(1984) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Appeal No. 1152 of 1977, Cross Objections and C.M.P. No''s. 11271 to 11274 of 1983 and 11985 and 6588 of 1984

Special Deputy Collector, Land Acquisition, Urban Development Authority, Visakhapatnam — APPELLANT

Vs

K. Ramayyamma and Others — RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4, 4(1)

Citation : AIR 1985 AP 118

Hon'ble Judges : Ramachandra Raju, J;Jagannadha Rao, J

Bench : Division Bench

Advocate : G.V.L.N. Narasimha Rao and M.Y.K. Rayuda, for the Appellant; T. Veerabhadrayya, G. Govinda Rao, K. Srikrishna, D. Satyanarayan, B. Jogayya Sarma, N.V. Ranganadham, A. Purnachandra Rao and E.V. Bhagiratha Rao, for the Respondent

Judgement

Jagannadha Rao, J.—A large extent of Ac. 17 and 24, 394 Sq. feet of land in T.S. No. 363/B in Block 20 of Waltair Ward was acquired for a development scheme in pursuance of a resolution by the Chairman, Town Planning Trust. A notification under S. 4(1) of the Land Acquisition Act was published in the Gazette of 21-9-1967. The Land Acquisition Officer passed an award bearing No. 7/72 dated 26-6-1972 fixing the market rate at Rs.4.04 per square yard. The claimants then applied for a reference under S. 18 of the L.A. Act. The reference was numbered as O.P. No. 117/1973 and after notice the claimants filed various claim statements. These persons were shown as claimants Nos. 1 to 22 in the O.P.

2. Before the learned Subordinate Judge, Visakhapatnam to claimants examined P.Ws. 1 to 8 and marked Ex. S.A-1 to A-24 on their side. On the other hand, the Government examined R.Ws. 1 to 3 and marked Exs. B-1 to B-27.

3. On a consideration of the above evidence, the learned Subordinate judge enhanced the market value from Rs.4.04 per square yard to Rs.20/ as being the

value on 21-9-1967. He did not make any deduction whatsoever for roads etc.

4. Against the said judgment, the Special Tahsildar, Land Acquisition, Visakhapatnam has preferred this appeal impleading the claimants 1 to 22 as respondents 1 to 22. The appeal is preferred questioning the enhancement in the rate i.e., from Rs.4.04 to Rs.20/- per square yard and is valued at Rs.10, 53,253-00 exclusive of both the solatium and the interest decreed at 4% P.A. from 5-9-1972, the date of taking possession.

5. In this appeal, it is contended by the learned counsel for the appellant, Sri G.V.L. Narasimha Rao, that the market value of Rs.20/- per square yard is excessive and totally unrelated to the evidence in the case, that the Court below ought to have deducted 1/3rd for the roads and further that wherever the claimants have claimed any particular rate less than Rs.20/-, the same cannot be exceeded while computing the market value.

6. On the other hand, Sri K. Srikrishna appearing for respondents 4, 6, 8, 9, 20 and 22, Sri N.V. Ranganadham and Sri. G.V. Ksitaramarao for respondents 14 to 18, Sri T. Veerabhadrayya for respondent No. 7, Sri Ke.v. Bhagiratha Rao for respondent no. 12, and Sri V. Jogayya Sarma for respondent No. 14, have charged in support of the decree and judgment passed by the lower Court.

7. The first question that, therefore, arises for consideration in this appeal is as to the market value of the acquired lands as on 21-9-1967, the date on which the notification under S. 4 of the L.A. Act was published.

8. Admittedly the acquired land is more or less in the shape of a quadrangle, with one side facing the Bay of Bengal and the opposite boundary being almost parallel. These two sides are lengthwise and each of these sides is about thrice as long as each of the remaining two sides. The acquired land is in Block No. 20 of Visakhapatnam Town.

9. The plan Ex. A-9 filed for the claimants gives the various Block Numbers of the Town and it is necessary to note the topography of these block numbers for a proper understanding of the points raised.

10. The Sea-coast of the Bay of Bengal is on the eastern side on the land in Block No. 20 and this land is at the northern most tip in the plan. The acquired land in T.S. No. 363/B is a part of Block No. 20 and lies alongside the sea-coast.

11. The coastal belt of land in the plan can be cut into three distinct groups. The first group (at the northern end) consists of three blocks i.e., Block No. 20 on the northern most tip, Block No. 21 immediately below and Block No. 32 below Block No. 21. On the Western side of these three blocks 20, 21 and 32 the Dyces Road runs from the north and slopes down towards the sea to the West of Group-1 lands and thus separates these three blocks 20, 21, and 32. The Dyces Road then joins the Beach road which is running alongside the sea-coast up to Block 32. Behind these three blocks 20, 21 and 32 in Group-1, we have Blocks 22, 23, 24, 30, 31. Then we have the Lunatic Asylum Road, behind them to their west

and farther west are Blocks 25, 29, 28, 26, 27.

12. Group-II which is immediately to the south of Group -I along the coast comprises of Blocks 33, 35, 34. These Blocks have the Beach Road on their east which meets (as already stated) the Dyces Road at the southern tip of Block 32 and The north-eastern tip of Block 33. Behind Block 34 we have Block 38 to its West. On the Western side i.e., West of Block 35 and Block 38 we have the Waltair Main Road.

13. Group-III is the southern-most group consisting, on the coast side, the Beach road again and then abutting it to its West, Block no. 39. Behind Block No.39 on its West we have Block No. 40. To the West of Block No. 40 we again have the Waltair Main Road. At the southern tip of Block Nos. 39 and 40 we have the Rama Krishna Mission and then the gedda (a channel) and to the further south of the Channel we have Block Nos. 58, 57 etc.

14. We have to ascertain the market value of the acquired land in S. No. 363/B which lies at the north-eastern end, on the coast-side, in Block No. 20 in Group-I.

15. The appellant had filed a detailed plan Ex. B-4 showing this part of the town with the various Block Numbers and giving details of the buildings already constructed in the various blocks by the date of notification drawn to a scale 1" = 33-''. In this appeal he has filed another copy of Ex.B-4 wherein he has shown the location of the various properties with reference to the sale deeds or awards/ judgments in the Ex.A series and B-series. As no objections have been filed there we allow C.M.P. No. 11274/83 filed by the appellant to receive the said plan and we mark the said plan as Ex. B-4 (a) for convenience.

16. Before proceeding further it will be convenient to indicate the approach of the lower Court in arriving at the market value of Rs.20/- per square yard. The learned judge made a personal inspection and observed in para 18 that the land is fit for building purposes and that there are no shrubs or green-vegetation. The lands are so uniquely suitable on the beach-side that according to the learned Judge, one has to see it to: ''believe it''. There are some sale deeds executed by the original owner P.W. 1 (Claimant No. 22) in the same Block No. 20 such as Ex. B-1 dated 28-5-1965, the rate under which works out to Rs.4.04, per square yard. Further kin the same Block No.20 we have in Ex.A-23 dated 144-8-1963 and Ex.A-22 dated 19-10-1963 disclosing a rate at Rs.6/- per square yard sold by the 22nd claimant. The learned Judge did not prefer to give any importance to Ex. B-1, Exs. A-23 and A-22 on the ground that these sale deeds were executed by P.W. 1 (Claimant No. 22) at the instance of her husband P.W.2 who was a spend-thrift having costly habits and that P.W.2 was, in fact, selling at higher prices and pocketing the extra-money without informing his wife. Having thus rejected Ex. B-1 Ex. A-22 and A-23, which are all in the very S. No. in Block No. 20 in Group-I, the learned Subordinate judge proceeded to consider Ex.A-2 to A-4, A-6, A-8, A-16 and A17 (in block Nos. 22, 23, 26, 27, 38, 56) between 1967 to 1971 as post notification sales showing rates at Rs.13, Rs.14/-, Rs.15/-

Rs.19/-, Rs.26/- and Rs.50/- and held that they are a ''guide'' to show the progressive increase in prices in the vicinity. Thereafter he came to Ex.A-10, A-11, A-18 and A-24 which are sale deeds or judgments in respect of lands at the Southern-most and in Block No.39 (Group III). These are: Ex. A-10 D/- 29-11-61 near the Radhakrishna mission at the Southern most tip in Group-III which shows a rate of Rs.15/-. Ex-A-24 a judgment of the trial Court in a reference under S. 18 in respect of land acquired for Caltex (in Group-III) under a notification dated 9-3-61 fixing a value of Rs.10/- for one piece and which was enhanced y the High Court in Ex.A-11 judgment (in A.S. No. 191, 61 of 1969) dated 11-11-1970 at rates referred to later. Ex. A-18 a judgment of the trial Court in O.P. No. 59/71 in respect of a notification dated 21-5-65 regarding land acquired for the Town Planning Trust in Block No. 39 (in Group-III) fixing a market value of Rs.20/- per square yard described as Category II therein.

17. Thus the learned Subordinate Judge had, in effect rested his conclusion on the market value of lands in Group-III on the Southernmost side as per Exs. A-10, A-11, A24 and A-18 and arrived at a rate of Rs.20/- per square yard. He did not however make any deductions for the roads.

18. After having carefully appraised the oral and documentary evidence of the case, we are of the view, for the reasons to be given below, that the learned Subordinate Judge was clearly in error in three respects namely: -

(i) in adopting the value of lands in Exs. A10, A-11, A-24 and A-18 on the Southernmost tip in Block No. 39 in group-III which are lands in a well-developed locality and quite far;

(ii)

(iii) in ignoring Exs. B-1, A-22 and A-23 as being totally irrelevant even though they are sales by the 22nd claimant in this very S. No. in Block 20 (Group-I) and

(iv)

(v) in not deducting anything for the formation of roads.

(vi)

19. We shall also incidentally refer to the submission of the learned counsel for the respondents-claimants on the basis of (i) Exs. A-5 in Block No. 23, (ii) Exs. A-2, A-3, A-4 in Block No.22 all four deeds behind Dyces Road on the West and (iii) Exs. A-6, A-7, A-8 in Block No. 27 (beyond Lunatic Asylum Road still West).

20. We shall take up the first aspect as to why the learned Subordinate Judge was not right in relying upon Exs. A-10, A-11, A-24 and A-18 on the southernmost part in Block No.39 in Group-III.

21. Ex. A-10 dated 29-11-1961 is at the extreme southern tip in Group-III and is covered by a registered sale deed by Sri A.K. Banerjee in favour of one Sri T.P. Rungta in respect of 456 square yards for Rs.6840/- in T.S. No. 1011/2 in Block

No. 39. It is near the Ramakrishna Mission bordering Vuta gedda channel. This land is at least fifteen furlongs away (as per Ex. B-4) (a) plan) from the acquired land. Further that locality was quite developed even by 21-9-1967 when the present land was acquired. P.W. 8, A.K. Banerjee, he Vendor under that deed Ex. A-10 clearly admitted in his evidence on 25-8-1977,

"It is true Block No. 39 has been a prominent locality since the last 20 years or more.......It is true, abutting the plot sold to Rungta, there is the 100 feet road of the Municipality. It is the Beach Road."

And clarified that the 100'' beach road was laid after he sold his site to Mr. Rungta in 1961. In view of the above facts, namely, that the land is quite far off and is last in a developed area, we are clearly of the view that Ex.A-10 dated 20-11-61 in Group III is not a comparable sale.

22. We next come to the narrow strip of land running from East to West acquired for Caltex Company in Block No. 39 in Group-III at the southern end. That land was acquired under a notification dated 9-3-61. The reference to the Civil Court under S. 18 is O.P. No. 24/63, the judgment in which is marked as Ex.A-24. The further judgment in appeal to this Court is marked as Ex. A-11 dated 11-11-1970. The trial Court fixed values at Rs.10/- Rs.5/- and Rs.3/- for three pieces of land on the basis of a sale deed dated 4-4-60 in S. No. 1011 in Block No. 39 (that sale deed works out at a rate of Rs.7/-) which is not marked in the present case now in appeal before us. This Court, in its judgment in A.S. Nos. 191, 61 of 1969 (Ex. A-11) also relied upon this very deed dated 4-4-1960 and while confirming the rate of Rs.10/- for the first bit increased the rate for the second bit from Rs.5/- to Rs.8/- and for the third bit from Rs.3/- to Rs.5/- and observed that if a higher rate was claimed for, the Court would have been prepared to allow. No deduction was made for roads.

23. According to the evidence of P.W. 8, this land acquired for Calrtex (i.e., land covered by Exs. A-24 and A-11) is only about 500 or 600 yards from the land covered by his deed Ex. A-10. We have already mentioned how distant the land covered by Ex.A-10 is and how developed that locality has been since 1957 onwards as admitted by P.W. 8, P.W.1, the 22nd claimant, also admits that at the back of this land are Panduranga Temple, the Caltex quarters, and the Andhra University, immediately next to the Caltex quarters. She also says that by the date of acquisition of the lands covered by Ex.A-11, the Ramakrishna Mission Beach was well developed. It is suggested to P.W. 1 that the distance between Caltex quarters and the present acquired site is 11/2 miles but she denies the same and says that it is 3 or 4 furlongs. P.W.2, the husband of P.W. 1, admits that Block No.39 (in which Caltex quarters are located) is called Pandurangam layout, that it is close to the Municipal Commissioner''s house, that the southern boundary of Block No. 39 is the University road and that the Quality Restaurant is located there. P.W.3, Pentakota Sreeramulu, also admits that by the date of acquisition of land for Caltex, the Andhra University buildings were existing and separated by a road. But he denied that the acquired lands are 2 kilometers from

his lands, near Caltex quarters. According to him, the distance is four furlongs. P.W. 8 also admits that in Block No.39, we have the Panduranga Temple, Quality Restaurant, Municipal Commissioner''s residence, the University quarters and Caltex Quarters and admits that Block No. 39 "has been a prominent locality since the last 20 years or more." R.W. 1 is the Special Tahsildar (Land Acquisition). He mentioned that the panduranga lay-out is 3 kilometers from the acquired site. Though it was suggested to him that Ex.B-4 plan was incorrectly prepared, no specific details were put to him. He further stated that the R.K. Mission is in the midst of posh buildings. R.W.2 is the surveyor who prepared Ex. B-4 is part of the Master Plan prepared by the Town Planning Trust. According to him, the distance between the acquired land and R.K. Mission is 10,325 feet (i.e., 1 mile 7 furlongs), that the Andhra University campus is 6300 feet (i.e., nearly 1 mile 2 furlongs) for the acquired land. He denied the suggestion that Ex. B-4 plan is incorrect.

24. From the aforesaid evidence adduced on both sides, it is clear that the land covered by Ex.A-11 acquired for Caltex is at least one or one and half miles from the acquired land, that that lands is nearer to the Andhra university and various other buildings and is a developed locality since 20 years. Therefore we are of the view that the land acquired for Caltex on 9-3-61 in respect of which the Civil Court fixed compensation as per Ext. A-11 and the High Court as per Ex. A-24 at Rs.10/- Rs.8/-, and Rs.5/- respectively for three types of land cannot also be compared to the land under acquisition. Therefore the lower Court was, in our opinion, wrong in taking the value mentioned in Ex. A-11 or Ex. A-24 in group III as any basis for assessing the market value of the acquired land.

25. We then come to Ex. A-18 judgment in O.P. No. 59/71 which is a judgment in a reference in respect of land belonging to Pentakota Sreeramulu (P.W. 3) under a notification dated 21-10-1965.

26. A look at the plan Ex. B-4 prepared according to scale shows that this land is in T.S. No. 1008 in Block No. 39, Ex. A-18 judgment discloses that that was divided into four categories. Category No. I (Ac. 16-24) was denotified, Category No. II was Ac. 12-16 cents, Category-III ac. 7-00 and Category -IV was gedda (drain). Under Ex. A-18, the learned Subordinate Judge had fixed the market value for Category-II at Rs.20/- per square yard and did not make any deduction for roads, while for Category III and Category-IV deductions were made at Rs.2/- and Rs.3/- thereby fixing the market values at Rs.18/- and Rs.17/- respectively per square yard.

We have to point out that since the judgment under appeal before us, the decree in Ex. A-18 dated 5-2-74 has been modified by a Division Bench of this Court in A.S. No. 56/76 on 23-12-1982 in an appeal preferred by the Government. The said judgment has been filed as additional evidence in C.M.P. No. 11274/1983 which we allow. That judgment is marked as Ex-B-28 in this appeal.

27. Inasmuch as the judgment in Ex. A-18 has been superseded by the judgment

in Ex-B-28, it is sufficient to refer to the latter for the purpose of the present discussion.

28. Inasmuch as the judgment in Ex.A-18 has been superseded by the judgment in Ex.B-28, it is sufficient to refer to the latter for the purpose of the present discussion.

29. From the plans Exs. B-4 and B-4(a), it will be seen that the two pieces of land acquired on 21-10-1965 and which are the subject matter of the judgments Exs.A-18 and B-28 are situated on either side of the strip of land acquired for the Caltex earlier on 9-3-1961. Therefore it goes without saying that the lands acquired on 21-10-65 and which are the subject matter of Exs.A-18 and B-28 are also more than a mile away from the acquired land and that they too are in a developed locality. P.W.3 was the main claimant for this land acquired on 21-10-1965. But he states that the lands which are the subject matter of the appeal before us are only 3 furlongs from his land acquired on 21-10-65. This cannot be accepted in view of the distances marked in Exs.B-4 and B-4(a) plans drawn to scale and in view of the evidence of R.W.1 and R.W.2. On the ground of the long distance and on the ground that, that area is a well developed area, we are of the view that Exs.A-18 and B-28 in Group III cannot help the respondents.

30. There is one other reason as to why the above said judgments in Exs.A-18 and B-28 in respect of P.W.3''s lands cannot be relied upon by the respondents. A reading of the judgment of this Court in Ex.B-28 reveals that the basis finally adopted there was the rate in the sale deed D/-29-11-1961 which is marked now as Ex.A-10. In Ex.A-18 judgment, this deed dated 29-11-1961 was marked as Ex.A-2. We have already held that Ex.A-10 land is at the southern most tip of the Group III lands and near the Rama Krishna Mission and in a posh locality and that it cannot be taken into consideration as a comparable sale. Once Ex.A-10 is not accepted as relevant, it is equally not permissible to consider as relevant Ex.A-18 or Ex.B-28 which judgments again rely upon Ex.A-10 sale deed.

31. Therefore we are of the view that the sale deed Ex.A-10 dated 29-11-1961, the judgments Ex.A-24 and A-11 dealing with the land acquired on 9-3-61 for Caltex or the judgments in Ex.A-18 and Ex.B-28 relating to the lands of P.W.3 acquired on 21-10-1965 which are all at the southern side and in Group III can be of no assistance to the respondents.

Learned counsel for the respondents then relied upon Exs. A-6, A-7 and A-8 which are in Block No.27 (Behind the Lunatic Asylum Road) away and to the West of Group I lands in support of the decree passed by the Lower Court.

32. As we shall presently show, these documents too cannot help the respondents for the following reasons. Ex.A-6 dated 14-10-1968 is a sale deed of 1731/3 square yards in Block No.27 in T.S.No.786 for Rs.2500/- which works out at Rs.15/- and odd per square yard. The northern boundary of the plot is shown as a Municipal road. P.W.4 is the scribe but his evidence does not throw any light on the value. P.W.6 claims tobe a mediator who arranged Ex.A-6 transaction and

he states that the real consideration paid under Ex.A-6 was at a rate ranging between Rs.20/- to Rs.30/- per square yard but the deed was executed for a lesser stamp duty. This version cannot be accepted. He however admitted that the site under Ex.A-6 was ''straightway'' fit for building purposes without the need for spending any further amount towards development. Now Ex.B-4 plan shows that this land is about 3500 i.e., 5 1/2 furlongs away from the acquired site and also that the site is located in a thickly populated area in China Waltair village. The site itself was bound by a Municipal road on one side. Having regard to the distance and location, we are clearly of the view that Ex.A-6 cannot help the respondents.

33. Ex.A-7 dated 19-12-1969 is a sale infavour of P.W.7 in respect of site of 200 square yards (at Rs.15/- per square yard) in Block No.27, very near to Ex.A-6. The witness P.W.7 admits that the plot was part of a layout approved by the Town Planning Trust and that even in 1969 there were houses in that layout. The eastern boundary of the land in Ex.A-7 is shown tobe a road. Thus, for reasons which wer have given for not applying the rate given in Ex.A-6, we cannot equally apply the rate in Ex.A-7.

34. Coming to Ex.A-8, it is a sale deed for 255 square yards for Rs.5,000/- (rate works outat Rs.19/- per sq.yd.) and this site is also near Ex.A-6. The eastrn and the western boundaries are shown as Municipal roads. Thus the land is in an approved lay-out and in a developed locality and about 5 1/2 furlongs away from the acquired site. It cannot therefore be accepted as a comparable document.

35. Thus these three sale deeds Exs.A-6, A-7 and A-8 of land behind the Lunatic Asylum Road to the further west of Group I lands relied upon by the learned counsel for the respondents cannot be accepted as comparable documents.

36. The question then is as to which of the other documents on record should be consideredfor estimating the market value of the acquired land as on 21-9-1967?

37. In our view, there are three sets of properties which are located immediately around Block No.20 where the acquired land is located and it is these documents that have to be considered for arriving at the correct market value of the acquired land.

38. The first group of documents is the one dealing with properties covered by Exs. A22, A-23, B1. They are located in this very Block No.20 in Group-I and in the same S.No.363/B as the acquired land. There can therefore be no doubt that they are quite relevant.

39. The 22nd claimant, P.W.1, sold under Ex.A-23, sale deed dated 14-8-63, an extent of 1000 square yards for Rs.6,000/- pursuant to an agreement dated 15-2-62. She similarly sold under Ex.A-22 dated 19-10-1963 pursuant to another agreement dated 5-3-63 another extent of 1000 sq.yds. at the rateof Rs.6/- per square yard. It is true that Ex.B-1 is a sale deed dated 28-5-65 by P.W.1 of 2600sq.yds. forRs. 10,500/-. We are not prepared to accept the value of the land

in Ex.B-1 as it is quite low compared to the rate in Ex.A-22 and Ex.A-23. We are of the view that we have to go by the rate in Ex.A-22 and Ex.A-23 and not by the ratein Ex.B-1.

40. The valud of the Rs.6/- per square yard in the very Block and T.S.No. as on 15-2-62 (the date of the agreement) should help us in estimating the value of the acquired land as on 21-9-1967, nearly, 5 1/2 years later. Having regard to the rate of increasein prices between the early part of 1962 and the latter half of 1967 in this part of Vishakapatnam town, we are of the view that it will be reasonable inference to make that the prices have more or less doubled by 21-9-1967 in 5 1/2 years and that the value per square yard of the land in Block No.20 would be at least Rs.12/- per square yard.

41. The second approach to the rate is by the other set of documents namely Ex.A-5 in Block No.23 on the immediate West of Block No.20 and Exs. A-2,A-3 and A-4 in its neighbouring BlockNo.22 (it is to the immediate west of Group I lands).

42. Ex.A-5 is asale deed dated 29-7-1967 in BlockNo.23. It is in respect of 402 square yards for Rs.5225/- which works out at a rate of Rs.13/- per square yard. It is at about a distances of 600/- yards from the acquire site. Exs.A-2 and A-3 are both dated 16-9-1970 and are located in the neighbouring block No.22 and each is a sale of 445 sq. yards. Ex.A-4 dated 9-11-1970 is a sale of 3642/9 sq. yards in the same block. The rate here works out to Rs.15/- per square yard and Ex.A-4 is about 800yards from the acquired site. Having regard to the fact that Exs. A-2 and A-3 are a little awayfrom the China Waltair Village and the cost in 1970 was Rs.15/- we are of the view that Ex.A-5 is of slight under value and that it will be reasonable to say that the lands covered byExs. A-2 to A-4 were sold for the correct value as distinct from the lands coveredby Ex.A-5. Thus the land to the westof theacquired land was sold at Rs.15/- in 1970 and taking that as a rought guide, it wouldnto be unreasonable to infer that the value of the acquired land in Sept.1967 would be at least Rs.12/- per square yard.

43. The third approach to the problem would be with the help of Exs. B-4 and B-4(a) plans in which are alsoshown the land which is the subject matter of the judgment A.S.No.5/75 (marked as M-22 to Ex.B-4(a) plan) in Block No.21 which is in Group I immediately adjacent to Block no.20 containing the acquired land. Ex.B-4(a) plan discloses that the S. 4 notification for this land in Block No.21 is dated 21-4-1963, that in that case the trial Court fixed the market value at Rs.6/- per square yard in O.P.No.46/67 and the High Court confirmed the value at Rs.6/- per square yard. Similarly we find that for the land whichis the subject matter of A.S.No.13/73 (marked as Ex.M-23 in Ex.B4(a) plan) in Group I in Block No32 (which is adjacent to Block No.21), the notification was dated 21-11-1963. The trial Court in that case fixed the market value at Rs.6/- in O.P.No.115/67 and the same was confirmed by the High Court in A.S.No. 13/73. Thus in the neighbouring blocks 21 and 32 in Group-I the value was Rs.6/- in 1963.

44. If the value of the land in the immediately neighbouring blocks (block 22 being within 500 yards and Block 32 being within 600 yards) in Group I along the coast line was Rs.6/- in 1963 we can safely take these values also as relevant. In our view,having regard to the quick pace of development in and arount the area in Vishakapatnam Town,it will not be unreasonable toinfer that thevalue of the land which was about Rs.6/- per square yard in 1963 had risen to Rs.12/- per square yard by Sept.1967.

45. Thus on an overallconsideration of the available documentgs in and arount the acquired land, we are of theview that the marketvalue of the acquired land is to be assessed at Rs.12/- per square yard as on thedate of acquisition on 21-9-1967.

46. We are therefore unable to agree with the view taken by the lower Court that the value of the acquired land as on21-9-1967 was Rs.20/- per square yard. We therefore set aside the said finding and hold that the value is to be assesed at Rs.12/- per square yard.

47. The next question is whether any deduction is to be made on the ground that roads have tobe formed and other amenities are to be provided.

48. We are of the view that when land of an extent of ac.17 and odd is acquired as in the instant case it is absolutely necessary to make deduction for the roads, etc. as held by the Supreme Court.

49. Decided cases say that deduction must be made ranging from 33 1/3% to 20%, No doubnt there are a few cases where a deduction up to 50% was suggested while in some others it was held that no deduction should be made. Leaving out these extreme views,we consider it proper that having regard to the circumstances of each case, a deduction ranging from 33 1/3% to 20% should necessarily be made when vast extents of land are acquired.

50. We shallnow dealwith the rulings of the Supreme Court on this question.

51. In Uttar Pradesh Government Vs. H.S. Gupta, , their Lordships of the Supreme Court were dealing with land outside Lucknow city and referred to the principle that if the land has to be sold in one block consisting of a large area the rate per square foot likely to be fetched would be less than if an equal extent of land is parcelled out into smaller bits and sold to different purchasers. But this shoul dbe done only after considering the price fetched for a smaller extent of land similarly situated with the same kind of advantagesand disadvantages. From the judgment which took the rate of Rs.120/- per square foot as the value, it is not clear as to what percentage was deducted for the roads and other amenities.

52. The next case decided by the Supreme Court is in The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, . In that casethe acquire dland was 51,243 sq.yards and the respondent was interestedin 48,404 sq. yards. The HighCourt deducted 25% (i.e. 12,101 sq. yards) towards roads etc. Their Lordships fo the Supreme Court stated that there was no dispute rised

before them regarding this deduction (para 4).

53. The third case is the one in Balammal and Others Vs. State of Madras and Others, , where the High Court accepted a cut of Rs.400/- in a market value assessed at Rs.2250/- in respect of Group K-A lands of the Mandavalli Scheme, the same was not disturbed. That works out at less than 20%.

54. The fourthcase is the one in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, , where their Lordships pointed out that when a large area such as the one acquired was sold, it cannot possibly fetch a price at the same rate at which small plots can be sold and held that if the smaller plots were sold at Rs.15,000/- per bigha, the larger block has to be value at Rs.10,000/- per bigha. In effect a deduction of 33 1/3% was made.

55. Next comes the case relating to Smt. Tribeni Devi and Others Vs. Collector of Ranchi, , where their Lordships deducted 33 1/3% towards development of roads etc.

More recently in Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, , a cut of 20% for some lands and 33% for other lands was adopted. A.P.Sen, J.who delivered the Judgment observed:

"It is well settled principle of valuation that where there is a large area of undeveloped land under acquisition, provision has to be made for providing the minimum amenities of town life such as water connections, well laid out roads, drainage facility, electric connections etc. The process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on a par with the developed lands. An extent of 20 per cent of the totalland acquired is normally taken as areasonable deduction for the space required for roads. This is apart from the cost laying roads themselves and the cost of providing other amenities like electricity, water, underground-drainage etc. In Tribeni Debi v. Collector of Ranch (supra) the Court allowed a deduction of 231/3% towards the cost of development. The cost of development may range from 20 to 33 per cent depending uponthe nature of the land, its situation and the stage of development etc. The tribunal had before it material on which it directed a cut of33 per cent of the market value in one and 20 per cent in the other. It cannot be said that the aforesaid deductions were arbitrary or unreasonable having regard to the factthat the land acquired is an undeveloped area and the award of the Tribuna is based on the ''Belting'' Principle."

Thereater in 1984, in Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, , it was observed:

"In certain other cases this Court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property, a deduction should be given. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , a deduction of 25% was indicted while there are certain other cases where theview is that the reduction should be to the extent of 1/3."

We may point out that a Division Bench of this Court in Special Tahsildar, Land Acquisition, Vishakaptanam v. Radnam Dharma Rao, A.S.No. 719/1975 dt 16-1-79 ofA.P.High Court,consisting of Ramachandra Rao, J. (ashe thenwas) and one of us (Ramachandra Raju N.) made a deduction of only 20% fo the roads and other amenities.

56. From the aforesaid rulings, it is clear that if for assessing the market value of large extents of land, the value of smaller plots with similar advantagesor disadvantagesis adipted, a deduction for the development of theland is necessarilytobe made. Such a deduction may vary from 20% to 33 1/3% depending upon the nature of the land, its situation and the stage of development. It is cusotmary todeduct 20% towards the space requiredforroads alone apart from the further deductios fro laying theroads and for providing electricity, water and drainage facilities. The maximum deductionis normally 33 1/3%. As in the Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, ther may be exceptional cases where the total deduction for roads and all amenities was accepted to at 20% in respect of a portion of theland.

57. Bearing the above principles inmind, we proceed to make the deduction. On the facts ofthis case we have arrived at a rate of Rs.12/- per square yard, differing from the rate of Rs.20 /- per square yard arrived at by the lower Court. Theland, as alreadypointed byus, is more orless a rectangular plot with the sea on one side along its length, on the coast side, and the opposite side running parallet to it. The lengthis nearly thrice as much as the width , the former spreading along the Coast side. There is thus no scope of having a road on the easter side for the sea is the easternboundary. Regarding the Southern side P.W.2 stated that there is a road running along side the gedda on the southand that it is being used as a road by the public but he admitted that it is a kacha road and is in T.S.No.357, (adjacent to the acquired land in T.S.No.363/B) on the south. It was suggested to him in corss-examination that this road isbeing used by the fishermen and washermen. The evidence of P.W.2 coupled with the suggestion makes it clear that there is iun fact,a kacha road abutting thegedda (channel) on the south in the adjacent S.No.T.S.357. We cannot therefore accept aswholly correct the evidence of R.W.1 for the State to the contrary that there is only a gedda and no road on the south. That is clearly contrary to the suggestion put to P.W.2, R.W.1 further admitted that there are drinking water wells in the lands acquired and that the lands are ever, as stated in the award, and the land was fit for construction. R.W.1 further admitted that in the award, he did not make any deduction whatsoever for roads or amenities. Therefore on the southern side, there is considerable saving towards the space needed for a road. Further the land runs parallel to the cost and in view of the sea on the eastern side and the width of the land beign about one third of its length. We are of the view that the deduction in this case should be 22.50% in Rs.12/- which leaves a net rate of Rs.9.30 per square yard which works out to something between 20% and 25%.

58. We therefore, fix the market value of the land, after the necessary deduction, at Rs.9.30 per square yard in substitution of the rate of Rs.20/- per square yard fixed by the lower Court.

59. It is true that some of the claimants have claimed at Rs.10/- er square yard while some othrs claimed at Rs.20/- per square yard fixed by the lower Court.

60. It is true that some of the claimants have claimed at Rs.10/- per square yard while some others claimed at Rs.20/- and Rs.25/- per square yard. In view of the fact that we have now fixed the rate at Rs.9.30 per square yard, we need notgointo the question as to whether some claimants could be awarded more than Rs.10/- per square yard.

61. In C.M.P.no.11273/84, it is shown that there is a dispute regarding the tile between some claimants i.e., claimants 12,15,16,17,18 and 22 with regard to Ac.3 and 18,295 sq. feet in T.S>no. 363/B-3 and there is a separate reference under S. 31 of the L.A.Act pending. It appears that, in spite of this dispute, some of these claimants have withdrawn various amounts not only with regard to T.S.No.363/B-2 but also with respect to R.S.No.363/B-3 pending this appeal in this Court. We make it clear that it will be opento the appellant to movethe lower Court for re-deposit of the amounts so drawn by such claimants - either wholly or in part or for obtaining directions regarding security to the satisfaction of the lower Court, subject to the final resultofthe reference under S. 31 of the Act. We are not going into the exactamounts refundable for the matter has to be decided by receiving calculation memos from both sides.

62. C.M.P.No.11274/83 for receitp of the plan is allowed marking the plan as Ex.B-4 (a), C.M.P.No. 11272/83 and C.M.P.No.11274/83 are allowed marking the judgment in A.S.No.56/76 dated 23-12-1983 as Ex.B-28. C.M.P.No. 11985/84 for raising additional grounds is allowed. C.M.P.No.6588/84 and C.M.P.No.11271/83 are however dismissed as unnecessary.

63. In the result the appeal is partly allowed and the decree and judgment of the lower Courtare set aside and the market value is fixed at Rs.9.30 per square yard for the entire land. The claimants are entitled, in addition, to 15% solatium on the above amount. On the sum total of the above said two amounts they are entitled to interest at the rate of 4% P.A. from5-9-1972 till payment. The compensation payable with regard to Ac.3 and 18,295 sq.feet which is in dispute in the reference under S. 31 of the L.A.Act as between claimants 12,15,16,17,18 and 22 shall be disposed of in the manner mentionedin the body of the judgment with reference to C.M.P.No.11273 of 1983. The appeal as regards the rest and the cross-objectins are dismissed. The parties, in the circumstances, are directedtobear their respective costs.

64. Appeal partly allowed.

