(2015) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 917/2011

Perfect Thread Mills Limited	APPELLANT
Vs	
The Competent Authority (Land Acquisition) cum SDO and Others	RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Arbitration Act, 1940 — Section 15, 30
Arbitration and Conciliation Act, 1996 — Section 18, 23, 23(1), 24, 28
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24
Constitution of India, 1950 — Article 254
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 24, 4
National Highways Act, 1956 — Section 3A, 3-A, 3G, 3G(5), 3G(7)

Citation : (2015) 11 RAJ CK 0028

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Manish Singhvi and Anjay Kothari, for the Appellant

Final Decision : Allowed

Judgement

Pratap Krishna Lohra, J.—Appellant, a company duly registered under the Companies Act, 1956 has laid this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short ''the Act of 1996'') to assail the impugned order dated 05.02.2011 passed by the learned Additional District Judge No. 3, Udaipur (for short ''the learned court below'') as well as the award dated 02.01.2007 rendered by Arbitral Tribunal and the award dated 11.08.2006 passed by the Competent Authority (LA)-cum-Sub Divisional Officer, Girwa insofar as the same relate to compensation for acquisition of land in question. A further relief is sought for determining compensation for acquisition of land on the basis of prevailing market value of the land on the date of publication of notification under Section 3A of the National Highways Act, 1956 (fort short ''the Act of 1956'') with other consequential benefits.

2. Succinctly stated the facts giving rise to this appeal are that the State

Government acquired the factory land as per the prescribed procedure and the same was allotted to the appellant in the year 1981-82 by the Rajasthan State Industrial Development and Investment Corporation Limited (for short ''RIICO'') on 99 years lease basis. Subsequently, a part of factory land measuring 12,300 sq.m. was acquired by the Central Government for National Highways Authority of India (fort short ''NHAI''). Pursuant to the acquisition, the Competent Authority (LA)-cum-Sub Divisional Officer, Girwa vide its award dated 11.08.2006 partially allowed the claim of the appellant for compensation towards damages and costs of construction and then existing Effluent Treatment Plant (''ETP''). The compensation awarded by the Competent Authority was not determined commensurating with the market value of the land and that prompted the appellant to lay a claim petition before the Arbitral Tribunal and District Collector under Section 3G(5) of the Act of 1956. The Arbitral Tribunal by its award dated 02.01.2007 modified the award of the Competent Authority by allowing compensation for establishing new ETP with some other damages and expenses. However, the Arbitral Tribunal affirmed the award of Competent Authority so far as it relates to compensation of land acquired. As the afflictions of the appellant were not properly appreciated and redressed by the Arbitral Tribunal with regard to compensation for the land acquired inasmuch as the Arbitral Tribunal has also not taken note of the market value of the land, the appellant pursued its cause by way of laying an application/objection under section 34 of the Act of 1996 before the learned court below. In its application/objection, the appellant ventilated its grievances against the award of the Competent Authority as well as Arbitral Tribunal for re-determining the compensation of the land acquired as per the market value of the land and sought enhancement of the amount of compensation. For substantiating its grievances, the appellant has urged many issues before the learned court below and made sincere endeavour to persuade it but in vain. Ultimately, the cause sought to be agitated by the appellant before the learned court below did not find favour of it and objections of the appellant were rejected.

3. It is also pertinent to note here that arbitral award is also questioned by the respondent-NHAI by way of laying a separate application under Section 34 of the Act of 1996 but the said effort of the respondent-NHAI proved abortive as its application/objection was time-barred. It is in that background, the appellant has invoked appellate jurisdiction of this Court.

4. Precisely, the appellant has questioned the impugned order for not determining the amount of compensation in terms of market value of the industrial land acquired by adhering to the principles laid down by the Hon''ble Apex Court. The appellant has assailed the impugned order by urging that the criteria for determination of compensation is full of flaws inasmuch as all the other authorities were guided by the rates fixed/prescribed by the District Level Committee (''DLC'') for the purposes of calculation of stamp duty and the said DLC rates are solely edificed on development charges/concessional rates fixed by RIICO for its industrial areas. The appellant has set out a specific case that DLC

rates per se cannot be romped in as a valid basis for determining the market value of the land in question and as such the same is de hors the provision of law. Taking shelter of the statutory provisions, it is submitted by the appellant that compensation ought to have been determined by taking into account the market value of land on the date of publication of notification under Section 3A of the Act of 1956. In substance, as per the appellant, the impugned order is not in consonance with the provisions of the Act of 1956. The appellant has also sought to question the impugned order of the learned court below on the anvil that DLC rates vis-?-vis industrial land is not reflecting the market value of land as per norms of the State Government and its sole basis is development charges rates/ concessional rates of various industrial areas fixed by RIICO every year. Taking shelter of Section 23 of the Land Acquisition Act, 1894 (for short ''the Act of 1894'') which is pari materia to Section 3G(7)(a) of the Act of 1956, the appellant has set out a specific ground that the Competent Authority, Arbitral Tribunal as well as learned court below have seriously erred in construing the market value at par with DLC rates determined by the District Level Committee. Reiterating its earlier stand that DLC rates duly fixed by District Level Committee insofar it relates to industrial areas are not based on ground realities and a pragmatic criteria, the impugned order as well as award of the Arbitral Tribunal and the award passed by the Competent Authority are vulnerable. The appellant has also made an attempt to highlight the true connotation of the term ''market value'' by submitting that the best way for assessing market value of the land depends on the usage of the land. For developing this ground, the appellant has submitted in the memo of appeal that factory''s land acquired is surrounded by a wide commercial area wherein commercial activities are in perpetuation and, therefore, this relevant consideration ought to have been paid requisite heed by the learned court below as well as Arbitral Tribunal and the Competent Authority. That apart, many other ancillary grounds are set out in the appeal for besetting the impugned order of the learned court below as well as award passed by the Arbitral Tribunal and the Competent Authority to seek enhancement of the compensation amount and awarding of interest in terms of Section 31(7)(b) of the Act of 1996.

5. Learned counsel for the appellant Mr. Manish Singhvi submits that the Competent Authority, Arbitral Tribunal and the learned court below have miserably failed to take into account market value of the land as expounded by the decisions of the Hon''ble Apex Court which is sufficient to vitiate the impugned order as well as the awards passed by the Arbitral Tribunal and the Competent Authority. Learned counsel for the appellant would contend that per se determining market value of the land on the sole basis of DLC rates has many pitfalls and pressing into service this criteria for determining compensation has rendered the impugned order as well as the awards irrational and perverse and as such cannot be sustained.

6. Elaborating his submissions, Mr. Manish Singhvi, learned counsel for the appellant has urged that development rates of industrial plot cannot be a

relevant factor for determining market value of the land and, therefore, the impugned order as well the awards lack judicial approach requiring interference in the interest of justice. Learned counsel submits that determination of market value in the instant case by the learned court below as well as by other authorities is de hors the fundamental policy of Indian Law propounded by the Hon''ble Apex Court in Oil and Natural Gas Corporation Ltd. Vs. Western Geco international Ltd., . Learned counsel for the appellant further submits that learned Competent Authority, Arbitral Tribunal as well as learned court below have adopted a very pedantic and unrealistic approach in determining the market value of the land which is sufficient to vitiate all the impugned orders being flawed in judicial approach. While conceding with the proposition that if two views are possible, then arbitrator''s view point must prevail, learned counsel for the appellant would urge that appellate court is not loathed with the power to interfere with the arbitral award when it is ex facie clear that arbitrator''s view point is perverse and de hors the sound principles for computation of the market value of the land. Elaborating his submission in this behalf, learned counsel has urged that arbitral award is solely edificed on the DLC rates without considering the sale deeds of the area and the location of the land which is within parameters of 150 metrs. of four lane highway. Learned counsel further submits that best method for computing market value of the land could have been contemporaneous sale deeds in the proximate area and by not resorting to the same by any of the authorities as well as learned court below has made out a clear case wherein the appellant is denied a fair compensation commensurating with the market value of the land and, therefore, interference under Section 34 & 37 of the Act of 1996 is called for to enhance compensation amount with interest thereon. Lastly, learned counsel for the appellant would contend that the land compulsorily acquired must be valued not merely by reference to use to which it was being put at the time at which its value had to be determined, but also with reference to use to which it was reasonably capable of being put in the future. In support of his contentions, leaned counsel for the appellant has placed reliance on following legal precedents:-

"1. Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.,

2. Oil and Natural Gas Corporation Ltd. Vs. Western Geco international Ltd.,

3. Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation,

4. Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others,

5. U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others,

6. Maj. Gen. Kapil Mehra Vs. Union of India (UOI),

7. Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat,

8. G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel and Others,

9. Karnataka Urban Water Supply and Drainage board, etc. Vs. K.S. Gangadharappa and Another etc.,

10. Mahabir Prasad Santuka and Others Vs. Collector, Cuttack and Others,

11. V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer,

12. State of Punjab and Another Vs. Hans Raj (Dead) by Lrs. Sohan Singh and Others,

13. Anjani Molu Dessai Vs. State of Goa and Another,

14. Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,

15. Bhupal Singh and Others Vs. State of Haryana

16. Padma Uppal and Others Vs. State of Punjab and Others,

17. Associate Builders Vs. Delhi Development Authority,

18. Gurpreet Singh Vs. Union of India (UOI),

19. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa,

20. Raghubans Narain Singh Vs. The Uttar Pradesh Government Through Collector of Bijnor,

21. State of Rajasthan & Anr. v. Bhimraj - S.B. Civil Misc. Appeal No. 390/2006 alongwith bunch of cases decided on 30.10.2013

22. National Highways Authority of India v. Madanganj Hotels - S.B. Civil Misc. Appeal No. 2994/2009 decided on 06.02.2004."

7. Per contra, learned counsels for the respondent-NHAI Mr. Akhilesh Rajpurohit and Mr. Vinit Sanadhya submit in unison that scope of judicial review under Section 34 of the Act of 1996 with the arbitral award is very narrow and limited and the same cannot be equated with the appellate jurisdiction. Having regard to the facts of the instant case, learned counsels would contend that there is concurrent finding by the Competent Authority as well as Arbitral Tribunal which has been approved by the learned court below by rejecting the application/ objections of the appellant, this court in exercise of appellate jurisdiction is not expected to re-appreciate the evidence for arriving at a different conclusion. Learned counsels for the respondent further submit that for calculating the amount of compensation vis-?-vis industrial land of the appellant, the DLC rates in vogue have been rightly pressed into service for assessing the market value of the land and, therefore, no interference is called for in this appeal. While joining issue with the appellant on fair amount of compensation, commensurating with the market value of the land, learned counsels would submit that the Competent Authority, Arbitral Tribunal as well as learned court below have rightly not taken

into account the contemporaneous sale deeds in the proximate areas produced by the appellant inasmuch as those sale deeds were of smaller piece of lands. Elaborating their submissions, learned counsels for the respondent submit that sale deed of small piece of land cannot be a guiding factor for determining the market value of a big chunk of land that too an industrial land. Stoutly defending the criteria for determination of market value of the land acquired on the basis of prevailing DLC rates of the area, learned counsels would contend that DLC rates are determined as per Rule 2(b) of the Rajasthan Stamp Rules, 2004 and therefore the discretion exercised by the learned court below, Arbitral Tribunal and the Competent Authority in this behalf is founded on the sound reasonings which is not required to be tinkered with even if other view is possible. Regarding determination of market value on the basis of concessional rate for the industrial land prescribed by RIICO, learned counsels for the respondent have urged that it is unimaginable that RIICo would incur losses while acquiring land by offering a better price but allotting the said land at the cheaper rates to the industrialists. Learned counsels have also urged that per se it is not acceptable that rates fetched in auction are reflective of the market value of the land. Lastly, learned counsels for the respondent would urge that in the matter of land acquisition, the powers of the appellate court to interfere are very much limited and the same can be exercised if it is noticed by the appellate court that impugned judgment is wrong and not on the premise that impugned judgment is not right. In support of their contentions, learned counsels for the respondent-NHAI have placed reliance on following legal precedents:-

"1. Bharat Coking Coal Ltd. Vs. L.K. Ahuja,

2. Associate Builders Vs. Delhi Development Authority,

3. Ravindra Kumar Gupta and Company Vs. Union of India (UOI),

4. P.R. Shah, Shares and Stock Broker (P) Ltd. Vs. B.H.H. Securities (P) Ltd. and Others,

5. M/s. Arosan Enterprises Ltd. Vs. Union of India and Another,

6. Continental Construction Ltd. Vs. State of U.P.,

7. Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,

8. Padma Uppal and Others Vs. State of Punjab and Others,

9. State of U.P. and another Vs. Rajendra Singh,

10. Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others,

11. Ravinder Narain and Another Vs. Union of India (UOI),

12. Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,

13. State of Haryana Vs. Ram Singh,

14. Engineer Syndicate Vs. State of Bihar and Others,

15. Maharashtra State Electricity Board Vs. Sterilite Industries (India) and Another-->

16. Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala,

8. I have heard learned counsel for the parties, perused the impugned order and thoroughly scanned the materials available on record.

9. As the respondent-NHAI has raised an issue concerning the scope of judicial review in this appeal precisely by laying stress on concurrent finding by the learned court below as well as by the Arbitral Tribunal and the Competent Authority, I feel persuaded to examine the scope of judicial review at the threshold.

10. Well it is true that judicial review in an appeal arising out of an arbitral award is very much limited but it cannot be said that Appellate Court is loathed with the power to make judicial review of the arbitration award.

11. In Bharat Coking Coal Ltd. (supra) wherein an arbitral award was passed as per the provisions of the Arbitration Act, 1940 while examining Sections 30 & 15 of the Act, the Hon''ble Apex Court held,-

"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

12. In Associate Builders (supra), a very recent judgment of Hon''ble Apex Court, Hon''ble Apex Court while examining the scope of judicial review has held that interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse or when conscience of court is shocked, or when illegality is not trivial but goes to the root of the matter. The Court further held that interference is not warranted when merely another view is possible for the reason that the arbitral being ultimate master of quantity and quality of evidence while drawing the arbitral award, award based on little evidence or on evidence which does not measure up in quality to train a legal mind cannot be held invalid.

13. In Ravindra Kumar Gupta and Company (supra), Hon''ble Apex Court has deprecated the practice of reappreciating the evidence led by the parties before the arbitrator and found that High Court has erroneously substituted its own opinion on appreciation of evidence under Section 30 of the Arbitration Act,

1940. The Court held,-

"8. We are of the considered opinion that the High Court committed a serious error in reappreciating the evidence led by the parties before the arbitrator. This evidence was duly scrutinized and evaluated by the arbitrator. With regard to Claim 5, the arbitrator has given elaborate reasons. Therefore, findings recorded by the arbitrator cannot said to be either perverse or based on no evidence. A firm finding has been recorded that under Claim 5 there was default and delay on the part of Union of India with respect to:

(i) The payment of RARs final bill.

(ii) Delay in appointing agency for ATT.

(iii) Delay in giving decision.

(iv) Increase in height of tent plinth (given late).

This conclusion has been erroneously substituted by the High Court with its own opinion on appreciation of the evidence. Such a course was not permissible to the High Court while examining objections to the award under Section 30 of the Arbitration Act, 1940."

14. The same view is reiterated by Hon''ble Apex Court in P.R. Shah, Shares and Stock Broker (P) Ltd. (supra) wherein the Court held,-

"14. A court does not sit in appeal over the award of an arbitral tribunal by re-assessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The arbitral tribunal has examined the facts and held that both second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye Law 248, in a claim against a non- member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of second respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

15. In M/s. Engineers Syndicate (supra) Hon''ble Apex Court reiterated the principle that the court must decline to recognise the power of the court to attempt to probe the mental process by which the arbirtrator had reached his conclusion where it was not disclosed by the terms of his award.

16. In Maharashtra State Electricity Board (supra), Hon''ble Apex Court while dilating on the power of judicial review to interfere with the arbitral award has held that it can be set aside when there is an error apparent on the face of record in the arbitral award.

17. In Saw Pipes Ltd. (supra), Hon''ble Apex Court while examining the scope of judicial review under Section 34(2)(b)(ii) has dilated on the phrase "public policy of India" and held that it should be given a wider and not a narrower meaning. The Court held,-

"22. The aforesaid submission of the learned Senior Counsel requires to be accepted. From the judgments discussed above, it can be held that the term "public policy of India" is required to be interpreted in the context of the jurisdiction of the court where the validity of award is challenged before it becomes final and executable. The concept of enforcement of the award after it becomes final is different and the jurisdiction of the court at that stage could be limited. Similar is the position with regard to the execution of a decree. It is settled law as well as it is provided under Code of Civil Procedure that once the decree has attained finality, in an execution proceeding, it may be challenged only on limited grounds such as the decree being without jurisdiction or a nullity. But in a case where the judgment and decree is challenged before the appellate court or the court exercising revisional jurisdiction, the jurisdiction of such court would be wider. Therefore, in a case where the validity of award is challenged there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the Arbitral Tribunal could be set aside. If narrow meaning as contended by the learned Senior Counsel Mr. Dave is given, some of the provisions of the Arbitration Act would become nugatory. Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 percent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28 .Section 28 (2) specifically provides that arbitrator shall decide ex aequo et bono [according to what is just and good] only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality".

18. In yet another judgment in Hindustan Zinc Ltd.(supra), Hon''ble Apex Court reiterated the same principle and held in clear and unequivocal terms that arbitral award would be open to interference by the court under Section 34(2)(b)

(ii) of the Act of 1996.

19. In yet another authoritative pronouncement in Western Geco International Ltd. (supra), Hon''ble Apex Court has further widened the scope of judicial review with an arbitral award under Section 34 of the Act of 1996 by redefining the term "Fundamental policy of Indian Law". The Court has further dilated on very important aspect of the matter namely perversity or irrationality of the arbitral award by romping in Wednesbury''s principle of reasonableness as an important facet of judicial review with the arbitral award. The Court held,-

"26. What then would constitute the ''Fundamental policy of Indian Law'' is the question. The decision in Saw Pipes Ltd. (supra) does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "Fundamental Policy of Indian Law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the Fundamental Policy of Indian law. The first and foremost is the principle that in every determination whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequences, the Court or authority concerned is bound to adopt what is in legal parlance called a ''judicial approach'' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the Court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of judicial approach in judicial and quasi judicial determination lies in the fact so long as the Court, Tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a Court, Tribunal or Authority vulnerable to challenge. In Ridge v. Baldwin [1963 2 All ER 66], the House of Lords was considering the question whether a Watch Committee in exercising its authority under Section 191 of the Municipal Corporations Act, 1882 was required to act judicially. The majority decision was that it had to act judicially and since the order of dismissal was passed without furnishing to the appellant a specific charge, it was a nullity. Dealing with the appellant''s contention that the Watch Committee had to act judicially, Lord Reid relied upon the following observations made by Atkin L.J. in [1924] 1 KB at pp. 206, 207:

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King''s Bench Division exercised in these writs."

"29. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a Court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury''s principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a Court of law often in writ jurisdiction of the Superior courts but no less in statutory processes where ever the same are available."

20. In Associate Builders (supra) which is the recent pronouncement by the Hon''ble Apex Court, on which learned counsel for the respondent has also placed reliance, Hon''ble Apex Court has reiterated the principles laid down in Western Geco International Ltd. (supra) for setting aside the arbitral award discussing the grounds for interference with the arbitral award threadbare on the anvil of it being contrary to the Fundamental Policy of Indian Law, principles of audi alteram partem and Wednesbury''s principle of reasonableness. The Court has also laid stress on need in judicial approach in such matters. The Court held,-

"27. Coming to each of the heads contained in the Saw Pipes judgment, we will first deal with the head "fundamental policy of Indian Law". It has already been seen from the Renusagar judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law.

28. In a recent judgment, ONGC Ltd. v. Western Geco International Ltd., this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held: (SCC pp.278-80 paras 35 & 38-40)

"35. What then would constitute the ''fundamental policy of Indian law'' is the question. The decision in ONGC does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression ''fundamental policy of Indian law'', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a ''judicial approach'' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/ authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

30. The Audi Alteram Partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act. These Sections read as follows:

"18. Equal treatment of parties.-- The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

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34. Application for setting aside arbitral award.-- (1) ****

(2) An arbitral award may be set aside by the Court only if --

(a) the party making the application furnishes proof that--

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(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; "

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. "Gopi Nath & Sons, it was held: (SCC 312 at p.)

"7. ...It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In "Kuldeep Singh v. Commr. of Police, it was held: (SCC)

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

"36. The third ground of public policy is, if an award is against justice or morality. These are two different concepts in law. An award can be said to be against justice only when it shocks the conscience of the court. An illustration of this can be given. A claimant is content with restricting his claim, let us say to Rs. 30 lakhs in a statement of claim before the arbitrator and at no point does he seek to claim anything more. The arbitral award ultimately awards him Rs. 45 lakhs without any acceptable reason or justification. Obviously, this would shock the conscience of the court and the arbitral award would be liable to be set aside on the ground that it is contrary to "justice".

21. After analysing the law on the subject i.e. judicial review with the arbitral award, I am not impressed by the argument of learned counsel for the respondent that in such matters, the courts are required to adopt an idealistic and pedantic approach in view of sea through change with wider connotation to the phrase "Fundamental policy of Indian Law" and even applying the Wednesbury''s principle of reasonableness horizons of the judicial review has been given a new dimension. This sort of situation has persuaded this court to examine the arbitral award with a pragmatic approach to test its sustainability on the anvil of "Fundamental policy of Indian Law", Wednesbury''s principle of reasonableness and with justice oriented approach.

22. The point in issue in the instant appeal is not related with an arbitral award wherein rights flowing from a contract between rival parties is adjudicated to compensate the aggrieved party. In fact, in the instant case, the appellant is sought to be deprived of its property - land by enforcing law of compulsory acquisition and the grievance of the appellant is against awarding inadequate compensation which is a mere pittance. The appellant has also laid emphasis on the fact that the determination of compensation is without scientifically applying the principle of offering compensation commensurating with the market value of the land. The appellant in its endeavour has seriously doubted the DLC rates which are pressed into service for determining compensation vis-?-vis industrial land allotted by RIICO at development charges rates/concessional rates. Even adopting development charges rates/concessional rates of RIICO as DLC rates is also questioned by the appellant to assert that DLC rates are irrational and not at par with the prevailing rates of the area where land is situated. The contemporaneous sale deeds in the proximate area are also highlighted by the appellant with the grievance that those were not considered by the learned court below as well as by the Arbitral Tribunal and the Competent Authority. Against such a challenge to the determination of amount of compensation, the respondent has taken shelter of DLC rates which are dependent on development charges rates/concessional rates of RIICO with full emphasis as if these rates are unfillable having Midas touch and beyond the arms of judicial review of this Court. Therefore, in totality, the issue is seriously contentious and requires judicial scrutiny by this Court and it would be unsafe to non suit the appellant by adopting a narrower approach vis-?-vis the scope of judicial review with the arbitral award. Consequently, I am not impressed by argument of learned

counsel for the respondent and feel persuaded to examine the afflictions of the appellant on merits.

23. Now adverting to the merits of the case, which is essentially confined to the adequacy of compensation awarded to the appellant. The appellant has assailed the impugned order by the learned court below, arbitral award as well as award by the Competent Authority by urging with full gusto that compensation of land acquired has not been determined as per the market value on the date of publication of the notification under Section 3A of the Act of 1956.

24. The criteria for determination of amount of compensation under the Act of 1956 are pari materia to the provisions of Land Acquisition Act, 1894 (for short ''the Act of 1894'').

25. Section 23 of the Act of 1894 under the caption "Matters to be considered in determining compensation" reads as under:-

"23 Matters to be considered in determining compensation.-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market value of the land at the date of the publication of the [notification under section 4 , sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector''s taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector''s taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector''s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector''s taking possession of the land.

[(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4 , sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- I -n computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of 59 [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition."

26. The provision in this behalf under the Act of 1956 is incorporated under Sub-section (7) of Section 3G of the Act of 1956 which reads as under:-

"3G. Determination of amount payable as compensation.-

(7) The competent authority or the arbitrator while determining, the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under Section 3-A ;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the and, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

27. The instant appeal may have many facets but the real issue requiring judicial scrutiny is confined to the phrase "market value". The rival parties are at logger-head on the true connotation of the word "market value" conceptually in relation to compulsory acquisition of land. The appellant is a land owner whose land has been compulsorily acquired is stressing for construing the term "market value" with a pragmatic and benevolent approach whereas the respondent-NHAI which has compulsorily acquired the land, is harping on the DLC rates for fair assessment of market value of the land. There remains no debate on the point that the appellant has failed to persuade the Competent Authority, Arbitral Tribunal and the learned court below in its endeavour to signify true purport of the market value as perceived by it. This sort of situation has equipped the respondents well armed to contend that vindication of their stand by the learned court below as well as by the other authorities has circumscribed the scope of judicial review in this appeal.

28. The power of compulsory acquisition embodies the principle of what is called

"Eminent Domain". It signifies powers of the sovereign to take property for the public use without the owner''s consent. The power of Eminent Domain is an incident of federal sovereign and an "off spring of political necessity". The relevant laws of compulsory acquisition of land, including the provisions contained in this behalf under the Act of 1956 emanate from the principle of Eminent Domain.

29. In the case of Building and Civil Engineering Holidays Scheme Management v. Post Officem, (1966) 1 QB 247 while construing the true meaning of "market value" under Section 9(2)(b) of the Crown Proceedings Act, 1947, it was held,-

"The "MARKET VALUE" means the price at which thing is bought and sold as between willing buyer and willing seller, eventhough there may be only one seller and one buyer."

30. Further, elaborating the meaning of "market value" in BSC. Footwear Ltd. Ridgwsay, (1971) 2 All England Reporter 534 (HL), it was held,-

"Market value signifies real value that the goods have on the accounting day. If the goods are bought by a wholesaler or retailer for resale, the value of those goods to him is either their cost or, if their purchase price has dropped by the accounting day, that price or the price at which the wholesaler, hopes to sell to a retailer or a retailer to the public."

31. Statutory Definitions, "in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market."

32. There is a serious acrimony between the parties for ascertaining the market value of the land acquired and, therefore, it has become imperative for this Court to test the criteria pressed into service by the rival parties in the matter of compulsory land acquisition.

33. In Bhagwathula Samanna (supra), Hon''ble Apex Court while construing the phrase "market value" within the meaning of Section 23 of the Act of 1894 has laid stress on a pragmatic approach. The Court held,-

"7. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi''s case."

"11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

12. The national highway runs very near to the proposed Port Trust colony. The lands acquired already for the South Eastern Railway Staff Quarters lie to the southern side of the land under acquisition. The town planning trust road runs on the northern side of the land under acquisition. The colony is in the fast developing part of the municipal town. The plot of Ac. 1.68 cents in Survey No. 2/2A acquired for the formation of the diversion road is adjacent to built-in-area. The land involved in these cases is of even level and fit for construction without the necessity for levelling or reclamation. The High Court has itself concluded on the evidence that the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the town planning trust road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed land with amenities of roads, electricity etc., the deduction in the value of the comparable land is not warranted.

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that

the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10 per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed."

34. In Bhupal Singh (supra), in a recent judgment Hon''ble Apex Court has dilated on the phrase "market value" and laid down guidelines for its determination with emphasis on factors to be considered. The Court held,-

"18. Law on the question as to how the court is required to determine the fair market value of the acquired land is fairly well settled by several decisions of this Court and remains no more res integra. This Court has, inter alia; held that when the acquired land is a large chunk of undeveloped land having potential and was acquired for residential purpose then while determining the fair market value of the lands on the date of acquisition, the appropriate deductions are also required to be made.

19. It is apposite to take note of some of the decisions of this Court on the issue relevant for the disposal of these appeals:

19.1 In Brig. Sahib Singh Kalha v. Amritsar Improvement Trust, this Court opined that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town life. Accordingly, it was held that a deduction of 20% of the total acquired land should be made for land over which infrastructure has to be raised (space for roads, etc.). Apart from the aforesaid, it was also held that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) needs also to be taken into consideration. To cover the cost component for raising infrastructure, the Court held that the deduction to be applied would range between 20% to 33%. Commutatively viewed, it was held, that deductions would range between 40% and 53%.

19.2 In Chimanlal Hargovinddas v. Special Land Acquisition Officer while referring to the factors which ought to be taken into consideration while determining the market value of the acquired land, it was observed that a smaller plot was within the reach of many whereas for a larger block of land there were implicit disadvantages. As a matter of illustration, it was mentioned that a large block of land would first have to be developed by preparing its layout plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held that these factors could be discounted by making deductions by way of allowance at an appropriate rate ranging from 20% to 50%. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

19.3 In Kasturi v. State of Haryana, this Court opined that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities, etc. It was also opined that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained that the acquired land may be plain or uneven, the soil of the acquired land may be soft or hard, the acquired land may have a hillock or may be low-lying or may have deep ditches. Accordingly, it was pointed out that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi case, it was held that normal deductions on account of development would be 1/3rd of the amount of compensation. It was, however, clarified that in some cases the deduction could be more than 1/3rd in other cases even less than 1/3rd.

19.4 In Lal Chand v. Union of India, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made.

19.5 In A.P. Housing Board v. K. Manohar Reddy, having examined the existing case law on the point it was concluded that deductions on account of development could vary between 20% to 75%. In the peculiar facts of the case, a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

19.6 In Special Land Acquisition Officer v. M.K. Rafiq Saheb, this Court after having concluded that the land which was the subject-matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50%, ought to be increased to 60%.

20. After taking note of the aforesaid cases and placing reliance upon the principles laid down therein, this Court in Chandrashekar observed as under: (SCC pp. 399-400)

"20. It is essential to earmark appropriate deductions out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

21. As far back as in 1982, this Court in Brig. Sahib Singh Kalha case held, that the permissible deduction could be up to 53%. This deduction was divided by the Court into two components. For the ''first component'' referred to in the foregoing paragraph, it was held that a deduction of 20% should be made. For the ''second component'', it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction.

22. In 2009 in Lal Chand case and in 2010 in A.P. Housing Board case it has been held that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% could be made. But in 2009 in Subh Ram case, this Court restricted deductions on account of the ''first component'' of development, as also, on account of the ''second component'' of development to 331/3% each. The aforesaid deductions would roughly amount to 67% of the component of the sale consideration of the exemplar sale transaction(s)."

35. Hon''ble Apex Court in its earlier judgment in Smt. Padma Uppal (supra) has embarked on the phrase "market value" and declined to interfere with the determination of compensation by the High Court even on the plea of State that land in question constitutes one block by taking into account the fact that it cannot be overlooked that entire area thereof is not similarly situate and does not possess the same or similar advantages and benefits.

36. In Jawajee Nagnatham (supra), Hon''ble Apex Court has categorically held that market value of the acquired land cannot be determined on the basis of Basic Valuation Register maintained by the Collector for the purpose of levy of stamp duty. The Court held,-

"5. The question, therefore, is whether the Basic Valuation Register is evidence to determine the market value. This Court in Special Land Acquisition Officer v. T. Adhinarayan Setty in paragraph 9 held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) . The methods of valuation may be (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. Same was the view in Tribeni Devi v. Collector of Ranchi. It was reiterated in catena of decisions, vide, Periyar and Pareekanni Rubbers Ltd. v. State of Kerala. Therefore, it is settled law that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value. Generally the second method of valuation is accepted as the best. The question, therefore, is whether the Basic Valuation Register would form foundation to determine the market value. The Indian Stamp Act, 1899 provides the power to prescribe stamp duty on instruments, etc. Entry 44 of List III, Concurrent List, of the VIIth Schedule read with Article 254 of the Constitution empowers the State Legislature to amend the Indian Stamp Act, 1899. In exercise thereof all the State Legislatures including the Legislature of A.P. amended the Act and enacted Section 47-A empowering the registering officer to levy stamp duty on instruments of conveyance, etc., if the registering officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift, release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47-A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value. Section 47-A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block, district or the region and to maintain Basic Valuation Register for levy of stamp duty for registration of an instrument, etc. No other statutory provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on the basis of valuation maintained in the Basic Valuation Register, came up for consideration in Sagar Cements Ltd. v. State of A.P. B.P. Jeevan Reddy, J., as he then was, considered the question and held that the Government has unilaterally fixed the valuation of the lands, the Basic Valuation Register had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the vendor is bound by it. The market value of the land for proper stamp duty has to be determined as per the law under Section 47-A itself. That view was followed by another learned Single Judge in P. Sasidar v. Sub-Registrar. It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value. The Division Bench followed, in support of its view a decision of another Division Bench in Land Acquisition Officer v. Venkateswara Prasad which also decided that Basic Valuation Register cannot be relied on to determine the market value. It would appear that in Govt. of A.P. v. Sohan Lal a Division Bench of that High Court, without noticing these two binding decisions, held that the Basic Valuation Register would form foundation to determine the market value and directed to determine the compensation on that basis. The entire controversy was considered by yet another Division Bench in Vasireddi Bharata Rao v. Revenue Divisional Officer. The Division Bench, after considering the case law disagreeing with Sohan Lal view as per incuriam, also reiterated that the Basic Valuation Register maintained by the registering authority has no statutory foundation to determine the market value and cannot form the base under Section 23(1) to determine the market value. This Court in Gulzara Singh v. State of Punjab held that mutation entries of the land transactions in the revenue records are not evidence unless the parties to the transactions have been examined in proof of documents. In Director of Survey-cum-LAO v. Mohd. Ghouse relied on by Mr. Ganguli, the Division Bench of Madras High Court, relying upon the instructions issued by the Government to determine the market value for the purpose of registration of the instrument under Section 47-A, held that it would form basis to determine the market value under Section 23 in an appropriate case, subject to proof of the market value. What were the instructions issued by the Government and whether they had any statutory foundation, have not been stated by the Division Bench. If the broad proposition of law that under Section 47-A of Stamp Act such instructions could be issued, as contended for the appellant herein, as appears to be the view of the High Court, it is not correct law. As we have already noted, Section 47-A being local amendment, made by each State Legislature did not find any such statutory basis. Like A.P. Act, Tamil Nadu Act is also referable to transactions intra vivos and not as general guidelines. If they are based on evidence inter partes it would be consistent with Section 47-A. Accordingly we hold that the basic value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands under Section 23 of the Act. The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette under Section 4(1) of the Act with reference to the sale deeds of the same lands or neighbour''s lands possessed of same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the reference court. The State did not file any appeal against the award of the reference court which itself is a matter gone in favour of the appellant. We do not find any justification to further enhance the market value."

37. In U.P. Jal Nigam Lucknow (supra) while reiterating the principle in Jawajee Nagnatham (supra), Hon''ble Supreme Court declined to accept the circular issued by the Government for determination of market value on the basis of Basic Valuation Register. The Court held,-

"5. This Court in Jawajee Nagnatham v. Revenue Divisional Officer had considered whether market value of the acquired land would be determined on the basis of basic valuation register maintained by the Collector for the purpose of levy of stamp duty under the Stamps Act and the method of valuation on that basis is valid in law. This question was considered in extenso in the context of the power of the State under Section 47-A of the Stamps Act to fix the basic valuation for stamp duty. After elaborate survey of the amendments made by the State Legislature by local amendment to the Stamps Act under Section 47-A, this Court had held that the market value shall be determined only on the basis of the evidence adduced by the claimant and in rebuttal thereof by the State, as to the prevailing market value of that particular land. The basic valuation is only for the purpose of collecting the stamp duty and that, therefore, it cannot form foundation to determine the market value.

6. The finding of the Court that the concession that the market value determined by the Collector on the basis of basic valuation would be properly applied, is obviously illegal. Shri Gopal Subramaniam contended that the Government of U.P. had issued three different circulars accepting the position that the basic valuation would form basis for determination of the compensation under Section 23(1) and that, therefore, the High Court was right in accepting the valuation made by the Collector and in directing to pay the compensation on that basis. After the judgment in Nagnathan''s case, the Division Bench of the High Court of Allahabad in State of U.P. & Ors. v. Shau Singh had held that the rates fixed for the collection of stamp duty cannot be relied upon to determine market value. Therefore, the instructions issued by the Government for determination of the market value on the basis of basic valuation register were held illegal. The Collector, therefore, was obviously wrong in determining the compensation under Section 23(1) on the basis of prevailing rates in 1992 as per basic valuation circulars."

38. This Court had the occasion to determine the market value of the land vis-?-vis DLC rates and the Court has found that DLC rates cannot be pressed into service as a guidelines for determining market value of the land. In Madanganj Hotels (supra), learned Single Judge of this Court discussed the issue relating to market value on the touchstone of DLC rates and found that DLC rates cannot be taken to be determinative and final for assessing market value of the land. The Court held,-

"10. Under the Rules of 2004, DLC rates or circle rates are only presumptive rates for the guidance of the registering authorities. They are only indicative and not final and yield to contra-evidence. DLC rates cannot supplant evidence on record on the market value of the land transacted even for the purpose of the Rajasthan Stamp Act 1998. It is trite that rebuttable presumptions can only be operative in a vacuum in the absence of evidence. The Hon''ble Division Bench of this Court in DB Civil Special Appeal (Writ) No. 887/2006 had allowed the applicants to produce additional evidence in support of their claim before the Arbitrator. It is inconceivable that if the DLC rates were to be taken to be determinative and final, the Hon''ble Division Bench would have allowed additional evidence to be produced by the applicants before the Arbitrator. The provisions of section 3G (7) of the Act of 1956 are quite clear and speak of determination of market value. Market value is a matter of evidence. If the intention of the Act of 1956 was to determine the compensation on the basis of DLC/Circle rates it would have been so provided in clear terms. In Thakur Kuldeep Singh (D) thr. L.R. and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has held that market value for acquired lands cannot be fixed merely on the basis of circle rates and the locality and prevailing circumstances are relevant for determining the real value of the land. In Mcdermott International Inc. v. Burn Standard Co. Ltd. and Others (supra) the Hon''ble Apex Court has held that interference with the awards by the Arbitrators can be made on the ground of patent illegality where such illegality goes to the root of the matter. Public policy as provided for in section 34(2)(b)(ii) of the Act of 1996 has been held to include situations of injustice and immorality as also situations of patently illegality. In the case of Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation, it has been held that an award contrary to the provision of law or the Arbitration & Conciliation Act, 1996 or even the terms of the contract would be patently illegal and opposed to the public policy of India and if it affects the rights of the parties would be open to interference by the Court under section 34 of the Act of 1996. In the case of Mcdermott International Inc. v. Burn Standard Co. Ltd. and Others (supra) the Hon''ble Supreme Court has held that unless the patent illegality goes to the root of the matter and the award is so unfair and unreasonable as to shock the consequence of the Court it would constitute a public policy violation. In the case of Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (supra) the Hon''ble Apex Court has held that public policy as set out in section 34 (2)(b)(ii) of the Act of 1996 should be allowed a wider meaning to facilitate setting aside of patently illegal awards. In the case of Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, the Hon''ble Supreme Court has held that violation of due process would also be hit by public policy contravention within the meaning of section 34(2)(b)(ii) of the Act of 1996."

39. In Smt. Kausalya Devi Bogra (supra) Hon''ble Apex Court while considering the factors for determination of compensation under Section 23 of the Act of 1894 opined that instances of small plots of land is not a proper guide for large tracks of land without giving deduction. The Court held,-

"13. Two principles relating to the matter of fixation of compensation relevant for the present purpose may be kept in view. When large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property (see (Prithvi Raj Taneja v. State of Madhya Pradesh; Padma Uppal v. State of Punjab. In certain other cases this Court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given. In Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, a reduction of 25% was indicated while there are certain other cases where the view is that the reduction should be to the extent of 1/3. Again, in the very scheme for fixation of compensation provided by the Land Acquisition Act there is bound to be some amount of arbitrariness. The acquisition is deemed to be a statutory purchase and on the basis of evidence the law requires an assumed consideration to be determined. Keeping in view the fact that acquisition is of compulsory nature, a solatium of 15% on the valuation is provided. Bearing these considerations in view and taking into account the fact that the lands in question were located in a developed part of Aurangabad and had considerable potential value, we proceed to fix the market value of the property. One acre of land is equal to 4840 square yards. The learned Civil Judge had maintained a distinction between the two classes of lands. We take note of that fact also in the matter of determining the compensation. We, however, do not propose to indicate separate valuations for the two classes of lands. Taking an overall picture of the matter, we direct compensation to be fixed at the rate of Rs. 1.50 per square yard or Rs. 7260 per acre for all the lands of the present appellants acquired by the notification in question. Over and above this amount, the appellants shall be entitled to statutory solatium of 15% as also interest at the rate of 6% per annum on the additional compensation from the date of dispossession till payment thereof. We direct the Collector to work out the compensation on the basis indicated above within two months from today. If the amount so determined is not paid within three months thereafter, the interest on the additional compensation shall be at the rate of 12% per annum till payment is made."

40. In Rajendra Singh (supra), Hon''ble Apex Court while considering the reference under Section 18 of the Act of 1894 for determination of enhanced amount of compensation dilated on Section 23 and held that burden lies on claimant to prove proper, just and adequate compensation to the acquired land.

41. In Ravindra Kumar Gupta and Company (supra) while construing the term "market value" under Section 23 of the Act of 1894 with reference to comparable sales laid down the principles. The Court held,-

"6. The civil court took due notice of the settled propositions of law that at the time of hearing of objections under Section 30 of the Arbitration Act, 1940 the jurisdiction of the court is limited. It has also been noticed that the court cannot hear the objections against the award as an appellate court, as the arbitrator is the final arbiter of the dispute referred to him. After noticing the legal position and after examining clauses of the agreement, the award has been made the rule of the court.

7. The findings of the civil court were challenged by the Union of India in appeal before the High Court, which has been partly allowed. In partly allowing the appeal the Division Bench has set aside the findings recorded by the arbitrator by merely stating as follows:

"So far as the contention of learned counsel for the appellant that Claim 5 is against clause 11(c) of IAFW, which is part of the agreement, is concerned, we have carefully perused the award given by the arbitrator as well as the impugned judgment of the court below. Claim 5 was for loses due to hold-ups and delay in the work. The Union of India in reply before the arbitrator stated that the delay in execution of work was due to default of the contractor himself. He had not employed sufficient manpower and resources to complete the work in time. There is no reason to disregard this statement on behalf of the appellant Union of India. We find that the arbitrator acted unreasonably and irrationally in ignoring the limits and the provisions of the contract as submitted by the learned counsel for the appellant."

8. We are of the considered opinion that the High Court committed a serious error in re-appreciating the evidence led by the parties before the arbitrator. This evidence was duly scrutinized and evaluated by the arbitrator. With regard to Claim 5, the arbitrator has given elaborate reasons. Therefore, findings recorded by the arbitrator cannot be said to be either perverse or based on no evidence. A firm finding has been recorded that under Claim 5 there was default and delay on the part of Union of India with respect to:

(i) The payment of RARs final bill.

(ii) Delay in appointing agency for ATT.

(iii) Delay in giving decision.

(iv) Increase in height of Tent plinth (given late).

This conclusion has been erroneously substituted by the High Court with its own opinion on appreciation of the evidence. Such a course was not permissible to the High Court while examining objections to the award under Section 30 of the Arbitration Act, 1940.

9. The law with regard to scope and ambit of the jurisdiction of the courts to interfere with an arbitration award has been settled in a catena of judgments of this Court. We may make a reference here only to some of the judgments. In State of Rajasthan v. Puri Construction Co. Ltd. this Court observed as follows:

"26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v.

Govt. of Kerala it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. (emphasis in original) Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator.

27. In MCD v. Jagan Nath Ashok Kumar, it has been held by this Court that appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word ''reasonable''. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is ''reasonable'' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy disciplined by system and subordinated to the primordial necessity of order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable."

42. Hon''ble Supreme Court in its earlier decision in Chimanlal Hargovinddas (supra) has dilated on the factors to be considered while assessing the market value on the basis of sale transaction.

43. In Ram Singh (supra), Hon''ble Apex Court has discussed the term "market value" under Section 23 of the Act of 1894 and held,-

"11. We are left with the question whether the High Court could have granted a further amount on account of potential value over and above the market value by way of compensation. Under Section 23(1) of the Act, in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration the market value of the land at the date of publication of the notification under Section 4 , sub-section (1). The statute does not allow for payment of any further amount on account of ''potential value'' over and above the market value. Besides ''market value'' means exactly what it says viz. the price which the asset would or could be expected to fetch in the open market. Where a property has the potentiality of more profitable use, it will command a better price than property without such potential. In other words, potentiality forms part of the market value and may be a factor to be taken into account for the purpose of determining the market value. But once the market value is determined, there is no question of awarding any further amount in addition thereto by reason of any further future potential. The decision relied upon by the claimants do not hold to the contrary."

44. In Periyar and Pareekanni Rubbers Ltd. (supra), Hon''ble Apex Court while underlining the principle to fix a fair market value with reference to comparable sales opined that it is desirable to reduce the element of speculation. The Court held,-

"10. Therefore, the transaction relating to the acquired land of recent dates or in the neighbour-hood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principle to fix a fair market value with reference to comparable sales is to reduce the element of speculation. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. As held by this Court in Collector, Raigarh v. Dr. Hari Singh Thakur, that fictitious and unreal transactions of speculative nature brought into existence in quick succession should be rejected. In that case it was found by majority that these sale deeds are brought up sales. In Administrator

General of West Bengal v. Collector, Varanasi, it was held that the market value of a piece of property, for the purposes of Section 23 , is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arm''s length. The prices fetched for similar land with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc."

45. In Shaji Kuriakose (supra), Hon''ble Apex Court dilated on fixing of market value by adopting comparable sales method. The Court held,-

"3. It is no doubt true that Courts adopt Comparable Sales Method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as Capitalisation of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, that (3) the land covered by the sale must be in the vicinity of the acquired land, that (4) the land covered by the sales must be similar to the acquired land and that (5) the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ex. A-4 is genuine, inasmuch as sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ex. A-4. The land covered by Ex. A-4 is situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlong from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ex. A-4 is a dry land and whereas the acquired land is a wet land. After acquisition, the acquired land has to be re-claimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ex. A-4 relates to a small piece of land which do not reflect the true market value of the acquired land. If it is often seen that a sale for a smaller plot of land fetches more consideration than larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation than what was the market value of the land covered by Ex. A-4. We, therefore, do not find any infirmity in the judgment of the High Court."

46. The law laid down by Hon''ble Apex Court to construe the phrase "market value" has many dimensions depending on facts of an individual case. If the contentions of the rival parties on this issue are analysed with objectivity, then a clear picture is emerged out that there is a consensus among the parties for determination of compensation on the basis of market value of the land on the date of publication of the notification under Section 3A of the Act of 1956 but for variance for the criteria, to be pressed into service. The appellant being dissatisfied with the market value of the land as determined by the learned court below, Arbitral Tribunal and the Competent Authority has pointed out many pitfalls in its determination and more particularly the DLC rates. Essentially, the DLC rates vis-?-vis industrial land as per the appellant are fixed solely on the basis of development charges rates/concessional rates prescribed by RIICO every year which is not in consonance and in conformity with the market value. That apart, the appellant has also urged that the factor which was relevant and germane to the matter namely that acquired land is surrounded by a wide commercial area has not been taken into consideration. Yet another ground of challenge is that in determining the market value contemporaneous sale deeds in the proximate area which were on record were completely eschewed by the learned court below as well as the other authorities.

47. On the other hand, learned counsel for the respondent has urged with full emphasis that DLC rates were the determination factor and have been rightly pressed into service for assessing the compensation for the acquired land.

48. Upon perusal of the materials available on record more particularly Annexure-12 dated 10/11-05-2007 which was made available to the appellant under the Right to Information Act by the Dy. Inspector General, Registration and Collector, Stamps, Circle Udaipur, it is amply clear that sole basis for determining the DLC rates is the rates prescribed by RIICO. The recitals contained in Point Nos. 5, 6 & 7 in vernacular read as under:-

49. The aforesaid recitals are indicative of the fact that vis-?-vis industrial land allotted by RIICO, the methodology adopted by the District Level Committee under the Stamp Act is not a scientific method and there is no endeavour by the Members of the Committee to discuss the issue threadbare. Essentially, the

District Level Committee is guided by the development charges rates/ concessional rates prescribed by RIICO which is per se not reflective of market value of the land. Therefore, it is a firm belief of this Court that DLC rate vis-?-vis industrial land has no proximity with the market value of the land and its determination by the District Level Committee is without application of mind apparently, falling short of the criteria for determining market value of the land as envisaged under Section 23(1) of the Act of 1894 and Sub-section (7) of Section 3G of the Act of 1956, as the case may be. It is also noticeable that learned court below, Arbitral Tribunal as well as the Competent Authority have not at all cared to appreciate even a vital fact that land of the appellant is surrounded by commercial area wherein commercial activities are in perpetuation. Even no endeavour was made to consider contemporaneous sale deeds of the proximate area for determining a just compensation after pressing into service compulsory acquisition of the land. May it be that the Act of 1956 is inspired by the principles of ''Eminent Domain'', it cannot be said that an incumbent like the appellant who has been divested of its land can be deprived of a fair amount of compensation commensurating with the market value. The sole defence of the respondent to justify the amount of compensation determined is the DLC rates vis-?-vis industrial land, which, in considered opinion of this Court, is not a valid criteria as the same is based on mere ipse dixit of the Members of the District Level Committee. Non-consideration of the sale deeds of the proximate area may be of a small piece of land, cannot be cited as a valid reason inasmuch as there is no trite law on this subject that such sale deeds cannot be a guiding factor for determining market value of the land. At times, probably the sale deeds of the proximate area may not reflect the market value of the land acquired but it is rather difficult to fathom that such sale deeds are to be completely ignored or overlooked for determining fair and competitive market value of the land acquired. Right of someone whose land has been acquired to receive a just and fair amount of compensation is well recognised and that right cannot be circumscribed or curtailed by offering meagre amount of compensation which is a pittance only.

50. Former Chief Justice of India and Vice-President of India, Justice M. Hidayatullah in his lecture on ''Right to Property and the Indian Constitution'' highlighted on the question of compensation under the Land Acquisition Act and guiding factors for its determination has discussed the issue threadbare. The relevant excerpts of the lecture of Hon''ble Justice M. Hidayatullah read as under:-

"In the first case, Lord Macmillan, Lord Romer and Sir George Rankin laid down that land compulsorily acquired must be valued not merely by reference to the use to which it was being put at the time at which its value had to be determined, but also with reference to the use to which it was reasonably capable of being put in the future. That case arose when the Vizagapatnam Habour Authority acquired lands adjoining the harbour. Situated on these lands was a shallow basin in a valley and it formed the catchment area for the water of a spring. Even in the dry season the spring was yielding 50,000 gallons of excellent drinking water, some 150 feet above sea-level. This water was not being put to any use by the owner and it used to discharge itself into the creek. The harbour site was malarious and the wells which were the source of water for the locality were breeding grounds for malaria-bearing mosquitoes. The wells had to be closed and other supply of water had to be obtained. The spiring ideally answered this need and was expected to be of considerable utility to oil companies and other industrial concerns likely to be established near the harbour. To use this water all what was necessary to do was to construct a tunnel and divert the water to the harbour area. About 109 acres of land were, therefore, compulsorily acquired. The question of compensation was taken up under sections 23 and 24 of the Land Acquisition Act, 1894. These sections closely followed the provisions of the Land Clauses Act of 1845 in England before the Acquisition of Land (Assessment of Compensation) Act of 1919.

In laying down the law the Judicial Committee observed that neither the buyer nor the vendor must be considered as acting under compulsion and the price must be the price a willing vendor would expect to obtain from a willing buyer. It was not the price that would be paid by a ''driven'' buyer to an ''unwilling'' vendor. The potentiality of the land for lucrative future use must be considered. Where the land had the unusual features or potentialities, the valuing officer must ascertain as best as he can from the materials before him the price a wiling purchase would pay for the land with these features of potentialities. The owner was entitled to, and the valuing officer must, ascertain the value of the potentialities even when the only possible purchaser of the potentialities was the authority purchasing under power enabling compulsory acquisition. Lord Romer emphasised that the land was essential for antimalarial works and the authority needed the land for the purpose, and based his decision on the principles contained in section 23 of the Act and took assistance of certain English and Scottish cases but did not refer to a single case decided earlier in India or by the Privy Council itself, although quite a few were cited at the Bar. There was in fact Narsingdas v. Secretary of State (1924) L.R. 52 I.A. 133. There the valuation was to be based on the actual condition of the land with all its existing advantages, excluding any advantage due to carrying out of the schemes for which it was acquired. This was affirmed in Nouroji Rustamji Wadia v. Bombay Government (1952) L.R. 52 I.A. 367.

The principle of compensation as determined by the Privy Council in this case may be stated in a few simple words. The main determinant factor was the market price which could be found if lands of similar kind and situation were sold by private treaty earlier and the price paid was ascertainable. Even this fact was not held decisive. It was laid down that not only should the present use determine the price but also the potentiality of its use in future was to be considered and even considered in cases where the only possible purchaser was the only person who could avail himself of this potentiality.

In the second case Babu Kailash Chandra Jain vs. Secretary of StateAIR 1946 132 (Privy Council) , the application of wrong principles of valuation giving rise to injustice and thus leading to interference by the higher authorities under the Land Acquisition Act was gone into. That case turned on the provisions of section 23 of the Land Acquisition Act as amended by the United Provinces Town Improvement Act, 1919. In that case Lord Macmillan, Lord Wright, Lord du Parcq, Martin L.J. and Sir John Beaumont were compelled to leave out future potentialities because the amendment had removed them from consideration. Their Lordships observed that only the present use of the land could be considered for the purpose of arriving at the market value."

51. In view of foregoing discussions and upon a thorough examination of materials available on record in conjunction with legal propositions adumbrated by the judicial pronouncements, unhesitantly in my opinion, determination of the market value of the land acquired is grossly inadequate and not satisfying the criteria for fair determination of the compensation. Consequently, rejection of application/objection of the appellant under Section 34 of the Act of 1996 so as to modify the arbitral award cannot be sustained. This sort of situation has cleared the decks for re-determination of the amount of compensation commensurating with the market value of the land.

52. The acquisition proceedings in the instant case were initiated by the respondent-NHAI almost more than a decade back and the matter has been examined threadbare by this Court as well as by the learned court below, Arbitral Tribunal and the Competent Authority, therefore, I do not feel persuaded to remand the matter back and feel inclined to settle it perpetually at this stage. Moreover, on thorough examination of the record, in my opinion, sufficient evidence is available to facilitate final determination of the case and, therefore, by resorting to Rule 24 of Order XLI CPC, the matter is finally decided at this stage.

53. Now the question that has cropped up is of vital significance as to what would be the adequate compensation to be offered to the appellant. The appellant has romped in the market value of the land acquired in Amberi Village at the rate of Rs. 400/- sq. ft. with assertion to award relatively enhanced rate by citing the reason that the land in question is abutting the center on the four lane of NH-8 and within the perimeter of 150 metrs. On this anvil, appellant has claimed enhancement @ Rs. 567/- per sq. ft.

54. To substantiate its claim for enhancement of compensation, the appellant has also placed heavy reliance on contemporaneous sale-deeds in the proximate area, which are on record. The market value of the land cannot be taken to static as it is always fluctuating but then by applying new horizons giving wide meaning to the term "Fundamental policy of Indian Law" and "Wednesbury''s principle of reasonableness", a fair amount of compensation is required to be awarded to the appellant to satisfy the test of rationality.

55. In totality, to meet the ends of justice, a reasonable and proportionate amount of compensation for the land of the appellant acquired even if moderately assessed comes to Rs. 550/- per sq. ft.

56. The appellant is, accordingly, declared entitled for enhanced amount of compensation at the rate of Rs. 550/- per sq. ft. with interest @ 9% per annum on the enhanced amount.

57. Therefore, viewed from any angle, I am unable to subscribe the view of the learned court below and accordingly the appeal succeeds.

58. The upshot of above discussion is that instant appeal is allowed, impugned order passed by learned court below is set aside and the application/objection under Section 34 of the Act of 1996 of the appellant is allowed in part as indicated hereinabove by modifying the arbitral award as well as award of the Competent Authority. The respondent-NHAI is directed to re-determine the amount of compensation of the land acquired at the enhanced rate of Rs. 550/- per sq. ft. and pay requisite enhanced amount to the appellant within three months from the date of decision. The enhanced amount would carry interest @ 9% per annum from the date of award passed by the Competent Authority in terms of Section 31(7)(b) of the Act of 1996.

59. Costs are made easy.

