
(2015) 05 AHC CK 0024
In the Allahabad High Court
Case No : First Appeal No. 200 of 2015

Rajendra Prasad and Others	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31
Land Acquisition Act, 1894 — Section 11, 17, 17(4), 18, 23

Citation : (2015) 112 ALR 346 : (2015) 5 AWC 4692 : (2015) 129 RD 332 :
(2015) 4 UPLBEC 2851

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : K.B. Sinha, R.K. Misra and S.K. Mishra, for the Appellant; Shivam Yadav, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

1. This appeal under 54 of Land Acquisition Act, 1894 (hereinafter referred to as "Act 1894") has arisen out of award dated 30th May, 1992 passed by J.B. Jaiswal, District Judge Ghaziabad in 27 Land Acquisition References but we are concerned hereat with Land Acquisition Reference No. 251 of 1990.

2. With the consent of learned counsel for the parties, we have heard this appeal under Order XXXI, Rules 11 and 13 C.P.C., simultaneously since it is contended that the entire matter can be decided in the light of various judgments of this Court, covering similar controversy and there is no reason for keeping the matter pending and requiring preparation of the book. Preparation of paper book is hereby dispensed with. As requested and agreed by learned counsel for the parties, we proceed to hear and decide on the basis of record of this appeal.

3. The dispute relates to acquisition of certain land at Village Bhangel Begumpur, Pargana and Tehsil Dadri, District Ghaziabad.

4. Acquisition proceedings commenced with publication of notification under

Section 4(1) of Act 1894 on 25th March, 1988. Possession was taken by State of U.P., of the acquired land, on 12th January, 1989. Special Land Acquisition Officer (for short "S.L.A.O.") made award dated 05.10.1989, wherein he determined compensation @ Rs. 35.07 per sq. yard. The appellant-claimant dissatisfied with the rate of compensation and claiming that compensation should be in the range of Rs. 250 to 500 per sq. yard, made an application under Section 18 of Act 1894 for Reference to the Court, whereupon aforesaid Land Acquisition Reference No. 251 of 1990 was made by Collector to the District Judge, Ghaziabad.

5. The area of land of the appellant which was acquired is 1-7-10 (4159.36 Sq. yard) and 2-3-0 Bigha (6503.75 Sq.yards). Before Reference Court, appellant-claimant relied on the following documents in support of their claim for higher compensation.

6. It does not appear that defendant-respondents placed any document before Reference Court but they sought to support the award of SLAO, contending that sale deeds of smaller piece of land cannot be applied for determining market rate of large area of acquired land.

7. The Reference Court however has found that even SLAO relied on a sale deed which was for an area 423.49 sq yard only and on that basis, rate of compensation was determined by him. Therefore, contention of defendant-respondents that exemplars of smaller area are not justified to be taken into consideration for determining market rate, was not correct.

8. It appears from impugned award that Reference Court has followed the principles that highest rates prescribed in an exemplar shall be followed where more than one exemplars are relied on having different rates and all are creditworthy, subject to other relevant considerations like proximity of the area, distance of period between date of notification under Section 4 of Act, 1894 and the date(s) of such exemplar, potentiality etc.

9. Relying on documents of the claimants, the Reference Court determined market value @ Rs. 125 per sq. yard but then following Apex Court's decision in Chaman Lal vs. SLAO AIR 1998 SC 1652, it has applied a deduction of 25% and final market value for the purpose of compensation has been determined at Rs. 93.75 per sq. yard. The Court below besides the aforesaid compensation has also allowed solatium at 30% and interest as per provisions of the Act 1894.

10. Shri S.K. Mishra, learned counsel appearing for the appellant-claimants contended that in a judgment of Raghuraj Singh and Others vs. State of U.P. and Others, First Appeal No. 401056 of 1999 decided on 19.05.2010, alongwith a large number of appeals, relating to different areas of Ghaziabad, this Court has allowed compensation @ Rs. 297 per sq. yard and, therefore, the same should be followed in the present case also.

11. It is further contended that in any case there could not have been any occasion to apply deduction of 25% since the land acquired is already situated in

developed area. Such deduction was unjustified and for that purpose reliance is placed on a Division Bench judgment of this Court in Jagdish Chandra and Others vs. NOIDA 2008 (1) ADJ 252.

12. Per contra Shri Shivam Yadav, learned counsel appearing for Ghaziabad Development Authority and learned Standing Counsel appearing for the State of U.P. contended that Reference Court having followed exemplars relied on by claimants themselves, it would not lie in the mouth of claimants to ask for a higher rate of compensation without pointing out any manifest error in the award of Reference Court which is founded on the documents/exemplars of claimant-appellants of their own.

13. We have heard learned counsel for the parties and perused the record.

14. The rival submissions give rise to two questions i.e., points of determination to decide this appeal;

(I) Whether appellants are entitled to claim compensation @ Rs. 297/- per sq. yard on the basis of judgment of this Court in Raghuraj Singh and Others (supra).

(II) Whether the Court below was justified in making 25% deduction on the market value which came to be determined by it.

15. Before dealing with the aforesaid two questions, it would be appropriate to have a bird's eye on the general principles applicable in such matters laid down by judicial precedents by this Court as well as the Apex court, relevant for determination of appropriate market value for the purpose of payment of compensation to tenure holder/land holders whose land was forcibly acquired under Act, 1894.

16. When a notification under Section 4(1) of Act 1894 is issued that date would be relevant for determining market value of the acquired land.

17. Initially, it is responsibility of Collector to determine market value which is payable to tenure holder/land holder in respect of acquired land and this is nothing but an offer made by the State to the owner as consideration, proposed by the State, for acquiring land forcibly. The Collector, therefore, passes an order which is called "award", determining market value on which, compensation of the acquired land is to be calculated.

18. An Award passed by Land Acquisition Officer 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 to the amount of compensation.

19. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and

Another, AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , the Court has said that a reference is like a suit which is to be treated as an original proceeding. The claimants is 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 sale land on reasonable price shall be presumed. The Court, therefore, would co-relate market value reflatd 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.

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

21. 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.

22. 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 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. In these appeals the area of land acquired varies from 100 Sq. yards to 50,000 Sq. yards. Most of the holdings are between 2000 Sq. yards to 10,000 Sq. yards.

23. In *V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI)*, (1995) 1 SCALE 220 : (1995) 2 SCC 302 : (1995) 1 SCR 188 the land acquired by notification dated 06.07.1970 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".

24. Again in *Shakuntalabai (Smt) and Others Vs. State of Maharashtra*, (1995) 8 JT 501 : (1995) 6 SCALE 693 : (1996) 2 SCC 152 : (1995) 5 SCR 618 Supp acres of land in Akola town was sought to be acquired by notification published on 11.08.1965 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".

25. 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 vs. Basheshwar Dayal (since deceased) Through His L.Rs.* and another decided on 01.08.2013 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, (1994) 2 JT 604 : (1994) 2 SCALE 298 : (1994) 4 SCC 595 : (1994) 1 SCR 368 : (1994) 2 UJ 17)

(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-avis 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., AIR 2011 SC 2937 : (2011) 8 JT 442 : (2011) 3 RCR(Civil) 904 : (2011) 8 SCALE 139 : (2011) 8 SCC 91 : (2011) 10 SCR 293 : (2011) AIRSCW 4591).

(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, AIR 2012 SC 2721 : (2012) 114 CLT 696 : (2012) 3 CTC 396 : (2012) 4 SCALE 628 : (2012) 5 SCC 432 : (2012) AIRSCW 2822 : (2012) 4 Supreme 66).

(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, (2004) 8 JT 327 : (2004) 8 SCALE 558 : (2004) 8 SCC 270 : (2004) AIRSCW 5534 : (2004) 7 Supreme 711).

(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 led 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.

26. 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.

27. 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, AIR 2012 SC 2709 : (2012) 6 JT 185 : (2012) 6 SCALE 34 : (2012) 7 SCC 595 : (2012) AIRSCW 3986 : (2012) 4 Supreme 323).

28. In the case in hand the own exemplars of claimant-appellants have been relied on by the Reference Court so as to award compensation. That being so it cannot be said that apparently approach of Court below is erroneous or illegal any manner warranting interference.

29. Now First we proceed to consider the question regarding benefit of judgment in Raghuraj Singh and Another (supra). In this regard it would be necessary to examine certain more judgments, which were followed in Raghuraj Singh (supra) and subsequent judgments.

30. First of the decisions is Jagdish Chandra and others v. New Okhla Industrial Development Authority, NOIDA and another (First Appeal No. 744 of 2001), Decided on 14.12.2007, reported in 2008(1) ADJ 253. This Division Bench judgment was delivered by Hon"ble Amitava Lala and Hon"ble V.C. Misra, JJ. Notification under Section 4(1) of Act, 1894 was issued for acquiring land, measuring 494-9-19 bighas (309.060 Acre) in village Chhalera Banger, Noida, district Ghaziabad. Though the notification was dated 30.10.1987 but published in U.P. Gazette on 27.2.1988 and in the daily newspaper on 11.6.1989.

Corrigendum was issued on 18.6.1989 and 24.6.1989, modifying Notification published in the Gazette on 27.2.1988. Thus relevant date of notification in that case was taken as 24.6.1989. Notification under Section 6 read with Section 17(4) of Act, 1894 was issued on 15.12.1989 and possession over the land was taken on various dates in the year 1990 and 1991. The Collector made award on 4.2.1992, determining compensation at the rate of Rs. 43.64 per square yard on the basis of a sale deed dated 29.8.1987 though actual transaction was made therein at the rate of Rs. 54.54 per square yard. The Collector however allowed 20% deduction in the said rate and thus compensation came to be determined at the rate of Rs. 43.64 per square yard. Claimant/Tenure holders submitted application for Reference. The Reference Court relied on an agreement to sell, dated 19.4.1989, and found market value of the land at the rate of Rs. 297.50 per square yard. After applying deduction of 50%, it awarded compensation at the rate of Rs. 148.75 per square yard. Claimants/Tenure holders approached this Court in several appeals, filed under Section 54 of Act, 1894, contending that no deduction ought to have been applied to the compensation determined at the rate of Rs. 297.50. The question up for consideration in Jagdish Chandra (supra) was "whether Reference Court was justified in making deduction of 50% or not". On behalf of claimants it was argued that under Section 23 of Act, 1894, there is no provision for deduction hence it could not have been applied. After examining Sections 23 and 24 of Act, 1894, the Court in paragraphs 17 and 18 held as under:

"17. Under the aforesaid provisions of section 23 and 24 of the Act, the criteria is laid down upon which the amount of compensation in respect of the acquired land is to be determined. It is settled view that once the market value is valued on the basis of the sale (exemplar method) which has been found to be the best method for determination of compensation and nothing is revealed/prescribed by the Statute that the authority/reference Court is empowered to deduct any amount from the market value already determined, then in absence of any such provision of such deduction on any ground in the Statute, the deduction so made by the reference Court is patently illegal. On a query made by the Court from the learned Counsel for the parties that in absence of any provision for deduction provided at all in the Statute how could the concerned authority at the time of passing of the award or disposing of the reference deduct an amount towards development charges of the land in arriving at a correct market value for payment of just compensation of the land already acquired and possession taken over under the provisions of the Act from the erstwhile owner of the land whose all rights, titles and ownership over the land had come to an end, they could not forward any reply to the same.

18. On acquisition of the land the just compensation is paid to the owner of the land on the basis of correct market value of the property at the time of issuance of the notification under Section 4(1) of the Act. This market value is assessed as per the nearest sale deed exemplar in point of time and place. This compensation is paid on the basis of an award passed under Section 11 of the Act. It is note-

worthy that once the land is acquired and possession has been taken by the acquiring body after the issuance of the notification under Section 4 and 6 is made the erstwhile owner loses all its rights, title, interest in the land vested in it and all of it stands vested with the acquiring/requiring body even though the symbolic acquisition is on paper. At this stage any deductions towards development/betterment charges are made at the time of awarding compensation to the erstwhile owner is not justifiable, more so since there is no statutory provision i.e. in the Act or Rules or Regulations etc. which provides for such deduction. After the acquiring/requiring body takes over the ownership of the land it is for it to develop or not develop the land and to what extent and all investments made for the same are to be borne by it and not by the erstwhile owner. It may, which it does charge from the new purchaser while selling of the land in plots and the price includes the betterment charges for the roads, parks etc. with interest. The concerned Authority and in the present case NOIDA once it charges from the new/subsequent purchaser all such charges cannot also be charged under the garb of deduction while awarding compensation to the erstwhile owner and gain double benefit. In such circumstances such deductions are unjustified and are required to be reversed. In the present case the land which is earmarked for "Park" no development of the land has been shown to have taken place nor any amount has been spent for the same then there cannot be any justification for deduction from the correct market price for the payment of compensation to the petitioners. The issues are decided accordingly."

(emphasis added)

31. Thus Jagdish Chandra and others vs. New Okhla Industrial Development Authority, NOIDA and another (Supra) the only question up for consideration was "whether 50% deduction to the rate determined by Reference Court was justified or not". The question "whether the rate of Rs. 297.50 without deduction, determined by Reference Court was valid or not" was not an issue for consideration.

32. Then next judgment is Ganeshi Singh and Others Vs. State of U.P. and Others, (2008) 3 AWC 2610 . It is also a Division Bench decision delivered by Hon"ble Amitava Lala and Hon"ble Shishir Kumar, JJ. Therein, the acquisition proceedings commenced in 1991. The appeals related to acquisition proceeding for acquiring land in village Chhalera Bangar, Pargana and Tehsil Dadri, district Ghaziabad. Under Section 4(1) of Act, 1894 notification dated 5.1.1991, published in the Gazette on 2.2.1991 was issued by State government, proposing to acquire land measuring area 790-16-9 bighas (492.26 acres). The notification was published in the newspaper on 24.3.1991. Corrigendum was also issued on 4.4.1991. Declaration under Section 6 read with Section 17 of Act, 1894 was published in the Gazette on 7.1.1992. Possession was taken in parts on 30.3.1992, 7.8.1995 and 18.11.1995. SLAO made award determining compensation at the rate of Rs. 125/- per square yard but applying 12% deduction, it actually awarded compensation at the rate of Rs. 110/- per square

yard. On Reference made under Section 18, Court determined compensation at the rate of Rs. 297/- per square yard but applying 25% deduction, it awarded compensation to Rs. 222/- per square yard. In this matter also, the question was "whether deduction of 25% by Reference Court was justified or not". It was pointed out that except one or two plots of claimants which were large in area, rest of the plots under acquisition were of smaller areas and smallest plot was only 0.12 bigha. Though it was admitted therein that circle rate cannot be considered as basis of compensation, but it was contended that the land areas of different size of land under different notifications are accumulated, can this formula of deduction due to largeness of land be applicable or not. Following decision in Jagdish Chandra and others (Supra), the Court held that deduction ought not to have been applied. Consequently appeals of land owners/claimants were allowed with similar rate of land as it was in Jagdish Chandra and others (Supra).

33. In both these matters, thus it is evident that on the basis of exemplar relied on by Reference Court, the market value was determined by Court at Rs. 297.50 and Rs. 297/- respectively, per square yard. The Reference Court attempted to reduce ultimate market value by applying 50% deduction in Jagdish Chandra and others (Supra) and 25% deduction in Ganeshi Singh (Supra), since former was an acquisition commenced in June, 1989 and the latter was an acquisition commenced on 2.2.1991. In both these matters, the Court held that deduction was not justified. The issue of rate as such was neither raised nor decided by this Court. Even otherwise both these matter relate to subsequent period, hence would be of no assistance to determine market rate in acquisition commenced on 25.03.1988.

34. Then comes third decision in Raghuraj Singh and Others Vs. State of U.P. and Another .

35. The aforesaid judgment related to Notification dated 24th March 1988 with respect to village Bhangel Begumpur. On behalf of the claimants, certain additional evidences filed were admitted by the Court. These additional evidences were in the form of Awards of Reference Courts in LAR Nos. 392/93, 173/96, 396/93 and 213/93. The first award related to acquisition of land vide Notification dated 30.11.1989 under Section 4 in respect of village Bhangel Begumpur. The other three awards related to Notifications dated 21.02.1991, 23.11.1989 and 27.2.1988 with respect to villages Morna, Sarfabad and Chhalera Bangar respectively. After referring to aforesaid awards, the Court followed award in LAR No. 392/93 which was in respect of Notification dated 30.11.1989 and following earlier decisions in Jagdish Chandra and others vs. NOIDA and another (Supra) and Ganeshi Singh vs. State of U.P. and others (supra), it held that rate of Rs. 297/- per Sq. Yard should be applied. We enquired from learned counsel for claimants in these appeals as to how rate determined in respect of acquisition notification of November, 1989 and onwards would be relevant to the present appeals, where acquisition notification is of March 1988 particularly,

when in the present case, best exemplars relied by claimants themselves have been followed and applied by Reference Court and is it possible to claimants to wriggle out from aforesaid documents, which are relied as evidences to support their claim. To this query, Shri Dharmpal Singh, learned senior counsel could give no reply at all and submitted that whatever is the judgment of this Court, is being simply relied on by the claimants.

36. The aforesaid decision relates to different periods, subsequent to 28.03.1998 and exemplars relied therein are also of subsequent period. In those matters where acquisition was of earlier date and the Court followed decisions involving acquisition of 1989 or 1991, we filed that there is no discussion on the question of determination of market value. We thus find it difficult to take the same as binding precedents on the question of market value of land for the purpose of compensation. We pointed out these facts to learned Senior Counsel, who could not make any comment except saying that whether judgments are, whether reasoned or simply following other decisions, he is placing the same, before the Court and rest is for the Court to decide. In absence of any binding precedents for the purpose of determining market value in respect of acquired land, when proceedings commenced of acquisition on 25.03.1998, the Reference Court, if followed best exemplars cited and relied by the claimants themselves, then it would not be permissible to claimants to turn around and claim higher compensation on the basis of some other judgments wherein question of rate of market value was not involved or discussed.

37. It is evident from a bare perusal of the judgment in Raghuraj Singh and Another (Supra) that the Court therein relied on an award of the District Judge in land acquisition reference No. 392 of 1993 in which the acquisition proceedings commenced with the notification published on 30.11.1989 was subject matter of conciliation. Obviously the exemplar as applicable in November, 1989 and thereafter would not be valid for determining market value in respect to a case where acquisition notification was issued on 25.03.1988. Then in Jagdish Chandra and Others vs. NOIDA (supra) and Ganeshi Singh (supra), the Court did not consider the question of market value. The only question up for consideration was whether deduction in market value determined by Reference Court was justified or not. This Court held that deduction was not justified. Moreso in Ganesh Singh (supra) the acquisition commenced on 02.02.1991 and in Jagdish Chandra the acquisition commenced in June 1989. Both these matter therefore cannot to held to be authority to determine market value of the land for which acquisition proceedings commenced on 25.03.1988, particularly when exemplars relied by claimants have been relied by Reference Court.

38. We may refer hereat some later judgments also.

39. Fourth judgment is Khazan Singh and others v. State of U.P. and others (First Appeal No. 564 of 1997 and other connected matters), decided on 11.10. 2012, by Hon"ble Amitava Lala, the then Acting Chief Justice and Hon"ble Ashok Srivastava, JJ. In this Bunch, acquisition Notifications of 1983, 1986, and 1988

were involved in respect of village Bhangar Begumpur and in respect of three other villages Nagla Charandas, Geha Tilapatabagh and Chhalera Bangar, acquisition Notifications of 1982, 1986, 1988, 1991 and 1992 were involved. The Court, following its earlier decisions in Raghuraj Singh and others vs. State of U.P. and others (Supra), and Jagdish Chandra and others (Supra) held that the directions given in Raghuraj Singh's case will follow irrespective of the period of above acquisition proceedings and difference of areas and villages. The judgment, in short, is reproduced as under:

"Most of the first appeals and cross appeals are related to the enhancement of compensation in respect of village Bhangar Begumpur. In one of such cases, i.e. First Appeal No. 1056 of 1999 (Raghuraj Singh and others Vs. State of U.P. and others), the Division Bench of this Court held that the compensation will be enhanced upto Rs. 397/- per square yard. The Division Bench following the principle laid down in the earlier order of a Division Bench presided over by one of us (Amitava Lala, J), has passed an order of enhancement of compensation reported in 2008 (1) ADJ, 253 (D.B.) (Jagdish Chandra and others Vs. New Okhla Industrial Development).

According to us, since the compensation has already been enhanced and no such challenge has been found with regard to such enhancement, which has been contended by Mr. Kamim Jailwas the learned Senior Advocate appearing for the appellant, we are of the view that similar compensation would be paid to the appellants whose cases are pending before this Court in relation to same village.

The cases before us which relates to village Bhangar Begumpur notifications were issued in the years, 1983, 1986 and 1988 and possession was also taken in the years, 1983, 1987 and 1989 So far as other three villages Nagla Charandas, Geha Tilapatabagh and Chhalera Bangar, notifications were issued in the years 1986, 1988, 1991, 1992 and possession was also taken in the years, 1987, 1990, 1992 and 1995, and the compensation was determined and ultimately under section 18 of the Land Acquisition Act, 1994 by the Reference Court in the year, 1993, 1995, 2002, 2003, 2007, 2008 and 2010 All the four villages are adjacent to each other. The Reference Court ultimately granted similar relief in respect of the matter of Raghuraj Singh (supra). Hence we quantify the rate of compensation as above, the same will be paid following the directions as we have given in the case of Raghuraj Singh (supra).

Following the earlier judgment of the Division Bench of this Court presided over by one of us (Amitava Lala, J) has passed the order, the appeals and cross appeals are disposed of, accordingly. At the time of reversal of the decree, the Reference Court will take into account the deficiency in court fee, if any and pass an appropriate order at the time of final order.

However, substitution application/s, if any, pending in these appeals are also allowed, without imposing any cost. So far defective appeals are concerned, only defect/s was/were deficiency of court fees, it is directed that same will be

recovered/adjusted in accordance with rules, while preparing final decree by the department.

There will be no order as to costs."

(emphasis added)

40. We enquired from learned Counsel how rates determined in respect of notifications issued under Section 4(1) of Act, 1894 on 24.6.1989 shall apply to acquisition of 1982, 1983, 1986, 1988 but instead replying the same, they said that it is the judgment of this Court and beyond that they cannot say anything.

41. Thereafter, other judgments which have followed decision in Raghuraj Singh (Supra), Khazan Singh and others (Supra) and Ganeshi Singh and others (Supra) are as under:

(i) Amar Singh and Another v. State of U.P. and others, (First Appeal No. 644 of 2012), Decided on 10.3.2014, by Hon''ble Krishna Murari and Hon''ble Harsh Kumar, JJ. Acquisition Notification under Section 4(1) is dated 15.2.1992 relating to village Geha Tilapatabagh. SLAO determined compensation at Rs. 41.31 per square yard, while Reference Court determined compensation at the rate of Rs. 250/- per square yard. The Court following Raghuraj Singh (Supra) determined compensation at the rate of Rs. 297/- per square yard.

(ii) Ghaziabad Development Authority vs. Kashi Ram and Others, (First Appeal No. 910 of 2000 and other connected matters), Decided on 13.11.2014 by a Division Bench consisting of Hon''ble Rajeev Sharma and Dinesh Gupta, JJ. Acquisition notification under Section 4(1) of Act, 1894 was issued on 12.10.1986 in relation to village Makanpur, Pargana Loni, Tehsil Dadri, District Ghaziabad. SLAO allowed compensation at the rate of Rs. 50/- per square yard, while Reference Court allowed compensation at the rate of Rs. 90/- per square yard. This Court followed decision in Khazan Singh and others (supra) and Amar Singh and Another v. State of U.P. and others (supra) and allowed compensation at the rate of Rs. 297/- per square yard.

(iii) Tejpal v. State of U.P. and Others (First Appeal No. 49 of 2005 and other connected matters), decided on 10.3.2014 by Division Bench consisting of Hon''ble Krishna Murari and Hon''ble Harsh Kumar, JJ. Acquisition Notification under Section 4(1) therein was issued on 2.2.1991 relating to village Chhalera Bangar, Pargana and Tehsil Dadri, District Ghaziabad. SLAO made award at the rate of Rs. 110/- per square yard, while Reference Court determined compensation at the rate of Rs. 297/- per square yard, but allowing a deduction of 25% granted compensation at the rate of Rs. 222/- per square yard. The Court following the decisions in Ganeshi Singh and others (supra) and Jagdish Chandra and others (supra), allowed compensation at the rate of Rs. 340/- per square yard by holding that since acquisition is of 1991, there should be an increment of 10% per annum.

42. We are also aware of the fact that in a regular First Appeal, the judgment of

the Court below and the findings and reasoning given by it are not to be reversed in a perfunctory manner. The Appellate Court is under statutory obligation to consider the reasoning given by the Court below and after recording its own reasons, demonstrating that the reasoning of the Court below is incorrect and only then the judgment of reversal can be passed and not otherwise.

43. Learned counsel for claimants argued that the award of Reference Court should be modified by enhancing rate of compensation. We find that before passing a decree of reversal, the appellate court has to meet the reasoning given by court below and has to record a finding that such reasoning is incorrect. It is not by taking a different view contrary to record, a judgment of reversal can be passed as a matter of course.

44. In *S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others*, AIR 1995 SC 1607 : (1995) 3 JT 614 : (1995) 2 SCALE 720 : (1995) 4 SCC 15 : (1995) 3 SCR 312 , the Court in paras 14 and 15 of the judgment has upheld the contention that though the appellate court is within its right to take a different view on the question of fact, but that should be done after adverting to the reasons given by trial court in arriving at the findings in question. The Appellate Court before reversing a finding of fact has to bear in mind the reasons ascribed by Trial Court. The Apex Court relied and followed earlier decision of Privy Council in *Rani Hemant Kumari Vs. Maharaja Jagadhindra Nath*, 10 CWN 630 and in para 15 of the judgment said:

"There is no need to pursue the legal principle, as we have no doubt in our mind that before reversing a finding of fact, the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari Vs. Maharaja Jagadhindra Nath*, (1906) 10 Cal.W.N. 630, wherein, while regarding the appellate judgment of the High Court of judicature at Fort William as "careful and able", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge."

45. Following the above decision Hon"ble B.L. Yadav, J in *Smt. Sona Devi Vs. Nagina Singh and Others*, AIR 1997 Patna 67 observed that whenever judgment of lower Appellate Court is a judgment of reversal, it is the primary duty of Appellate Court while reversing the findings of Trial Court to consider the reasons given by Trial Court and those reasons must also be reversed. Unless that is done, judgment of lower Appellate Court cannot be held to be consistent with the requirement of Order 41, Rule 31, which is a mandatory provision.

46. The above view has also been followed recently in *Jaideo Yadav and Others Vs. Raghunath Yadav and Another*, (2009) 3 PLJR 529 wherein the Court said that Trial Court recorded its findings but lower Appellate Court had not reversed the said findings and rather on the basis of some findings of its own, appeal was allowed by lower Appellate Court without appreciating findings of Trial Court on

the concerned issue. The court then said :

"The law is well settled in this regard that where the judgment of the lower appellate court is a judgment of reversal it is primary duty of the appellate court to consider the reasons given by the trial court and those reasons must also be reversed."

47. This court has also followed the same view in Doodhnath and Anr. Vs. Doodhnath and Anr., AIR 2006 Allahabad 3. Recently this view has also been followed in Second Appeal No. 47 of 2015 Awadh Narayan Singh Vs. Harinarayan, decided on 22.1.2015.

48. From the above, we find that in subsequent matters, earlier judgments in Jagdish Chandra and others (supra) and Ganeshi Singh (supra) have been followed though they were in respect of much later acquisition proceedings, and question of rate of compensation as such was not involved therein. The basic question which was considered in Jagdish Chandra (Supra) and Ganeshi Singh (Supra) related to deduction. In the present case, however, it is own exemplar of claimants which had been relied on by Reference Court. It is not shown that the reasoning given by Reference Court in determining market rate at Rs. 125/- per square yard, per se, is bad or illegal or it has been arrived at by any misreading of documents. Thus the Reference Court, in our view, has not committed any error in arriving at the conclusion and taking market rate of land as Rs. 125 per sq. yard.

49. However, it has reduced actual rate of Rs. 125/- per square yard, by applying 25% deduction, which, in our view, having regard to the fact that the land in question was already lying in developed area, it was not justified in view of law laid down in Jagdish Singh and Ganeshi (supra). The deduction of 25% has been applied by the Reference Court in a mechanical manner without giving any justification for the same. When the exemplars of Rs. 125/- per sq. yard has been followed, no justification is found for applying mechanically 25% deduction by the Court below, which is wholly illegal. The second question, therefore, is answered in favour of the appellants while the question No. 1 is answered against the appellants.

50. In the result, we allow the appeal partly and modify the impugned award dated 30th May, 1992 LAR No. 251/1990 passed by Reference Court. We set aside the direction of the Court below applying 25% deduction in respect of market rate of Rs. 125/- per sq. yard, which it has determined on the basis of sale deed/exemplars, relied by the claimants. Meaning thereby, the claimants would be entitled to receive compensation of acquired land from the State by determining market value @ Rs. 125/- per sq. yard. With respect to the other directions contained in the impugned award dated 30th May, 1992 regarding 30% solatium, interest etc., the same is hereby affirmed and confirmed.

51. The appellant shall be entitled to proportionate costs throughout to the extent they have succeeded in appeal.