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**(1993) 04 SC CK 0040**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 1799 of 1980**

Rao Narain Singh (dead) by L.R.s.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision : 06-04-1993**

**Acts Referred:**

Defence of India Act, 1962 — Section 29, 36

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8

**Citation :** AIR 1993 SC 1557 : (1993) 2 JT 610 : (1993) 2 MLJ 76 : (1993) 2 SCALE 400 : (1993) 3 SCC 60 : (1993) 2 SCR 969

**Hon'ble Judges :** N. Venkatachala, J;B.P. Jeevan Reddy, J

**Bench :** Division Bench

**Final Decision :** Partly Allowed

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## **Judgement**

N. Venkatachala, J.

1.This civil appeal by special leave is preferred against the common judgment and separate decrees dated 9.5.1980 of the Rajasthan High Court, dismissing civil First Appeal No. 54 of 1971 in which the appellant had sought enhanced compensation for his acquired property and partly allowing civil First Appeal No. 56 of 1971 of the Union of India in which it had sought reduction in the market value of the same acquired property.

2. The appellant, since deceased (represented by his Legal Representatives), was the owner in possession of a property known as 'Masuda House' at Ajmer, comprised of a thirty year old building with a large extent of land of about 70 Bighas, 14 Biswas, appurtenant thereto. On 24th April, 1963, the Union of India, in exercise of its powers u/s 29 of the Defence of India Act, 1962 (D.I. Act), requisitioned the said building and land for stationing the Central Reserve Police Force (C.R.P.F.) and took its possession. Then, on 5th May, 1967 the Collector of Ajmer, having served a notice on the appellant u/s 36 of the D.I. Act, acquired the said building and land. As the D.I. Act ceased to have its force with effect from 10th July, 1968, the Collector of Ajmer took recourse to Section 8(1) of the

Requisitioning and Acquisition of Immovable Property Act, 1952 - the Requisitioning and Acquisition Act and offered to the appellant on 10th September, 1968 a sum of Rs. 5,32,594 as total compensation for the acquired building and land. The appellant, rejected that offer of compensation as inadequate. This situation led to the appointment of Shri Updesh Narain Mathur, the Joint Legal Remembrancer for the State of Rajasthan, as Arbitrator u/s 8(1) (b) of the Requisitioning and Acquisition Act, for determining the just amount of compensation payable to the appellant for his acquired building and land. On a notice issued by the Arbitrator to the appellant inviting his claim for compensation, the appellant filed a claim-statement claiming Rs. 2,50,000 as compensation for the acquired building and Rs. 10 per sq. yard as compensation for the acquired land. The Arbitrator, purporting to act on evidence produced by parties in an enquiry held by him for determining the compensation payable to the appellant, made an award on 15th April, 1971. By that award, the market value of the acquired building was fixed at Rs. 2,50,000 while the market value of land was fixed at Rs. 7.50 per sq. yard. Then, the damages for loss of access to the appellant's unacquired land was fixed at Rs. 2,000. Further, the solatium payable on the total market value of the acquired land was fixed at 15 per cent while the interest on the total compensation payable was fixed at 6 per cent per annum from the date of the award to the date of payment. The appellant, who felt that the amount of compensation awarded by the Arbitrator was inadequate, preferred an appeal in the High Court seeking grant of enhanced compensation. The Union of India which, on the contrary, felt that the amount of compensation awarded by the Arbitrator was excessive, preferred an appeal in the High Court seeking reduction in the amount of compensation. The High Court which clubbed both the appeals and heard them, by its common judgment partly allowed the appeal of the Union of India and dismissed the appeal of the appellant. By that judgment the market value of the building was reduced from Rs. 2,50,000 to Rs. 1,41,100 while the market value of the land was reduced from 7.50 per sq. yard to Rs. 4 per sq. yard. Solatium was given at a uniform rate of 10 per cent on the market value of both the building and the land as against the rate of solatium of 15 per cent, which had been given on the market value of the land by the award. Interest at 4 per cent per annum on the amount of compensation was granted directing payment of that rate of interest on the total amount of compensation from the date of acquisition till 2nd November, 1968, the date on which Rs. 4,59,150.84 paise was paid to the appellant and on the balance amount of compensation from 3rd November, 1968 upto the date of its payment to the appellant. That common judgment of the High Court and the decrees made thereon, are appealed against by the appellant in these appeals, where by grant of enhanced compensation is sought. Due to the death of the appellant during the pendency of this appeal, his Legal Representatives are permitted to prosecute this appeal.

3. Shri A.K. Sen, the learned senior counsel for the appellant, contended before us that the market value of the acquired building as well as the market value of

the acquired land, determined by the High Court fell far short of the price which each of them would have fetched in the open market if had been sold on the date of their acquisition in the same condition in which they were at the time of requisition and hence were not the respective prices liable to be paid for them u/s 8(3) of the Requisitioning and Acquisition Act. Elaborating the contention, he argued that the High Court in determining the market value of the acquired land at Rs. 4 per sq. yard had not taken into consideration the relevant factors, such as, (i) the building potentiality of the acquired land, (ii) the prices fetched under sale deeds of similar lands in the vicinity of the acquired land and (iii) trend in price-rise of lands, which would have warranted granting of a higher market value for it. He further contended that the High Court ought not have reduced the market value of the acquired building to an amount falling short of the amount fixed for it by the Arbitrator on the basis of the estimate of its value prepared by Shri G.L. Sharma, a private Engineer and his own spot inspection report. As regards the solatium awarded by the High Court at 10 per cent on the market value of the acquired land and building, his contention was that such solatium should have been awarded at the rate of 15 per cent as was permissible under the Central Land Acquisition Act and not at the rate of 10 per cent as was permissible under the Rajasthan Land Acquisition Act. The learned Counsel for the Union of India, who refuted the said contentions, advanced on behalf of the appellant, sought to sustain the judgment of the High Court.

4. The principal controversy which needs our decision in the light of the above rival contentions since relates to the correctness of the amount of compensation determined by the High Court as that payable for the acquired land of 1.38,117.20 sq. yards, we shall proceed to deal with it at the first instance.

5. Sub-section (3) of Section 8 of the Requisitioning and Acquisition Act, being the provision according to which the compensation payable for the acquired land has to be determined, it is excerpted:

8(3). The compensation payable for the acquisition of any property u/s 7 shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

6. As it is ruled by this Court in Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, that the provision of Section 8(3) of the Requisitioning and Acquisition Act lays down a principle aimed at giving to the owner of the acquired land an amount of compensation which approximates to such land's just equivalent value on the date of its acquisition, our endeavour here would be to see whether that principle is rightly applied by the High Court in determining the amount of compensation payable for the acquired land.

7. Method of valuation to be resorted to by a court in determining acquired land's just equivalent price, has to, necessarily depend on the nature of evidence adduced by parties in that regard. When, in a given case, the parties produce

evidence of sales relating to the acquired land or lands in the vicinity of the acquired land and require the concerned court to determine the compensation payable for such acquired land, such court naturally resorts to what is known as 'the Comparable Sales Method' of valuation of land. Indeed, 'Comparable Sales Method' of valuation of an acquired land is invariably resorted to by every court ever since the Privy Council in *Atmaram v. Collector of Nagpur* AIR 1929 P.C.92, regarded that method as one which furnishes 'a healthy criterion' for determining the market value of an acquired land. As regards the acquired land, with the market value of which we are concerned, parties themselves had produced evidence of sales of lands before the Arbitrator in order to enable him to determine its market value based on prices fetched for lands under those sales. The same sale deeds are considered by the High Court to find as to which of them could form the basis for determining the market value of the acquired land. It is why, we have now to see, whether the sale deeds relied upon by the High Court to determine the market value of the acquired land did really furnish a proper basis to make such determination by resorting to 'the Comparable Sales Method' of valuation of land.

8. Building potentiality of the acquired land, claimed to be possessed by the acquired land, can assume no significance in the instant case as 'the Comparable Sales Method' of valuation of land is resorted to by the High Court. Such method is resorted to, as the acquired land was found to be comparable in its essential features with land(s) respecting which evidence of certain sale deed(s), was produced. Hence, the contention of the learned Counsel for the appellant raised to establish, that the acquired land had building potentiality at the time of its acquisition, need not engage our consideration.

9. The High Court, as is seen from its judgment, has examined the sale deeds produced as evidence of comparable sales with a view to find out as to which of them could be taken to relate to a land or lands comparable to the acquired land. Such examination was necessary to find whether the land covered under a genuine sale deed was basically similar to the acquired land. If so found, it would not be difficult for the Court to hold that the price fetched for such land could be regarded as the price of the acquired land, although some amount may have to be either added to sale price or deducted out of the sale price in balancing certain factors not common to the land(s) sold and the land acquired.

10. A site plan of an area in Ajmer, available in the record, by consent of parties, is utilised by the High Court for locating the actual situation of the lands covered by the sale deeds vis-a-vis the actual situation of the acquired land. A sale deed dated 11.10.1960 produced in evidence as Ex.P-4 is found to relate to sale of 48,400 sq. yards of land at the rate of Rs. 650 per sq. yard by Mayo College to Life Insurance Corporation of India while another sale deed dated 17.11.1960 produced in evidence as Ex.P-19 is found to relate to sale of 13,572 sq. yards of land at the rate of Rs. 7 per sq. yard by the very Mayo College to Model Housing & Cooperating Society Ltd. These sale deeds, according to the High Court, since

related to lands situated in a populous area of Ajmer City, the lands sold under them were not comparable to the acquired land which was situated at a place farther away from the city. Although it was contended on behalf of the appellant that the lands sold under the said two sale deeds ought to have been held by the High Court as those comparable to the acquired land, that contention cannot merit our acceptance since the location of the lands covered by the sale deeds is altogether different from the location of the acquired land, as becomes apparent from the site plan with reference to which the High Court has concluded that the lands covered by the sale deeds' lands and the acquired land were not comparable.

11. Sale deed dated 14.1.1964 produced as Ex.P-5 whereunder Mayo College had sold 1,000 sq. yards of land at the rate of Rs. 10 per sq. yard in favour of Mrs. V.M. Kaula; another sale deed dated 25.9.1964 produced as Ex.P-6 relating to sale of a small strip of land at Rs. 10 per sq. yard between the same parties; and a third sale deed dated 13.11.1964 produced as Ex.P-7 whereunder the very Mayo College had also sold to Navin Chandra Sharma 782 sq. yards of land at Rs. 7 per sq. yard, are regarded by the High Court as not comparable sales for determining the value of the acquired land, in that each of them were small bits as compared to the acquired land. The High Court, as suggested on behalf of the appellant, cannot be found fault with for its refusal to act upon the said three sale deeds as comparable sales to determine the market value of the large extent of the acquired land, when it is well settled that the prices fetched under sale deeds of small bits of lands ought not to, ordinarily, be made the basis for determination of large extents of acquired land, (See: Collector of Lakhimpur v. Bhuban Chandra Dutta [1974] SCC 236 and Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, . Besides, in the instant case when sale deeds of lands of even larger extents of lands situated in the very area where the bits of lands covered by the three rejected sale deeds were situated were not considered by the High Court as comparable sales for the reason of their situation in a populous area of the city, that reason should equally hold good for the High Court not acting upon the three sale deeds relating to bits of lands as comparable sales for fixing the market value of the acquired land.

12. However, there are other two important sale deeds which the High Court has regarded as sales of lands comparable to the acquired land and has taken the prices fetched for them as the criteria for determining the market value of the acquired land. A sale deed of the year 1961 produced as Ex.P-18 related to sale of 26,733 sq. yards of land which was a portion of the acquired land. That land had been sold by the very appellant to Nayjiwan Co-operative Housing Society Ltd. at the rate of Rs. 3 per sq. yard. Another sale deed dated 14.3.1958 produced as Ex.P-10 related to sale of 5,124 sq. yards of land situated in the close vicinity of the acquired land. That land had been sold at the rate of Rs. 3.50 per sq. yard by Joharilal to Saraswati Balika Vidhyalaya. As regards sale deed Ex.P-18 under which the appellant had sold a large extent of land to Nayjiwan Co-operative Society at the rate of Rs. 3 per sq. yard, the contention of learned

Counsel for the appellant before us was, as was before the High Court, that the real value of the land as on the date of sale was Rs. 6 per sq. yard as stated by P.W.6, Sadu Singh, and hence that rate should have formed the basis for determining the market value of the acquired land. The High Court rejected this contention on its view that the statement of P.W.6, the President of the Society, that the price of the land was Rs. 6 per sq. yard at the time of its purchase in the year 1958 was difficult of acceptance when the Society had accepted its price at the rate of Rs. 4 per sq. yard in relation to the year 1965, when it had been acquired. Besides, what cannot be overlooked is that neither the vendor of the land nor P.W.I, Narayana Singh, who has given evidence on behalf of the vendor, had stated at any time that the real price of the land in Ex.P-18 was Rs. 6 per sq. yard as on the date of its sale. The High Court, therefore, cannot be found fault with for relying upon the sale deed relating to a land which formed part and parcel of the acquired land earlier, as furnishing the real criterion for determining the price of acquired land (See: *Bangaru Narasingha Rao Naidu v. R.D.O. Vizianagram* [1980] 1 SCC 75. Hence, the contention urged that the price under sale deed Ex.P-18 should be regarded as Rs. 6 per sq. yard and that price should form the basis for determining the market value of the acquired land, ought to fail.

13. The contention that the rate of Rs. 3.50 per sq. yard at which Joharilal sold the land under Ex.P-10 to Saraswathi Balika Vidyalaya had to be regarded as a concession price since he was the Vice-President of the vendee Vidyalaya, was not accepted by the High Court because of its view that oral testimony given by Joharilal as P.W.2, several decades after the actual sale had taken place, was difficult to act upon, particularly, when there was nothing in the sale deed which could give such indication. This contention has been rightly not accepted by the High Court. We are unable to find any good reason to take a contrary view in the matter.

14. The learned Counsel for the appellant then contended that the High Court should not have brushed aside the claim of the appellant that the market value of the acquired land as on the date of its acquisition could be fixed at least at the rate of Rs. 6 per sq. yard, as had been done by the Arbitrator taking into consideration the trend of price-rise of lands. The High Court has taken the view that there was no reliable evidence available on record to show that the land price in the area between the year 1961 when the deceased-appellant had sold the land adjoining the acquired land at Rs. 3 per sq. yard and the year 1967, when the land, the compensation for which had to be determined, was actually acquired, had gone up appreciably. The view so taken by the High Court, according to the learned Counsel for the appellant, ignored the reliable evidence on record relating to the sale prices of building plots formed on a land far beyond the acquired land by the Urban Improvement Trust of Ajmer fixed in the year 1963, that is, Rs. 15 per sq. yard for commercial plots and Rs. 7 per sq. yard for residential plots and the said prices were approved by the State Government. This evidence, it was asserted by the learned Counsel for the appellant, clearly

demonstrated the price-rise of land in the area of the very acquired land after the year 1961. In our view, the contentions of learned Counsel as regards trend of price-rise of land in the area of the acquired land are well founded. No doubt, the plots of Urban Improvement Trust made ready for sale at high prices pertained to a developed lay-out. Yet, they clearly indicated the prices of land situated beyond the acquired land, as prevailed in the year 1963. Besides, in the instant case it is admitted that for the land which was purchased under Ex.P-18 by Navjiwan Housing Society in the year 1961 at Rs. 3 per sq. yard the Arbitrator had awarded a rate of Rs. 4 per sq. yard with reference to its acquisition in the year 1965, and that award was not challenged by the State, as fixing a high price. From this, it becomes obvious that even the State was well aware of the trend of price-rise of lands in the area of the acquired land between the year 1961 and 1965. Thus, trend in price-rise of lands in the area of the acquired land between the year 1961, the year in which the appellant sold the land adjacent to the acquired land and the year 1967, the year in which the land in question was acquired, was therefore, very much seen. Indeed, the rising trend in prices of immovable properties is a common phenomenon all over the country after the year 1950, although such rising trend has varied in degree from place to place and year to year. The lands around Ajmer City, were no exception to such trend in price-rise. However, as the market value of the acquired land is determined by the High Court at Rs. 4 per sq. yard in the year 1967, without taking into account the trend of price-rise of lands in the vicinity of the acquired land, we consider that it would be very just and proper to add to that price of Rs. 4 per sq. yard, another Re. 1 per sq. yard on account of the factor of price-rise of lands in the area of the acquired land between the year 1961 and the year 1967. If Re. 1 per sq. yard is so added to Rs. 4 per sq. yard, the market value of the acquired land in 1967, the year of its acquisition, would work out to Rs. 5 per sq. yard. Hence, as against the market value of the acquired land determined by the High Court at Rs. 4 per sq. yard, we determine the same at Rs. 5 per sq. yard, inasmuch as, such determination of market value of the acquired land would satisfy the principle of awarding to it an equivalent price.

15. The next question which requires our examination keeping in view the arguments of learned Counsel for the contesting parties, is as to whether the High Court had gone wrong in not accepting the price of the acquired building - 'Masuda House' determined by the Arbitrator in a sum of Rs. 2,50,000 as on the date of its acquisition as the correct market price.

16. The Arbitrator for Fixing the price of the acquired building had acted on an estimate of one G.L. Sharma, a retired Executive Engineer of Government of Rajasthan, who had claimed that he had prepared the estimate of the acquired building on an inspection of the building in the presence of Shri B.D. Gupta, Assistant Surveyor, C.P.W.D. representing the C.R.P.F. Ajmer for which the building had been acquired. So also the Arbitrator had acted on the inspection report which he had claimed as prepared on local inspection of the building. The High Court found that the retired Executive Engineer, who, it was said, had

prepared the estimate of the building for fixing its price on the date of acquisition, had not given evidence about it as a witness and that had led to denial to the contesting party, an opportunity of cross-examining him as to acceptability of the Report. therefore, according to the High Court, such estimate could not have had any evidentiary value and the price of the building fixed by the Arbitrator on the basis of such estimate had to be discarded. Further, the High Court has found fault with the Arbitrator to have relied upon his Inspection Report to test the estimate of the building prepared by the retired Executive Engineer, although it had not been admittedly signed by the Arbitrator at the time of making his award. In the view of the High Court, such report could not have been made use of by the Arbitrator for the purpose of accepting the estimate of the building made by the retired Executive Engineer, inasmuch as the parties against whom such inspection report had been used, had no opportunity of knowing about the very existence of such report. As is seen from the evidence on record and the proceedings before the High Court the reasons as to why the High Court did not attach any value to the estimate made by the retired Executive Engineer and the Inspection Report, cannot be said to be ill-founded. Besides, it was not disputed before us that the retired Executive Engineer had been employed by the appellant-Rao Narain Singh, the owner of the acquired building, as his private Engineer, inasmuch as that Executive Engineer had admittedly visited the building and prepared the estimate of costs and specification of structures in the building on behalf of Rao Narain Singh. Again, it was not disputed that the Arbitrator came to sign the Inspection Report said to have been prepared by him after the award had been made and when he had become 'functus officio' as an Arbitrator. In the said view of the matters, it is difficult for us to think that the High Court was in any way unjustified in refusing to accept the valuation of the building as Rs. 2,50,000, based on the estimate made by Shri G.L. Sharma retired Executive Engineer and the spot Inspection Report claimed to have been made use of by the Arbitrator. However, as is seen from the judgment of the High Court, it has fixed the market price of the acquired building at Rs. 1,41,100 having regard to the estimate prepared by the Executive Engineer, scrutinised by the Superintending Engineer of the Rajasthan Public Works Department and approved by the Chief Engineer of the Rajasthan Public Works Department. Such estimates, admittedly had been produced on behalf of the owner of the building - Rao Narain Singh of 'Masuda House', by his own witness P.W.5, Ramdayal Gupta and spoken to by him. We cannot, therefore, say that the High Court in the said circumstances, was not justified in relying upon the estimates made by the Public Works Department of the State of Rajasthan in fixing the price of the building at Rs. 1,41,100. Yet, we consider that the High Court should have added to that price of the building a sum of Rs. 5,720 when it had found that that amount of Rs. 5,720 was the price of items in the building which were left out in the estimate of the Engineers of the Public Works Department of the State of Rajasthan. As stated by the High Court itself, the items for which cost had not been fixed by the Engineers of the Public Works Department in their estimate, were 'road side retaining walls', 'wire fencing' and



'main gate wall'. The cost of those left out items was found to be Rs. 5,720. We, therefore, consider it just and reasonable to add that amount of Rs. 5,720 to the price of the acquired building. Hence, in our view, the just equivalent price of the acquired building would be Rs. 1,41,100 plus Rs. 5,720 i.e. Rs. 1,46,820 and not merely Rs. 1,41,100, its price determined by the High Court.

17. The last question that arises for our consideration is whether the High Court had acted rightly in fixing the solatium payable on the amount of compensation for land and building at 10 per cent instead of at 15 per cent. The High Court in fixing the solatium at the rate of 10 per cent on the amount of compensation payable for the land and building has held that the land and building acquired being in the State of Rajasthan the solatium payable was the rate admissible therefore u/s 23(2) of the Rajasthan Land Acquisition Act - the State Act and not the rate admissible under the corresponding provision in the Central Land Acquisition Act. We find no good reason to disagree with the High Court in the said matter as the solatium to be paid for the land acquired under the Requisitioning and Acquisition Act cannot be a benefit of solatium not available for a land acquired under the State Act, i.e. under the Rajasthan Land Acquisition Act. Thus, the appellant cannot succeed on this question.

18. In the result, we allow this appeal partly and modify the judgment and decrees of the High Court under appeal. The market price of acquired land of 70 Bighas, 14 Biswas and 1412 sq. yard is enhanced to Rs. 5 per sq. yard from Rs. 4 per sq. yard awarded by the High Court. The market price of the Masuda House is enhanced to Rs. 1,46,820 from Rs. 1,41,100 awarded by the High Court. The solatium at 10 per cent shall be payable on the said total amount of the price of the land and price of the building, as determined by us. The damages of Rs. 2,000 awarded by the High Court as loss of access to and utility of the unacquired land of the appellant stands undisturbed. The interest of 4 per cent per annum shall be payable on the total of all the said amounts in the manner indicated by the High Court in its judgment and decrees under appeal. Since the appellant died during the pendency of this civil appeal, the amount of compensation which has become payable under this judgment, less the amount of compensation already paid or deposited, shall be paid to the legal representatives of the deceased-appellant, who are prosecuting this appeal. Costs payable in this appeal shall be paid by the respondent to the legal representatives of the deceased-appellant, in proportion to their success.