

**(2016) 11 AHC CK 0175**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 430 of 1999**

M/S Oswal Chemicals

APPELLANT

Vs

Ram Dularey

RESPONDENT

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**Date of Decision :** 28-11-2016

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, Section 23

**Citation :** (2017) 2 ADJ 529 : (2017) 2 AllWC 1189

**Hon'ble Judges :** Surya Prakash Kesarwani, J.

**Bench :** Single Bench

**Advocate :** N.B. Singh, Bharat Ji Agrawal and Piyush Agrawal, Advocates, for the Appellant in First Appeal No. 430 of 1999; J.C. Bhardwaj and B.D. Sharma, Advocates, for the Respondent in First Appeal No. 430 of 1999; N.B. Singh, Bharatji Agarwal, P. Agarwal and S.K.

**Final Decision :** Dismissed

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## Judgement

Surya Prakash Kesarwani, J.—; Heard Sri Naveen Sinha, learned senior advocate assisted by Sri Piyush Agarwal, learned counsel for the appellants, Sri B.D. Sharma, learned counsel for the claimants-respondents, Sri Yatindra, learned standing counsel for the respondent No.2 and Sri Arvind Srivastava, learned counsel for the respondent No.3.

2. These appeals were heard at length on 23.11.2016 and 24.11.2016. Today, an affidavit on behalf of the respondent No.2 has been filed pursuant to the order dated 24.11.2016. In the aforesaid affidavit, the respondent No.2 has not disclosed the entire desired information but merely filed copies of government order dated 07.03.1987, the letter of the Special Land Acquisition Officer dated 23.03.1990 bearing approval of the District Magistrate dated 25.03.1990, circular of the Secretary, Revenue dated 14.05.1990 and copy of the award.

FACTS OF THE CASE:-

3. Briefly stated the facts of the present case are that by notification under

Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") dated 22.08.1989 published in the U.P. Gazette on 25.08.1989, land measuring 331.85 acres of village Piprola-Ahmadpur, 282.14 acres of village Kishurhai and 147.52 acres of village Muklapur, District Shahjahanpur, total 761.51 acres were acquired for the present appellants through defendant respondent No.3 (U.P.S.I.D.C.) for planned development. Notification under Section 6(1) of the Act was published in the Gazette on 20.09.1989. Possession was taken on 10.01.1990. Subsequently, an area of 3.90 acres of village Piprola Ahmadpur and 1.64 acres of village Muklapur, total 5.54 acres was reduced. Thus, total 755.97 acres land was acquired for which award was made by the S.L.A.O. Interim compensation being 80% of the proposed market value of Rs.55,000/- per acre for lands along the roadside of village Piprola Ahmadpur measuring 58.07 acres, was paid to the tenure holders in terms of the provisions of Section 17(3A) of the Act. With respect to the rest of the area, interim compensation was awarded but neither there is any description of valuation in the impugned judgment nor in the award of the S.L.A.O. that at what rates, the interim compensation to others, were paid. For the purposes of interim compensation, value of the acquired land was determined on the basis of minimum value provided by clause 6 of G.O. No.7-4(9)-86-114-Revenue-13, dated 07.03.1987, which is reproduced below:

"izfrdj dh njksa esa fu/kkZj.k esa cktkj ewY; fu/kkZfjr djrs le; LFkkuh; {ks= ds fy, ykxw LVSEi M~;wVh ds fy, fu/kkZfjr cktkj ewY; ls de fu/kkZfjr u fd;k tk,A"

4. The S.L.A.O. made the final award on 01.10.1991. He determined the market value of the acquired land as under:

Sl. No.

Name of village

Area acquired (in acres)

Market value of the acquired land

Rate of awarded compensation

1

Piprola Ahmadpur

327.95

Rs.63,37,939.45

58.07 acre @ Rs.41517.90 for plots along roadside and for remaining land, as per circle rate divided in 14 categories ranging from Rs.13,500/- per acre to Rs.18,500/- per acre

2

Kishurhai

280.5

Rs.43,94,302.55

As per circle rate of nine categories land ranging from Rs.8974.22 per acre to Rs.28,170.40 per acre

3

Muklapur

147.52

Rs.26,08,595.40

As per circle rate of seven kinds of land ranging from Rs.10,270.00 per acre to Rs.24,138.54 per acre

5. The S.L.A.O. also awarded for trees and buildings and solatium @30% etc. In the award, the S.L.A.O. observed that the valuation of 58.07 acres land of village Piprola Ahmadpur adjoining the road, was initially taken to be Rs.55,000/- per acre in terms of the aforesaid G.O. dated 07.03.1987 for payment of interim compensation after due approval of the District Magistrate and, thereafter, possession was taken but subsequently at the time of final determination of compensation, effect to the G.O. dated 07.03.1987 effective on the date of acquisition was not given in view of the subsequent circular dated 14.05.1990.

6. Aggrieved with the offer made by the S.L.A.O. as per award, various references were made at the instance of tenure-holders under Section 18 of the Act, which were collectively decided by the impugned judgment dated 03.09.1998 passed by the court of District Judge, Shahjahanpur. The court awarded compensation @ Rs.41517.90 per acre for the first belt of land upto 70 meters on both sides of the road for all the three villages. For the remaining acquired land, compensation was awarded @ Rs.25,000/- per acre. Aggrieved with this judgment, the appellants have filed these first appeals under Section 54 of the Act.

7. Before the reference court, the tenure holders claimed compensation @ Rs.55,000/- per acre. They filed in evidence copy of the sale deed of 0.11. acres of land executed by one Roshan Singh on 21.08.1989 (paper No.56-C) in favour of one Sri Dhan Pal Singh. As per this sale deed instance selling rate comes to about Rs.70,000/- per acre. The present appellants opposed this evidence and contended that this sale deed is of a very small piece of land and, therefore, it is not relevant for determination of the market value of the large area of land acquired for the appellants. The reference court accepted the objection and held that considering total area of the acquired land it is not appropriate to rely upon the sale deed of 0.11 acres dated 21.08.1989. Considering the facts, the reference court determined market value of lands of the first belt (70 meters on

both sides of the road) @ Rs.41517.90 per acre and for the lands of second belt (rest of the land) @ Rs.25,000/- per acre. Perusal of the paper book filed by the appellant shows that no sale deed instances were filed by them in evidence before the reference court. The respondents No.2 & 3 have also not filed any documentary evidence except a letter of allotment dated 17.01.1990 (paper No.23-ga) addressed to the appellants for lease of 170.540 acres undeveloped Gram Sabha land of village Ladpur Sarai resumed for the appellants' gas based fertilizer plant in question. P.W.-1 Radhey Shyam was examined on 04.08.1998, who stated in his evidence that lands of three villages are similar and are equally fertile which are adjoining to each other and were acquired for the appellant's fertilizer factory. He also affirmed the aforesaid paper No.56-C. He stated that 999 acres of land of different villages were acquired for the appellants.

#### SUBMISSIONS OF THE APPELLANTS:-

8. Sri Naveen Sinha, learned senior advocate submits that the S.L.A.O. has rightly awarded compensation @ Rs.41517/- per acre only in respect of plots of land measuring 58.07 acres of village Piprola-Ahmadpur lying on the roadside. There was no basis to award compensation at the same rate for the acquired lands of remaining two villages namely Kishurahai and Muklapur upto 70 meters belt of either side of the road. He submits that the court below has fixed compensation for the remaining land @ Rs.25,000/- per acre despite the fact that no evidence, whatsoever, was led by the claimants to establish the market value of the aforesaid acquired land to be Rs.25,000/- per acre as on the date of acquisition. He submits that the reference court itself found that the S.L.A.O. has rightly taken into consideration the sale deed instances for determination of market value for 58.07 acres and he rightly applied the circle rate depending upon the quality of land for rest of the acquired area. He referred to various paragraphs of the award made by the S.L.A.O. and submits that the reference court could not point out any illegality in the award of the S.L.A.O. Therefore, there was no justification for the reference court to extend the market value of Rs.41517/- per acre in a 70 meters belt of both side of the road for acquired land of all the three villages. He submits that the onus was upon the claimants to lead evidence with respect to the market value of the acquired land but they could not lead any evidence which may even remotely indicate the determination of market value by the S.L.A.O. to be inadequate. He submits that the sale deed instance dated 21.08.1989 filed by the claimants was of a very small piece of land measuring merely 0.11 acres. Therefore, it was rightly not taken into consideration. He submits that the finding of the reference court to enhance the compensation is based on conjectures and not based on any evidence. No reason has been given for extending the first belt rate for compensation to the other two villages. The reference court has not given any basis to determine compensation for the rest of the acquired land at the uniform rate of Rs.25,000/- per acre. The impugned judgment passed by the reference court is wholly arbitrary and, therefore, it deserves to be set aside and the award of the S.L.A.O. deserves to be restored. In support of his submissions, he relied upon the judgments of

Hon"ble Supreme Court in the case of Chimanlal Hargovinddas v. S.L.A.O., AIR 1988 SC 1652 (paras-4, 7 & 8) and S.L.A.O. v. S.O. Tumari, AIR 1995 SC 840 (para-7).

9. Learned counsels for the respondents No.2 & 3 support the arguments advanced by Sri Naveen Sinha, learned senior Advocate appearing for the appellants.

#### SUBMISSIONS OF THE RESPONDENT NO.1:-

10. Sri B.D. Sharma, learned counsel for the respondent No.1/ claimants supports the impugned judgment. He submits that due to poverty, illiteracy and acute financial crisis the claimants could neither represent their case properly before the court below which resulted in award of inadequate compensation nor they could file cross objection before this court for enhancement of compensation since they lost their land which was their main source of livelihood.

#### DISCUSSIONS & FINDINGS:-

11. I have carefully considered the submissions of learned counsel for the parties.

12. Undisputedly, total area of 755.97 acres land was finally acquired which consisted of land of three villages namely Piprola Ahamad Pur, Kishurhai and Muklapur in District Shahjahanpur.

13. Another piece of land measuring 170.40 acres undeveloped Gram Sabha land of village Ladpur Sarai was resumed by the respondent No.3 for Gas based fertilizer plant in question of the appellants and lease thereof was granted vide allotment letter dated 17.01.1990 (paper No.23-ga) on a premium of Rs.48,93,750/-. The average rate of premium comes to Rs.28,719/- per acre.

14. It is noteworthy that in the connected First Appeal No.25 of 1999, the appellants have filed an affidavit dated 07.10.2016 of Animesh Kumar Arora, Manager HR and Administration of the appellant-Company. They have filed along with the affidavit a copy of a sale agreement dated 03.11.2005 which reveals that for consideration of Rs.1900 crores, they have sold the factory established on the acquired land to one M/s Shyam Basic Infrastructure Private Ltd. Jaipur Rajasthan. A copy of another sale agreement dated 31.03.2006 has been filed whereby a subsequent sale agreement was entered by the appellants with one M/s Kribhco Shyam Fertilizers Ltd. for sale of the factory for consideration of Rs.1908 crores which included lease-hold land.

15. Thus, from the perusal of the evidences on record, it is evident that as per paper No.23-ga, the lease of 170.40 acres undeveloped Gram Shabha land of another adjoining village was granted by the respondent No.3 on a premium of Rs.28,719/- per acre. It is undisputed that the lands of the tenure holders were being used for cultivation as on the date of acquisition. Consequently, it cannot be disputed that their land would have been better than the undeveloped Gram Sabha land. Once the appellants themselves took merely leasehold right of

aforesaid undeveloped Gram Sabha land on premium @ Rs.28,719/- per acre, it cannot be said that the reference court has committed any error in determining market value of the acquired land of the second belt at a uniform rate of Rs.25,000/- per acre. Thus, in fact, the tenure-holders should have been aggrieved with the impugned judgment. Prima facie, there appears to be substance that due to poverty and financial constraints the tenure holders-claimants whose only source of livelihood in the form of their agricultural land were taken away by compulsorily acquisition, could not properly contest the case. However, I do not intend to enter in this controversy since the claimants have not challenged the impugned judgment.

16. So far as the extension of first belt to other two villages with respect to lands on both sides of the road upto 70 meters depth is concerned, I find no substance in the submissions of the learned counsel for the appellants. The reference court has correctly extended the same rate of compensation to the lands of other two adjoining villages. I also do not find any illegality in the impugned judgment which provides compensation @ Rs.41,517.90 per acre for the first belt of 70 meters of both side of the road. In the case of Omkar Singh v. State of Haryana, 2016(3) ADJ 364 (para-24), Hon"ble Supreme Court considered an acquisition of lands of nine villages for development of Industrial Growth Centre at Bawal by notification under Section 4 of the Act dated 10/12.09.1992 and award of compensation for lands on both sides of the road. It enhanced the compensation awarded by the High Court by increasing it from Rs.4 lacs per acre to Rs.5 lacs per acre for land situated upto 500 meters on NH8 in all villages, from Rs.3 lacs per acre to Rs.4 lacs per acre for land situated on either side of Rewari-Bawal Road upto 500 Meters both side and for lands beyond 500 meters on NH8 and within 500 meters on Rewari-Bawal Road. For remaining land, Hon"ble Supreme Court enhanced compensation from Rs.2 lacs per acre to Rs.3 lacs per acre.

17. In view of the aforesaid decision of Hon"ble Supreme Court in the case Omkar Singh v. State of Haryana and others (supra), I do not find any illegality in the impugned judgment whereby the reference court determined compensation @ Rs.41517.90 per acre for acquired land upto 70 meters depth on both sides of the road in three villages, particularly when the aforesaid rate of compensation as determined by the S.L.A.O. for road side land of one of the villages, i.e. village Piprola Ahmadpur, is admitted by the appellants to be not excessive. Learned counsel for the appellants could not disclose any justifiable reason against the impugned decision extending same rate of compensation for the acquired land along the road of all the three villages.

18. Perusal of Section 23 of the Act, clearly indicates that the market value of acquired land has to be determined as on the date of acquisition namely the date of notification under Section 4 of the Act. In the present set of facts, the land was acquired for establishing a chemical fertilizer factory, which cannot be equated with the acquisition which may be made for the purposes of housing colonies or offices or institutions. The return from land acquired for housing etc.

cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry to earn substantial profit.

19. In the case of Atma Singh (dead) through LRs v. State of Haryana and another, 2008 (2) ADJ 568, Hon"ble Supreme Court considered difference between acquisition of land for setting up industry and the acquisition which may be made for housing colonies or offices or institutions and held as under:

"14. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-product in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by-product begasse is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration."

(Emphasis supplied by me)

20. As per provisions of Section 23(1) of the Act, the court should take into consideration the factors indicated therein. The main object of the inquiry before the court is to determine the market value of the land acquired. "Market Value" is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is

compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.

21. The aforesaid settled principle of law also finds support from the law laid down by Hon''ble Supreme Court in the case of Kanta Prasad Singh v. State of Bihar v. State of Bihar, 1976 (3) ADJ 772, Prithvi Raj Taneja v. State of M.P., 1977 (1) ADJ 684, Administrator General of West Bengal v. Collector, Varanasi, 1988 (2) ADJ 150, Periyar Pareekanni Rubbers Ltd. v. State of Kerala, (1991) 4 ADJ 195, Atma Singh & Ors. v. State of Haryana & Anr., (2008) 2 ADJ 568 (paras-4 & 5), Bhupal Singh and others v. State of Haryana, 2015 (5) ADJ 801 (para-27), Union of India and another v. Raghubir Singh (dead) by LRs etc. and connected civil appeals, 1989 (2) ADJ 754 (para-33).

22. No evidence indicating any distinguishing feature of the three villages contiguous to each other were led by the appellants. On the contrary, P.W.-1 was examined who clearly stated in his evidence that acquired lands of all the three villages are similar. There is no contrary evidence available on record. No evidence has been led by the appellants to show that any injustice has been caused to them. Under the circumstances, I do not find any error in the impugned judgment to apply the same rate of compensation for acquired land upto 70 meters depth on both sides of the road in the three villages. For the same reasons, I also do not find any infirmity in the impugned judgment that the same rate of compensation for the remaining acquired land has been applied @ Rs.25,000/- per acre. In the case of Gujrat Mineral Development Corporation v. Ram Sang Bhailalbai and another, 2015 (11) ADJ 483 (para-5), Hon''ble Supreme Court considered similar question and held as under:

"In Gujarat Mineral Development Corpn. v. Sarojben Gordhanbhai Patel, 2010 ADJ OnLine Guj 8795, the learned Division Bench has noted that village Rajpardi and village Madhavpara are adjacent to each other and are also covered under the same Group Gram Panchayat. In doing so it also took into account the fact that there was no evidence showing any distinguishing feature of the lands between these two villages. We have also perused the map in question and we note that the two villages are contiguous to each other, having common boundaries. We may clarify that the compensation payable was computed on the basis of the sale deed concerned with the village Madhavpara. We also take note that there is no evidence to show that any injustice or any illogical conclusion was arrived at in following the compensation rate applicable to village Madhavpara."

(Emphasis supplied by me)

23. In the case of Major General Kapil Mehra and others v. Union of India and another, 2015 (2) ADJ 262, Hon"ble Supreme Court considered the principle for determination of market value as well as the value of free hold land vis-&grave;- vis lease-hold land and held as under:

#### "Market Value

10. First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:- (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

12. In Viluben Jhalejar Contractor v. State of Gujarat (2005) 4 ADJ 789, this Court laid down the following principles for determination of market value of the acquired land: (SCC pp.796-97, paras 17-20)

"17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under subsection (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the

proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition."

13. The courts adopt comparable sales method for valuation of land while fixing the market value of the acquired land. Comparable sales method of valuation is preferred rather than methods of valuation of land such as capitalization of net income method or expert opinion method, because it furnishes the evidence for determination of the market value of the acquired land at which the willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification under Section 4 of the Act.

14. While taking comparable sales method of valuation of land for fixing the market value of the acquired land, there are certain factors which are required to be satisfied and only on fulfilment of those factors, the compensation can be awarded according to the value of the land stated in the sale deeds. In *Karnataka Urban Water Supply and Drainage Board and Ors. v. K.S. Gangadharappa*, (2009) 11 ADJ 164, factors which merit consideration as comparable sales are, inter alia, laid down as under: (SCC p.168, para 8)

"8. "16. "9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 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.

10. It is only when these factors are present, it can merit a consideration as a comparable case (See *Special Land Acquisition Officer v. T. Adinarayan Setty* (AIR 1959 SC 429))

These aspects have been highlighted in *Ravinder Narain v. Union of India* (2003) 4 ADJ 481, ADJ p.484, paras 9-10."

22. In *M.B. Gopala Krishna & Ors. v. Special Deputy Collector, Land Acquisition*, (1996) 3 ADJ 594, as relied upon by the appellants, it was held as under:-

"It is further contended by Shri Mudgal that value of the land does not get pegged down on account of the land being in occupation of a tenant and the circumstances in this behalf taken into account by the High Court, is irrelevant. We find no force in the contention. A freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A freehold

land normally commands higher compensation while the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land. Under those circumstances, the High Court would be right in its conclusion that the land burdened with encumbrances takes lesser price than the freehold land. The encumbrances would operate as a disabling factor to peg down the price when we compare the same with freehold land."

The above observations were made in the aforesaid decision while upholding the compensation that was payable to the landlord without reference to the tenant's rights. The above principle will apply only where a property subject to encumbrances is to be sold to a private purchaser or is acquired subject to the tenancy.

23. "Freehold land" and "leasehold land" are conceptually different. If a property subject to a lease and in the possession of a lessee is offered for sale by the owner to a prospective private purchaser, the purchaser being aware that on purchase he will get only title and not possession and that the sale in his favour will be subject to encumbrance namely, the lease, he will offer a price taking note of the encumbrances.

Naturally, such a price would be less than the price of a property without any encumbrance. But when a land is acquired free from encumbrances, the market value of the same will certainly be higher.

24. Exs A7 to A10 are the perpetual lease deeds relating to the period from September 1995 to December 1996 and to get the perpetual lease deeds converted as freehold, the holder of perpetual leasehold has to pay further amount to DDA. Having regard to the period of Exs A7 to A10 and the date of issuance of Section 4 notification dated 19.2.1997, in our view, addition of 20% is to be added for arriving at the value of "freehold" property. Adding 20% to Rs.37,433.75 per sq. yard which comes to Rs.7,486.75, the value is calculated at Rs.44,920.50 rounded off to Rs. 74,921/- per sq. yard."

(Emphasis supplied by me)

24. In view of the law laid down by Hon"ble Supreme Court in the cases of Major General Kapil Mehra and others (supra) and M.B. Gopala Krishna and others v. Special Deputy Collector, Land Acquisition (1996) 3 ADJ 564, I find that the claimants land being free-hold land was certainly of higher value than the leased land obtained by the appellants and as the market value determined by the reference court cannot be said to be excessive.

25. The Land Acquisition Act is in the nature of welfare stipulation and thus the State Government and its instrumentalities including U.P.S.I.D.C. must be just and fair to those whose land it acquired. It cannot be just and fair to deprive the claimants respondents of their landed property without payment of its true

market value which was compulsorily acquired for the appellants to establish a factory to earn profit. Minor inconsistencies and technicalities cannot deprive poor peasants/ tenure holders for rightful payment of compensation/ market value. In the case of Mahesh Dattatray Thirthkar v. State of Maharashtra, 2009 (11) ADJ 141 (para-53) Hon"ble Supreme Court held as under:

"Further, while this Court clearly cautioned against taking up of "technical pleas to defeat a just claim to enhanced compensation" under the Act in Bhag Singh v. U.T. Of Chandigarh, (1985) 3 ADJ 737, the High Court set aside the order of the Reference Court merely on grounds of minor inconsistencies and technicalities. It seemed to have disregarded the fact that the compensation provision of the Act is in the nature of a welfare stipulation and thus the State government must be just and fair to those whose land it acquires. It is not just and fair to deprive the owner of any property without payment of its true market value, especially when the law provides that the same shall be paid."

26. The judgments in the case of Chimanlal Hargovinddas v. S.L.A.O. (supra) and S.L.A.O. v. S.O. Tumari (supra) relied by the learned counsel for the appellants, on facts, do not support the case of the appellants.

27. The judgment in the case of Chimanlal Hargovinddas (supra) relied by the appellants, illustrates the settled principles of law for determination of market value. I have already discussed in detail the question of market value of the acquired land and found that the market value determined by the reference court is not excessive.

28. Acquisition of land of farmers by Government, particularly small farmers, in the process of development not only deprives them of their fundamental right to cultivate their agricultural land as part of their right to livelihood (which is the foundation for their sense of economic security, peace, prosperity and social status) but also creates a difficult situation for them by dragging them in luxury litigation without realising that poor farmers can not afford the exorbitant cost of litigation. Such litigations are also burden on public exchequer since cost of litigation for several years is much more than the valuation of appeal.

29. In the case of Mahanadi Coal Fields Ltd. & Anr v. Mathias Oram & Ors. 2010 (11) ADJ 269 (paras 10 and 11) after quoting the remarks of Dr. B.R. Ambedkar, the chief architect of the Constitution of India, Hon"ble Supreme Court while considering a land acquisition matter, observed that it is very often the process of development that most starkly confirms the fears expressed by Dr. Ambedkar about our democracy. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens. Even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively which happens rarely, uncomfortable questions remain. For people whose lives and livelihoods

are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

30. In the case of Bhusawal Municipal Council v. Nivrutti Ramchandra Phalak and others, 2014(2) AWC 1407 (SC) (paras 16,17,18), Hon"ble Supreme Court considered the plight of farmers affected by land acquisition and creation of compulsive situation to indulge in luxury litigation and held as under :

"16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/ authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct. It would be apt to quote the well known words of Justice Brennan:

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

(Emphasis supplied by me)

31. The fundamental right of a farmer to cultivate his land is a part of right to livelihood. Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity. India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system." "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement or the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land. the economic and cultural shift to a market economy can be traumatic." (Vide: Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors., (2010) 11 ADJ 269; and Narmada Bachao Andolan v. State of Madhya Pradesh & Anr., AIR 2011 SC 1989)

32. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache he will never know how it feels. The risks faced by the farming community are many; they relate to natural calamities such as drought and floods; high fluctuation in

the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them. Economic growth through the 1990's had made India a more market-oriented economy, but had failed to benefit all Indians equally. The problems that plagued the farmers several decades ago are still glaringly present today; there is little credit available. What is available is very expensive. There is no advice on best practise in conducting agriculture operations. Income through farming is not enough to meet even the minimum needs of a farming family. Support systems like free health facilities from the government are virtually non-existent.

33. I would like to add something more to justify imposition of costs upon the wealthy appellants for payment to the claimants - respondents (poor farmers) who were not only deprived of their means of livelihood (agriculture), their sense of economic security, peace, prosperity and social status, on account of compulsory acquisition of their lands for the rich appellants to set up a fertilizer factory which they sold after few years for Rs.1908 crores and yet created a difficult situation for the claimants respondents by dragging them in luxury litigation for more than twenty six years from the date of acquisition including about 17 years in this court, without realising that poor farmers cannot afford the exorbitant cost of litigation. This reminds the court the fear expressed by Dr. B.R. Ambedkar, the Chief architect of the Constitution of India, about our democracy as noted by Hon'ble Supreme Court in the case of Mahanadi Coal Fields Ltd. and another (supra) which is also well reflected in the feelings and sufferings expressed by the claimants-respondents in their submissions as noted in para 10 above. The appellants have dragged the poor claimants ? respondents in long luxury litigation for about 26 years and deprived them to receive just and fair compensation.

34. In view of the aforesaid, all the above noted first appeals are dismissed with cost of Rs.10,000/- to each claimant-respondent in each appeal which shall be paid by the appellants within one month from today. Entire balance amount of compensation payable to each claimant-respondent along with all benefits and interest under the Act in terms of the impugned judgment, shall be paid to them within three months from today. Interim orders passed in these appeals are vacated.

35. In view of the above discussion, I do not find any merit in these first appeals. Consequently, all the first appeals fail and are hereby dismissed with cost of Rs.10,000/- to each tenure holders.

36. Interim order granted earlier shall be vacated. The payment, if any, shall be made to the claimants within three months from today.