
(2005) 08 UK CK 0036

In the Uttarakhand High Court

Case No : First Appeal No's. 31 and 32 to 42 of 2001 and 4-D and 5-D, 15 and 16 of 2004

Oil and Natural Gas Corporation Ltd.

APPELLANT

Vs

Virendra Singh and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 4, 4(1), 51A
Limitation Act, 1963 — Section 5

Citation : (2006) 1 UC 359

Hon'ble Judges : P.C. Verma, J;B.S. Verma, J

Bench : Division Bench

Advocate : L.P. Naithani, sisted by J.P. Joshi, in First Appeal Nos. 31 to 42 of 2001 and Ashok Agarwal, in First Appeal Nos. 4-D and 5-D, 15 and 16 of 2004, for the Appellant; Ashok Agarwal in First Appeal Nos. 31 to 42 of 2001 and L.P. Naithani, assisted by J.P. Joshi, for ONGC in First Appeal Nos. 4-D and 5-D, 15 and 16 of 2004, for the Respondent

Judgement

B.S. Verma, J.—All these appeals have been preferred u/s 54 of the Land Acquisition Act, 1894 (for short the Act). Since all the appeals except First Appeal No. 15 of 2004, F.A. No. 16 of 2004, F.A. No. 4-D of 2004 and F.A. No. 5-D of 2004 arise out of the common award passed by the Special Land Acquisition Officer Dehradun (for short S.L.A.O.) dated 22-8-1987 and common judgment and award dated 20-12-2000 passed by the Reference Court and as common questions for determination in these appeals are involved, therefore, all these appeals are being decided by this common judgement. First Appeal No. 15 of 2004, F.A. No. 16 of 2004, F.A. No. 4-D of 2004 and First Appeal No. 5-D of 2004 arise from common judgment and award dated 10-12-2003 passed by the Additional District Judge, IV F.T.C. Dehradun, in L.A. Case No. 130 of 1990 and Land Acquisition Case No. 131 of 1990 and F.A. No. 4-D of 2004 and F.A. No. 5-D of 2004 are the cross-appeals preferred by the claimants for enhancement of compensation against the impugned judgment and award. Since the lands under

these cases have been acquired by the same Notification and were acquired for the same public purpose, therefore, these appeals are being taken up together as the facts are the same and common questions are involved for determination in these appeals.

2. At the outset, it may be mentioned that First Appeal No. 31 of 2001 arise out of L.A. Reference No. 136 of 1990, F.A. No. 32 of 2001 arise out of L.A. Reference No. 133 of 1990, F.A. No. 33 of 2001 from L.A. Reference No. 121 of 1990, F.A. No. 34 of 2001 from L.A. Reference No. 125 of 1990, F.A. No. 35 of 2001 from L.A. Reference No. 119 of 1990, F.A. No. 36 of 2001 from L.A. Reference No. 137 of 1990, F.A. No. 38 of 2001 from L.A. Reference No. 124 of 1990, F.A. No. 39 of 2001 from L.A. Reference No. 127 of 1990, F.A. No. 40 of 2001 from L.A. Reference No. 123 of 1990, F.A. No. 41 of 2001 from L.A. Reference No. 135 of 1990 and F.A. No. 42 of 2001 from L.A. Reference No. 122 of 1990.

3. Appeal Nos. 4-D of 2004 and 5-D of 2004 have been filed with delay and application u/s 5 of the Limitation Act has been filed to condone the delay in each appeal. The Respondents did not file any objection despite notice. The delay in filing the appeals is sufficiently explained. The application for condonation of delay in each of the appeals is allowed. The delay is condoned and the appeals are admitted.

4. Challenge in the first 12 appeals is the judgment and award dated 20-12-2000, passed by the Additional District Judge, Dehradun, whereby all the references have been partly allowed holding the claimants entitled to get compensation @ 3,70,000 per acre along with additional amount @ 12% from the date of final publication of notification u/s 4(1) of the Act i.e. 5-7-1985 till the date of possession or the date of award whichever is earlier. In addition solatium @ 30% and statutory interest for one year @ 9% over the amount of compensation and thereafter @ 15% per annum till the date of payment were also awarded. Compensation already paid to the claimants was ordered to be adjusted. The last four appeals are directed against the judgment and award 10-12-2003, passed by the Reference Court and the award was passed in the case by the S.L.A.O. on 25-4-1988 holding the claimants entitled to market value of the acquired lands of Mauza Kaulagarh @ Rs. 2,50,000/- and Rs. 1,87,500/- per acre.

5. Brief facts giving rise to the present appeals are that the State of U.P. proposed to acquire land of Mauja-Garhi, Kaulagarh and Prem Pur Mafi, Pargana Central Doon, Tehsil and District Dehradun for construction of quarters, road and office complex of the Oil and Natural Gas Commission Dehradun (in short the O.N.G.C.) vide notification u/s 4(1) of the Act published on 5-7-1985 followed by notification u/s 6(1) of the Act dated 8-8-1986 thereby possession of lands of the different claimants was taken over by the State/O.N.G.C. After acquisition of land as well as after considering a number of sale instances for fixation of market value> the S.L.A.O. ultimately came to the conclusion that in respect of Mauza

Garhi the sale instance executed on 5-6-1985 by Raghuveer Singh s/o Madan Singh in favour of Sri Man Chand s/o Sri Bharat Singh in respect of 0.05 acre land of Khasra No. 356 for a consideration of Rs. 12,500/- can be taken as exemplar sale deed thereby the rate comes Rs. 2,50,000 per acre. The S.L.A.O. in the award dated 22-8-1987 observed that 27.19 acre land was acquired of Mauza Garhi, therefore, considering the largeness of the land acquired vis-a-vis the exemplar sale deed a deduction of 25% was made and the compensation @ 1,87,500 was awarded to the claimants by the award dated 22-8-1987. The S.L.A.O. awarded compensation vide award dated 25-4-1988 in respect of the land of Mauza Kaulagarh @ Rs. 2,50,000/- i.e. Rs. 1,87,500/- per acre after deducting 25% towards largeness of the land alone as land measuring 35-47 acre was acquired per exemplar sale deed showing sale of 0.10 acre land of K. No. 16 by Subhash Chandra to Lalit Mohan for Rs. 25,000/= on 31-7-1984 @ Rs. 2,50,000/- per acre and in respect of land of Prempur Mafi the S.L.A.O. found that 22.31 acre land was acquired. He took the exemplar sale instance of the sale-deed executed by Manohar Lal in favour of Jeet Ram in respect of 0.082 acre land sold for a sum of Rs. 15,500/- which comes @ Rs. 1,89,124-39 per acre. The S.L.A.O. deducted 25% towards largeness of area and vide award dated 27-2-1988 awarded compensation @ of Rs. 1,60,670-74 and Rs. 1,20,503-05 per acre respectively. The claimants were dissatisfied by the said award and they filed separate objections, which gave rise to the above mentioned references. Sri, Ram Singh in his objection contended that his 1.41 acre land of Khasra No. 363 and 364 of Mauja-Garhi was acquired for the purposes of O.N.G.C. and the compensation awarded by the S.L.A.O. is quite below the market rates and against the law. It was alleged that the land under acquisition was abadi land and the facilities of Post Office, Bus, Shopping Complex, Police Station, Electricity, Water, Road etc. are available quite near the land acquired. The potential value of the land is very high and it fetched about Rs. 15,000/- per annum from the crops. According to him a similar land of Sita Ram Gupta was sold @ Rs. 6,72,043 and the sale deed was registered on 14-5-1984. He has prayed for compensation @ Rs. 7,00,000/= per acre. Similar grounds were taken by other claimants including the land-owners of Mauja Kaulagarh and Prem Pur Mafi.

6. It may be added that in First Appeal No. 15 of 2004 and F.A. No. 16 of 2004, the S.L.A.O. vide award dated 25-4-1988 fixed the market value of the land @ Rs. 2,50,000/- and Rs. 1,68,750/- per acre and awarded the compensation along with 30% solatium and interest @ 12% per annum. The claimants filed objections against the award passed by the S.L.A.O., on the basis of which Land Acquisition Reference No. 130 and 131 of 1990 were registered. The land-owners alleged that the prevalent rate of the land acquired was Rs. 1,00,000/- per Bigha at the time of publication of notice u/s 4 of the Act. As such the Special Land Acquisition Officer did not assess the rate of the land of the claimants property. The land-owners claimed the compensation before the Reference Court @ Rs. 5,00,000/- per acre.

7. The Collector as well as the O.N.G.C. contested the case by filing their separate written statement stating therein that the compensation was awarded by the S.L.A.O. after scrutinizing the relevant sale deeds executed in the same area having same potential value and the future scope of the land acquired. It was denied that the facility of road, post office, electricity, water etc. were available near the land under acquisition. The fertility of land was also denied. It was asserted that the land acquired is not a developed area and the S.L.A.O. has already considered the exemplar sale deed of the highest rate, therefore, the objection of the claimants is liable to be rejected.

8. On the pleadings of the parties, the learned Reference Court framed Issues except that of L.A. Reference No. 126 of 1990:

1. Whether the compensation awarded by the Special Land Acquisition Officer is inadequate? If so, what is the correct amount of compensation?

2. Any other relief is the claimant entitled?

9. In L.A. Reference Case No. 126 of 1990, the following four issues were framed by the Reference Court:

1. Whether the claimant is entitled to any additional compensation? If so, to what amount?

2. What was the correct rate of land in question at the time of acquisition?

3. Whether the claimant is entitled to any interest?

4. To what relief, if any, the claimant is entitled?

10. The Reference Court consolidated all the cases of the first set of appeals together on the ground that they have arisen out of the same Notification and the Land Acquisition Case No. 125 of 1990 relating to First Appeal No. 34 of 2001 was made the leading case and evidence was recorded in that case.

11. In support of their case relating to first set of 12 appeals, the claimants adduced oral as well as documentary evidence before the Reference Court. In oral evidence, Ram Singh claimant of L.A. Case No. 125 of 1990 was examined as P.W.1, Inder Singh as P.W.2, Dev Bahadur as P.W.3 and filed three documents, which are certified copies of sale deeds dated 26-9-1984 and dated 17-2-1986 and a guide map issued by Survey of India, Dehradun. The claimant also filed copy of award dated 20-5-1995 passed in L.A. Case No. 408 of 1989, Anurag v. Collector. Similarly claimant Manohar examined Arun Kumar Dangwal as P.W.1 in L.A. Case No. 122 of 1990. In L.A. Case No. 121 of 1990, the claimant Madho Ram examined himself as P.W.1 and filed certain documents. In L.A. Case No. 137 of 1990, claimant Mahendra Singh was examined as P.W.1. He also filed documentary evidence. In L.A. Case No. 136 of 1990, claimant examined himself Virendra Singh P.W.1 and filed documents. In L.A. Case No. 119 of 1990, claimant Har Prasad only filed documents as in other cases. In L.A. Case No. 123 of 1990, claimant Madan Lal only filed similar documents. In L.A. Case No. 127

of 1990 claimant Lacchi Ram examined himself as P.W.1 and filed documents in support of his case. In L.A. Case No. 124 of 90 and 133 of 1990 on the documentary evidence was filed. On the other hand, the Opposite Parties examined Sri Trilok Chand as D.W.I.

12. The learned Reference Court after hearing both the parties and perusing the evidence observed that the sale deed (paper No. 20-C) filed on behalf of the claimants reveals that the land measuring 0.092 acre was sold by Sita Ram Gupta to Lakshaman Thapa for a consideration of Rs. 62000/- and the sale deed was registered on 26-9-1984. The learned Reference Court also observed that the S.L.A.O. was bound to consider this sale instance of the highest market rate as per Government instructions for determination of compensation. The Reference Court has observed as under:

A perusal of the award published by the S.L.A.O. reveals that he has not considered this sale deed for determining the just amount of compensation. He has collected number of sale deeds from the office of Sub-Registrar, Dehradun in between 1984-85 upto 5-7-1995 the last notification u/s 4(1) of the Act. According to the award he has considered 103 different sale deeds which were duly executed in the office of Sub-Registrar, Dehradun immediately before the publication of notification u/s 4(1). The exemplar relied upon by the claimant, paper No. 20-C1, was executed on 25-9-1984 and 103 sale deeds which were collected by the S.L.A.O. were executed within a period of one year immediately before 5-7-1985 say these were executed in between July 1984 to July 1985. These facts are clear from paras 9,10 and 11 of the award made by the S.L.A.O. which is available on record. He has not shown any reason why the sale deed relied upon by the claimant was not considered whereas this was also executed within a period of one year before the notification u/s 4(1) the Act was published. It also belongs to a land which is immediately near the acquired land and situated in village Ghari. Not only this at para 14 of the award he made a deduction of 25% on account of largeness of the area.

13. Ultimately, the learned Reference Court observed that the claimants were entitled for compensation of the land acquired @ Rs. 6,75,000/- less 40% deduction, which according to the Reference Court came to Rs. 3,75,000/- (in fact 40% of Rs. 6,75,000/- comes to Rs. 2,70,000/- and the balance comes to Rs. 4,05,000/-). There was clearly a calculation mistake in the judgement. However the Reference Court relying upon the pronouncement of the Apex Court as well as the Allahabad High Court mentioned in para No. 14 observed that the compensation in respect of some other land under the same notification was awarded @ Rs. 3,70,000/- per acre, therefore, compensation for the land acquired was determined at the aforesaid rate of Rs. 3,70,000/- per acre. It has not been denied that the lands of three adjoining Mauza, viz. Mauja Garhi, Kaulagarh and Prempur Mafi, giving rise to the references under the present appeals were acquired under the same Notification; that they were adjoining to each other and that the acquisition of lands was made for same public purpose.

Accordingly all the references were partly allowed vide judgment and award dated 20-12-2000. Aggrieved by the award of the Reference Court, the O.N.G.C. has filed the present twelve appeals.

14. In the second set of F.A. No. 15 of 2004 and F.A. No. 16 of 2004, the Reference Court framed Issue No. 1 on the point of market value of the acquired land and the entitlement of the land-owners thereof and Issue No. 2 related to relief. The learned Reference Court relying upon the contention of the claimants assessed the market value of the land @ Rs. 5,00,000/- per acre with the observation that the claimants have claimed the market value at the said rate and after deducting 40% keeping in view the geographical situation of the land allowed the two reference cases and the claimants were ordered to be paid compensation @ Rs. 3,00,000/- per acre along with solatium @ 30% and interest payable thereon under the Act vide award dated 10-12-2003. It is pertinent to mention that in these cases, no sale-instance was filed by either party. The claimants placed on record only the certified copies of the judgment and awards dated 20-5-1995 and dated 20-12-2000 previously passed by the Reference Court. Against the award dated 20-12-2000, the first set of 12 appeals have been filed.

15. In support of the first set of 12 appeals, it has been contended that the exemplar sale deed relied upon by the Reference Court was not applicable to the references under the present appeals. It was also contended that the Reference Court was not justified in discarding the evidence led by the opposite parties-Appellant. It was also submitted that the Reference Court erred in awarding compensation at common rate for different types/quality of lands and the potentiality of the land acquired was not properly adjudged. The Appellant in F.A. No. 15 of 2004 and F.A. No. 16 of 2004 has assailed the impugned award of the Reference Court only on the ground that the market value of the land acquired was not properly determined by the learned Reference Court.

16. On the other hand the learned Counsel for the claimant-Respondent has supported the award passed by the learned Reference Court by stating that the findings were recorded after hearing both the parties, rival contentions raised by them and on the basis of entire evidence on record.

17. Learned Counsel for the claimant-Respondent submitted that having considered the entire evidence on record and having heard the contentions raised on behalf of the rival parties, the learned Reference Court has rightly held the claimants entitled to compensation @ Rs. 3,70,000/- per acre as the lands under acquisition was acquired by the same Notification and the potentiality of the lands was similar and it was acquired for the same public purposes.

18. It may be noted that in the second set of four appeals, both the claimant-Appellants Smt. Mithlesh Singhal and Om Prakash Nautiyal have come up before this Court against the award passed by the Reference Court for enhancement of compensation thereby the cross-appeals were registered as First Appeal No. 4-D

of 2004 and F.A. No. 5-D of 2004 respectively. Since the only point pressed by the claimant-Appellants in these two appeals before us is that the market value of the land acquired was not properly adjudged by the Reference Court, therefore, the controversy will be determined while dealing with the contentions raised by the Appellant-O.N.G.C. in other appeals. The point for determination in these cross-appeals is whether the market value arrived at by the learned Reference Court @ Rs. 3,00,000/- per acre is inadequate and improper as well as against the evidence on record? We may reiterate that the delay in filing these two appeals has already been condoned.

19. We have heard the rival contentions of both the parties at length and have carefully examined the entire material on record.

20. The admitted facts of the first set of 12 appeals are that as many as seven Land Acquisition References namely L.A. Case No. 119 of 1990, 125 of 1990, 126 of 1990, 127 of 1990, 135 of 1990, 136 of 1990 and L.A. Reference No. 137 of 1990. Reference No. 137 of 1990 relate to the land owners of Mauja Garhi (Central Doon) Dehradun. Four references namely L.A. Case Nos. 121 of 1990, 122 of 1990, 123 of 1990 and 124 of 1990 pertain to land owners of Mauja Prem Pur Mafi and one reference No. L.A. Case No. 130/90 relates to the land of Mauja Kaulagarh. It is also not disputed that the lands of these three Mauzas adjoin each other. It is also admitted that a common Notification u/s 4(1) of the Act for acquisition of land was published vide No. 662/III-I(1)/85 Sa.Pra.Anu. Lucknow dated 08-03-1985 which was published in the official Gazette on 05-7-1985. It is evident from the record that the S.L.A.O. concerned vide his award dated 25-4-1988 in respect of Mauza Kaulagarh awarded compensation for the land acquired @ of Rs. 2,50,000/= and Rs. 1,87,500/- per acre respectively. The land owners of Mauza Garhi compensation was awarded @ Rs. 1,87,500/- per acre while in respect of land owners of Mauza Prem Pur Mafi compensation @ Rs. 1,60,670.74 per acre and 1,20,503.05 per acre. It is not relevant to mention the admitted facts in respect of the second set of four cases.

21. The main controversy to be determined in all these appeals as contended by the learned Counsel for the Appellant-O.N.G.C. is whether the awards passed by the S.L.A.O. concerned are tenable in the eye of law and whether the compensation determined by the learned Reference Court at the flat rate of Rs. 3,70,000/- per acre in the reference under the first set of 12 appeals as well as @ Rs. 3,00,000/- per acre as given in the references of the second set of appeals was not properly based on record? If so what would be the just rate of market value of the land acquired? On the basis of the submissions made before us, the only point to be decided centers around as to what is the proper market value of the acquired land.

22. In support of his contention the learned Counsel for the Appellant submitted that the learned Reference Court relying upon the previous judgment and award dated 20-8-1995 passed in L.A. Case No. 408 of 1989 Anurag and Ors. v. The Collector Dehradun passed the impugned award awarding compensation @ Rs.

3,70,000/- per acre.

23. We have perused the certified copy of the award passed by Reference Court in LA. Case No. 408 of 1989 and find that the market value of the acquired land was determined at Rs. 6,75,000/- per acre and the learned Reference Court after making a deduction of 40%, ultimately compensation @ Rs. 3,70,000/- per acre was awarded. The argument of the learned Counsel on this score is misconceived.

24. So far as the contention regarding the exemplar sale deed relied upon by the Reference Court is concerned, we find that the sale instance relied upon by the Reference Court in L.A. Case No. 408 of 1989 refers to the sale deed dated 26-9-1984 in respect of 0.92 acre land of Mauza Garhi, Dehradun. The land was sold for a consideration of Rs. 62,000/-. The learned Reference Court while deciding the twelve references also placed reliance upon the sale deed (paper No. 20 C) whereby 0.92 acre land pertaining to Garhi Dehradun was sold by Sri Sita Ram Gupta in favour of Retd. Sub. Maj./Hony. Capt. Laxman Thapa. It is fully borne out from the record that a deduction of 40% from the market value was already made towards development charges etc. Moreover, it is significant to mention here that the common judgment and award dated 20-5-1995, passed in Land Acquisition Reference No. 408 of 1989, Anurag Sharma v. Collector Dehradun along with other L.A. Reference Nos. 399 of 1989, 400 of 1989, 401 of 1989, 402 of 1989, 403 of 1989, 404 of 1989, 405 of 1989, 406 of 1989, 407 of 1989, 409 to 413 of 1989 was challenged before this Court in First Appeal No. 974 of 2001 arising out of L.A. Reference No. 406 of 1989, O.N.G.C. v. State of U.P. and Ors. along with 9 other connected references. In the said cases, O.N.G.C. was not a party before the Reference Court. By the decision of this Court dated 16-9-2004, all these appeals were allowed in view of the Apex Court decision in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., holding that the Appellant O.N.G.C. has a right to appear and adduce evidence in the proceedings before the Reference Court. All the references were remanded to the Reference Court concerned for decision afresh. In this view of the matter, the decision in the aforesaid previous Reference is of no avail for the purposes of the present appeals.

25. On the other hand, the learned Counsel for the claimant-Respondent of the first set of 12 appeals submitted that the learned Reference Court committed no error in relying upon the aforesaid sale instance. The record shows that P.W.1 Ram Singh and P.W.3 Sri Dev Bahadur have proved the sale deed dated 26-9-1984 (20-C). The potentially of the acquired land has been proved by the statement of P.W.1 Ram Singh. P.W.2 Sri Inder Singh is the architect valuer. P.W.2 clearly stated that the land of villages Garhi, Kaulagarh and Prem Pur Mafi was acquired for the purposes of the O.N.G.C. and that these villages are adjoining to each other. All facilities are available there. From the side of the Appellant D.W.1 Trilok Chand was produced before the Reference Court. D.W.1 stated that the S.L.A.O. after considering all the facts passed the impugned awards. According to him the acquired land was not residential and no facility of

telephone, post office, electricity, water, shopping complex etc. was not available there and the land was uneven. The learned Counsel for the claimant-Appellants in F.A. No. 4-D of 2004 and F.A. No. 5-D of 2004 vehemently submitted that the learned Reference Court has mis-interpreted the averment of the claimants that the compensation may be awarded @ Rs. 5,00,000/- per acre say @ Rs. 1,00,000/-per Bigha. It was argued that the market value after making deduction should have been assessed at the rate of Rs. 5,00,000/- per acre in respect of the land of the claimant-Appellants of Mauza Kaulagarh.

26. It has been vehemently argued on behalf of the Appellant-O.N.G.C. that the S.L.A.O. has rightly selected three separate sale instances for determination of compensation in respect of three different villages/Mauza Garhi, Kaulagarh and Prem Pur Mafi. According to the Appellant highest market value as per exemplar sale-deed has been determined by the S.L.A.O. and the learned Reference Court was not justified in relying upon the sale-instance (Paper No. 20-C) alone, which was in respect of land of Garhi Cantt. Dehradun. Learned Counsel for the claimant-Respondents, on the other hand, vehemently submitted that it was incumbent upon the State to determine common market value of the land acquired by same notification in respect of similarly situated lands as well as for the same public purposes, therefore, in the facts and the circumstances of the case, the Reference Court committed no error in selecting one sale-instance for assessing market value for the lands of similarly situated lands.

27. It was submitted on behalf of the O.N.G.C.-Appellant that the vendor and vendee of the sale-instance filed by the claimants were not examined before the Reference Court, therefore, the genuineness of the sale-deed cannot be relied upon. We have considered the evidentiary value of the sale instance produced before the Reference Court. The submission of the learned Counsel for the O.N.G.C.-Appellant is not tenable. We are of the considered view that Section 51-A of the Land Acquisition Act, 1894 permits the production of a certified copy of the registered sale transaction in evidence without examination of the vendor and vendee. The genuineness of such document is rebuttable. The State led no evidence in rebuttal to dispute the genuineness of the sale transactions referred to above while the attesting witness of the sale-instance paper No. 20C1 was produced by the claimants as P.W.3 Deo Bahadur in the first set of 12 appeals. All the three sale instances are certified copies. In the absence of any evidence in rebuttal, the sale instances referred to above were fully admissible in evidence. We are fortified in our view by the Apex Court judgment in the case of Cement Corporation of India Ltd. Vs. Purya and Others, wherein while dealing with the scope and evidentiary value of the documents produced u/s 51-A of the Land acquisition Act, the Apex Court referred to its earlier decisions and observed in paragraph 31 as under:

Thus, the reasoning of this Court in Narasaiah case that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that

document, is the correct position in law. This finding in Narasaiah case is also supported by the decision of this Court in the case of Mangaldas Raghavji Ruparel.

28. Learned Counsel for the claimant-Respondents while supporting the sale instance relied upon by the claimants (20-C1) submitted that the sale instance of smaller area vis-a-vis large Chunck acquired can be read in evidence when no other evidence is available. The learned Counsel placed reliance in the case of Ravinder Narain and Anr. v. Union of India (2003) (1) AIL ACC 605 wherein "Land Acquisition Act 1894, Section 23(1)-Sale Instances of Smaller Area-Where Large chunk of area is acquired sale instances of smaller are not good piece of evidence of determine market value-However-Where no other evidence is available instances of sale of smaller area can be relied upon."

29. The learned Counsel for the claimant-Respondent has placed reliance upon the case of Nand Ram and Ors. v. The State of Haryana 1989 AIL ACC 1 wherein it has been held "Land Acquisition Act, 1894, Section 23- Compensation-State to pay similar compensation to the landowners whose lands were similarly situated and were acquired under the same notification for the same public purpose." Learned Counsel for the Appellant further placed reliance upon the case of K. Periasami v. Sub-Tehsildar Land Acquisition (1994) LACC 606 SC wherein the Apex Court observed that "Market Value-Where a large tract of land is acquired by the same notification-Different Benches of the High Court awarded different market values-In such situation same market value should be paid-Appellant also held entitled to partly of market value."

30. Now it has to be seen whether the learned Reference Court committed any error in selecting only one sale instance (20-C) for determining the market value of the land acquired for three adjoining villages.

31. Having considered the rival contentions of the learned Counsel for both the parties as well as the entire material on record in the light of the fact that the lands of all the three villages are similarly situated; that the lands were acquired by the same notification No. 662/III-1(1)/85-Sa.Pra.Anu. Lucknow dated 8-3-85 that the notification u/s 4(1) of the Act was published on 5-7-85 and that the land was acquired for the same public purpose i.e. for construction of quarters, office complex etc. of the Appellant O.N.G.C. Regarding proximity of the sale-instance relied upon by the learned Reference Court, it is pertinent to mention that the Reference clearly observed in its judgment that the "Exemplar relied upon by the claimant, paper No. 20-C1, was executed on 25-9-1984 and 103 sale-deeds which were collected by the S.L.A.O. were executed within a period of one year immediately before 5-7-1985 say these were executed in between July 1984 to July 1985." The Reference Court further observed at page 22 of the judgment that "It also belongs to a land which is immediately near the acquired land and situated in village Ghari." It finds place to mention here that the Reference Court observed in its award that the S.L.A.O. also mentioned in so many words in his awards that the lands under acquisition had potential value of

Abadi in near future and that the land is situate near city Abadi. Extract from the awards of the S.L.A.O. was cited in the judgment in this regard. It is not relevant to recite the same in this judgement. Suffice to mention that the potential value and proximity as well as similarity of the lands under acquisition vis-a-vis the sale instance of the claimants (20-C) stand at par. Therefore, we hold that the sale-instance (20-C1) is indicative of the proximity and similarity in potential value with the lands under acquisition.

32. At this juncture, we may refer to other sale-instances relied upon and considered by the S.L.A.O. while determining compensation in respect of Mauza Kaulagarh and Mauza Prem Pur Mafi. From the record, it is evident that the S.L.A.O. has selected one exemplar sale instance each of the highest market value for each Mauza, since all the lands of the three villages, i.e. Mauza Garhi, Kaula Garh and Prem Pur Mafi were acquired. The learned Reference Court while assessing the market value of the acquired land only considered the sale instance filed on behalf of the claimants (20-C1). The learned Reference Court lost sight of the sale-instance relied upon from the side of the Appellant-O.N.G.C./ State. As mentioned earlier, in the appeals before us, the lands were proposed to be acquired by the same Notification, the lands of all the three villages were adjoining to each other and were acquired for the same public purpose, therefore, following the ratio of the Nand Ram case (supra), we are of the considered view that the learned Reference Court ought to have considered the sale-instance 20-C1 as well as the sale-instance of the highest market value, i.e. the sale instance taken in respect of Mauza Kaulagarh as well as that of Mauza Garhi relied upon by the S.L.A.O. In both the sale instances in respect of Mauza Garhi and Kaulagarh relied upon by the S.L.A.O. the land was sold @ Rs. 2,50,000/- per acre. As such the learned Reference Court fell into error in not considering the sale instance of the highest value filed from the side of the S.L.A.O. Therefore, the finding of the learned Reference Court on the point of market value cannot be upheld. In our view, the best method for determining the market value could be that the average of the two instances, i.e. paper No. 20-C1 relied upon by the claimants whereby the land was sold @ Rs. 7,00,000/- per acre, as well as the sale instance of the highest market value relied upon by the S.L.A.O. whereby the land was sold @ Rs. 2,50,000/- per acre in respect of villages Garhi and Kaulagarh. We are also of the view that the lands of all the three villages are similarly situated and adjoin each other, which were acquired for the same public purpose under the same Notification. Following the ratio of the Apex Court judgment in Nand Ram case (supra), we are of the view that only the sale-instance of the highest market value relied upon by the S.L.A.O. showing the rate of Rs. 2,50,000/- per acre as well as the sale instance (20-C1) filed by the claimants and relied upon by the learned Reference Court be considered for purposes of determination of the market value on the basis of comparable sale instances by average method. Therefore, we are ignoring the sale instance of village Prem Pur Mafi, mentioned earlier, relied upon by the S.L.A.O. for the aforesaid purpose. Thus, there remains only two comparable sale

instances one from the side of the claimants and the other relied upon by the S.L.A.O, Here we may refer that in order to determine the market value of the lands under acquisition, the Apex Court in the case of H.P. Housing Board v. Bharat S. Negi and Ors. (supra) observed that Land Acquisition Act, 1894-Section 23- Compensation Market value Determination of Comparable sales method Average of comparable sale instances-Held, while computing market value, all proved instances of comparable sales need to be taken into consideration. In paragraph 5 of the judgement, the Apex Court observed as follows:

We have heard the parties. In our view, the High Court was absolutely wrong in excluding the two sale instances cited by the Appellants. The High Court omitted to notice that the offer of Rs. 80,000/- per bigha had not been accepted by the claimants. In any event the offer was for Rs. 80,000/- per bigha as a consolidated amount. The Appellants would not then have to pay the solatium and interest amounts. We are told and it is not disputed that the figure of Rs. 80,000/- per bigha would, if solatium and interest is deducted, have gone down to less than Rs. 40,000/- per bigha. In our view the approach of the Reference Court was correct. As all sale instances were proved, they were all to be taken into consideration. If all the sale instances are taken into consideration the average would work out to Rs. 1,11,660 per bigha. But as all the sale instances are of small pieces of lands and the acquisition is of the large piece of land, a deduction of 33 1/3% must be made towards development cost. Thus the compensation would work out to Rs. 74,444 per bigha.

33. Having considered the entire material on record and on reapraial of the evidence adduced by the parties and having perused the relevant case-law referred to above, we find that the lands were similarly situated and the proximity of the land was similar. Accordingly we hold that the proper market value in respect of the land under acquisition will be average of Rs. 7,00,000/- and Rs. 2,50,000/- which comes to Rs. 4,50,000/- per acre. We also find that no evidence was filed on record in rebuttal to dispute the genuineness of the certified copy of the sale-deed paper No. 20-C1, therefore, the sale instance in question can be read in evidence. It is held that the market value determined by the Reference Court is erroneous. Now it will be seen as to what should be appropriate deduction from the aforesaid rate of market value of Rs. 4,50,000/- per acre.

34. As mentioned earlier, a large tract of area comprising three villages was acquired and the sale-instances relied upon both by the claimants and the S.L.A.O. were in respect of small piece of land. In our view considering the largeness of land under acquisition vis-a-vis the sale instances, suitable deduction shall be made as the deductions are required to be made both towards development charges as well as towards largeness of area. We are fortified in our view by the case of H.P. Housing Board (supra), wherein the Apex Court clearly observed that but as all the sale instances are of small pieces of lands and the

acquisition is of the large piece of land, a deduction of 33, 1/3% must be made towards development cost. We may also refer to the decision of the Apex Court in the case of Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, wherein the Apex Court has observed as below:

Land Acquisition Act, 1894-Section 23- Compensation-Market Value-Principles for determination of Relevant factors to be considered-Comparable instances of sale of lands, which have proximity from time angle as well as situation angle, can be considered and suitable adjustments to be made having regard to various positive and negative factors- In case of acquisition of a large area for a specific purpose deductions can be made by way of development charges-Deductions can also be made for largeness of the land- Having regard to peculiar features, facts and circumstances of the case and interest of justice, held, rate of compensation as fixed by High Court should be reduced- Claimants entitled to interest on solatium.

35. The market value of the acquired land, as determined above, is Rs. 4,50,000/- per acre and after deducting 33,1/3% there-from, the net market rate comes to Rs. 3,00,000/- per acre. Accordingly, we hold that the claimants are entitled to compensation @ Rs. 3,00,000/- per acre. We also find that the learned Reference Court in the impugned award dated 10-12-2003 has come to the conclusion that the claimants are entitled to compensation @ Rs. 3,00,000/- per acre, though on different ground, therefore, the finding of the learned Reference Court in FA. Nos. 15 of 2004 and F.A. No. 16 of 2004 along with cross-appeals (4-D of 2004 and 5-D of 2004) does not require interference by this Court.

36. No other point was urged or argued before us in these appeals.

37. For the reasons and discussion aforementioned and having gone through the entire material on record, in our opinion, the impugned judgment and award dated 20-12-2000 passed by the learned Reference Court in the cases under appeals deserve to be modified to the above extent. It is held that the claimant-Respondents in the first set of 12 appeals are entitled to get compensation of the land acquired @ Rs. 3,00,000/- per acre. All the appeals except First Appeal No. 15 of 2004, F.A. No. 16 of 2004, FA. No. 4-D of 2004 and F.A. No. 5-D of 2004 are liable to be partly allowed. There is no force in the second set of four appeals, namely, F.A. No. 15 of 2004, F.A. No. 16 of 2004 along with cross-appeals No. 4-D and 5-D of 2004 preferred by the claimants. All these appeals are liable to be dismissed.

38. First Appeal No. 31 of 2001 arising out of L.A. Reference No. 136 of 1990, F.A. No. 32 of 2001 arising out of L.A. Reference No. 133 of 1990, F.A. No. 33 of 2001 from L.A. Reference No. 121 of 1990, F.A. No. 34 of 2001 from L.A. Reference No. 125 of 1990, F.A. No. 35 of 2001 from L.A. Reference No. 119 of 1990, F.A. No. 36 of 2001 from L.A. Reference No. 137 of 1990, F.A. No. 37 of 2001 from L.A. Reference No. 126 of 1990, F.A. No. 38 of 2001 from L.A.

Reference No. 124 of 1990, F.A. No. 39 of 2001 from L.A. Reference No. 127 of 1990, F.A. No. 40 of 2001 from L.A. Reference No. 123 of 1990, F.A. No. 41 of 2001 from L.A. Reference No. 135 of 1990 and F.A. No. 42 of 2001 from L.A. Reference No. 122 of 1990 are hereby partly allowed and the impugned judgment and award dated 20-12-2000, appealed against, is modified to the above extent. Rest of the findings regarding solatium and interest are maintained. In the peculiar circumstances of the case there will be no order as to costs.

39. The second set of four appeals viz. First Appeal No. 15 of 2004, First Appeal No. 16 of 2004, First Appeal No. 4-D of 2004 and F.A. No. 5-D of 2004 are hereby dismissed with no order as to costs.

40. The amount deposited by the Appellant-O.N.G.C. in compliance of the interim order of this Court shall be remitted to the learned Reference Court for being paid to the claimants according to their share as per Rules.