

(1995) 07 GUJ CK 0008
In the Gujarat High Court

Special Land Acquisition Officer and Another

APPELLANT

Vs

Patel Bhagwandas K. and Others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

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

Citation : (1996) 1 GLR 481

Hon'ble Judges : N.N. Mathur, J;M.B. Shah, J

Bench : Division Bench

Judgement

M.B. Shah, J.—Being aggrieved by the judgment and award dated 31st August 1994, passed by the learned Assistant Judge, Mehsana, in Land Reference Case Nos. 497 of 1987 to 536 of 1987 and 539 of 1987 to 592 of 1987 and 592/1, 592/2, 592/3 and 593 of 1987 and 137 of 1987, the Special Land Acquisition Officer has filed these appeals.

2. The claimants have also filed cross-objections in each matter.

3. Admittedly, the lands were acquired by Ahmedabad Urban Development Authority ("AUDA" for short) for the purpose of constructing residential buildings for township for "economically backward group, low income group, medium income group, high income group", for which notification u/s 4 of the Land Acquisition Act ("the Act" for short) was published in the official gazette on 15th November 1979. Notification u/s 6 of the Act was published on 10th November 1982. The Land Acquisition Officer divided the lands into 11 groups and awarded compensation at a rate ranging between Rs. 13 and Rs. 25 per sq. metre.

4. Against that award, the claimants preferred aforesaid Land Reference Cases before the District Court, Mehsana. The learned Assistant Judge awarded additional compensation at the rate of Rs. 70/- to Rs. 80/- per sq. mtr. by dividing the lands into three groups.

5. At the time of admission hearing of these matters, the learned Government Pleader pointed out that the impugned award passed by the learned Judge is

arbitrary and without application of mind. While admitting the matters, the Court stayed operation of the award passed by the learned Judge and directed expeditious hearing of the matters. The matters were fixed for hearing on 3rd April 1995 and thereafter were placed on Board in July 1995.

6. II. Submissions

The learned Advocate General, appearing on behalf of the Special Land Acquisition Officer, vehemently submitted that the award passed by the learned Judge is on the face of it erroneous and is passed without considering or appreciating the evidence produced on record. He submitted that the learned Judge has materially erred in not considering the sale instances Exh. 119 to Exh. 123 with regard to lands bearing Survey Nos. 726/1 and 726/2. According to his submission, these lands were purchased by the claimant Bhagwandas Ratilal Sheth or his sons or by a partnership firm consisting of his sons, as deposed by him before the Court. He submitted that, had the learned Judge referred to the aforesaid sale deeds, it would have been amply clear that, in the said sale deeds, it is mentioned that the lands bearing Survey Nos. 726/1 and 726/2 were sold at the rate of Rs.9/- per sq. yard as per Banakhats executed in October 1978. He further pointed out that in the document, it is stated that Banakhats were executed in October 1978 and price fixed was Rs. 91/- per sq. yard. Therefore, there was no reason for the learned Judge to grant additional compensation, as the Land Acquisition Officer had granted compensation ranging from Rs. 13 to Rs. 25 per sq. mtr. He submitted that, admittedly, lands bearing Survey Nos. 726/ 1 and 726/2 are situated in the vicinity of lands under acquisition, and, therefore, before the trial Court, the claimants have relied upon the award (Exh. 19) dated 13th January 1993 passed by the learned Assistant Judge, Mehsana, for the said lands bearing Survey Nos. 726/1 and 726/2. As per the said award, market value of the said land was fixed at the rate of Rs. 70/- per sq. mtr. According to his say, no reliance should be placed on award (Exh. 19) because, in that case, even the sale instance, upon which reliance is placed by the learned Judge for determining the market value, is not appreciated by the Court.

As against this Learned Counsel, Mr. Patel appearing for the claimants, vehemently submitted that the lands under acquisition are situated within the developed area of Kalol town. He pointed out that the lands under acquisition are covered under the Town Planning Scheme and that they could be used for residential, commercial or industrial purposes. He, therefore, submitted that the lands under acquisition are situated in a highly developed area and even the additional compensation awarded by the learned Judge is inadequate and, hence, cross-objections filed by the claimants deserve to be allowed. He further contended that these lands are sold by the AUDA from time to time by charging Rs. 65/- to Rs. 251/- per sq. mtr. and thereafter in 1993, the AUDA has fixed market value of the land at Rs. 500/- per sq. mtr. He, therefore, submitted that the cross-objections filed by the claimants should be allowed and the market value of the lands under acquisition should be fixed at the rate of Rs. 150 to Rs.

200/- per sq. mtr. It is his further contention that the lands of the claimants are acquired by paying a nominal amount and that very same lands, without there being any change or development, are sold by charging exorbitant price.

7. III. Situation of Lands Under Acquisition

At this stage, we may state that even the Land Acquisition Officer had stated in the award that the lands are situated in the developing area. This would mean that the lands under acquisition are having potentiality for building purpose or it can be used for commercial or industrial purposes. But, at the same time, at the relevant point of time when Section 4 notification was published in 1979, the lands were used for agricultural purposes. The AUDA had prepared a development plan for this area. With regard to Kalol town, Mr. Patel pointed out some paragraphs from the draft development plan prepared by the Authority. The development plan was published on 25th June 1981. It states that Kalol Saij was one of its developed industrial towns in Mehsana District under AUDA. It is also stated in the report with regard to the land-use (at p. 148) as under:

(3) Land-Use:

The Municipal area of the town is 1738.0 hectare out of which 440.47 hectare of land is developed, while remaining is under agriculture, water-bodies (sic) and vacant. The industrial use is mainly located in the south-east side of the town. Residential area are spread all over the town. Commercial areas are mainly covered in the old town along with main road and near bus-station and railway-station.

Thereafter, in the outline of the proposed development plan it is mentioned (at p. 150) as under:

AUDA is also acquiring nearly 467 hectare land to north of Kalol town site as well as in west and south side to develop it as township.

From the draft development plan, it is apparent that the lands which were used as agricultural lands on the date of publication of notification u/s 4 of the Act are acquired by AUDA for having a township. Learned Counsel Mr. Patel, however, submits that the market price be fixed by considering its potentiality that the said lands can easily be used for non-agricultural purposes. Keeping the aforesaid aspect in mind, for deciding the market price, we would appreciate the sale instances which are produced on record alongwith evidence led by the parties.

8. Evidence Led By The Parties

(A) Firstly before the trial Court, the claimants have heavily relied upon Exh. 19, which is an award dated 13th January 1993 passed by the learned Assistant Judge, Mehsana, in Land Reference Case No. 71 of 1984. In that case, the claimant was "Dinesh Land Corporation" and the reference was filed on its behalf by Dineshbhai Prahladbhai Gajjar and Nitinbhai Bhagwandas Sheth. In the said

case, lands bearing Survey Nos. 726/1 and 726/2 admeasuring to 1 Hectare 36 Are and 59 Sq. mtr. were acquired for construction of quarters of employees of Narmada Project at Kalol; notification u/s 4 of the Act was published on 22nd May 1981; the Land Acquisition Officer had awarded compensation at the rate of Rs. 24/- per sq. mtr. and the claimants had claimed compensation at the rate of Rs. 70/- per sq. mtr. The learned Judge has accepted the claim and awarded compensation at the rate of Rs. 70/- per sq. mtr. by relying upon the sale deed dated 29th September 1981 (Exh. 30 in that case) executed in favour of Motinagar Co-operative Housing Society at the rate of Rs. 110/- per sq. mtr. The said sale instance is also produced on the record of the present case at Exh. 229. In that proceedings the claimants have not produced the sale deeds for the very same Survey number executed on 11th June 1980. By placing reliance upon Exh. 30 the learned Judge has awarded compensation at the rate of Rs. 70/- per sq. mtr.

For this award (Exh. 19), learned Advocate General pointed out that these very Survey Nos. 726/1 and 762/2 were purchased by Dinesh Land Corporation by paying consideration at the rate of Rs. 91- per sq. yard. He submitted that this is apparent from Exhs. 119 to 123 dated 11th June 1980 and, without producing these sale deeds, the claimants got the said award.

In this view of the matter, we would discuss the evidence with regard to the said instances.

For this purpose, we would refer to the evidence of Shri Bhagwandas Ratilal Sheth (Exh. 18), who is the main witness for the claimants. It is his say that he is the claimant in Reference No. 523 of 1987; he has seen the lands of all other claimants of this group; all the lands are agricultural lands and are possessing similar fertility; they are situated in the same sim of village; by award dated 23rd September 1986, the Land Acquisition Officer has awarded compensation at a rate ranging between Rs. 13/- and Rs. 25/- per sq. mtr. to the lands; as the said compensation is less than the market price, they have filed reference by claiming compensation at the rate of Rs. 250/- per sq. mtr. It is his further say that the acquired lands are situated within the limits of Kalol township. For this purpose, he has relied upon the Map (Mark 17/108). He has pointed out that, coming to Kalol from Ahmedabad city by national highway, there is factory of IFFCO since last 20 years; thereafter there are ONGC housing colony; village Saij, and railway crossing. After the railway crossing, there are other factories on the southern side of the road. Between the railway line and the highway, there is GIDC estate since last 20 years. After that there is one Nandjyot Housing Society and, thereafter, there is Malamine Factory. It is his further say that draft town planning scheme was framed in 1978, which was finalised within two years. It is his say that the lands situated near the acquired lands are utilised for N.A. purpose. It is his say that land bearing Survey No. 482, which is acquired, was sold subsequently by AUDA to Saraswati Co-operative Housing Society at the rate of Rs. 180/- per sq. mtr. He further produced a statement (Mark 17/114) on

record to indicate that the acquired lands were sold by AUDA at the rate ranging from Rs. 65/- to Rs. 251/-. He has also stated that in Kalol town, there are number of Government offices, banks and textile mills and that it is fully developed.

In paragraph 8, he has specifically stated that lands bearing Survey Nos. 726/ 1 and 726/2 of his ownership were acquired under the Land Acquisition Act for Narmada Yojna Vasahat. He has produced on record award (Exh. 19) passed by the District Court and stated that compensation at the rate of Rs. 70/- per sq. mtr. was awarded. It is his further say that for S.T. Depot, the lands in the year 1962 were acquired and the District Court has awarded compensation at the rate of Rs. 42.50 per sq. mtr. Against that award, the claimants had preferred an appeal and the High Court has awarded compensation at the rate of Rs. 104/- per sq. mtr. For this purpose, he has produced on record judgment and order passed by this Court at Exh. 20. It is his further say that the land is situated in the developed area and that Kalol Town Planning Scheme Nos. 1 and 2 were finalised in the year 1980 and final plots were also given after deducting 15% to 20% per land and by recovering charges.

In cross-examination, he has stated that he was doing the business of purchasing and selling lands; he is having three sons, namely, Hasmukh, Bharat and Nitin; it is true that Dinesh Land Corporation was their partnership firm; it is also true that his lands bearing Survey Nos. 726/1 and 726/2 of Kalol were acquired for Narmada Yojna Vasahat and that the same were of ownership of Dinesh Land Corporation; that the lands were touching the highway; that the lands Survey Nos. 726/1 and 726/2 were purchased from Pandya Shivshanker Premshanker; that he had obtained power-of-attorney from Pandya Shivshanker Premshanker, Arvindbhai, Pandya Annapoornaben and Pandya Meenaben; he has executed registered sale deed dated 22nd June 1981 in favour of Dinesh Land Corporation; he has admitted that certified copy of the said sale deed was shown to him and it bears his signature; that sale deed is produced on record at Exh. 119.

Similarly, by taking power-of-attorney, he has executed registered sale deed (Exh. 120) on 11th June 1980 and the said document bears his signature.

It is also admitted that sale deed dated 11th June 1980 (Exh. 121) was executed in his presence and that he has signed it. Similarly, sale deed (Exh. 122) dated 11th June 1980 was executed in his presence and that the land was purchased by Dinesh Land Corporation from Rajnikant, Bharatbhai, Savitaben and others.

It is also admitted that sale deed (Exh. 123) date 11th June 1980 was executed in his presence. By the said sale deed, his partnership firm, Dinesh Land Corporation, purchased land from Pandya Savitaben, Rajnikant Narayanbhai, Bharat Narayanbhai and Savitaben Narayanbhai.

He also admits that sale deed (Exh. 124) dated 1st September 1975 was executed in his presence; he has signed it as witness and that the land was

purchased by his son Bharatbhai as main promoter of Dharmanath Co-op. Housing Society Limited (Proposed) from Vijayakumar and others.

He specifically admits that for purchase of the land Banakhats were executed at the prevailing market rate.

In further cross-examination, he has admitted that land bearing Survey No. 726 is at a distance of 500 mtrs, from the lands which are acquired and that it touches the highway. He further admits that, though he was cultivating the land, he was hardly getting his expenses.

With regard to the same Survey No. 726, the claimants have examined Manharlal Jaishanker Pandya (Exh. 149) and Rajendrakumar Babubhai Pandya (Exh. 232). At this stage, we may note that learned Advocate Mr. Amin submitted that these 2 witnesses were examined by the claimants by issuing summons to them and, therefore, they are not claimants' witnesses. In our view, this submission is without any substance. The claimants have examined them as their witnesses, examination-in-chief is taken by them, and, thereafter, they are cross-examined by the Government pleader and by the Advocate on behalf of the acquiring body. Merely by summoning the witnesses, they would not cease to be claimants' witnesses.

It is the say of the witness Manharlal Shivashanker (Exh. 149) that Ravishanker Premshanker, Narayanbahi Premshanker, Babubhai Premshanker, Arvindbhai Premshanker and Rajeshbhai Premshanker are sons of his uncle. The lands admeasuring Survey Nos. 726/1 and 726/2 were their ancestral properties. That the land was purchased by his grandfather in the year 1964. For this property, Civil suit No. 17 of 1974 was filed for partition and for injunction. It is his say that the case with regard to the said land was still pending and he was not aware of the sale deeds executed in favour of Dinesh Land Corporation in the year 1980.

It is the say of Pandya Rajendra Babulal (Exh. 232) that the land bearing Survey Nos. 726/1 and 726/2 were purchased by his grandfather Premshanker Narsi Rao in the year 1964. For that land, there was dispute between the brothers and that his uncle Manharbhai had filed Civil suit before the Civil Court at Kalol. Because of the dispute, the land was sold to Dinesh Land Corporation in the year 1974. But at that point of time, sale deed was not executed. But power-of-attorney was executed in favour of Bhagwandas Sheth. Five different sale deeds were executed in the year 1980. The land was sold at the rate of Rs. 9/- per sq. yard. For sale of land, the price was fixed in the year 1974. In the year 1980, the value of the land was about Rs. 35/- to Rs. 40/- per sq. mtr. The land was sold because of family dispute and when it was sold it was a waste land. For execution of the sale deeds, permission was obtained by Bhagwandas Sheth in the year 1980 and, thereafter the sale deeds were executed. It is his say that the dispute with regard to the land was pending. In cross-examination, it is his say that lands bearing Survey Nos. 726/1 and 726/ 2 were given to Premshanker in partition and to that effect, statements of family members were also recorded. However,

Pandya Manharbhai had filed a suit but in that suit, he has lost. He admitted that he was knowing about the contract for sale with regard to this land and one sale deed was executed by him and another sale deed was executed by his power-of-attorney. At the relevant time, market price of the land was Rs. 35/- to Rs. 40/- per sq. mtr. But it was sold at lesser price because of the dispute. He has further stated that the suit was filed in the year 1971 and was disposed of within three years. He admits that the contents of the said documents are correct. In further cross-examination, he has also admitted that he was not in a position to produce Banakhat executed between the parties. He has admitted that he was not having any documents for proving that market price of land at the relevant time was Rs. 35/- to Rs. 40/-.

From the evidence of witnesses Bhagwandas and Rajendrakumar, execution of sale deeds (Exh. 119 to Exh. 123) for the lands bearing Survey Nos. 726/1 and 726/2 is proved. In the aforesaid sale deeds, it is specifically mentioned that, for the said lands, Banakhats were executed on 11th October 1978 and the consideration was Rs. 9/- per sq. yard. The lands were agricultural lands. It is also admitted by witness Bhagwandas that the purchaser of the said land, namely, Dinesh Land Corporation, was his partnership firm. His two sons were partners therein and that the sale deeds were executed by him by taking power-of-attorney from the original owners. That he has executed two sale deeds by taking power-of-attorney from the original owners.

This land bearing Survey No. 726 is situated at the distance of 500 metres from the lands under acquisition and there is no reason not to rely upon the said deed and the evidence of Bhagwandas for determining the market price of the lands under acquisition. In our view, clearly, this would be the best piece of evidence for determining the market price of the lands under acquisition, because the sale instances are for lands in neighbourhood with similar advantage and potentialities. The sale deeds are also executed on 11th June 1980, while in the present case, notification u/s 4 of the Act was published on 15th November 1979. As stated in the sale deeds, Banakhats were executed on 11th October 1978. It is further to be noted that, before the trial Court, claimants themselves relied upon the award (Exh. 19) with regard to lands bearing Survey Nos. 726/1 and 726/2 for determining the market price of the lands under acquisition. As stated earlier, in paragraph 8 of the deposition, Bhagwandas had specifically stated that lands bearing Survey Nos. 726/ 1 and 726/2 of his ownership were acquired for Narmada Yojna Vasahat and he had produced on record the award (Exh. 19) to show that the market value of the land was Rs. 70/- per sq. metre.

However, Mr. Patel, Learned Counsel appearing on behalf of the claimants, vehemently submitted that these sale deeds could not be relied upon for determining the market value of the lands under acquisition, because:

- (i) it is not property owned by a single person;
- (ii) amongst owners, there was dispute;

- (iii) the land was used for manufacturing bricks;
- (iv) it was not agricultural land;
- (v) there is no T.P. Scheme for that area and
- (vi) it is isolated land till it was acquired.

He, therefore, submitted that the sale instances are wholly incomparable. He submitted that, in any case, the market value of the land is not correctly mentioned in the said sale deeds because witness Rajendrakumar specifically deposed that at the relevant time the market value of the said land was Rs. 35/- to Rs. 40/-. He also admitted that this statement is also a guess work by the witness.

As against this, the learned Advocate General appearing for the appellants submitted that:

- (i) before the trial Court, the claimants have heavily relied upon award (Exh. 19) for the said survey numbers;
- (ii) admittedly, according to the deposition of witness Bhagwandas, the land is situated at a distance of 500 mtrs. from the lands under acquisition;
- (iii) even Map (Exh. 238), which is produced on record, clearly reveals that Survey No. 726 is situated in the vicinity of the lands under acquisition;
- (iv) it is at a distance of two fields from the acquired lands;
- (v) it also touches highway, while most of the lands under acquisition are not touching highway;
- (vi) not only this, but in the deposition, the claimant Bhagwandas had nowhere stated that the said deeds were executed in favour of Dinesh Land Corporation because of some reasons, which would indicate that price paid by him or by his partnership firm, Dinesh Land Corporation, was less than the market price.

Considering the aforesaid submissions and the facts on record, in our view, there is no reason not to take into consideration the sale deeds (Exh. 119 to Exh. 123) for the land bearing Survey No. 726. We also note that from the documents it is clear that the said land was purchased by the grandfather of the witness Rajendrakumar in 1964 for a sum of Rs. 5,000/-. According to the Map, land bearing Survey No. 726 is situated in the vicinity of lands under acquisition. It also touches the highway. The claimants themselves have relied upon the award (Exh. 19) for the said land bearing Survey No. 726. As it is owned by the co-owners, it cannot be said that it would not fetch the market value or because there was dispute between the co-owners, sale deeds (Exh. 119 to Exh 123) should not be taken into consideration for fixing the market value of the lands under acquisition.

(B) Next piece of evidence, upon which, reliance is placed by the claimants, is

Exh. 19, which is the award dated 13th January 1993 passed by the learned Assistant Judge, Mehsana, for lands bearing Survey Nos. 726/1 and 726/2. As per the said award, the said lands were acquired for Narmada Yojna Vasahat Scheme, for which notification u/s 4 was issued on 22nd May 1981 which was published in the Government Gazette on 11th June 1981. Total land which was acquired was admeasuring 1 Hectare 36 Are 59 sq. mtr. (13,659 sq. mtrs.). The Land Acquisition Officer awarded compensation at the rate of Rs. 24/- per sq. mtr. and the claimants have claimed Rs. 70/- per sq. mtr. before the Court. In that case also the claimant was Dinesh Land Corporation and Bhagwandas was examined on behalf of Dinesh Land Corporation. In paragraph 17 of that judgment and award, it is specifically stated that Bhagwandas had deposed before the Court that before notification u/s 4 has been issued, it was proposed by him to construct 241 row houses and tenements but since the lands were to be acquired, permission was not granted for construction of housing complex. The Court, thereafter, relied upon sale deed Exh. 30 dated 29th November 1981 executed in favour of Motinagar Co-operative Housing Society for purchase of land admeasuring 16,556 sq. mtrs. at the rate of Rs. 110/- per sq. mtr. For proving sale deed Exh. 30, the claimants in that case had examined Patel Vipulkumar Natvarlal (Exh. 42) and, as he was cross-examined, the Court arrived at the conclusion that the lands disposed of by sale deed Exh. 30 dated 29-9-1981 was adjacent to the lands acquired and, therefore, sale deed Exh. 30 could be taken into consideration and that the say of the claimants that they should be awarded compensation at the rate of Rs. 70/- per sq.mtr. was reasonable. The Court arrived at the conclusion that the land sold by Exh. 30 was at the distance of 340 mtrs. from the acquired land and that even though notification u/s 4 was issued on 11th June 1981 and the sale deed Exh. 30 was executed on 29th September 1981, i.e., after lapse of three months, it can be relied upon and market price of the land under acquisition could be fixed at the rate of Rs. 70/- per sq. mtr.

As against this award (Exh. 19), learned Advocate General rightly pointed out that, in that case, the claimant was Dinesh Land Corporation, which was, as stated by Bhagwandas, of his ownership and its partners were his two sons. He submitted that Bhagwandas had intentionally not produced the sale deeds before the Court in that reference. He also submitted that, in that case also, the Court has not considered the sale deed Exh. 30, which is produced on record (in the present case Exh. 229). He pointed out that in that very sale deed dated 29th September 1981, it is specifically stated that M/s. Deepak Land Corporation was one confirming party and the second confirming party was M/s. Vijay Land Corporation. It is also stated that in favour of confirming party Deepak Land Corporation a Banakhat to purchase the said land was executed on 7th April 1981 and, on 16th June 1981 it has executed Banakhat in favour of Vijay Land Corporation who in turn executed Banakhat on 25th June 1981 in favour of Motinagar Co-operative Housing Society. The lands were included in the Town Planning Scheme No. 1 of Kalol. By the said sale deed, land admeasuring 2,100

sq. mtrs. was sold for a consideration of Rs. 1,47,000/-. It means that the price which was fixed per sq. mtr. of land was Rs. 70/-. It is further stated in the document that confirming party M/s. Deepak Land Corporation had agreed to sell this land to M/s. Vijay Land Corporation, which is a confirming party, at the rate of Rs. 90/- per sq. mtr. for which a Banakhat was executed on 16th June 1981. Vijay Land Corporation further executed Banakhat on 25th June 1981 in favour of Motinagar Co-operative Society (Proposed) and fixed rate by charging additional Rs. 20/- per sq. mtr. for releasing its rights as Banakhat holder. That means, the confirming party, Vijay Land Corporation got profit of Rs. 20/- per sq. mtr., i.e., Rs. 42,000/- for the land in question, within a span of ten days. Further, Deepak Land Corporation, other confirming party, got profit of Rs. 20/- per sq. mtr. within a span of approximately two months, as the Banakhat was executed in its favour on 7th April 1981. The result is that the land which was purchased by Motinagar Co-operative Society by sale deed dated 29th September 1981, at the rate of Rs. 110/- was sold firstly by its vendor to Deepak Land Corporation at rate of Rs. 70/- per sq. mtr. for which Banakhat was executed on 7th April 1981. That Deepak Land Corporation executed a Banakhat in favour of Vijay Land Corporation on 16th June 1981. Vijay Land Corporation, thereafter, executed Banakhat in favour of Motinagar Co-operative Housing Society on 25th June 1981. If the contents of the document were appreciated by the learned Judge, probably the learned Judge would not have awarded the compensation at the rate of Rs. 70/- per sq. mtr. for the lands bearing Survey Nos. 726/1 and 726/2. Unfortunately, it seems that the learned Judge has not considered the contents of the said document Exh. 30 (in the present Exh. 229).

The Learned Counsel for the claimants have also relied upon Exh. 229 for determining the market price of the lands under acquisition. For this purpose, they have examined Natwarlal Maganlal Patel (Exh. 228). He has stated that he was partner of Vijay Land Corporation; that Survey No. 425, which is given final plot Nos. 214 and 178 under Town Planning Scheme No. 1, was purchased by Deepak Land Corporation. That land was sold by them to Motinagar Co-operative Housing Society by registered sale deed for a sum of Rs. 2,31,000/-. He has produced the said sale deed at Exh. 229. According to him, price of land per sq. mtr. was Rs. 110/-. He has stated that, for this land, Banakhat was executed by them in favour of Motinagar Co-operative Housing Society on 25th June 1981. He has also stated that the acquired lands are adjoining the highway, while the lands sold by them was on the otherside of the highway. In cross-examination, he has admitted that once there is Town Planning Scheme and when final plots are given to the land, then there is no necessity for obtaining "N.A." permission; he has also admitted that from the owner Maganlal Shivabhai, his land was purchased by Deepak Land Corporation and from Deepak Land Corporation, the land was purchased by Vijay Land Corporation. Deepak Land Corporation and Vijay Land Corporation were doing the business of forming Societies and constructing buildings over the land. He denied the suggestion that higher price was mentioned in the document to show to the members of the society that the land

was purchased at higher rate.

From the aforesaid deposition, it can be stated that contents of sale deed Exh. 229 are proved by the witness. But, as analysed above, the value of the lands on 7th April 1981 was Rs. 70/- per sq. mtr. Thereafter, Deepak Land Corporation sold it at the rate of Rs. 90/- per sq. mtr. to Vijay Land Corporation and Vijay Land Corporation sold it to Motinagar Co-operative Housing Society at the rate of Rs. 110/- per sq. mtr. It also indicates that after publication of notification in November 1979, price of the land in the vicinity was increasing. On 7th April 1981, price was Rs. 70/- per sq. mtr.; on 16th June 1981 it was Rs. 90/- per sq. mtr. and on 25th June it was Rs. 110/- per sq. mtr.

(C) The claimants have next relied upon sale deeds Exhs. 132 and 133. The area transferred under the said sale deeds is only 529.79 sq. mtr. (approximately 530 sq. mtr.). Thus, plots are very small plots of the lands. For proving these sale deeds, the claimants have examined Sitarambhai Somanath Patel (Exh. 131). It is the say of the witness that he has purchased the land bearing Survey No. 228 (new S. No. 284) from its owner Mishra Hemandkumar Ambalal, at the rate of Rs. 75.61 per sq. mtr. for which two sale deeds were executed. Sale deed Exh. 132 was executed on 28th February 1979 and sale deed Exh. 133 was executed on 3rd March 1979. By each sale deed, he has purchased 529 sq. mtrs. of land. In cross-examination, he has stated that the acquired lands were agricultural lands; in the vicinity the lands were used for agricultural purpose whereas the land which was purchased by him was N.A. land; it was situated within the limits of Nagarpalika and was purchased for making construction; in the vicinity of the said land, building was constructed on other plots; said lands were situated at a walking distance of 2 minutes from Kalol city and its bazar; plots were having the facilities of electricity, water and drainage and that it was in developed area. He has further admitted that plots which he had purchased were at the distance of one kilometre from the acquired lands.

From the aforesaid evidence, it can be stated that two plots, which are purchased by the witness, are:

- (i) small plots,
- (ii) in fully developed area,
- (iii) within the Municipal limits,
- (iv) N.A. plots.
- (v) having facilities of electricity, water and drainage,
- (vi) situated at a walking distance of 2 minutes from Kalol city and its bazar, and
- (vii) the acquired lands are situated at a distance of 1 km.

(D) The next document, upon which reliance is placed, is Exh. 135, which is the sale deed dated 30th May 1983. For this purpose, the claimants have examined

witness Bharatbhai Firkamdas Patel at Exh. 134. It is his say that he has purchased land bearing Survey No. 518 (final plot No. 509) admeasuring 845 sq. mtr. by registered sale deed dated 30-5-1983 at the rate of Rs. 245/- per sq. mtr. He has stated that the land was purchased by Ashirwad Co-operative Housing Society and at the time of sale, he was present and he has signed the document. In cross-examination, he has admitted that in the said society he is not having any plot; land which was sold was N.A. land; on western side of the land, there was Asha Society; the society was having facilities of electricity, water and drainage. In further cross-examination, he has admitted that before the sale deed, there was agreement to sell but with regard to that, he was not having any personal knowledge and he was not knowing the conditions of sale and that Asha Society was in existence since years.

With regard to this sale deed, it can be stated that:

(i) the sale deed is post-notification sale virtually, after lapse of four years of the notification u/s 4.

(ii) it is of a small plot and that too within the developed area having facilities of water, electricity and drainage.

Therefore, in our view, no reliance can be placed upon sale deed Exh. 135 for determining market price of the lands under acquisition.

(E) Now we would discuss the sale instances relied upon by the claimants which cannot be taken into consideration for fixing the market value of the lands under acquisition for the reasons recorded hereunder:

(a) The Learned Counsel for the claimants has not relied upon sale deed Exh. 137, dated 30th January 1974 for land bearing S. No. 102, in this case, because it is for the land in the midst of Kalol. He has stated that the sale deed was of the land on the northern side, for which other group of matters is pending for hearing.

(b) Next document is Exh. 139 which is sale deed dated 3rd April 1990. For this purpose, the claimants have examined Rameshbhai Trikambhai Patel at Exh. 138. It is his say that the land bearing Survey No. 49 admeasuring 170 sq. metres was sold to Mehsana Agricultural Co-operative Bank by sale deed dated 3rd April 1990 at the rate of Rs. 2,038/- per sq. mtr. It is the say of the witness that the said plot is situated at a distance of 3-4 kilometres from the lands under acquisition. In cross-examination, he admits that he has no personal knowledge with regard to the contract for sale between the vendors and Mehsana Co-operative Bank; he was not knowing the conditions of sale; he has signed the documents as a witness; when the land was sold, there were shops on its both the sides. In the document it is mentioned that the property was situated on the station road and that it was being used as a shop.

Considering the fact that the sale deed Exh. 139 was executed on 3rd April 1990, nearly more than 10 years after the publication of the notification u/s 4 and that it is a very small plot situated in a commercial area which was being used for

commercial purpose, in our view, no reliance can be placed upon the said sale deed in determining the market value of lands under Acquisition.

(c) Other document is Exh. 142 dated 17th June 1982. The claimants have examined Vasantlal Chandulal Shah at Exh. 141. It is the say of the witness that he was Secretary of Amikunj Co-operative Housing Society and the said society applied for obtaining loan for construction of houses to Gujarat Co-operative Housing Finance Society Limited (hereinafter referred to as "the Society"). The Society has advanced the loan for which a mortgage deed was executed by the society on 17th June 1982. He has produced the xerox copy of the said document at Exh. 142. Now, considering the contents of the said document, it is clear that the Society has advanced loan to Amikunj Co-operative Housing Society for construction of houses, and the document specifically recites that the property mortgaged was the premises described in Schedule written thereunder, i.e., the land, buildings and structure to be erected thereon. Hence, no reliance can be placed upon the said document for arriving at the market price of the land under acquisition.

(d) Similarly, the claimants have relied upon the document which is mortgage deed (not sale-deed) Exh. 144 dated 23 August 1978. For this purpose, the claimants have examined one Chimanlal Prabhudas at Exh. 143. It is his say that he was the Secretary of Co-operative Society since 1975; the society took the loan from Society and the mortgage deed was executed on 24th August 1978. The document Exh. 144 also pertains to the mortgage of the land and buildings. In this case also, loan is given for construction of houses and what is mortgaged is land and the buildings which were to be erected thereon. So, no reliance can be placed on this document.

(e) The claimants have also relied upon Exh. 227 dated 19th May 1990. For this purpose, they have relied upon the evidence of Kannaiyalal Natwarlal Patel, Exh. 226. It is the say of the witness that he was serving with Kalol Nagarik Bank as an accountant; Kalol Nagarik Bank has purchased final plot No. 156 admeasuring 736 sq. mtr. from Kalol Nagarpalika by a registered sale deed dated 19th May 1990 at the rate of Rs. 1,501/- per sq. mtr.

In our view, no reliance can be placed on the said sale deed as it is after a lapse of 11 years after the publication of the notification u/s 4 of the Act and it is of small plot.

(f) The claimants have also examined Shankarbhai Revabhai Patel, Exh. 145. It is his say that in the year 1986 AUDA has sold the acquired land bearing Survey No. 583. He has purchased it by paying Rs. 251/- per sq. mtr. For this purpose he has produced on record Exh. 146 which is a kabja receipt. As per the said kabja receipt, the land admeasuring 2,728 sq. mtr. was sold to Shankarbhai Revabhai Patel at the rate of Rs. 251/- per sq. mtr. In cross-examination he has reiterated that he purchased land which was in a residential and commercial zone. Prior to it in the year 1985 the land was being cultivated and at that time

there was no development. He has denied the suggestion that AUDA has handed over the possession of the land after levelling the same.

In our view, the sale by the AUDA of the acquired land after a lapse of 7 years would be of no assistance in determining its market price on the date of acquisition. It is to be noted that when the land is taken over by the statutory authority or developed by it, its price would increase and from this no inference can be drawn with regard to its valuation in the year 1979.

At this stage we would deal with the contention raised by the Learned Counsel, Mr. Patel, for the claimants, that the land was acquired for a profiteering motive and is being sold by public auction at much more higher price by the AUDA. Hence, the same should be taken into consideration for determining the market value of the land. He submitted that there is no reason to discard the evidence of the claimants that the AUDA was selling the land at the rate of Rs. 65/- to Rs. 251/- per sq. mtr. and for this purpose Bhagwandas has produced the statement mark 17/40. He further submitted that taking into consideration the aforesaid price fetched by the AUDA for the lands which are acquired by it, a reasonable compensation at the rate of Rs. 200/- per sq. mtr. be awarded to the claimants.

This submission is without any substance and the price of the land under acquisition cannot be fixed on the basis of sale executed by AUDA after lapse of some years. In any case, the aforesaid price does not take into consideration at all the expenses incurred by AUDA in acquiring the lands, in developing the same and other expenses required for establishment. The claimants have not led any evidence on this aspect. Hence, no reliance can be placed on such sale instances which are proved by Shankarbhai or the statement mark 17/40 produced by the claimant, Bhagawandas, for determining the market value of the land under acquisition.

Lastly, on behalf of the Land Acquisition Officer, reliance is placed on sale deed, Exh. 124, (dated 1st September 1976) whereby Dharmnath Co-operative Housing Society purchased part of Survey No. 471/1A admeasuring 8,107 sq. yards for a sum of Rs. 1,65,000/-. This sale deed is produced in the cross-examination of Bhagwandas Sheth. As stated earlier, he has stated that the land was purchased by his son, Bharatbhai, as a promoter of Dharmnath Housing Society Limited from one Vijaykumar and others and that document bears his signature. The said land is sold at the rate of Rs. 20.40 per sq. yards (i.e., Rs. 24.35 per sq. mtr.) approximately.

9. Keeping the aforesaid sale deeds in mind, now we will discuss the judgments upon which the reliance is placed by the Learned Counsel, Mr. Patel, for the claimants.

(a) Firstly, Learned Counsel, Mr. Patel, has relied upon the decision rendered by the Supreme Court in the case of Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, . The Learned Counsel, Mr. Patel, has relied upon the following observations made by the Supreme Court in the said judgment for

contending that if the AUDA has sold the land at the rate of Rs. 251/-, then, the Court should fix the appropriate market rate by considering the said sale instances.

Since the claimants themselves had sold those lands to others, they would reflect the market value of lands as prevailing near about the date of acquisition and could be of assistance to determine the compensation as on 1983.

He has also submitted that the Court should take into consideration the future suitability or adoptability of the land.

In our view, this judgment in no way helps the submission of the Learned Counsel for the claimants. In the present case, there is no evidence to show that the claimants have sold or purchased any lands under acquisition during the year 1978 and 1979. On the contrary, the evidence of claimant Bhagwandas reveals that land in neighbourhood, i.e., Survey No. 176 was purchased by him in the year 1978 and sale deeds were executed in 1980.

Further, in the said judgment it has specifically been held that future suitability or adoptability of the land for any purpose shall not be taken into account for determining the market value. The reasonable method to determine the market value of the acquired lands is on the evidence of transaction of bona fide sales of acquired land but not of evidence of sales of such land got up having had knowledge of the proposed acquisition. The Court further held that in absence of bona fide sales of the lands in the neighbourhood possessed of same or similar quality and having the same or similar advantages would give an unerring assurance to the Court to determine just and proper compensation. Such sales must not only be proved but also be bona fide transactions. The Court has also held, "bona fide sale or series of sales of small pieces of land do not furnish the sole basis to determine market value. Bona fide sales may furnish evidence of the market conditions for consideration." Dealing with this aspect, in paragraph No. 9, the Court held that for determining the market value of the land admeasuring 9.49 acres or 14.10 acres, reliance on sale instances of small extents of land of 120 sq. yd. does not furnish any satisfactory basis. Fixation of the market value on that basis is the height of illegality.

Further, with regard to the fixation of the market value on the basis of potentiality of the land for the use of the building purposes, the Court observed that the existing demand for the land in the neighbourhood and other related facts should be taken into consideration. However, the Court cautioned and observed:

But the present value alone falls to be determined and feats of imagination should not run riot or travel beyond its manifest limits nor be an arbitrary or whim of the Court in determining the compensation or the fixation of the market value.

So, in our view, the aforesaid judgment in no way assists the claimants"

contention that because the AUDA has sold the lands at the rate of Rs. 251/- per sq. metre in the year 1986, the compensation, therefore, should be fixed on that rate or by taking into consideration the said value.

(b) The Learned Counsel for the claimants further referred to the decision in the case of S.A. Jain College Trust and Managing Society Vs. State of Haryana and Another, . In our view, in that case acquired land possessed all characteristics of a potential building site for both residential as also commercial or industrial purposes and it was near other buildings and establishments. Considering the aforesaid fact, the Court approved the finding arrived at by the High Court. Thus, this judgment would hardly help the case of the claimants.

(c) The Learned Counsel further relied upon the decision rendered by the Supreme Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, . Even in that case, the Court observed that the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building potentiality and in that case under Clause (4) of Section 24 of the Land Acquisition Act any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Further, the Court has discussed what material is required to be placed on record for determining the potentiality of the land for being used for building or other purposes and thereafter once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and to determine its market value taking into account the increase in price attributable to such building potentiality.

Here, in this case, as stated earlier, we have considered and relied upon the report of Land Acquisition Officer that the lands could be used for building purposes.

Further in the very judgment the Honourable Supreme Court has exhaustively dealt with in paragraph 13 as to how the market price of the land is to be determined in cases where reliance is placed on sale instances of small plots. The Court has observed that if the market value of the acquired land with building potentiality has to be fixed on the basis of evidence of price of small plots, the first thing which is required to be done is to prepare a hypothetical lay-out of the plots of the acquired lands itself. Thereafter, there should be an evidence of losses suffered or expenses incurred in having made a lay-out of building plots which may relate to lands lost for laying roads, drains, sewerages, parks, etc., costs incurred in the making of roads, drains, sewerages, providing water supply, electric supply, losses on investments and paying of conversion charges, development charges, etc., in a developed layout or an undeveloped lay-out in which building plots had been laid and sold and which sales form the basis for determining the market value of the acquired lands. The Court has also observed that since the owners of the acquired lands with building potentiality rarely

produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical lay-out of building plots to be thought of by the Court in respect of such land, although they rely on the price fetched by sale of plots in a developed lay-out or an undeveloped lay-out for determining the market value of their lands with building potentiality in the vicinity of such lay-out, the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the price got in the sale transactions relating to the building plots in a developed or an undeveloped lay-out, relied upon by the owners of the land, if such transactions are found to be genuine. Thereafter the Court has referred to the decision of the Bombay High Court in case of *Bombay Improvement Trust Vs. Mervanji Manekji Mistry*, , and has observed as under:

Thus, when it becomes inevitable for the Court to fix the market value of the acquired land with building potentiality on the basis of the price fetched by sale of a building plot in a developed lay-out of building plots in the vicinity, it must, in our view, fix the wholesale market value of the acquired land with building potentiality at one-third to one-half of the retail price got by genuine sales of plots in a developed lay-out in the vicinity, by deducting two-thirds to one-half out of the retail prices of plots, as losses or expenses involved in having made the land where the plots are formed as developed, according to the degree of development. For instance, if the retail prices of plot is Rs.12/-, per square yard, the wholesale price of the acquired land with building potentiality could be fixed at rupees varying between Rs. 4/- and Rs. 6/- depending upon the nature of development found in the lay-out of the plot sold in retail.

Lastly, it would not be out of place to mention that in that case the Court has also observed that even if there is no cross-examination of the witnesses because, evidence resulted thereof has not been adduced, the Court is required to accept the statements of the witnesses for claimants on the basis of probabilities and in such case the Court will be performing duty justly expected of them. Otherwise, it would amount to doling out public money to the claimants in excess of their legitimate, just compensation payable for their lands.

In our view, the aforesaid judgments relied upon by the Learned Counsel, Mr. Patel, would hardly advance the case of the claimants that the compensation should be determined on the basis of price received by the AUDA by auctioning the plots in the year 1986 or thereafter.

At this stage, the Learned Counsel for the claimants further submitted that:

- (i) the lands are acquired for profiteering;
- (ii) the award dated 23rd September 1986 came to be passed after lapse of eight years of publication of notification u/s 4 of the Act on 15th November 1979;
- (iii) the date of the notification u/s 4 of the Act should be advanced by three years and the market price of the lands under acquisition should be determined

accordingly, that is to say, the market price of the lands under acquisition be determined as if notification u/s 4 of the Act is issued in the year 1982;

(iv) strike down the notification;

(v) pay equivalent of value of a rupee in 1979, i.e., 15th November 1979.

With regard to the contention that the lands are acquired for profiteering, in our view, this submission is totally irrelevant in the present proceedings for determining the market price of the lands under acquisition. In these First Appeals, we are required to determine the market price of the lands under acquisition on the basis of date of notification u/s 4 and after considering relevant evidence with regard to the prevailing market rate of the lands. Similarly, with regard to other contention also, we have no jurisdiction to advance the date of publication of notification u/s 4 on the ground of delay, as alleged by the Learned Counsel for the claimants, in making the award u/s 11 of the Act. If the claimants were aggrieved by the so-called delay, it was open to them to challenge the award at the relevant time before the appropriate forum. In any case, Section 23(1A) and the rate of interest provided in Section 28 of the Land Acquisition Act would take care of the loss suffered by the claimants on account of passing of award after lapse of some years. Further the submission of striking down notification in the compensation appeal is unusual, which cannot be entertained. Lastly, submission of paying equivalent of value of a rupee in 1979 also cannot be accepted. As stated above, the Legislature has taken care by introducing Section 23(1 A) and paying higher rate of interest. Hence, in our view, there is no substance in these contentions raised by the Learned Counsel for the claimants.

10. V. Findings Given By The Trial Court

At this stage, it would be appropriate to mention that the learned Judge has not bothered to appreciate the evidence, which was produced before him. He has not appreciated the deposition of the claimants and their witnesses. He has not appreciated the documentary evidence produced before him. For illustration, he has not bothered to refer to the sale deed (Exh. 229), dated 29th September 1981, wherein it is specifically mentioned that before execution of sale deed, the lands were agreed to be transferred by Banakhat dated 7th April 1981 to the Deepak Land Corporation. Deepak Land Corporation in turn assigned its rights to Vijay Land Corporation by charging Rs. 20/- more per sq. mtr. for which Banakhat dated 16th June 1981 is executed. Thereafter, Vijay Land Corporation agreed to assign its rights to Motinagar Co-operative Housing Society (Proposed) by charging additional Rs. 20/- per sq. mtr. That means, on 7th April 1981, the value of the land was Rs. 70/-, as stated in the sale deed. In the sale deed, it is specifically mentioned that the land admeasuring 2,100 sq. mtr. were sold for a consideration of Rs. 1,47,000/-. Further, he has not appreciated the evidence of the claimant Bhagwandas Sheth, who has specifically proved sale deeds Exh. 119 to Exh. 124. In his deposition, he has not at all stated that the said lands bearing

S. No. 726/1 and 726/2 were purchased by them by taking any undue advantage or that the vendors have sold the land because there was some pending dispute between them. Witness Bhagwandas has not produced anything on record to show that the contents of the said documents are not reliable. Further, without verifying the mortgage document Exh. 142 executed by Amitkunj Co-operative Society in favour of the Society the learned Judge has relied upon Exh. 142 as sale deed and has determined the market value of the land by taking into consideration the fact as if the price fixed by the deed was Rs. 172.50 ps. for the sale of the land. It is expected of the learned Judge that at least he ought to have looked at some of the contents of the document in question in arriving at such a conclusion and at least to state whether it was a sale deed or a mortgage deed. If it was a mortgage deed, what was mortgaged, that is to say, land alone was mortgaged or whether land with building/structure was mortgaged. Similarly, the learned Judge has referred to Exh. 144 dated 23rd August 1978 for holding that the lands were sold at the rate of Rs. 93.69 ps. As discussed above, Exh. 144 is not a sale deed but a mortgage deed by Jyotikrupa in favour of the Society. Further, it is to be borne in mind the sale index produced either by the claimants or by the Land Acquisition Officer cannot be relied upon for determining the market value. For proving the market value, the parties are required to adduce evidence of sale instances alongwith transfer deed by examining either vendor or vendee or person knowing about the sale transaction. However, it seems that the learned Judge has become over-generous in granting compensation and has not taken care, which, as stated by the Honourable Supreme Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , amounted to doling out public money to the claimants far in excess of their legitimate entitlement for just compensation payable for their lands.

At this stage, it would be worthwhile to quote similar observations of the Hon'ble Supreme Court in the case of The Collector, Raigarh Vs. Harisingh Thakur and Another, .

Landholder has generally secured anything from four to forty times as much for the land as its agricultural piece, i.e., many times its real value: this result unfortunately springs from a general tendency of District Judges in hearing a reference u/s 18 of the Land Acquisition Act, 1894, to assume that purely agricultural lands, merely by their proximity to a city or town, became endowed with special adaptability as a building site; while it is not suggested that unfairly low value should be offered, on the other hand the temptation to over-generosity must be equally resisted. Such generosity at the public expense reacts against the development and against the prosperity of the country and imposes an unnecessary burden on the tax-payer.

Considering the over-generous award made by the learned Judge, in our view, the aforesaid observations of the Hon'ble Supreme Court equally apply in the present case.

Further, the learned Judge has not taken into consideration the fact that a vast belt of agricultural land admeasuring 54 Hectare 64 Are 86 sq. mtr. was acquired by the AUDA for establishment of a township at Kalol and that the said lands were used as agricultural lands on the date of acquisition. He has not taken into consideration the fact that the lands under acquisition are situated away from the city and that they were required to be developed for township. Therefore, the AUDA has prepared a plan and after preparing the plan, the lands were acquired for constructing houses for different strata of income group of people. Merely because the lands were acquired by the AUDA for township, the lands would not cease to be agricultural lands. However, we expressly make it clear that this does not mean that the lands under acquisition have no building potentiality. We have accepted the finding given by the Land Acquisition Officer that the lands are having potentiality for being developed and can be used for residential or commercial purpose or can be used for industrial purposes.

11. (VI) Keeping this in mind, we determine the market rate of the lands under acquisition on the basis of sale instances upon which reliance can be placed as discussed above. We summarise the said sale instances as under:

(i) Exh. 199 to 123 are sale deeds executed for S. No. 176/1 and 176/2. These sale deeds reveal that the Banakhats were executed in October 1987 at the rate of Rs. 91/- per sq. yard (Rs. 10.57 per sq. mtr.). On the basis of the said Banakhats, sale deeds were executed in June 1980 in favour of Dinesh Land Corporation, which, according to the deposition of claimant Bhagwandas, is of his ownership.

(ii) Sale deed Exh. 229 dated 29th September, 1981 can also be relied upon to some extent for assessing the market price of the lands under acquisition. As discussed above, the price of the land admeasuring 2,100 sq. mtrs. of T.P. Plot Nos. 214 and 178 was fixed at the rate of Rs. 70/- per sq. mtr. on 7th April 1981. No doubt, the sale deed was executed in September 1981 on the basis that the land was sold at the rate of Rs. 110/- per sq. mtr. However, difference of Rs. 40/- was taken away by the middlemen Deepak Land Corporation and Vijay Land Corporation within a span of five months. But, from this document, it can be inferred that as on 7th April 1981, the land, which is on the north was sold at the rate of Rs. 70/- per sq. mtr. In the present case, notification u/s 4 of the Act was issued on 15th November 1979. After publication of the said notification, price of the land has increased in that area and, discussed above, within the span of five months, the same land was sold at the rate of Rs. 110/- per sq. mtr. which means that, within the span of five months, increase in price of land was Rs. 40/- per sq. mtr. The reason may be that the AUDA wanted to develop the said area for township in a planned manner. Taking into consideration this aspect, it can reasonably guess that in November 1979, the price can be assessed between Rs. 35/- and Rs. 40/-, because the time-gap between notification and Banakhat is roughly one year six months (15th November 1979 and 7th April 1981).

(iii) The next document is award dated 13th January 1993 (Exh. 19). As

discussed above, the learned Assistant Judge has awarded compensation at the rate of Rs. 70/- per sq. mtr. for the lands bearing S. Nos. 726/1 and 726/2. While awarding compensation, the learned Judge has not appreciated the contents of document Exh. 30. It is say of claimant, Bhagwandas that Dinesh Land Corporation belongs to him. In that case also, the claimant was Dinesh Land Corporation which by various sale deeds Exh. 112 to Exh. 120 purchased the lands at the rate of Rs. 9/- per sq. yard. If such is the situation, in our view, no reliance can be placed upon the said award (Exh. 19). If this is taken into consideration, it is to be noted that the date of notification u/s 4 in that case was 11th June 1981. In the present case, notification u/s 4 was issued on 15th November 1979. Therefore, it is virtually lapse of 20 months. By giving appropriate deduction to increased price, as stated above, here also it can reasonably guess that the range of price would be between Rs. 35/- and Rs. 40/-.

(iv) Fourthly, the claimants have relied upon sale instances of small piece of land admeasuring 529 sq. mtrs. for which sale deeds Exhs. 131 and 132 are executed on 28-2-1979 and 3-3-1979 respectively. The lands were purchased at the rate of Rs. 75/- per sq. mtr. Admittedly, lands were small plots having amenities such as electricity, water, drainages and road. It is at two minutes walking distance from Kalol town, as stated by the witness. This would mean that this piece of land is situated in the midst of Kalol town or near the city area. Still however, for assessing the market price of the lands under acquisition, it can be relied upon by taking into consideration the principles discussed by the Honourable Supreme Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , in paragraph 13, which we have discussed earlier. This would be a case of fixation of wholesale market value of the acquired land with building potentiality on the basis of retail price got by sales of plots in a developed lay-out in the vicinity. The Court in that case has observed that it can be fixed by deducting two-thirds to one-half out of the retail prices of plots, as it requires expense having made the land where the plots are formed as developed. Therefore, on the aforesaid sale instances, the price ranging from Rs. 25/- to Rs. 37.50 can be assessed.

(v) As against this, there are sale instances Exh. 119 to Exh. 123 which reveal that in October 1987, price of lands bearing S. Nos. 176/1 and 176/2 was Rs. 91/- per sq. yard (i.e., Rs. 10.75 per sq. mtr.). Adding 12 per cent per year for arriving at the market value in November 1979, it can be stated that the value in November 1979 of the said lands would be approximately Rs.12/-sq. mtr. At this stage, we may note that it is the say of the claimant's witness Pandya Rajendra Kumar (Exh. 232) that in the year 1980, the value of land was Rs. 35/- to Rs. 40/-. No doubt, he has admitted in cross-examination that there is nothing on record to show that the value of the land was Rs. 35/-to Rs. 40/-.

(vi) The other document upon which the reliance was placed is Exh. 124, which is sale deed dated 1st September 1975 for sale of land bearing S. No. 471/1A (part). Land admeasuring 8,107 sq. yards was sold to Dharmanath Cooperative

Housing Society Limited for a sum of Rs. 1,65,000/-, i.e., Rs. 20.40 per sq. yard. Increasing the said amount by 12% per annum, for a period of four years, the addition can be Rs. 10, meaning thereby, approximate price of the land in November 1979 would be at the rate of Rs. 30/- per sq. yard, i.e., Rs. 36/- per sq. mtr.

The net result of the aforesaid discussion can be tabularised as under:

Claimants

In this view of the matter, it would be just and proper to determine the market price of the lands under acquisition ranging between Rs. 35/- and Rs. 40/- per sq. mtr.

12. It is to be noted that the Land Acquisition Officer has awarded compensation at different rates on the basis of the situation of the lands, i.e., if the lands are touching the highway, then more compensation is given and the lands are situated in the rear side, then less compensation is awarded. He awarded compensation ranging from Rs. 13/- to Rs. 25/-. Without disturbing the said division of lands, the learned Assistant Judge has awarded additional compensation varying from Rs. 70/- to Rs. 80/-. With regard to the aforesaid division of the lands, no contentions are raised in these appeals.

13. Hence, for the lands which are situated touching the highway, the compensation is determined at the rate of Rs. 40/- per sq. mtr. and with regard to other lands, the compensation is determined at the rate of Rs. 35/- and Rs. 37/- per sq. mtr.

The claimants are also entitled to get:

- (i) solatium at the rate of 30% on the additional amount of compensation awarded by this Court;
- (ii) benefit of Section 23(1 A) of the Land Acquisition Act, i.e., in addition to market value of the land, additional amount at the rate of 12% per annum on such market value for a period from 15th November 1979 to 23rd September 1986;
- (iii) interest at the rate of 12% per annum for a period of one year from the date of taking over the possession of the land under acquisition; and interest at the rate 15% per annum from the date of expiry of the period of one year till the amount is deposited with the trial Court.

In the result, the appeals filed by the Special Land Acquisition Officer are allowed with proportionate costs. The judgment and award dated 31st August 1994 passed by the learned Assistant Judge, Mehsana. in Land Reference Case Nos. 497 of 1987 to 536 of 1987 and 539 of 1987 to 592 of 1987 and 592/1, 592/2, 592/ 3 and 533 of 1987 and 137 of 1987, is quashed and set aside.

14. The claimants are awarded compensation as per the Schedule given

hereinbelow. Before signing the judgment, the learned Advocate for the parties have verified it.

Schedule ----- F.A.
L.A.R. Survey Rate per Additional Total No. No. No. sq.mtr. by LAO
----- 528/95

533/87 603 13 22 35 508/95 506/87 535 15 20 35 492/95 507/87 535 15 20 35
504/95 509/95 537 15 20 35 505/95 510/87 538 15 20 35 524/94 529/87 596
15 20 35 524/94 529/87 597/2 15 20 35 525/95 530/87 597/1 15 20 35 534/95
541/87 461 15 20 35 466 15 20 35 538/95 545/87 467 15 20 35 546/95
589/87 476/1 15 20 35 547/95 590/87 476/2 15 20 35 503/95 508/87 536/1 16
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19 35 539/95 546/87 468 16 19 35 544/95 587/87 474/1 16 19 35 545/95
588/87 474/2 16 19 35 546/95 589/87 476/5 16 19 35 548/95 591/87 477 16
19 35 501/95 505/87 534 17 18 35 506/95 511/87 539 17 18 35 506/95 511/87
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522/95 527/87 594 17 18 35 523/95 528/87 595/2 17 18 35 494/95 499/87
531/1 18 17 35 496/95 500/87 531/1 18 17 35 497/95 501/87 531/1A 18 17 35
598/95 502/87 531/1 18 17 35 508/95 513/87 554 18 17 35 513/95 518/87
593/1 18 17 35 514/95 519/87 591/1 18 17 35 520/95 525/87 591 18 17 35
521/95 526/87 593/2 18 17 35 536/95 543/87 463 18 17 35 543/95 586/87 473
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478/1]basis of 18 17 35 478/2]area as 18 17 35 550/95 592/1/87
478/1-2]determi- 18 17 35 551/95 592/2/87 478/1-2]ned by 18 17 35]trial
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First Appeal Nos. 549/95, 550/95 and 551/95, the amount is to be paid as per
the apportionment order passed by the District Court.

The appellants shall deposit the said amount within a period of four months from today with the trial Court.

Cross-Objections

Coram: M.B. Shah and N.N. Mathur, JJ.

Oral Order:

15. As the First Appeals filed by the State Government are allowed consequently, cross-objections, except one, are required to be rejected. Cross-objections, except cross-objection in First Appeal No. 538 of 1995, filed by the claimants are rejected with costs.

16. With regard to cross-objections in First Appeal No. 538 of 1995, it is pointed out by the learned Advocate for the claimants that the Land Acquisition Officer, at the initial stage, awarded compensation for the entire land without there being any deduction, on the basis of the Town Planning Scheme. Subsequently, at the time of passing of the award, the compensation was given on the basis of the area of the final plot under the Town Planning Scheme. Thereafter, this mistake was pointed out by filing Misc. Civil Application No. 6 of 1994. The Court after hearing the parties awarded compensation on the basis of the area which was mentioned in the notification u/s 4. That modification is accepted by the Special Land Acquisition Officer and the State has not preferred any appeal against the said order. Apart from the aforesaid order, it is also admitted that possession of the land was taken prior to finalisation of the Town Planning Scheme. According to the Kabja Pavati, which is produced on record at Exh. 161, possession of the land admeasuring 14,627 sq. mtr. was taken. Compensation is awarded only for the land admeasuring 12,048 sq. mtr.

17. In this view of the matter, the claimants of Land Reference Case No. 545 of 1987 are entitled to get compensation for the entire land admeasuring 14,627 sq. mtrs. instead of 12,048 sq.mtr., i.e., they are entitled to get compensation for additional area of land admeasuring 2,579 sq. mtrs.

18. In the result, this cross-objection is partly allowed to the aforesaid extent with no order as to costs.