
(1974) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : First Appeal No's. 113 and 172 of 1968

P.R. Modi

APPELLANT

Vs

The Collector, Durg

RESPONDENT

Date of Decision : 16-08-1974

Acts Referred:

Evidence Act, 1872 — Section 65(8)

Land Acquisition Act, 1894 — Section 18, 23, 4

Citation : AIR 1975 MP 57 : (1975) JLI 595 : (1974) 19 MPLJ 824

Hon'ble Judges : M.L. Malik, J;A.P. Sen, J

Bench : Division Bench

Advocate : K.P. Munshi and Y.K. Munshi, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Judgement

Malik, J.

These appeals and forty-eight more are directed against the order of the First Additional District Judge. Durg. made in connected references u/s 18 of the Land Acquisition Act. We propose to deal all the appeals together and the judgment delivered in these appeals shall be read as judgment in all the appeals.

The lands are situated in mouza Kasaridih, in tahsil and district Durg. The preliminary notification u/s 4 of the Land Acquisition Act was published on 27-10-1960 for acquisition of 24.37 acres. The notification u/s 6 of the Act was issued on 29-1-1964. It was detected that Khasra Nos. 839 and 959/14 measuring. 30 acres were inadvertently omitted from the notification and a fresh notification for acquisition of those Khasra numbers had, therefore, to be issued u/s 4 on 12-9-1963. Notification u/s 6 in respect thereof, is dated 8-10-1963.

On further verification, it was brought to light that Khasra No. 827/2 area .07 acres was notified in excess and should be left out. It was also found that an area of 4.24 1/2 acres out of the notified area was covered by houses and the proposal was not to acquire the land which was built upon. This area was,

therefore, to be deleted. The total area for acquisition thus worked out to 20.33 1/2 acres. Out of this area 3.43 acres was such land as was permitted to be diverted to non-agricultural purposes, though in fact, the land continued to be under plough or was Padti (waste land).

Persons ((recorded land holders) affected by acquisition were 46, out of which 39 filed their claim statements before the Land Acquisition Officer. They claimed compensation at the rate varying between Rs. 1.50 to Rs. 5/- per square foot. They, however, adduced no evidence before the Land Acquisition Officer nor did they file any record of income they derived from their respective lands.

The Land Acquisition Officer determined the award on the basis of multiple of 1069 per rupee rental. This is how he worked out the multiple. He had before him the index of sales which took place within 3 years prior to the acquisition. They were in all 325. He left out of consideration 208 sales which did not appear to him bona fide and for fair price. They were transacted by industrialists and businessmen at fancy prices. The transactions indicated according to him systematic disposal of small plots at house building site rates though the land was in fact, used for agriculture and was not developed and diverted for the use as a building site. The Land Acquisition Officer picked out 117 representative sales, determined the rental on basis of up-to-date classification of soil, divided the consideration of those 47 sales by the rental so worked out and found the multiple of 1069 per rupee rental. The total compensation worked out to Rs. 38307.85 Nps. for 20.35 1/2 acres. Allowing 15% solatium for compulsory acquisition which came to Rs. 5896.05 Nps., the award was made for Rs. 45203.90 Nps. Over and above this amount, the Land Acquisition Officer offered to pay 10% for the potential value. The land had certain existing advantages, and possibilities of being used as a build-ins site, which he took notice of. For trees and wells upon the land, the Land Acquisition Officer determined Rs. 1504.20 Nps. as the compensation.

The Additional District Judge who heard the references u/s 18 of the Land Acquisition Act was of the view that the multiple worked out by the Land Acquisition Officer was an arbitrary figure and that the Land Acquisition Officer was wrong in eliminating 208 recent sales which were mostly for building purposes. According to the learned Judge, the land acquired was suitable for construction of buildings; there was demand for house-sites; the acquired land fell within the municipal limits of Durg town; the Bhilai Steel Plant was at a distance of 8 miles from the Kasaridih abadi and its sector 9 almost a mile and half away, had its impact; the industrialists and businessmen were being attracted in the vicinity of these lands; some buildings had already come up: thus the land had a great potential value and, therefore, deserved to be valued as building site. In his assessment of the evidence, he felt that valuation by belts would determine just compensation payable. He divided the land into four rows; the first row abutting the road Durg-Uttai and the rest of the rows as one went deeper into the land. Unfortunately, the Judge did not give the depth of each row

from the frontage. He fixed the rate at Re. 1/- per Square foot for the first row, provided the land to be valued was less than 10,000 Square feet. For the second row the rate was fixed at .75 Nps. for the third row at 60 Nps. and for the fourth row at 50 NPS. per Square foot. The same condition applied to all the rows that in case the land exceeded 10,000 Square feet, but was below one acre, the value would be reckoned at half the rate. For land above one acre, the rate was further reduced to 1/3rd the rate fixed for plot below 10,000 Square feet.

We may state at the outset that howsoever reasonable the principle of multiple as derived by the Land Acquisition Officer may appear, it does not commend itself to us. At best, the value determined on the basis of multiple takes notice of the lands' fertility only. Its potential value as a building site and other possibilities by reason of its situation, do not enter into consideration. Besides, the multiple has been worked out on an index of sale which under the provisions of Section 65(8) of the Evidence Act would be a document inadmissible in evidence. Once the matter comes before a Court in a reference, the proceedings become strictly judicial and the basis on which the multiple had been worked out, for reasons of its inadmissibility, will have to be eliminated. The Court will then work only on admissible evidence to determine the market price. Evidence relating to actual sales within a reasonable time before acquisition, and its intrinsic character, shall guide the Court's decision. The Additional District Judge was right in ignoring the index of sale and the multiple derived on its basis.

It was argued by Shri E.K. Pandey, Advocate, on behalf of some of the claimants, that the index of sales having come to be exhibited as a document being the basis on which the multiple was worked out, the entry therein which indicated the highest price paid in a transaction, could be taken notice of for evaluating the market price. He said, it was an admission relating to transaction and the item in the index prima facie indicated that the entries were made after due verification. Since it was a document filed by the other side, the claimant was absolved from proving the transaction and the contents thereof.

This argument of the learned counsel has to be rejected. The argument overlooks two factors. Firstly, the Land Acquisition Officer has not relied on those transactions as representative sales for the purposes of determining the multiple. It would, therefore, imply that he did not take them as genuine transactions and had his doubts about the consideration shown therein. If the claimant relied on any transaction indicating a fair business deal, the onus was on him to prove the transaction by examining the parties thereto or those who had personal and direct knowledge about it. Such direct evidence has its relevance two-fold: (i) to prove the consideration actually paid and (ii) that the transaction was between a prudent purchaser and a willing vendor and that the price paid was the normal market rate prevailing then. A reference to index of sales obtained from the Registration Office or to revenue records noting the changes would avail nothing to the claimant. (Please see: *Maharao Shri Madansinhji Vs. State of Gujarat*,).

Secondly, the proceedings before the Land Acquisition Officer are not judicial. He

need not adhere to the strict rules of evidence. He has only to satisfy himself about the reasonableness of the offer to be made to the person whose land is being acquired. The sources for such satisfaction may be either his personal knowledge of the purchase and sale of the lands or the knowledge that he may derive from the local Patwaris, or from the Registration Office. The information so collected has not to be tested by the rules of evidence nor would such information be accepted in a court of law unless it is tendered strictly within the rules of admissibility. (We find support for this proposition in the earlier decision of this Court reported in: *The Collector Vs. Chaturbhuj Panda and Others*,).

Index of sales though exhibited, could not be used for any purpose whatsoever, much less for the purpose of picking out the highest price paid in a transaction. We have to determine the market value with reference to the evidence adduced about the transactions, bearing in mind its relevance and admissibility and its intrinsic character. The value on the date of publication of the notification u/s 4 of the Land Acquisition Act is the criterion. The meaning of the expression "market value" and the factors to be considered in determining it have been succinctly stated by the Supreme Court in *Zabar Singh Vs. The State of Uttar Pradesh*, thus :

"Market value on the basis of which compensation is payable u/s 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes of which the property is compulsorily acquired."

In para 5 of their Lordships' Judgment, dealing with the doctrine of potential value the following observations have been quoted from *N.B. Jeejeebhoy v. District Collector, Thana*:

"A vendor to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value but the objective factor, namely, whether the said potentiality can be turned to account within a reasonable near future.....

The question therefore turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered; whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

Another classic authority to which a reference may be made is the Privy Council Decision reported in AIR 1939 98 (Privy Council) Lord Romer stated the law thus:

"The compensation must be determined, therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion.

But sometimes it happens that the land to be valued possesses some unusual, and it may be unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification u/s 4, Sub-section (1)) but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however, willing a vendor will be content to sell the land for its value as waste or agricultural land as the case may be it explains that, in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however, that the land must not be valued as though it had already been built upon, a proposition that is embodied in Section 24, Sub-section (5) of the Act and is sometimes expressed by saying that it is the possibilities of the land and not its realized possibilities that must be taken into consideration."

The usual evidence that comes before the Court in the proof of market value can be put in three categories: (i) opinion of the experts, (ii) price paid within a reasonable time in a bona fide transaction of purchase or sale of land possessing similar advantages; in particular earlier purchase or sale of the part of the land sought to be acquired or land in close proximity furnishes the best evidence, and (iii) a number of years -- purchase of the actual or immediate prospective profits of the lands acquired.

We are concerned in the present appeals with evidence of the second category. Expert opinion has not been obtained nor has compensation been determined on the basis of prospective profits No data have been placed before the Court in proof of the profits the claimants obtained from the lands (except for fruit bearing trees).

In assessing evidence, we must once again reiterate that it is not open to the

Court to look into and rely on documents not properly proved. It is only on admissible and legal evidence that the Court must act. It may also be stated that in considering the evidence, the Court will not be bound to accept the statement of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced.

"The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As Judge of fact it was open to the appellate Judges to test the evidence placed before them on the basis of probabilities."

Chaturbhuj Pande and Others Vs. Collector, Raigarh, .

Having stated the principles for determining the market value we proceed to discuss the evidence and see whether the Additional District Judge was right in valuing the land by belts, and in fixing the varying rates ranging from 50 Nps. to Re. 1/- per sq. ft.

The method of valuation by belts i.e. by artificially dividing the land into plots, is generally discouraged for the obvious reason that it involves a considerable extent of arbitrariness. Without calling in aid the opinion of experts in town planning lay out and designing, the Judge would not be able to appreciate how best the land could be used. A colonizer has to take into account the needs of the prospective purchasers of plots, the minimum amenities of town life which they would expect, like roads, water connections, electricity, drainage facilities and proper approach roads. These amenities cost a great deal. The Additional District Judge, before he could work on a hypothetical scheme of colonization, ought to have obtained a model lay out with roads and approaches and then decided upon the value of plots; demarcated to the best advantage of the land holders, bearing in mind at the same time that amenities detailed above (apart from schools, parks, clubs and libraries are also the present day need in every decent colony) had also to be provided. It was a huge plot of 20 1/2 acres being acquired. The Additional District Judge had in view only one road as a frontage. He did not contemplate roads running parallel and at cross-sections providing approach to each plot. How should the land be valued if every plot has a frontage or way if the road is provided after every two plots. The assessment of the District Judge would then be faulty since no plot would be left over 10,000 square feet and every plot or every alternate plot shall have a road abutting.

It is obvious, therefore, that the Additional District Judge has worked on a very hypothetical scheme, which was both impractical and irrational. He did not give the depth of each row and left it to our imaginations. Why should he have taken 10,000 Square feet as the best plot size for the maximum price, when possibly a bigger plot would be divided into smaller units all of them having a frontage. Even the rear plots with approach-roads could fetch almost the same value.

In our view, therefore, the rates fixed by the Additional District Judge on a hypothetical scheme of colonization cannot be upheld. An overall rate of land,

regarded as a single unit, should have been determined. And that is what we propose to do.

The following sales have been proved and we have to pick out of them such bona fide transactions as would compare best in time and quality for determining the market value: (After referring to the Schedule of transactions of sales their Lordships proceeded.)

It would be pertinent to note that the transactions as have been proved, can be put in two categories: (i) Sales by cultivators in favour of businessmen and (ii) Sales by businessmen in favour of plot-holders. The first category sales are on acreage basis and the second category sales are on square foot basis. Refer to the transactions of sales above. The first two sales are by Inderchand son of Suganchand (A.W. 1) on square foot basis. The sale in favour of Sonkaran purports to be at the rate of Re. 1/- per square foot, and the second sale in favour of Lalchand Bablani at the rate of 75 Nps. per square foot. Inderchand in turn had purchased these very lands Kh. Nos. 937 and 940 area 82 acres for Rs. 3200/- in the year 1956. This is what Suganchand (A.W. 1) says from the witness-box. The total area sold to Sonkaran and Bablani works out to .29 acres and the consideration purported to have been received by Inderchand totals Rs. 10,000/-. The land which remains undisposed is .59 acres, and Inderchand expects to receive Rs. 20,000/- if he could get purchasers like Bablani and Sonkaran. Whereas Inderchand purchased the lands for Rs. 3200/- in 1956, he means to sell them for Rs. 30,000/- in 1960 and mind you he has incurred no expenses in development or lay out.

Now turning to Kaley's sales: they are in all nine (marked with asterisk). Kaley's have sold plots in their individual names or in the name of Mahakali Engineering Works or in the name of Land Development and Construction Company, Motiram (A.W.11) who is their manager, says that plots were sold at concessional rates of 25 Nps. square foot to the servants of the Company, and to strangers, they were sold at .50 Nps, and .62 Nps. per sq. ft. Since the rates, according to him had been on the increase after the sales of the plots, he expects to get .75 Nps. to Re. 1/-per square foot. Calculated at this rate, Kaley's expect anything between Rupees 32,000/- to Rs. 40,000/- per acre. All the nine sales by Kaley's took place between June, 1958 to February, 1959.

Kaley's purchased those very lands in February, 1958 and February, 1959 at the rate of Rs. 5000/- per acre. To be more specific. Kaley's purchased Kh. No. 959/5 area .38 acres for Rs. 1403/- from Biselal on 14-2-1959, which works out less than Rs. 4000/- per acre. They purchased on 19-2-1958 and 20-2-1958 from Firan Khasra Nos. 959/7 and 959/6 area two acres. for Rs. 10,000/-.

P. R. Modi purchased the land Khasra No. 947, area .55 acres, abutting the road, from Jethu on 13-8-1951 for Rs. 2200/-. Khasra No. 949 area .60 acre was purchased on 28-3-1958 for Rs. 2190/- and Khasra No. 946 area .64 acre was purchased on 20-3-1958 for Rs. 2336. The sales indicate that since 1951 to

1958, there was no appreciable rise in price. All the lands were acquired for a price below Rs. 4000/- per acre. Heeralal Shah (A.W. 2). examined on behalf of Modi, says that the lands were worth Rs. 2.50 to Rs. 3/- per square foot on the date of notification calculated at that rate, the land he says would fetch Rs. 80,000/- per acre. It would be pertinent to note that despite the land abutting the road having been purchased in 1951, no motor garage or workshop was constructed. There is a candid admission in Heeralal Shah's testimony that he had come to know in 1958 itself that the Government was going to acquire all these lands. Despite this knowledge, it appears, he purchased contiguous Khasra numbers. He applied for diversion, which was refused. Whereas the first sale in favour of Modi appears genuine, the sales in 1958 appear speculative. Be that as it may the fact remains that the lands were purchased in the year 1958 at a price less than Rupees 4000/- per acre.

Another sale which needs particular attention is Mangalu Sao's. Mangalu Sao purchased from Bhojabai and others, Khasra No. 814/1 area 2.33 acres for Rs. 10,000/- on 15-5-1958. This land is contiguous to the Kasaridih abadi. The land was available to him at a rate slightly higher than Rs. 4000/- per acre despite the abadi being in close proximity and a temple almost touching the border of his land, Mangalu Sao sold .17 acres out of this land to Shankarlal for Rs. 600/- at the same price at which he had purchased it. He says. Shankarlal was intermediary in the purchase of the land and he deserved to be sold at the same rate. In a portion of the land Mangalu Sao constructed his own house. Two acres out of 2.33 purchased by Mangalu Sao, have been acquired by the Government. When it comes to parting with the land. Mangalu Sao expects the award of compensation at the rate of Rs. 1.50 to Rs. 2/- per square foot, which works out to more than Rupees 60,000/- per acre.

The other sale deeds need only a casual mention. They do not relate to lands in close proximity. They are on a different road and on the other side of the Kasaridih abadi. These lands are to the west, closer to the Durg town, whereas the lands requisitioned are to the east. The transactions relating to them would not furnish correct data for determining the market value of the lands in dispute. The Additional District Judge was right in overlooking these sales. The map Ex. A-1 needs to be opened to find the location of Khasra Nos. 761/1, 763/3, 763/1, 726/1, 726/4, 767/3 and see that they are far away from the lands in question.

To reiterate, two types of sales gaze at us. In 1958-59, Kaley Mangalu Sao and Modi had purchased lands from the cultivators at a rate varying between Rs. 4000/- and Rs. 5000/- per acre. At about the same time. Kaley and Inderchand profess to have sold the land at rates varying between .25 Nps. to Re. 1/- per square foot that means at the rate varying between Rs. 11000/- to Rs. 40000/- per acre. Inderchand's sales purport to be nearer in point of time to the date of notification, at a rate which would be anything between Rs. 30,000/- to Rs. 40,000/- an acre. A sudden spurt in the rise of price from Rs. 4,000/- to Rs. 30,000/- excites our suspicion and invites necessarily to ask the following

questions: Had the pressure on the land suddenly increased after the year 1958? Was there vigorous building activity in that direction? What was the speed of progress? In what time was the whole area expected to be covered? How many houses had come up in close proximity? What is the distance of the nearest house from the land sought to be acquired? And every such activity after the year 1958 should weigh upon us for proportionate increase in the value. But in case there appeared nothing abnormal in the activity, and the pace of progress was just normal or rather dormant, the basic value would be same as in the year 1958.

It should be made clear that only those sales could be relied upon as were genuine sales and indicated proper market value. A forced sale, an accommodation sale, fancy price paid by a purchaser for a particular land, sales involving speculation or entered into with the knowledge of the acquisition proceedings just to push up the prices, but unrelated to the prevailing market conditions, have all to be discarded. An honest transaction between parties after taking into account the market conditions is the real criterion See: Collector of Panchmahals Vs. Desai Keshavlal Panalal, and N.C. John's Trust, Alleppey Vs. State of Kerala and Others, .

The claimants rely upon Dhusabhai Polabhai and Others Vs. Special Land Acquisition Officer, Ahmedabad, and contend that the rise in price of the land occasioned by speculation due to knowledge of imminent acquisition has also to be taken note of. This is what the authority lays down:

"If a person desires to acquire land or settle down in a place which is full of promise for the development the desire could not be condemned as a mere speculative desire. There could be nothing unreal or undesirable about it

(Para 7)

If the knowledge that acquisition by the Government is imminent raises the tone of the market and gives impetus to the market, a new market rate would be created and the transactions would be governed by that rate.

(Para 7)

It would be too dangerous a proposition to lay down and too unfair a comment on human impulses to generalise and stigmatise every transaction of sale and lease cum sale entered into after the market had risen as a speculative transaction or demonstration of a profiteering tendency of a human mind.

(Para 7)

A speculation on the effects of establishing an educational centre in areas sought to be acquired upon prices is permissible upto a certain extent. It is permissible to the extent to which it is shown that it had actually entered into the market value of the land on the date of the notification.

(Para 7,10)

It may be unfortunate that for launching a welfare scheme of acquisition in the interests of public education a higher compensation may have to be paid on account of the market value of the land going up as the result of speculation arising out of the prospective acquisition of the lands. But so long as Section 23 stands as it is on the Statute book, it is inevitable that the material rate is the market rate at the date of the notification."

(Para 11)

This dictum of their Lordships of the Bombay High Court was quoted with approval in a recent decision of this Court reported in *The Collector, Jabalpur and Another Vs. Kamal Kumar Jain and Others*, .

We do not dispute the proposition contained in this authority. The emphasis is on speculation giving impetus to the market and a new market rate having, therefore, been created. The speculation must enter into the market value. Nevertheless, the transactions tendered in proof of the market rate should be genuine transactions, in the sense that they are between willing purchasers and willing sellers having regard to the prevailing market conditions. A deliberate attempt to boost up the prices on the eve of acquisition of the land by fictitious and unreal sale transactions is not what the proposition contemplates.

33-44. We propose, therefore to examine the transactions a little more thoroughly, [After considering the evidence relating to the sale transactions their Lordships proceeded].

We would concede that there was no effective cross-examination of the witnesses examined on behalf of the claimants and the evidence in rebuttal given on behalf of the State was too scanty and of little significance, yet evaluating the evidence on the basis of probabilities as discussed above, we were prone to accept the first category sales i. e. sales by cultivators in favour of businessmen, as genuine and reliable and the second category sales i.e. sales by businessmen in favour of the plot-holders, as collusive and speculative. We must, therefore, determine the market value on the basis of the first category sales, keeping in view the existing condition of the land with all its existing advantages and its potential possibilities. The basic rates in 1958 were Rs. 5,000/- an acre for lands abutting the Durg-Uttai road, (this is the rate at which Kaleys purchased the land), and Rs. 4300/-an acre for lands abutting the Kasaridih abadi (the rate at which Mansalu Sao purchased the land). The lands falling in between may be valued at Rs. 4000/- an acre as the basic rate in 1958. Something must be paid in addition for the increase in the potential value till the date of acquisition in October. 1960, and for the gradual rise in prices. Reasonable conjecture has to play its part.

It is an admitted position that the acquired land lies in between Durg-Uttai road to the North and Kasaridih road to the South. (Please see the map Ex. A-1). To the North of the Durg-Uttai road are bungalows of the District Officers as shown in the map, then the poultry farm and then the open play-around, or land kept

reserved for the Central Jail. Thereafter lie paddy fields. To the South of the road are Kaleys' bungalow, their automobile workshop and at some distance Sims Bakery (Map Ex. A-8) may be seen. In between and to the South are paddy fields. The land has been acquired for extension of the abadi. The area is within Municipal limits. Possibility of increased house building activity in that direction is not too remote. The Bhilai sector 9 is at a distance of 1 1/2 miles. The land on the road side may be wanted for ancillary industries. Two houses have been recently constructed on Kaleys' plots.

Our pertinent query to the claimants was, how could Kaleys Mangalu Sao and Modis acquire lands from the cultivators in 1958 and in February, 1959 at Rs. 5000/- an acre, when everything they spoke of concerning the bungalows to the North, Kaley's garage and bungalow to the South, the poultry farm the Sims Bakery and the sector 9 of Bhilai had their impact on the potential value? Bhilai plant had started functioning since 1956. The bungalows to the North and South of the road already existed before the purchases were made by Kaleys Modies. Mangalu Sao and Suganchand. What was sudden spurt of activity to raise the price from Rs. 5000/- to Rs. 40,000/- in 1960?

We scanned the evidence, but to our surprise found the building activity in this direction almost negligible. Chhabilal Singh (A.W. 8) says that only 3 or 4 bungalows came up during these five years between the tank on one side and agricultural farm on the other. Shivnarayan Patwari (N.A.W. 8) is another witness who could give some positive data. He is a Patwari of Kasaridih since 1962. He says that during these five years after he took over charge, only 50 to 60 houses have come up in the Kasaridih abadi. The average comes to 10 houses a year, which would cover an area of half an acre, all told. It indicates a very poor house building activity. The pace of progress between 1958 to 1960 was slow, almost negligible, in the direction of the acquired land, and, therefore, there was no appreciable increase in the potential value. However, we propose to value the lands on the road-side at the rate of Rs. 5500/-per acre instead of Rs. 5000/- and at the rate of Rs. 4800/- per acre instead of Rs. 4300/- for lands contiguous to the Kasaridih abadi. The lands in between shall be valued at the rate of Rs. 4400/-an acre. We have taken into account the rise in potential value at 10% as assessed by the Land Acquisition Officer, which appeared to us reasonable, and we have fixed the rates accordingly. In determining the increase in potential value, we could act on no exact mathematical formula. We had to act on ordinary guess work, which, as is stated in Velayudam Chettiar's case: M.S.O.S.P.V. Velayudam Chettiar and Others Vs. The Special Tahsildar for Land Acquisition, Madurai at Madurai Town, , is permissible. The authority says:

"Valuation of immovable property is not an exact science. It is an enquiry relating to a subject abounding in uncertainties, where there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at."

The noticeable feature in the present land acquisition proceeding is that the

speculators and intermediaries, presumably, having obtained knowledge of the imminent acquisition made quick purchases of the lands from the primary plot holders and entered into collusive transactions with friends to create evidence of a sudden spurt in the rise of prices. The law, presently, makes no distinction between the transactions made by the intermediaries and those made by the primary plot-holders in the matter of assessment of market value and it is left to the Court to make a selection of the real transactions and decide upon payment of compensation. Before long, we feel the legislatures are bound to interfere to curb down this tendency of the speculators by defining what the expression "market value" should mean and whether the land should be valued on the basis of the actual uses to which it is put rather than on the hypothetical potential value.

Having come to the conclusion that the lands have to be valued on acreage basis at varying rates as given above we would work out the compensation payable to each claimant-appellant. Modi's lands are non-diverted agricultural lands left fallow after they were purchased from primary land-holders at Rs. 4000/- an acre in 1956 and 1938. Modis have demanded compensation at time rate of Rs. 2/- per square foot plus 15% for compulsory acquisition and interest at 6 %. According to our decision, they would be entitled to Rs. 9845/- at the rate of Rs. 5500/- per acre for their lands Kh. Nos. 946, 949 and 947 area 1.79 acres. The solatium at 15% works out to Rs. 1422.75 Nps. The total amount payable to Modis comes to Rs. 11,267.75 Nps. The Additional District Judge has allowed interest at the rate of 3% on the excess amount payable from the date possession of the lands was obtained till payment. We would allow 6% per annum, a uniform rate for all the claimants. The Additional District Judge has discriminated the claimants in this regard without any valid reason.

In the result, we allow the State appeal and dismiss the one filed by Modis. The excess compensation determined by the Additional District Judge at Rs. 25,311-35 Nps. is set aside and instead Rs. 7,274.25 Nps. substituted (i.e. Rs. 11,267.75 Nps. Rs. 3,993.50 Nps. award given by the Land Acquisition Officer). Interest at 6% per annum on this amount till payment is also allowed. The State shall be entitled to costs proportionate to success.