired by Rajasthan Housing Board in the year 1986 in the revenue village Jodhpur and the compensation awarded was Rs. 14000/- per bigha. The land is stated to adjoining to the present land. The award Annexure-A/2 shows that the land was acquired for the Public Works Department in the year 1989 in village Kudi Bhagtasni and the compensation awarded was at the rate of Rs. 20,051/- per bigha. The document Annexure-A/5 is registered sale-deed executed in relation to the land measuring 2 bigha 5 biswa on 21.4.1989 at the rate of Rs. 26,666/- per bigha in revenue village Sunthla. Similarly, Annexure-A/6 pertains to registered sale-deed in relation to the land measuring 15 bigha on 12.6.1989 at the rate of Rs. 83,666/- per bigha in Khema Ka Kuan, Jodhpur. Annexure-A/9 is the award pertaining to the land acquired in the year 1990 by the Public Works Department and Rs. 30,000/- per bigha was given as compensation qua different villages i.e. village Kudi Bhagtasni, Sangariya, Pal, Chokha and Chopasani. Even though the sale-deeds are of date much later in time, the Apex Court in the case of *Udho Dass vs. State of Haryana & Ors.*, (supra), as stated above, observed that "potential can be examined and recognized only sometime in the future".

14. Hon"ble the Apex Court in the case of *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, observed the factors which have to be kept in mind while deciding the potential of the land. The relevant observation reads as under:--

The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

15. Thus, the documents placed on record Annexures-A/1 to A/3 and A/5 to A/9 show that there has been a continuous increase in the market value of the land from 1979 onwards. These documents have a persuasive value to assess the potential of the land in question as extremely high.

16. Annexure-A/8 is of course the document of allotment in pursuance to the auction held by the UIT, Jodhpur. Infact the said document is in support of the document Exhibit-3 already produced before the Civil Court, which was duly proved before the Civil Court. The documents Exhibit-3 & Annexure-A/8 relate to the allotment of the plot No. 567 in Kamla Nehru Nagar auctioned on 25.11.1979 by the Urban Improvement Trust, Jodhpur, The said plot was auctioned at the rate of Rs. 41 per square yard. Admittedly, as per the statement of DW-1 Shri S.L. Bohra, the Executive Engineer, the distance between acquired land and Kamla Nehru Nagar is only 1.5. kms. The said document has been rejected by the Civil Judge on the ground that it related to a small piece of land in developed area, whereas, the land in question is an agricultural land and comprising of big area.

17. The land auctioned is no doubt a plot in developed area. Nevertheless, it is an admitted position that the distance between the land in question and Kamla Nehru Nagar is only 1 1/2 kilometer. Moreover, applying the test laid down by Hon"ble the Apex Court in the case Ravinder Narain vs. Union of India (supra) and Hans Raj's case, the auction of the plot is of the same period as the acquisition of the land in question; the transaction is bona fide as the auction has been done by the UIT, Jodhpur. Hence, it cannot be overlooked. The land in question is situated between Jodhpur. Banner main road and Jodhpur-Chopasani main road. It is surrounded by other developed residential areas. It is also within the Municipal area and Master Plan of Jodhpur City. Educational institutions are situated nearby and the Civil Court has itself recorded a finding as already reproduced above that it has potential value "on the basis of its residential use". Thus, it definitely has the similar advantages. Even if, ail the negative factors as applicable to acquisition of larger area is applied and the deduction for development and leaving the land for roads etc. is considered, still the market value assessed vis-?-vis the plot auctioned by the UIT, Jodhpur is on an excessively lower side. The said plot has been auctioned at the rate of Rs. 41 per

Square Yard, whereas the compensation for the land in dispute has been awarded at the rate of Rs. 1.60 per Square Yard. Still, the plot being a small plot auctioned in a developed residential area, we may not be able to equate the same for the purpose of arriving at the market value. However, its situation and period when it was auctioned being similar, it leaves no doubt that potential of the land in dispute is huge, specially as the land has been admittedly acquired for the residential purpose.

18. Coming back to the market value of the land in question, Annexure-A/4 is a sale-deed of the year 1980. The land sold is situated in Khema Ka Kuan. Thus, this sale-deed is of about the same time on the date when present land was acquired. The distance of both the land from Railway Station Jodhpur is stated to be almost equal. The said sale-deed pertains to area comprising of 1 bigha sold at the rate of Rs. 8000/- per bigha. No doubt, the same is with respect to a small area. However, the Apex Court in the case of Ravinder Narain & Anr. vs. Union of India, (supra) while considering the sale-deed of a small area for the purpose of market value held as under:--

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

19. Similar view has also been taken by Hon"ble the Apex Court in the case of Lucknow Development Authority vs. Krishna Gopal Lahori & Ors., (supra).

20. Hon"ble the Apex Court in the case of Hans Raj Sharma (Dead) by Lrs. vs. Collector, Land Acquisition, Tehsil & District Doda (supra) in para 8 & 12 agreed with the judgment rendered by the High Court, vide which, the sale of small chunk of land was taken into consideration for assessing the market value as long as it was not very far away and was on the National Highway even though it was across the river. While doing so, reliance was placed on the judgment rendered in the case of Ravinder Narain & Anr. vs. Union of India, (supra). In that case, reference Court had rejected an instance of sale of land, which was 500 yards away from the acquired land on the ground that it was across the river. The Single Bench of the High Court, however, took a view that it was not fault of the claimant that there were no sale of big chunk of land during the relevant period and accordingly, equated the same with the instance of the sale of land, which was about 400 and 500 yards away. The Division Bench upheld the order of the Single Bench. The State filed an appeal before the Apex Court. While agreeing with the High Court, Hon"ble the Apex Court held in para 11 & 12 as under:--

11. In Ravinder Narain vs. Union of India, it was held that where a large chunk of land is the subject-matter of acquisition, the rate at which small plots are sold

cannot be said to be a safe criterion. Nevertheless, the Court was of the view: (SCC p.483, para 7)

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land, However, in such cases necessary deductions/adjustments have to be made while determining the prices.

It was recognised that although fixing of the market value involves a certain amount of intelligent guesswork on the part of the Court, the element of speculation could be reduced to a minimum if the following principles are kept in mind with reference to comparable sales: (SCC p.484, para 9)

- (i) The sale is within a reasonable time of the date of notification under Sec. 4(1);
- (ii) It should be a bona fide transaction:
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

12. The Division Bench of the High Court was of the view that although instances of sale of smaller chunks of land could not be always relied upon, there was no reason why the instance of acquisition by the State Government within a distance of about 500 yards from the present land for the purpose of setting up a sheep breeding farm could not be considered. In the instant case, the land was situated across the river on Thathri on the right side and its market value was fixed at Rs. 1000 per kanal. The High Court was therefore, justified in taking this as reasonable comparable instance of sale and fixing the market value of the acquired land based thereupon.

21. Thus, in view of the above, there is no reason to ignore Exhibit-A/4 just because it is of the small area. As such, the same can be adopted for consideration of the market value.

Learned counsel for the appellants-claimants has also placed on record the copy of the judgment rendered by High Court in the case of Jai Ram titled as S.B. Civil Misc. Appeal No. 217/1994 (State of Rajasthan vs. Jai Ram), decided on 16.1.2002, vide which, the appeal of the State were dismissed and the appeal filed by Jai Ram being S.B. Civil Misc. Appeal No. 62/1994 was allowed and the cost of the land was determined at the rate of Rs. 11000/- per bigha. The said judgment pertain to the land measuring 302 bigha situated at Jhalamand and Basani Chohan on the outskirts of Jodhpur City acquired vide notification under Sec. 4 of the Rajasthan Land Acquisition Act issued on 28.3.1981. In that case, the award was given by the Land Acquisition Officer on 17.1.1984 at the rate of Rs. 4500/- per bigha. The trial Court enhanced the same to Rs. 5500/- per bigha

and also award solatium at the rate of 30%. However, the High Court allowed the appeal and enhanced the amount to Rs. 11000/- per bigha. While enhancing the compensation, the High Court observed as under:

There cannot be dispute that the land is situated at 1/2 km from Jhalamand Chauraha, Jodhpur in the area of village Jhalamand and Basani Chohan. It is also not in dispute that the area falls within the municipal limits of Jodhpur city and is situated about a kilometer away from the University, Air Force Station and Madhuban Housing Board Colony. These are urbanised areas and a huge number of houses are constructed and some Govt. Offices are situated like Central Arid Zone Research Institute, Banks etc. PW. 4 Jai Ram, who is appellant in S.B. Civil Misc. Appeal No. 62/94 stated that one Tulsi Ram's land was situated in his neighbourhood and the said Tulsi Ram sold his land @ Rs. 11,000/- per bigha.

22. The land in dispute is even better situated if not similarly situated. As per map Exhibit-4, village Jhalamand is outside Municipal limit and the land in dispute is within Municipal limit. The State filed an appeal against the judgment and order passed in Jai Ram vs. State of Rajasthan. The same is stated to have been dismissed. Similar is the case of Tulsi Ram vs. State & Ors., (S.B. Civil Misc Appeal No. 56/1987), decided by this Court granting compensation at the rate of Rs. 11000/- per bigha. The said land was acquired in the year 1982 and is situated in village Kudi Bhagtasni.

23. The notification under Sec. 4 of the Act in both these judgments is closer in time to the notification under Sec. 4 issued for the land in dispute. The notification in the present case is of 4.8.1979, whereas, in the case of Jai Ram is dt. 28.3.1981. Thus, the said judgment, as discussed above, is fully applicable to the present case and can be safely relied upon for assessing the market value of the land in dispute.

24. Learned counsel appearing on behalf of the Rajasthan Housing Board objected to the grant of solatium at the rate of 30% of the cost of acquired land. It was contended that the claimants are entitled only to 10% solatium on the value of the land as decided by the Land Acquisition Officer. The said argument too has not merit. Reliance was placed on the judgment rendered by Hon^{ble} the Apex Court in the case of Union of India vs. Raghubir Singh (supra). However, subsequently, Hon^{ble} the Apex Court in the case of Union of India & Ors. vs. Zora Singh etc., reported in 1992 (1) p. 177 while referring to the judgment rendered in the case of Raghubir Singh (supra) held in para 20 as under:--

We find that this decision which was rendered by a constitution Bench of this Court comprising 5-learned Judges runs in no way counter to the view which we have taken and, in fact, it leads some support to the view which we are taking. In the case before us, as the Reference Court has made its award after 24.09.1984 the benefit of the provisions of Sec. 23 (1-A) was clearly available to the claimant as held in the impugned judgment

25. In the present case, the reference Court made award in the year 1993.

Further Hon"ble the Apex Court in the case of Sunder Vs. Union of India, further held in para 24 as under:--

24. The proviso to Sec. 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Sec. 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment Splitting up the compensation into different components for the purpose of payment of interest under Sec 34 was not in the contemplation of the legislature when that section was framed or enacted.

26. And upheld the judgment rendered by the Division Bench of the Punjab and Haryana High Court in tile case of State of Haryana Vs. Kailashwati and Others, in its para 26 as under:

26. We think it is useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana vs. Kailashivati, (SCC p.119, para 10)

Once it is held as it inevitably must be that the solatium provided for under Sec. 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Sec. 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Sec. 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Sec. 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Sec. 28 in terms warrant and authorise the grant of interest on solatium as well.

27. Thus above discussion leaves no doubt that interest on the amount by way of additional amount and solatium is consequential and entitles a person to receive the benefit under Sec. 23(1-A) & (2) of the Land Acquisition Act.

28. Learned counsel for the respondent-Rajasthan Housing Board further submitted that the said reference was beyond limitation. It was contended that the award was passed on 16.7.1980 but application of reference under Sec. 18 of the Act was presented in the Civil Court on 15.1.1981 i.e. after expiry of the six weeks. However, the said submission has not merit. Hon"ble the Apex Court in the case of Premji Nathu Vs. State of Gujarat and Another, held that limitation to

make a reference can be submitted within six months after receiving of the award. In that case, the notice under Sec. 12 (2) was served upon the appellant on 22.2.1985. However, the said notice was not accompanied by the copy of the award. The appellant though was served with the notice could not effectively make reference. The said application for reference was therefore, made beyond the limitation. The Court held that it was not barred by limitation. Para 15 of the said judgment reads as under--

15. In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable. A careful reading of the averments contained in paragraph 2 of the application filed by the appellant under Sec. 18(1) shows that the notice issued by the Collector under Sec 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dt. 8.4.1995 for making a reference to the Court. This implies that copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant along with the notice. Unfortunately, while deciding issue No. 3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Sec. 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector under Sec. 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference under Sec. 18(1).

29. In the present case, no notice was issued under Sec. 12(2) of the Act and accordingly, no copy of the award was served upon the appellants. The said issue No. 3 was, therefore, rightly decided in favour of the appellants-claimants.

30. The last argument raised by learned counsel for the respondent-Rajasthan Housing Board was that the Court cannot grant compensation higher than amount claimed by the claimants and that different claimants had made different claims. This question too stands settled by various judicial pronouncements. Section 25 of the Land Acquisition Act, 1894 reads as under:--

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.--The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Sec. 11.

A perusal of the above provision shows that the Court can award higher compensation and there is no barrier that prohibits higher claim before the Court vis-?-vis the claim made before the Land Acquisition Officer. The Full Bench of the Karnataka High Court in the case of Special Land Acquisition Officer vs.

Kallangouda, reported in 1993 LACC p. 134 after relying upon the judgment rendered by Hon''ble the Apex Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, and also on the judgment rendered by Gujarat High Court in Sharadchandra Chimanlal and Others Vs. State of Gujarat and Others, was pleased to hold as under:--

The above provision does not either by implication or explicitly limit the compensation amount that could be claimed by a claimant. The section, on the other hand, makes it plain that under no circumstance the award made by the Court should be less than the amount awarded by the Collector. The only limitation on the power of the Court in compensation appears to that the Court cannot award a compensation less than the one awarded by the LAO. By implication it means that the Court can award higher compensation than what was awarded by the LAO. Significantly the section remains untrammelled by any conditions enjoining the making of a claim higher than what was sought for before the LAO. In other words the section does not forge a connecting link between the claim made before the LAO and a claim made before the Court. The result is the claimant will be free to claim any amount before the Court as compensation and this liberty to claim any amount in Court remains totally inhibited by any claim made before the LAO even if there was a great disparity between the two claims, i.e., the one made before the LAO and the one made before the Court. We must emphasize there that the section itself being silent about any barriers that either prohibit making of a higher claim before Court vis-a-vis the claim made before the LAO there is no need at all for the claimant to offer any explanation whatsoever as to why he made a lower claim before the Court. The law does not enjoin offering of any such explanation.

The operative part of the said judgment reads:

Regard being had to the catena of decisions referred to supra, more so in the light of the decision in Chimanlal's case rendered by the Supreme Court by which we are bound that the claimant can seek compensation without any pre-condition or restraint being no longer resintegra, we must hold:

(1) the claimant being free to ask and obtain compensation after making an appropriate demand before Court subject to making good the claim by substantiating it by adequate evidence it would not be necessary for the claimant to explain away the circumstance under which he made no claim or made a smaller claim before the LAO. In view of the amended provision of Sec. 25 of the Act he is no longer under any obligation to support his conduct before the LAO in not making a claim or in making a lesser claim, and

(2) in the light of the discussion on the ambit of Sec. 25 after its amendment, the contrary dicta in Kalburgy's case cannot be supported more so in the light of the decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, and has necessarily to be treated as *Per incuriam* and therefore dissented to an overrule.

31. Thus, before the reference Court, claim is to the tune of Rs. 1.80 per Square feet, which comes to Rs. 16.20 per Square yard i.e. Rs. 31,363.20 per bigha. Hence, there is no difficulty in enhancing the compensation.

32. In view of the above discussion, it is evident from the material placed on record that the land in dispute had great potential, Secondly, on consideration of Annexure-A/4 placed on record by the appellants-claimants, which pertains to the sale-deed of the year 1980 qua village Khema Ka Kuan of the land comprising 1 bigha sold at the rate of Rs. 8000/- per bigha as well as the judgment passed by this Court in S.B. Civil Misc, Appeal No. 62/1994 filed by Jai Ram against State of Rajasthan determining the cost of the land as Rs. 11,000/- per bigha, in which the notification under Sec. 4 was issued in the year 1981, the appeals filed by the claimants are allowed and the amount awarded by the reference Court is enhanced from Rs. 3100/- per bigha to Rs. 7100/- per bigha, which shall be paid to the claimants within three months from today, and the appeals filed by Rajasthan Housing Board are, accordingly, dismissed. The appellants-claimants are entitled to all the benefits of solatium, interest and other statutory benefits.