

(2015) 07 AHC CK 0212

In the Allahabad High Court

Case No : First Appeal Nos. 141 and 142 of 2005

Power Grid Corporation of India Ltd.

APPELLANT

Vs

Chandru and Others

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 23(1A)

Citation : (2015) 11 ADJ 436 : (2016) 114 ALR 389

Hon'ble Judges : Sudhir Agarwal and Ranjana Pandya, JJ.

Bench : Division Bench

Advocate : Piyush Bhargava, for the Appellant

Final Decision : Dismissed

Judgement

1. We have heard Sri Piyush Bhargava, counsel for the appellants and learned counsel for the respondents. Both these appeals under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as the "Act, 1894") have arisen from the award/Judgment dated 29.9.2004 passed by Sri S.D. Paliwal, Additional District Judge, Court No. 17, Meerut adjudicating 39 Land Acquisition References (hereinafter referred to as the L.A.R.") including L.A.R. Nos. 119 of 1998, Chandaru v. State of U.P. and others and 116 of 1998, Atar Singh (now deceased and substituted by his legal heirs) v. State of U.P. and others.

2. Since both these appeal have arisen from the common award/Judgment, hence, have been heard together and are being decided by this common Judgment.

3. For the purpose of establishing 765/400/220 K.V. substation, the Power Grid Corporation of India Limited, Ghaziabad (hereinafter referred to as the appellant") sought to acquire 70.7562 hectare of land in village Mataur and Samauli Salempur, Tehsil Sardhana, Pargana Daurala, District Meerut and, for the said purpose, State Government issued notification under Section 4(1) of Act, 1894 on 13.2.1995. Notification under Section 6(1) was published on 17.9.1995

and possession of acquired land was taken on 6.9.1996. The Special Land Acquisition Officer, Meerut (hereinafter referred to as "S.L.A.O.") made its award dated 20.2.1998 on various rates depending upon the nature of soil following the circle rate. He determined different rates for both the villages and the same are as under:

4. We find that in respect of village Mataur, the prescribed circle rate was followed and the same was applied to village Samauli Salempur. Average rate comes to around Rs. 25/- per sq. meter. Dissatisfied therewith, a large number of tenure holders submitted application for making reference to District Judge, Meerut for determination of market value under Section 23 of Act, 1894 pursuant where to the impugned award dated 29.9.2002 has been passed by Court below determining market rate at Rs. 131 per sq. meter. The Court below has also allowed additional compensation at the rate of 12 per cent under Section 23(1A) , 30 per cent solatium under Section 23 (2) and interest for different periods as per various provisions of Act, 1894.

5. The dispute before this Court is confined to the market value determined by the Court below at Rs. 131 per sq. meter.

6. The Reference Court formulated issues No. 1 and 2 as under:

"1. Whether the market rate of acquired land as determined by award is justified in accordance with Section 11 of Land Acquisition Act? If not,, then what is appropriate rate of compensation?

2. Whether the acquired land was agricultural and was being used for agricultural purposes or to which extent the acquired land had the potentiality for residential and industrial use?"

(Translation by the Court)

7. It has been admitted before us and has also been found by Reference Court that acquired land situates on Meerut-Muzaffarnagar, Grand Trunk Road near Daurala Township. A number of commercial and educational institutions exist thereat. The acquired land is also near Daurala Sugar Mill and several other connected industrial units thereof. The land has great potential. Claimant-land holders requested that compensation should be paid at the rate of Rs. 500 per sq. meter.

8. It is also evident from the record that S.L.A.O. also relied on a sale-deed dated 26.5.1995 executed by Richh Pal Singh in favour of his wife Smt. Dayawati and aunt Smt. Rewati transferring 0.6934 hectare of land of Khasra No. 1203 at the rate of Rs. 25/- per sq. meter.

9. The Court below found that looking to the admitted facts that Richh Pal Singh was engaged in lot of litigations and in dire need of money and there was a family dispute also and also the fact that there was normally no occasion to transfer land by husband in the name of wife by sale unless some exceptional

reasons exist, the said document cannot be said to have been executed bona fide for valid consideration and, therefore, it was not credible material to determine market value. Having said so, it found that there was a sale-deed dated 11.3.1996 executed by Richh Pal Singh and Om Prakash through Power of Attorney Holder Anag Pal in favour of Videsh Sanchar Nigam Limited, transferring 6000 sq. meter at the rate of Rs. 131.50 per sq. meter, which is quite reliable. In order to accept sale-deed executed after notification under Section 4(1) was published, it relied on Apex Court decision in State of Uttar Pradesh Vs. Major Jitendra Kumar and Others, and Administrator General of West Bengal Vs. Collector, Varanasi, . It has also noticed that mere fact that the land was being used for agricultural purpose would make no difference since situated near G.T. Road, it has a lot of potential with respect to its user and suitability for various purposes, which is also required for the purpose of distribution and transmission of electrical energy, hence, compensation ought not to depend on nature of soil. With respect to deduction in respect of size of land, Reference Court has found that area of holdings of tenure holders vary from 0.0001 hectare to 0.880 hectare, hence, there is no justification for making deduction in compensation payable to tenure holders having small size of holdings than those whose area of land acquired is large.

10. It is vehemently contended that reliance placed on sale-deed executed on 11.3.1996, after notification under Section 4(1) published on 13.2.1995, was wholly illegal inasmuch as once acquisition proceedings are started, there is always a tendency of increase in price of land and, therefore, sale-deed executed after more than three years ought not to have been relied on, particularly when a better exemplar was available in the form of sale-deed dated 26.5.1995. It is further said that the Court below has erred in law in holding that there was no substantial change in price of land from 1994 to 1998 and reliance placed on various exemplars is erroneous since the same were in respect of very smaller size of land.

11. Per contra, learned counsel appearing for claimant-respondent tenure holders contended that acquired land has great potential and sale-deeds of corresponding period, even if of smaller piece of land, show much higher price of land and if even 50 per cent deduction would have been allowed, market value would have come to around 150 per sq. meter, therefore, Court below in determining market value at Rs. 131 per sq. meter has not committed any error and appeal deserves to be dismissed.

12. From record, it appears that there were two sale-deeds dated 25.4.1994 executed by one Jasvir Singh transferring 165.35 sq. meter of land at the rate of Rs. 300 per sq. meter to Smt. Chironji and dated 16.8.1994 executed by Surendra Singh transferring 105 per sq. meter of land at the rate of Rs. 300/- per sq. meter to Smt. Kripa Devi. Both these land situate in village Mataur.

13. So far as the sale-deed dated 26.5.1995 is concerned, Reference Court has clearly observed that circumstances and other factors show that transfer of land

by sale by Richh Pal Singh in favour of his wife and aunt, was a kind of distress sale and for reasons other than bona fide, hence, that document was not credible. The Court has observed that generally there is no reason for a husband to execute sale-deed in favour of his wife. Consideration was not paid before Sub Registrar but it was claimed that entire consideration had already been paid at the residence. The S.L.A.O. himself has noticed in the award that Richh Pal Singh was facing a large number of Court cases and in dire need of money; wife was residing with her husband and argument was advanced by one of the counsel for claimants that in order to save land from fragmentation, sale-deed was got executed. These facts noticed in the impugned award have not been disputed and, therefore, we are also of the view that aforesaid document has rightly been rejected by Court below.

14. Now, issue comes "whether determination of market value at Rs. 131 per sq. meter relying on a subsequent sale-deed dated 11.3.1996 is justified."

15. At this stage, it would be appropriate for the Court to have a bird eye view of various authorities laying down various principles on which market value should be determined in respect of land forcibly to be acquired under the Act, 1894.

16. Counsel for the parties do not dispute that circle rate fixed by Collector cannot be basis for determining market value. In *Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others*, , this question came up for consideration in the matter arisen from the State of Andhra Pradesh. The land owners appealed against order of Reference Court before Andhra Pradesh High Court claiming higher compensation on the basis of the basic valuation register maintained by Revenue authorities under Stamp Act, 1899. The claim of land owners failed in High Court which held that such register had no evidentiary value on statutory basis. In appeal, Apex Court held that basic valuation register was maintained for the purpose of collecting stamp duty under Section 47-A of Stamp Act, 1899 as amended in State of Andhra Pradesh. It did not confer expressly any power to the Government to determine market value of the land prevailing in a particular area, i.e., village, block, district or region. It also did not provide, as an statutory obligation, to Revenue authorities to maintain basic valuation register for levy of stamp duty in regard to instruments presented for registration. Therefore, there existed no statutory provision or rule providing for maintaining such valuation register. In the circumstances, such register prepared and maintained for the purpose of collecting stamp duty had no statutory force or basis and cannot form a valid criteria to determine market value of land acquired under Act, 1894. This decision was followed in *Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another*, .

17. Another matter from State of U.P. came up for consideration involving the same issue in *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, . The land owners' demand for compensation in regard to land acquired under Act, 1894 on the basis of market value assessed as per circle rate determined by Collector was accepted by High

Court but in appeal Judgment was reversed by Supreme Court following its earlier decision in *Jawajee Nagnatham* (supra). The Court held that market value under Section 23 of Act 1894 cannot be determined on circle rates determined by Collector for the purpose of stamp duty under Stamp Act 1899. This view was reiterated in *Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another*, .

18. The issue has again been considered recently in *Lal Chand Vs. Union of India* (UOI) and *Another*, , wherein two Judgments of Apex Court taking a view that circle rates may be considered as prima facie basis for the purpose of ascertaining the market value were examined. These decisions are *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, and *R. Sai Bharathi Vs. J. Jayalalitha and Others*, . The Court resolved controversy in *Lal Chand v. Union of India*, holding, if in a particular case, guideline market values are determined by an Expert Committees constituted under State Stamp Law for following a detailed procedure laid down under the relevant rules and are published in State Gazette, the same may be considered as a relevant material to determine market value. The Court said when guideline market values, i.e., minimum rates for registration of properties, are so evaluated and determined by Expert Committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. Having said so in para 44 the Court further stated as under:

"44. One of the recognised methods for determination of market value is with reference to the opinion of experts. The estimation of market value by such statutorily constituted Expert Committees, as expert evidence can, therefore, form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either streetwise, or roadwise, or areawise, or villagewise) and finalised after inviting objections and published in the gazette. Be that as it may."

19. Following aforesaid decisions and applying the same to the facts of present case, we find that it is no body's case that circle rates fixed by Collector, Ghaziabad do satisfy the requirement as observed in *Lal Chand v. Union of India*, so as to form a relevant material to be considered for determining market value under Section 23 of Act, 1894. It is, in these circumstances, we have no hesitation in holding that in respect of determination of market value of land acquired in these appeals, circle rates fixed by Collector would not be relevant material to be looked into for determining market value.

20. So far as material placed before S.L.A.O. and his award is concerned, we find that the same was not material to be looked into by Reference Court since

proceedings before Reference Court are independent and separate. An award by S.L.A.O. is like an offer and not to be treated as a judgment of Trial Court. It is well-settled, when the land holders are not agreeable to accept the offer made by Land Acquisition Officer, they have a right to approach Collector under Section 18 of the Act, 1894, by a written application, for referring the matter to Court, for determination of the amount of compensation or if there is any dispute regarding measurement of land for that also. In the present case the references in question were made at the instance of claimants for determining the amount of compensation.

21. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, the Court has said that a Reference is like a suit which is to be treated as an original proceeding. The claimants are in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate. However, for the said purpose the Court would not consider the material, relied upon by Land Acquisition Officer in award, unless the same material is produced and proved before the Court. The Reference Court does not sit in appeal over the award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before the Reference Court. Determination of market value has to be made as per market rate prevailing on the date of publication of notification under Section 4 of Act, 1894. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. the Court is a hypothetical purchaser, willing to purchase land from the open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under Section 4 of the Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. The Court, therefore, would co-relate market value reflected in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words a balance sheet of plus and minus factors may be drawn and the relevant factors may be valued in terms of price variation, as a prudent purchaser would do. The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors.

"27. Some of the illustrative examples of plus and minus factors given by the Court in *Chimanlal Hargovinddas* (supra) are as under:

22. The size of the land, therefore, would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. The Court said that in such matters, the factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

23. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number of land holders and size of their plots. When we talk of concept of a prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller the individual land holder will come. It is the area of his holding which will be relevant for him and not that of actual total and collective large area which is sought to be acquired.

24. In *V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI)*, , the land acquired by notification dated 6.7.1970 in village Chicalim near Goa Airport belonged to a single owner. The Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of fetching higher price in comparison to the plot which are much higher in size. Having said so the Court further said "though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined".

25. Again in *Shakuntalabai (Smt) and Others Vs. State of Maharashtra*, , 20 acres of land in Akola town was sought to be acquired by notification published on 11.8.1965 under Section 4(1) of Act, 1894 which was also owned by a single person. It is in this context the Court said "the reference Court committed manifest error in determining compensation on the basis of sq. ft. when land of an extent of 20 acres is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider valuation sitting on the armchair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously no".

26. We may also notice at this stage that deduction for development is different than the deduction permissible in respect of largeness of area vis-?-vis exemplar of small piece of land. Many times, land owners relied on the rates on which development authorities used to offer allotment of developed plots cropped out by them in residential or industrial area. Such rates apparently cannot form the basis for compensation for acquisition of undeveloped lands for reasons more

than one. The market value in respect of large tract of undeveloped agricultural land in a rural area has to be determined in the context of a land similarly situated whereas allotment rates of development authorities are with reference to small plots and in a developed lay out falling within urban or semi-urban area. The statutory authorities including development authorities used to offer rates with reference to economic capacity by the buyer like economic weaker sections, low income group, middle income group, higher income group etc. Therefore, rates determined by such authorities are not uniform. The market value of acquired land cannot depend upon economic status of land loser and conversely on the economic status of the body at whose instance the land is acquired. Further, normally, land acquired is a freehold land whereas allotment rates determined by development authorities etc. constitute initial premium payable on allotment of plots on leasehold basis.

27. However, where an exemplar of small piece of land is relied, in absence of any other relevant material, Court may determine market value in the light of evidence relating to sale price of small developed plots. In such cases, deduction varying from 20% to 75% is liable to apply depending upon nature of development of lay out in which exemplar plot is situated.

28. In *Lal Chand v. Union of India* (supra), Court noticed that this deduction for development constitutes two components-one is with reference to area required to be utilized for development work and second is the cost of development work. It further held that deduction for development in respect of residential plot may be higher while not so where it is an industrial plot. Similarly, if acquired land is in a semi-developed urban area or in any undeveloped rural area, then deduction for development may be much less and vary from 25 to 40 percent since some basic infrastructure will already be available. The percentage is only indicative and vary depending upon relevant factors. With reference to exemplars of transfer of land between private parties, Court would also look into the intrinsic evidence, i.e., the exemplar sale-deed where the sale-deed recites financial difficulties of vendor and urgent need to find money as a reason for sale or other similar factors, like litigation or existence of some other dispute. These are all the factors constituting intrinsic evidence of a distress sale.

29. In *Lal Chand v. Union of India* (supra), the Court also observed, if acquisition is in regard to a large area of agricultural land in a village and exemplar sale-deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale-deed as prima facie evidence of prevailing market value even if such land is at the other end of village, at a distance of one or two kilometers. But, the same may not be the position where acquisition relates to plots in a town or city where every locality or road has a different value. A distance of about a kilometer may not make a difference for the purpose of market value in a rural area but even a distance of 50 meters may make a huge difference in market value in urban properties. Thus, distance between two properties, the nature and situation of property, proximity to the village or a road

and several other factors may all be relevant in determining market value.

30. Normally, the Courts have held that exemplars should be such which are before the date of notification under Section 4(1) but an exemplar sale-deed of a subsequent period of date of acquisition notification is not completely ruled out to be relevant document provided the circumstances to justify the same are available.

31. In *State of Uttar Pradesh Vs. Major Jitendra Kumar and Others*, , notification under Section 4 was published on 6.1.1948. The Court determined rate of compensation relying on sale-deed dated 11.7.1959, i.e., a document executed after almost three and half years after the date of acquisition notification. Supreme Court upheld reliance of such document observing that if there is no material to show that there was any fluctuation in market rate between the date of acquisition and the date of concerned sale-deed, such document may be considered as a relevant material in absence of any other apt evidence. This view was followed in a subsequent decision, i.e., *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1998 SC 943, where the Court said as under:

"Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value."

32. Further, we need not go into a catena of other decisions rendered in the last several decades since we are benefited of a recent Division Bench decision of this Court in First Appeal No. 454/2003 and other connected matters, *Meerut Development Authority through Its Secretary v. Basheshwar Dayal* (since deceased) Through His L.Rs and another, decided on 1.8.2013 wherein the legal principles settled by Apex Court in various judgments, relevant for determination of market value have been crystallized as under:

"(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification under Section 4(1) ,

(ii) The method for determination of market value may be:

(a) Opinion of experts,

(b) 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,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

(Ref. Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others,)

(iii) 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 had been sold in the 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 but subject to the following factors:

(a) Sale must be a genuine transaction,

(b) the sale-deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,

(c) the land covered by the sale must be in the vicinity of the acquired land,

(d) the land covered by the sales must be similar to the acquired land

(e) the size of plot of the land covered by the sales be comparable to the land acquired.

(f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land.

(iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition which are as under:

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. (Ref. Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc.,).

(viii) When there are several exemplars with reference to similar lands, it is the

general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. (Ref. Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others,).

(ix) In view of Section 51A of the Act certified copy of sale-deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale-deed would automatically be accepted. The legislature advisedly has used the word "may". A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. (Ref. Cement Corporation of India Ltd. Vs. Purya and Others,).

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(a) Existing geographical situation of the land.

(b) Existing use of the land.

(c) Already available advantages, like proximity to National or State Highway or road and/or developed area,

(d) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

(xi) Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(xii) The question whether a land has potential value or not, is primarily one of

fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others,)."

33. In the light of above general guidelines and also considering the fact that claimants have to be considered as plaintiffs before Reference Court, therefore, onus initially lay upon them to prove what is the appropriate market rate, we proceed to consider first whether in the present case such onus has been discharged by claimants or not, before Court below.

34. In the present appeals, Reference Court has relied upon the sale-deed dated 11.3.1996 to determine rate for compensation at Rs. 131/- per sq. meter holding that nothing has been brought before it to show that there was any escalation in price. Moreover, there were sale-deeds of 1994 in which land was sold in the same village at the rate of Rs. 300/- per sq. meter while in 1996, land was sold at the rate of Rs. 131/- per sq. meter. There was one more sale-deed dated 1.5.1998 wherein 235 sq. meter of land of Khasra No. 1176 was transferred by one Anag Pal at the rate of Rs. 255/- per sq. meter. Since sale-deed dated 11.3.1996 provided lowest rate whereby a large tract of 6000 sq. meter was sold by Richh Pal and Om Prakash, through their Attorney Holder Anag Pal to Videsh Sanchar Nigam, Reference Court found it relevant and relying thereto determined market rate at Rs. 131/- per sq. meter.

35. In fact, Reference Court in this way has shown a view favourable to the appellants. If it would have relied on the sale-deeds of 1994 whereby rate of land was Rs. 300/- per sq. meter, the determination of market value even by applying a sufficiently higher deduction, would have been higher than Rs. 131 sq. meter.

36. We may also notice at this stage that for acquiring 55.175 hectare of land in Village Mataur, the holdings of 112 tenure holders were acquired. Only 12 of them have size of their holding, one or more hectare. In rest of the matters, size of holding is very small ranging between 210 sq. meter to less than one hectare. Similarly in village Salempur, land of 52 khasara numbers have been acquired wherein only two khasara numbers had an area of more than one hectare and in respect of 50 khasaras, area vary from 180 sq. meter to less than one hectare.

Reference Court, at one stage, has observed that area of holding vary from 0.0001 hectare to 0.880 hectare but this is clearly a misreading inasmuch as there is no holding which is as small as 0.0001 hectare. Holding of smallest area is such as we have noticed above. Sale of smaller size holdings was comparable with two exemplar sale-deeds dated 25.5.1994 and 16.8.1994, which were before Reference Court whereby 165.33 sq. meter and 105 sq. meter of land were transferred at Rs. 300/- per sq. meter, and if these two documents would have been relied, in our view, the rate would have been higher than Rs. 131/- per sq. meter.

37. The land, subject-matter of transaction in sale-deed dated 25.4.1994, situate about 150 meter away from G.T. Road while the land, which was subject-matter of transaction in sale-deed dated 16.8.1994, was about 70-80 meter away. The aforesaid two sale-deeds if are taken as exemplars and looking to the smaller size of land transacted therein, 50 per cent deduction is allowed, the rate would have come to Rs. 150/- per sq. meter while on 11.3.1996, around 6000 sq. meter of land was transferred at the rate of Rs. 131/- per sq. meter. All these land situate near acquired land. The sale-deed dated 11.3.1996 was result of proceedings of purchase commenced on 22.12.1994 when Anag Pal, Attorney Holder of Richh Pal Singh and Om Prakash proposed to sell all his land at the rate of Rs. 300/- per sq. meter. That proposal, ultimately, finalized at the rate of Rs. 131.50 per sq. meter. Videsh Sanchar Nigam is an undertaking of the Government of India and it has purchased land after wide advertisement.

38. Even, for the sake of argument, for the time being, if we exclude sale-deed dated 11.3.1996, which has been relied on by Court below, there were two sale-deeds dated 25.4.1994 and 16.8.1994 whereby land was transferred at Rs. 300/- per sq. meter. Even if we apply deduction at the highest rate, i.e., 75 per cent, the rate would come to Rs. 75/- per sq. meter. This is the worst case when maximum deduction, if applied. However, in the present case, it is not in dispute that acquired land was on main G.T. Road of Meerut-Muzaffarnagar near Daurala Town. It has all developed activities like industrial, commercial, residential etc. We thus find no reason and none could be pointed out by learned counsel for appellant to justify application of maximum deduction in the case in hand, particularly when area of acquired land of most of the tenure holders is in smaller fragments. If we apply 50 per cent deduction, it would come to around Rs. 150/- per sq. meter. The Court below has allowed payment of compensation at the rate of Rs. 131/- per sq. meter meaning thereby deduction in respect of aforesaid two exemplars would come to around 56 per cent. In absence of any other material available before Court below, even if we rely on the aforesaid two exemplars and consider other attending circumstances in the light of exposition of law discussed above, we find that applying more than 55 per cent of deduction, the rate of acquired land would come similar to what has been held by the Court below.

39. We may also notice at this stage that looking to the location etc. and other factors of the land subject-matter of transfer in two sale-deeds of 1994 and the

land acquired which has most of the tenure holders having smaller fragments of land, normally the deduction of more than 25 to 30 per cent would have been justified and in case the land owners would have come in appeal, there could have been a valid & justified case of increase or enhancement of the rate determined by Reference Court. We, however, find no justification whatsoever to reduce the rate what has been determined by Reference Court. In our view, Reference Court has already taken a considerate view, favourable to appellants and any further squeezing of rates for compensation would only result in gross injustice to land losers who have already suffered due to forcible acquisition of their land by State at the instance of the appellants.

40. Here, we would also like to observe that these appeals have actually arisen from acquisition of land of respondent(s), who is/are basically farmer(s). The State, in exercise of its statutory powers, has taken away valuable source of earning livelihood and rather, the only source of livelihood available to respondent(s), and in lieu thereof, compensation is sought to be paid. It is true that acquisition of land is a statutory right of State and therefore, respondent(s), by itself, may not oppose it successfully. But the fact remains that action of State has deprived respondents from having the solitary means of earning livelihood, which is being pursued, by farmer(s), normally from generation to generation. The cash amount, paid to them, does not result, normally, in acquisition of another land by these persons. Experience has shown that most of time, cash money is spent on material luxuries and thereafter these poor farmers, deprived of their land, come on road, find it difficult to sustain a bare two times meal for themselves as also the family. The conflict of development of nation and right of individual, relating to his very sustenance, has a long chequered history of litigation as also legislation, giving rise to multifarious amendments in Land Acquisition Act. Now, a new enactment has come up.

41. The fact remains that agricultural land is continuously reducing though population of country is increasing and thereby creating another complication in the field of agricultural produce. The Court also finds that in the matter of compensation, if amount, thought to be adequate by State, is not accepted by Court below and compensation is increased, almost invariably land holders/farmers are dragged to higher Courts with continued litigation, which result in exhaustion of such person(s) not only in respect of their labour and energy but residuary worth and financial capacity etc. also. Sufficient amount of compensation, they are compelled to spent, in such litigation also.

42. The appeals normally are filed by State and its instrumentalities, as a matter of course, without any proper initial scrutiny whether it is worth filing or not and that is how a very huge chunk of appeal, in such matters, are filed by State against land holders/farmers, who are already denuded of their most valuable possession i.e. land/agricultural land. The State has constitutional obligation of a welfare State, must think over such aspect seriously. There should be an honest attempt to curtail frivolous, unfruitful litigation, particularly, if it can save

innocent and poor citizens from litigious harassment.

43. Be that as it may, since we have already noticed that Reference Court has already shown due lenient view in favour of appellant, we do not find any justification to interfere with the award in question so far as it determined market value for the purpose of compensation payable to the claimants-respondents. In the circumstances, we do not find any error in the impugned award requiring interference.

44. The point for determination noticed above is answered against the appellants and we hold that Reference Court has not erred in determining the market value for the purpose of compensation of acquired land at the rate of Rs. 131/- per sq. meter and it warrants no interference by this Court. The appeals are, accordingly, dismissed with costs.