

(2006) 04 DEL CK 0051

In the Delhi High Court

Case No : L.A. Application No's. 94, 95-97, 98, 104-108, 109-113, 114-20, 132-133, 134-35, 136-140, 142, 149-160 and 172-174 of 2006

Smt. Omwati

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 18, 23, 23(1A), 23(2)

Citation : (2006) 90 DRJ 324

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : B.S. Maan and Jai Prakash, for the Appellant; Sanjay Poddar and Sachin Nawani, for the Respondent

Judgement

Swatanter Kumar, J.—The learned Reference Court vide its judgment and award dated 24.10.2005 declined to enhance the compensation awarded to the claimants as per the Award No. 8/1996-97 relating to the acquisition of the land in the revenue estate of Village Ranhola, Delhi, and the references made by the Collector u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") were not accepted. Being dissatisfied with the order, the claimants/land owners have filed the present appeals praying for enhancement of the compensation in regard to the acquired lands of the appellants @ Rs. 1 lac per bigha over and above the rate assessed by the Collector.

2. Grant of relief in this appeal is vehemently opposed by the respondents and it is argued that the judgment under appeal does not suffer from any error of law and the Reference Court has correctly appreciated the evidence on record and it is submitted that the appeals be dismissed.

3. The learned Counsel appearing for the respondents, while supporting the judgment of the Reference Court contended:

(a) The sale deeds Ex.A1 to A4(P4) produced by the defendants have rightly not

been relied upon and considered by the learned Reference Court because they relate to adjoining villages, to small pieces of land in comparison to large tracts of lands acquired by the notification in question and are the sale deeds executed by interested persons to create evidence in their own favor;

(b) The appellants have failed to bring on record any cogent and reliable evidence which could be considered by the Reference Court and even by this Court for accepting the claim for enhancement of compensation; and

(c) The policy of the Government dated 27.4.1990 is a document which cannot be relied upon by the appellants to claim any higher compensation than the one awarded to them by the Reference Court.

4. Having noticed the legal controversies raised in the present appeal, we may now refer to the facts giving rise to these appeals. The appellants are recorded bhumidaars/owners, who claim to be owners in possession of the agricultural land comprising of Khasra Nos. 40/222(4-16), 23(4-16), 24/1(3-4), 25/3(3-19), 43/2/1(4-4), 3/1(4-3), 4/1/1 (1-0), 4/3/2 (1-0), total admeasuring 32 bighas 8 bids was and also the recorded bhumidaar/owner to the extent of $\frac{1}{2}$ share in the land comprising of Khasra Nos. 40/15/1/1 (3-12), 16/1/2 (1-6), 16/3/1 (1-4) total measuring about 6 bighas 2 bids was situated in the revenue estate of Village Ranhola, New Delhi, thus, the appellants were the recorded bhumidaar of the total land measuring $32-8 + 3-1 = 35$ bighas and 9 biswas. The notification u/s 4 of the Act was issued by the appropriate government on 6.1.1995 intending to acquire a total land measuring about 971 bighas and 6 bids was in the revenue estate of Village Ranhola, New Delhi for a public purpose namely "Planned Development of Delhi" and with particular reference to establishment of a Sewage Treatment Plant. In furtherance to this notification, a declaration u/s 6 of the Act was issued on 9.3.1995 where after notices under Sections 9 and 10 of the Land Acquisition Act were issued to the appellants. Land of the appellants were part of the large tract of land acquired by the said notification. The appellants filed their claims which was considered by the Collector and the award was made granting compensation @ Rs. 4.65 lacs per acre in addition to the proportionate solarium. As already noticed, dissatisfied from the award, the claimants had made the references u/s 18 of the Act which were declined vide the impugned judgment and the court held as under:

This principle was again reiterated by the Supreme Court in cases of Land Acquisition Officer and Sub-Collector, Gadwal Vs. Smt. Sreelatha Bhoopal and another, wherein it set aside the order of High Court that had relied on sale deed relating to small piece of land and determined compensation per sq. yard and K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , wherein it was held that a Sale deed of small piece of land relied on by claimants cannot form basis for determining compensation for large extent of land.

Second reason for discarding valuation on the basis of Ex.P1 to P4 is that

situation of particular land plays an important role in fetching the value of it. For example if the land is situated just near the metal led road on a developed place it may fetch more value than the land which is situated far away from the metal led road and near the less developed area. In the present case no evidence has been adduced to prove existence of favorable factors to fetch more value of the land in dispute. Halka Patwari has been examined as PW1 but he deposed that he was not able to tell if the quality of land/soil of village Mundka was similar to that of village Safipur Ranhola. PW2 also could not prove that her land was situated near the metalled road and in some developed area. She admitted that her village has not so far been urbanised and her land was being utilized for agricultural purposes only.

The arguments of counsel for the Union of India seems to me convincing that Larson & Turbo, Kleen-Rite Enterprises and others paid higher side of price of land as lands were purchased for commercial purposes. The counsel for the petitioner further failed to prove on record that there was similarity of situation, position and advantages attached to the land purchased by Larson & Turbo Limited, Kleen-Rite Enterprises and others and land in dispute and acquired in the present case.

Arguments of Id. Counsel for the petitioner regarding fixation of rate of land on the basis of Govt. Policy is not convincing for the reasons; firstly, that price of the land acquired by the Government cannot be enhanced on the basis of such policy as neither precedents nor substantives law on the subject provides that rate of land can be enhanced on the basis of like documents. Secondly, no document showing such policy has been filed and proved in accordance with the provisions of Indian Evidence Act.

I have examined the evidence and material produced on record on different angles in order to find out whether after applying the principles as discussed in cases Smt. Tribeni Devi and Others Vs. Collector of Ranchi, ; Adusumilli Gopalakrishna Vs. Special Deputy Collector (Land Acquisition), ; and Suresh Kumar Vs. Town Improvement Trust, Bhopal, etc., some enhancement of compensation could be made? I came to the conclusion that petitioner could not establish on record that either potentiality or market value or the advantages attached to the land subject matter of this case could fetch more value than the land acquisition collector awarded for the land in dispute and referred to in the award. In other words, it could not be established that market value as on the date of notification for acquisition of land was more than what the Land Acquisition Collector assessed in his award. Therefore, it is held that the petitioner is not entitled for enhancement of compensation and accordingly, this issue is decided in favor of the respondents and against the petitioner.

ORDER

Resultants upon the decision of issue No. 2 in favor of the respondents and against the petitioner; it is held that petitioner is not entitled for enhancement of

compensation. Parties are left to bear their own cost. Reference is, accordingly, answered in favor of the respondents and against the petitioner.

5. According to the appellants the learned Trial Court has erred in not appreciating the direct and comparable instances of sale which were produced by the appellants as Ex.A1 to A4 and they have also contended that the findings of the Reference Court that the sale instances were that of small pieces of lands is factually incorrect in as much as the sale instances proved by the appellants on record related to nearly 1-3 bighas of land which by no stretch of imagination can be considered or compared to sale of small plots. The court should have relied upon these sale instances as comparable and admissible evidence and granted the compensation at those rates. It is also argued on behalf of the appellants that reasonable and fair market value of the land can be gathered from the various sale instances and particularly the policy decision of the Government dated 27.4.1990 fixing the minimum price of the land in those parts of Delhi.

6. The grievance of the appellant is also that both the Collector and the Reference Court has awarded the compensation in violation to the principles of law provided in Section 23 of the Act. These principles have entirely been ignored particularly for determining the market value of the land, the damage sustained by the persons interested as a result of dispossession and effect on their livelihood. In fact, the Collector is stated to have even ignored the instructions issued by the Government in this regard. The learned Reference Court answered both the issues against the claimants and held that the claimants were not entitled to any enhancement of compensation. As already noticed, the claimants had produced Ex.A1 to A4 in support of their claims and examined one witness PW1. PW2, the claimant Smt. Omwati, had filed an affidavit by way of evidence and was subjected to cross-examination and had produced and proved on record exhibits A1 to A4, the details of which are as under:

Notification u/s 4 dated 6.1.1995

S. No. Details of Sale Deed Village Date of Execution Value (per bigha) (Sale consideration + Area) 1. Rs. 9,07,200/- for land Tikri Kalan 23.04.1993 Rs. 3,02,400/- measuring 3 Bighas in Kh. Nos. 41/7 (0-10), 41/4/2 (0-10), 41/3 (1-0), 41/14(0-5), 41/7 (0-15) (Ex. A1) 2. Rs. 1,25,000/- for land Mundka 27.02.1990 Rs. 1,25,000/- measuring 1 Bigha out of Kh. No. 46/21/2 (Ex. A2) 3. Rs. 3,25,000/- for land Nilothi 19.12.1996 Rs. 3,25,000/- measuring 1 Bigha out of Kh. No. 16/24 (Ex.A3) 4. Rs. 1,95,000/- for land Saffi Pur 13.10.1994 Rs. 1,62,500/- measuring 1 Bigha & 2 bids was Ranhaula, Delhi. out of Kh. No. 25/8 [Ex.A4 (P4)]

7. No witness was examined on behalf of the respondents. They only tendered in evidence, Ex.R1, copy of the award and Exs. R2 and R3, the details of which are as under:

S. No. Details of Sale Deed Village Date of Execution Value (per bigha) (Sale

consideration + Area) 1. Rs. 97,000/- for land Saffi Pur, 10.08.1994 Rs. 97,000/- measuring 1 Bigha out of Ranhola, Delhi Kh. No. 30/12 min, (1-0) (Ex.R2) 2. Rs. 4,40,000/- for land Saffi Pur, 30.04.1996 Rs. 1,05,769.23 measuring 4 Bigha 16 Biswas, Ranhola, Delhi out of Kh. No. 23/15 (Ex.R3)

8. Ex. A1 and A2 relate to the revenue estate of Village Tikri Kalan and Mundka respectively. Ex.A3 relates to a land situated in the revenue estate of Village Nilothi and is dated 5.12.1996. Ex.A4 (P4) relates to Village Ranhola i.e. from the Revenue Estate of the same village with the land of which we are concerned in the present appeal. This sale was effected on 13.10.1994. These sale instances have been rejected by the learned Reference court on the ground that they are much prior to the date of acquisition, or are of different villages, or small pieces of lands. As far as Ex.A4 is concerned, this was executed between the appellants/claimants and their family members. Vide Ex.A4 land measuring about 1 bigha 2 bids was sold for a sum of Rs. 1,95,000 and was executed just little prior to issuance of the notification u/s 4 on 6.1.1995. It is a known fact that sometimes prior to the publication of the notification u/s 4, the process of the appropriate authorities planning to acquire the land, is known to the public. In fact, surveys are conducted which itself is a public indication of the intention of the Government to acquire the lands. Secondly, these sale deeds have been executed between interested persons which would create a dent in the credibility of the registered documents. The learned Counsel appearing for the respondents has rightly placed reliance upon a judgment of the Supreme Court in the case of Virender Singh and Others Vs. Union of India (UOI), where the court had declined to place reliance upon the sale deeds Ex.A3 and A4 in that case as they were executed by the claimants themselves in favor of the persons who figured as respondents before the court in those proceedings. Thus, we would also not like to place any reliance upon the contents of Ex.A4.

9. Coming to Ex.A3, it is a sale deed dated 5.12.1996 i.e. executed nearly 2 years later to the issuance of Section 4 notification dated 6.1.1995. A sale deed which has been executed two years subsequent to the acquisition of the land and that too in another village by no stretch of imagination could be considered as a relevant piece of evidence for determining the fair market value of the land payable to the claimants in the January"1995. Reference in this regard can be made to the judgment in the case of State of Haryana and Anr. v. Ram Chander and Ors. 1999 (2) PLR 753. In view of the settled position of law that except to a limited extent the sale deeds which were executed post-notification, are not reliable piece of evidence for determining the fair market value of the land in question, and thus, we reject Ex.A3 as well.

10. Now, coming to the exhibits A1 and A2. Ex.A1 is a registered Sale deed dated 23.4.1993 relating to sale of nearly 3 bighas of land in Village Tekri Kalan for a consideration of Rs. 9,07,200/-. This would give the rate of nearly Rs. 3,02,400/- per bigha. Ex. A2 is also a registered sale deed in respect of one bigha of land situated in Village Mundka where it was sold for a sum of Rs.

1,25,000/- on 25.2.1990. Both these sale deeds have been rejected by the learned reference court on account of they being much prior to the date of acquisition. ? This reasoning does not appear to be correct as a sale deed of April 1993 for acquisition of lands in January"1995 cannot be treated as a sale deed of a much prior period. As far as Ex.A2 is concerned this may be true to some extent as the sale deed is nearly 5 years prior to the date of acquisition. But the value indicated in these exhibits would be a relevant consideration for indicating what was the market value of the land surrounding the land in question even prior to the date of acquisition. In order to determine reasonable and fair market value of the land at the date of acquisition the past sale considerations reflected through the registered sale deeds would be a relevant consideration if otherwise admissible and comparable.

11. PW1, Mr. Lalit Kumar Sharma, Halka Patwari stated in his examination in chief that Village Mundka is situated on the north of the Village Ranhola, and Village Nilothi is on the south of the said village. He further specifically stated that the boundaries of Village Saffi Pur, Ranhola and Mundka touch each other. Of course, he stated that he was not able to tell whether the land/soil of Village Mundka is similar to the other villages. In his cross-examination he stated that the sajra brought by him in Court on the basis of which he made the statement was prepared nearly 10 years back. The claimant, Smt. Omwati (in LAA No. 94/2006), had given her affidavit by way of evidence Ex. PW2/A. In her affidavit, she had clearly stated that the entire land of the claimants is leveled throughout and is having the potentiality of building sites and all amenities and facilities of life i.e. water, electricity, metal roads, transport, school, hospital are available and were available at the time of the issuance of the notification u/s 4 of the Act. According to this affidavit, the land rates were between Rs. 500/- to Rs. 1000/- per square yards. In paragraph 8 of the said affidavit she also stated that there has been construction of new colonies which were existent even prior to the issuance of the notification and the land is being sold in the shape of plots near the vicinity of the Village Ranhola and the rates of the lands at the village Ranhola is nearly Rs. 5000/- per sq. yard. She specifically stated that the sale transactions in Village Mundka have been @ Rs. 1,25,000/- per bigha even in the year 1990. The entire land had the potentiality of residential, commercial and industrial purposes and according to her the land in question was surrounded by village Nilothi, Mundka and Tilangpur Kota and a number of colonies have been in existence on all those lands prior to the issuance of the notification u/s 4. The following paragraphs of the affidavit can usefully be reproduced at this stage:

That there is no such thing which is essential for life are not available in Village Saffi Pur Ranhola, Delhi. Every amenities and facilities of daily life are available in the land in Village Safipur Ranhola, Delhi. The Land Acquisition Collector has not taken into consideration all the facts while determining the market value of the land. The Land Acquisition Collector should have taken into consideration the future potentiality of the land and should have determined the market value by keeping in view the market value as fixed by the Government.

That the Delhi Development Authority has made the allotment of alternative plots to the land owners whose land has been acquired by the Delhi Development Authority is charging the market value of the land at the rate of Rs. 2750/- per sq. meter from the persons whose land has been acquired. The plots are allotted undeveloped. The Land Acquisition Collector have taken the market value which is being charged by the Delhi Development Authority and after some adjustment he should have determined the market value of the land under acquisition. There is no difference between the land of plot allotted by Delhi Development Authority and the land which have been acquired vide the above noted award.

12. Nothing material is reflected from the cross-examination of this witness. She denied the suggestion that there was only a school up to 5th standard and stated that for the last 5 years, a school up to 12th standard was functioning in the same village. She denied the suggestion that there is no railway station. Of course, she admitted the suggestion that the village had not been urbanised and she denied the suggestion that the land in that village was sold for a sum of Rs. 97,000/- per bigha in the month of August 1994.

13. The respondents had placed on record Ex.R2 and R3. Ex.R2 is a registered sale deed dated 10.8.1994 vide which 1 bigha was sold for a sum of Rs. 97,000/- in the revenue estate of the same village, while Ex.R3 is a registered sale deed dated 30.4.1996 vide which 4 bighas 16 bids was of land was sold for a sum of Rs. 4,40,000/-, again in the revenue estate of Village Ranhola. This is the complete evidence of the respondents.

14. The appellants placed heavy reliance upon the policy decision taken by the Land and Building Department, Vikas Bhawan, New Delhi, wherein the Joint Secretary, L&B had issued a policy circular conveying the decision of Delhi Administration to fix a minimum price for all agricultural lands in the Union Territory of Delhi with effect from 27.4.1990". Besides making various observations, it was recorded in this report that the tendency to undervalue the land price for the purpose of registration of the sale deeds is coming to the notice of the authorities more than often. The purpose was to conceal unaccounted for money and to evade the stamp duty and tax payment. In order to prevent all this, the administration directed as under:

It has been decided to fix the minimum price at Rs. 4.65 lakhs per acre for all agricultural lands except those in the river bed. For lands in the river bed, enclosed between the forward bunds, the minimum price fixed is Rs. 1.5 lakhs per acre. Hence forth while registering the sale deeds, this price would be taken into account by the concerned authorities.

In case of lands being acquired for various public purposes under the Land Acquisition Act, these minimum prices will be taken into consideration by the Land Acquisition Collector for payment of compensation and would apply in all cases where land has been notified u/s 4 of the Land Acquisition Act in 1990. For land notified in previous years u/s 4, the minimum price would be arrived at by

discounting the 1990 price by 15% per annum. These minimum prices would however have no application to cases in which awards have already been announced. In addition to these minimum prices, the farmers would also be entitled to 30% solarium and other benefits provided for in the Land Acquisition Act. For lands notified u/s 4 of the Land Acquisition Act in 1990 and thereafter the minimum compensation payable will be more than Rs. 6 lakhs per acre for agricultural land and approximately Rs. 2 lakhs per acre for lands situated in the river bed. These minimum prices, do not in any way, restrict the farmers from seeking higher compensation under the Land Acquisition Act, if they so desire.

15. Such policy decisions of the government cannot be treated as a substantive piece of evidence. They are documents prepared by the government after due verification and surveys, but the documents itself does not refer to any distinct piece of evidence which was considered by the government for determining the minimum price payable for acquisition of agricultural land. At the same time, this policy decision of the government cannot be treated to be either entirely inadmissible or irrelevant for the purpose of determining the controversy in issue. This reflects the conscious decision of the appropriate government not to allow registration of the sale deeds, wherein the agricultural lands anywhere in Delhi are proposed to be sold below the specified rate i.e. Rs. 4.65 lacs per acre (i.e. Rs. 1,11,778.84 per bigha). This value was fixed in the year 1990. We do not intend to say that the government is bound by this price and the claimants must get this price, but with such variations that are permissible in law, this would be some kind of a guideline for the court to arrive at just and fair market value of the land at the relevant time. The learned Counsel appearing for the respondent Union of India, while relying on the judgment of the Supreme Court in the case of Virender Singh (supra) argued that small pieces of land cannot at all be looked into by the courts while determining the compensation payable to the claimants for acquisition of vast stretches of lands. Firstly, this is, in our view not a correct reading of the judgment of the Supreme Court and secondly, the facts of that case were entirely different. Their Lordships of the Supreme Court held that "small bit of transaction would not be determinative factor for deciding the market value of vast stretch of land" where the land was acquired to the extent of 5,484 bighas and only one bigha vide Ex.A1 was made the basis for awarding the compensation by the court, and the same was not accepted by the Supreme Court. In the present case, the acquisition is only of 971 bighas but the sale instances placed on record by the claimants as well as the respondents were of land measuring 1 bigha to 4 bighas, as such these sale deeds cannot be treated at parity with Ex.A1 (in the case of Ram Phool and Another Vs. Union of India, It will be impracticable to imagine that the claimants or even respondents are expected to tender evidence of sale transactions where hundreds of bighas have been purchased or sold in acquisition proceedings or even sale of few hundreds of bighas. No individual person and for that matter, even a corporate body would sell or buy the lands in hundreds of bighas in a place like Union Territory of Delhi, where yards of lands cost thousands of rupees. To require

parties to lead such evidence is an illusory submission rather than a pragmatic view. We may also refer to a judgment of the Punjab & Haryana High Court in the case of Baldev Singh v. State of Haryana 1999 (3) PLR 141 where the court discussed this aspect as well as the aspect of the notified lands being surrounded by the boundaries of the revenue estates of other villages and its impact on the fixation of the compensation payable. The court after detailed discussion held as under:

14. One can hardly trace any element of disparity between the case of Harpal Singh and the present appeals. In both the cases, the lands were acquired by the same notification dated 26.5.1981. Lands were acquired by a common notification in the revenue estates of all the three villages i.e. Patti Mehar, Jandli and Sounda. It is also an admitted case and is equally reflected by the site plans Ex.P.10 and Ex.P.11. The boundaries of the three revenue estates of these villages is common. In other words, the lands of each of these villages are adjacent to other while part of the land of Patti Mehar prior to the present acquisition was in Municipal Limits. This has been so reflected in the cases of Pala Singh and Sudesh Kumar (Ex.P.9). The lands acquired are at a distance from the grain market while those places were fully commercialised and developed when the lands in those areas were acquired. Thus, I find it difficult to plainly follow the said criteria for awarding the compensation in the present case. The necessary corollary thereto would be to make a reasonable deduction/cut from such amounts and to implement the rule of uniform compensation as afore-indicated to award the compensation which has been awarded in other connected cases for such similar lands. The lands in other cases are comparable or even somewhat similar. They have been acquired for one and the same purpose and, thus, difference of part of the land from the other land acquired would not be of great significance.

15. For the reasons afore-stated I allow these appeals and enhance the compensation for acquisition of the lands of the land owners to Rs. 2,91,800/- per acre. The land owners claimants would be entitled to statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act in accordance with law. However, in the facts and circumstances of the case, there would be no orders as to costs. The appeals are, accordingly, allowed, limited to the above extent.

16. Even in the case of Ravinder Narain and Another Vs. Union of India (UOI), , the Court held as under:

It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

8. In the case of Suresh Kumar v. Town Improvement Trust, Bhopal 1989 (1)

SVLR 399 in a case under the Madhya Pradesh Town Improvement Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of AIR 1939 98 (Privy Council) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser.

17. Further in the case of Union of India (UOI) Vs. Bal Ram and Another, the Court held as under:

The ground urged before us is that in view of the decision in Kanwar Singh and Others Vs. Union of India, contiguity of villages could not by itself be sufficient to draw an inference of similarity in character of the lands in awarding the compensation and, Therefore, the reasoning of the High Court is not correct. The High Court indeed did not rely upon the contiguity of the lands alone but if found that the nature/quality of the lands is by and large similar to those lands considered in Satpal's case. If that is the finding of the High Court, we do not think there would be any justification to make any distinction between lands which had been lying in Palam and Shahbad Mohamadpur. Therefore, the view taken by the High Court cannot be faulted with. The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is same and lands are identical and similar, though lying in different villages, we find the judgment of the High Court to be fair and reasonable and no interference is called for. Therefore, the appeals stands dismissed.

18. It may also be noticed that certain principles relating to this aspect were also enunciated by the Supreme Court in the case of The Land Acquisition Officer, Revenue Divisional Officer, Nalgonda (A.P.) v. Morisetty Satyanarayana and Ors. 2002 (1) AILACC 1. Amongst others it was held that normally, the court would not consider post notification sale instances and an order based upon such instances may be held to be erroneous. Where the court basis its findings on sale instances relating to small pieces of lands belonging to different persons, deduction is required to be made. But wherever there is an increase in the market price of the land during the relevant years, then applying the development deduction on these grounds would not be necessary. These principles are to be kept by the court in mind while determining the compensation payable to the claimants.

19. We have already held that Ex. A4 (P4) and A3 cannot be looked into and the court cannot record its findings on the basis of such evidence. Thus, the court would be left with exhibits R1, R2, R3, A1 and A2. Ex.A1 relates to the revenue estate of Village Tekri Kalan where 3 bighas of land was sold for Rs. 9,07,200/-. Vide Ex.A2, 1 bigha of land was sold for a sum of Rs. 1,25,000/- in the year

1990. There is no evidence on record to show that the land in the revenue estate of Village Tekri Kalan is adjacent to the land in question and both the lands have same potential and are capable of fetching the same price. PW2 in his affidavit Ex.PW2/A had specifically stated that Village Mundka is nearby and there are industries in those areas so the land acquired is fit for industrial development. Furthermore, even PW1 in his statement had stated that on the north of the revenue estate of Village Ranhola, Village Mundka is situated. Thus, the lands located in Village Mundka were stated to be little better than the acquired land but both the lands were stated to be near each other and were having great potential, both industrial as well as residential. The acquired land has all the facilities and necessities of day-to-day life. Thus, exhibit A2 can easily be looked into for determining the fair market value of the acquired land. For a sale instance or other piece of evidence to be relevant it must be "a document which is admissible piece of evidence and is a comparable instance". Of course, it is not necessary that it should be an absolutely identical piece of land in comparison to the acquired lands. This is an indication in regard to the price of the land surrounding the acquired land. Vide Ex.A2 land has been sold in Village Mundka which as per the evidence on record is a more potential area having higher value and is to some extent even developed. This is the own admission of the claimants as such the claimants cannot be entitled to the same value as reflected in Ex.A2. Some amount of deduction would have to be made to balance the higher potential of Ex.A2 by lowering the extent of compensation payable to the claimants. In the facts and circumstances of the case and the judgments relied above in the cases of Baldev Singh (supra); Ravinder Narain (supra) and Union of India v. Bal Ram and Anr. (supra), it will be appropriate to reduce the value of the acquired land by 25% to balance the higher potential of the developed areas and comparatively smaller pieces of land in comparison to the acquired land, location etc., thus making the value @ Rs. 1 lakh per bigha.

20. The respondents have mainly relied upon Ex.R2 which again is a sale deed of small pieces of land. Ex.R2 is the document on which the thrust of the entire argument of the respondent is based. This is a sale deed executed in the year 1994 for a land measuring about 1 bigha in Village Saffi Pur Ranhola for a sum of Rs. 97,000/-. The notification u/s 4 was issued on 6.1.1995 which would be the relevant date for determining the fair market value of the land in question. Ex.R3 is still another sale deed dated 30.4.96 i.e. post-notification and vide this sale deed 4 bighas 16 bids was of land was sold in Village Saffi Pur Ranhola, Delhi. As per this sale deed the price would be nearly Rs. 1,10,000/- per bigha though this sale deed is post-notification but still it reflects the two very pertinent facts which would throw light on determining the extent of compensation payable to the claimants:

- (a) That in Ex.R2, it has been recorded that it was converted into a farmhouse and plans for that were sanctioned as back as on 4.12.1987.
- (b) That there is increasing trend in the prices of the property.

21. As per Ex.R2, one bigha was sold for Rs. 97,000/- in the year 1994, while the land was sold @ Rs. 1,10,000/- per bigha in the year 1996 vide Ex.R3. Both these material pieces of evidence have not been adverted to by the learned Reference Court. Even if this Court treats Ex.R2 as the material piece of evidence as argued by the respondents for determining the fair market value of the land at the time of acquisition still there is a gap of nearly 6 months in the date of sale of Ex.R2 and issuance of notification u/s 4 acquiring the land in question. The claimants in any case would be entitled to increase in the price again on various counts i.e. development of the surrounding areas, increase in value of the land as well as other determining factors as contemplated under the provisions of Section 23 of the Act. From the evidence led by the appellants as well as the respondents there is hardly any major difference in the amount which can be determined as fair market value of the land at the time of acquisition. On the basis of Ex. A2 as well as Ex.R2, the compensation payable would approximately be the same particularly keeping in view the two basic ingredients which we have afore-noticed and as are clear from Ex. R3. The respondents are bound by both these exhibits and must bear the consequences thereof.

22. Now, let us revert back to one basic document and consequence thereof, which completely and discreetly would have to be considered by the court. The policy of the government afore-noticed, had for reasons mentioned therein, clearly directed that the minimum price of any agricultural land anywhere in Delhi would be Rs. 4.65 lacs per acre. This value was effective from 27.4.1990. In other words, the minimum value of the agricultural land, except the river bed in Delhi, in the year 1995 would be much more than what has been indicated in the policy of the government. The object of the policy is to ensure that people do not evade stamp duty and other liabilities, but at the same time it is a document which is relevant. It may not be strictly binding on the State and cannot be enforced against the State as it is a document primarily prepared to prevent evasion of revenue and tax. This document again is a fair indication of the market value prevalent in Delhi in the year 1990 which according to the Government should be determined as the "minimum price". There is apparent distinction between "minimum price" and "fair market value" of the land as contemplated u/s 23 of the Act. The expression "minimum" is capable of being understood and given different meanings in different contexts. But its basic understanding in common parlance can hardly be altered. According to Century Dictionary, the word "minimum" means smallest amount or degree and it is smallest and next to nothing (minimum est nihilo proximum). Even in context to "minimum wages" it indicates "the bare subsistence minimum wages". The Black's Law Dictionary explains the expression "minimum as "of, relating to, or Constituting the smallest acceptable or possible quantity in a given case, minimum charge to a customer of a public utility".

23. The clear consequence of this expression is that a "fair market value" has to be read and construed in contradistinction to "minimum price" and cannot be treated synonymous to that expression. In all normal circumstances, "fair market

value" should be higher than the "minimum price". The determination of the amount of compensation to be awarded has to take in its ambit the market value of the land on the date of publication of notification and also such amounts which may become payable to the claimants in reference to second and sixth clauses to Section 23 of the Act. Thus, market value of the land is a basic criteria which the court has to essentially take into consideration for determining the final amount of compensation to be awarded to the owners of the land. It cannot be the "minimum price" of the land. The concept of payment of compensation has much wider connotation than the "minimum price of the land". In the case of Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, , while elucidating the various principles relating to acquisition proceedings under the provisions of the Act, the Court also observed that the "market value" is the ordinary price the property may fetch in open market if sold by a willing seller in effect by special needs of a particular purchase. The court could consider other sale instances in absence of sales of similar lands and also such other evidence that may be considered. The court emphasized that "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-a-vis the land under acquisition by placing the two in juxtaposition.

24. On proper analysis of the factual matrix of the case, evidence on record and the principles of law afore-referred it is clear that in terms of Ex.A2, sale deed relating to October"1994, the land in the adjacent village of Mundka was sold @ Rs. 1,25,000/- per bigha and by reducing the amount for better developed areas and location etc., it will be just and fair to assess the compensation payable to the claimants @ Rs. 1 lacs per bigha. As per Ex.R2, in the revenue estate of the same village, a land measuring about 1 bigha was sold for Rs. 97,000/- in the year 1994, nearly 6 months prior to the date of notification, as such the claimants would be entitled to some increase because of increase in the price of the land as exhibited by Ex.R2 and R3. Thus, even on that basis the compensation of Rs. 1 lakh per bigha would be fair. Even in terms of policy of the Government fixing the market value of the land at Rs. 4.65 lacs per acre, the price of the land would still come to Rs. 1,11,778.84 per bigha. We have already held that the government cannot be bound by this policy as its real purpose was not to determine the fair market value of the land at the time of acquisition but was to prevent evasion of revenue and taxes etc. In these circumstances, from whatever angle the claim of the appellants is viewed, the appellants are bound to succeed partially. Consequently, we set aside the judgment of the Reference Court dated 24.10.2005 and partially allow the appeals and assess the compensation payable to the claimants for acquisition of their lands @ Rs. 1 lakh per bigha. They would obviously be entitled to all statutory benefits of interest and Section 23 of the Act even on the enhanced compensation. The appellants

would also be entitled to proportionate costs.

25. Accordingly, all the appeals stand disposed of.