

(2003) 02 DEL CK 0105

In the Delhi High Court

Case No : Regular First Appeal : 114 of 1998 and 155 of 1998

S.S. Aggarwal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 507(A)
Land Acquisition Act, 1894 — Section 11A, 17(1), 18, 23, 23(1)
Registration Act, 1908 — Section 57(5)

Citation : (2003) 1 ILR Delhi 148

Hon'ble Judges : Devinder Gupta, Acting C.J.; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Om Prakash with Mr. Rajeshwar Dagar, for the Appellant; Gita Luthra, Advocate with Ms. Jhum Jhum Sarkar, for the Respondent

Judgement

Devinder Gupta, A.C.J.

1. By this common judgment two appeals filed u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) are being decided wherein the appellants have sought further enhancement in the amount of compensation payable to them. On 6.1.1995 notification u/s 4 and Section 17(1) of the Act was issued notifying the intention of the Government to acquire land situate in village Jasola, Delhi at public expense for public purpose, namely, construction of Sewerage Treatment Plant under Planned Development of Delhi. Declaration u/s 6 of the Act was made on 10.1.1995. The Collector Land Acquisition proceeded to make his award No. 10/95-96 of village Jasola on 11.10.1995 offering to the claimants compensation @ Rs. 96,875/- per bigha (Rs. 96.80 per sq. yard). Feeling dis-satisfied the appellants sought references. The reference court by the impugned awards dated 29.9.1997 answered the references u/s 18 of the Act and held the appellants entitled to compensation at the market rate of Rs. 1,02,000.00 per bigha (Rs. 102/- per sq. yard). Still feeling dis-satisfied the claimants have sought further enhancement in the amount of compensation in these appeals. Their claim is that they are entitled to compensation at Rs.

10,000/- per sq. yard. but due to paucity of funds have affixed court fee on claim @ Rs. 7,000/- per sq. yard.

2. Land situate within revenue estate of Jasola has been subject matter of acquisition ever since the Government started acquiring lands for Planned Development of Delhi. Firstly land situate in this revenue estate was acquired on the basis of notification issued u/s 4(1) of the Act on 13.11.1959. More land was acquired by two subsequent notifications issued u/s 4 of the Act on 24.10.1961 and 6.4.1964. Revenue estate of village Jasola and village Bahapur were adjacent to each other and both were declared as urbanised by notification No. F-2(49)/65-LSG dated 28.5.1966 issued u/s 507(A) of Delhi Municipal Corporation Act, 1957 (Ex. A-1), which was published on 3.6.1966. Village Jasola is mentioned at Sl. No. 19 of South Delhi Zone in the said notification. After the land had been declared urbanised by the Delhi Administration on 28.5.1966 it was declared to be a development area in 1974 when notification was issued under the provisions of Delhi Development Act. More land was acquired in Jasola by notification issued u/s 4 of the Act on 5.6.1979. Thus the development activity, which commenced in the revenue estate, when the land was acquired through notification dated 13.11.1959 continued unabated and the pace of development accelerated when more and more land was acquired till 1979. The topography of village, its importance and location may be noticed that it is situate on Mathura Road. Localities of Sukhdev Vihar, Ishwar Nagar, Jasola DDA flats, Jasola Colony, Apollo Hospital, Harkesh Nagar, Sarita Vihar, part of Mohan Co-operative Industrial Area, Okhla Industrial Area Part II, Friends Colony are situate and have been developed on the acquired land of village Jasola acquired till 1979. The adjoining revenue estate is Bahapur. On the acquired land of village Bahapur are located posh colonies and business centre e.g. Kalkaji and Nehru Place. As such on the date of issuance of notification u/s 4 of the Act on 6.1.1995 revenue estate of Jasola was not only an urbanised land but also a development area where lot of development activity had already take place and had become one of the prestigious areas in the National Capital Territory of Delhi. Ever since Jasola was declared a developed area in the year 1974, all civic facilities like electricity, water, sewerage, roads, hospital, telephone connections etc. were available. Thus the left over area of the revenue estate had great potential of being utilised both for residential as well as for commercial and industrial purposes. The Land Acquisition Collector in his award also noticed this aspect that land under acquisition was urbanised in the year 1966 and was declared development area in the year 1974. He, however, under erroneous assumption treated the area only as agricultural land for the purpose of assessment of compensation, contrary to the provisions of Section 23 of the Act, when he said that land was still arable and continued to be used as agricultural land since it was being used for growing crops and vegetables. For this reason alone the Collector Land Acquisition opined in his award that the rates announced by Land and Building Department for different areas of city, though may be taken into consideration in assessing market value of land but in the instant case being

agricultural land same cannot be applied. He observed:--

The rates announced by L&DO/L&B Department for different areas of the city are the rates which are charged by the respective authorities on the unearned income on account of increase in price of land. These are also the rates of which violation of Building Bye-Laws are compounded by the local bodies responsible for enforcement of such by laws i.e. to say if extra space has been covered in a certain commercial-residential building the compensation amount is to be determined with reference to these rates up to a prescribed limit. This also implies that these rates are applicable to the localities in respect of which building plans are approved under the respective building - Bye-Laws as the words F.A.R. (Floor Area Ratio) appearing in the order also indicates. As such the rates announced by L&DO/L&B Department are not applicable for the agricultural land.

3. The Collector Land Acquisition while treating the land to be agricultural proceeded to assess the market value saying:--

In view of the factors mentioned above I do not find it justified to determine the market value of the urbanised land at a rate less than the minimum fixed by the Government for acquisition of agricultural land. At the same time in the absence of any documentary evidence on record I do not think it justified to determine the market value at a rate higher than Rs. 4.65 lacs per acre. I am, therefore of the considered opinion that Rs. 4.65 lacs per acre is a just price. I accordingly determine the market value @ Rs. 4.65 lac per acre i.e. Rs. 96875/- per bigha.

4. Learned Counsel for the appellants vehemently contended that since the land had already been declared urbanised almost 29 years prior to issuance of notification u/s 4(1) of the Act and had been declared to be development area about 21 years prior to issuance of notification u/s 4(1) of the Act, the acquired land had great potential for being utilised for residential, commercial as well as for industrial purposes which aspect has altogether been ignored not only by the Collector but also by the reference court. Learned Counsel for the appellant placed reliance upon the decision in Anar Singh vs. Union of India AIR 1985 SC 298 wherein this Court compared the land situate in village Bahapur with the land of revenue estate Jasola observing that potential value, location and situation of both the villages is similar and both are adjacent and quite close to each other. It was further observed:--

Village Jasola is situate on the two sides of Mathura Road. On one side it adjoins village Bahapur. On the other side of the road village Okhla as well as Bahapur adjoin village Jasola. Counsel for the appellant concedes that there is no sale transaction in this village evidencing the market value of the land on 24.10.1961, the date with which we are concerned. But he says that the acquired land had great potential value which factor has been completely ignored both by the Land Acquisition Collector as well as by the Additional District Judge.

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Village Bahapur as we have seen, adjoins village Jasola on both sides. If the prices of land in village Bahapur were rising, it is not possible to say that there was no increase in the value of the land in village Jasola.....It will not therefore be correct to say, as was observed by the learned Judge, there is no material to guide us in this case. There may not be any sale transaction in village Jasola. The transactions of the adjoining village can be a good guide when there is no evidence available in this village..... We cannot lose sight of the fact that village Jasola is adjoining Bahapur. Thus also must be borne in mind that notification u/s 4 was issued on 24.10.1961. One thing is certain. The acquired land had great potential value whether it was situated on this side of the road or the other side of the road.

5. After referring to the aforementioned decision learned Counsel for the appellants contended that in order to determine fair market value of the acquired land it will not be unfair in case determination of the market value as had been made in the case of revenue estate Bahapur and instances of market value of the said village are relied upon.

6. Ex. A-2 is copy of the award of reference court in LAC No. 2/80 Shri Bhola Nath & Another vs. Union of India decided on 27.9.1998 with respect to land situate in village Bahapur acquired through notification dated 30.6.1978. Market value was determined at Rs. 175/- per sq. yard. This award of the reference court was challenged by the claimants in appeal before this Court. Division Bench of this Court in RFA 65/1981 dated 21.8.1998 Bhola Nath and others Vs. Union of India modified the award Ex. A-2 and assessed the market value of land situate in village Bahapur at Rs. 2,000/- per sq. yard as on 30.6.1978. Against the judgment of this Court Union of India preferred an appeal before the Supreme Court being SLP (Civil) No. 1608/99 Union of India vs. Bhola Nath Sharma (dead) by L.Rs. & Another. The SLP was dismissed on 12.4.1999. Review petition No. 1359 of 1999 filed by Union of India was also dismissed on 13.10.1999. As such in so far as village Bahapur is concerned market value of land as on 30.6.1978 stands finally determined at Rs. 2,000/- per bigha.

7. Ex. A-5 is an award dated 13.3.1993 of Shri N.N. Goswami, a retired Judge of this Court in the matter of Shri Bashir Ahmad & Ors. vs. Delhi Administration & Ors. After acquisition proceedings relating to 0.98 acres of land situate in Bahapur were quashed by this Court in C.W. 391 of 1967 by judgment dated 5.1.1973, the claimants prayed for restoration of possession, which was not restored. In this background the disputes and differences between the parties as regards determination of the amount of compensation payable for land situate in village Bahapur were referred by the Ministry of Works and Housing through its letter dated 31.12.1979 to the sole arbitration of Justice Hardayal Hardy, a retired Chief Justice of this Court, who died during the proceedings. Vacancy was filled by Mr. Justice Prithvi Raj, another retired Judge who also could not make his award and finally Shri N.N. Goswami proceeded with the reference on and

from 14.11.1992. The sole arbitrator determined the market value of the land situate in village Bahapur as on 24.1.1983 as being Rs. 2,500/- per sq. m. (Rs. 2157/- per sq. yard). The Delhi Administration accepted the award and paid the amount of compensation accordingly.

8. The claimants also placed reliance upon sale instance, Ex. A-4, a sale deed executed on 15.6.1995 with respect to a free hold plot of land measuring 300 sq. yard bearing No. S-184, Greater Kailash, II, New Delhi alongwith construction standing thereupon. The property was sold through registered deed of conveyance for a total sale consideration of Rs. 1,07,50,000.00, for which agreement to sell had been entered into on 4.2.1995. This plot of land was situate in village Bahapur and was part of residential colony of Greater Kailash II. Learned Counsel for the appellants contended that since construction was standing on this plot of land and assuming that the entire plot was duly covered by construction, i.e. 2700 sq. feet (even without giving margin of set backs and irrespective of the FAR) and assuming the construction to be of super quality in case cost of the construction is taken to be the highest i.e. @ Rs. 500/- per sq. feet (though as per CPWD Memo No. SE(S&S) EE II/AD III/289 dated 29.6.1992 the cost of construction in 1995 for such like property was only @ Rs. 337.25 per sq. feet), the total cost of construction at this rate would be Rs. 13,50,000/-. Deducting this amount from the total sale consideration, the balance amount would be the cost of plot of land paid by the vendor to the vendee i.e. Rs. 94 lakhs. Even if 1/3rd is deducted towards development charges, the market value of this piece of land works out to Rs. 20,889/- per sq. yard.

9. Reliance is also placed on another instance of conveyance by letter of allotment dated 13.4.1995 of perpetual lease hold rights in plot No. 70 of District Centre, Nehru Place (village Bahapur). By this letter, offer of M/s. Great Eastern Shipping Co. Ltd. of Rs. 34.20 crores for perpetual lease hold rights in the plot was accepted. Being a plot of land situate in Nehru Place (revenue estate Bahapur) of which floor area was 3568.76 sq. m. and size of plot being 1784.38 sq. m. it was contended that it would reflect market value as on 13.4.1995 at Rs. 1,65,000/- per sq. yard.

10. In addition to this reliance has also been placed on office order No. 2/92 Ex. A-6, the schedule of market rates of land in different areas of Delhi. New Delhi under the control of Land Development Office. As per this schedule of rates issued by Ministry of Works, Housing and Urban Development, Government of India dated 24.1.1992, residential and commercial rates were notified and for Bahapur rates were notified for residential at Rs. 8,400/- per sq. m. (Rs. 7245/- per sq. yard) and at Rs. 16,800/ per sq. m. (14,490 per sq. yard) for commercial plots.

11. Learned Counsel for the appellant also placed reliance upon decision of this Court in RFA 416/86 Ram Chander & Ors. vs. Union of India decided on 19.10.2001, by which a Division Bench of this Court has determined market value for land situate in village Jasola acquired through notification issued u/s 4

of the Act on 15.6.1979. While equating the land of village Jasola with the land situate in Bahapur by placing reliance on the observations made in Anar Singh's case (supra) the market value as had been determined in Bhola Nath's case (supra) @ Rs. 2,000/- per sq. yard as on 30.6.1978 was applied to determine the market value as on 15.6.1979. For the difference in the dates of notifications u/s 4(1) of the Act in Bhola Nath's case (supra) and in Ram Chander's case (supra) appreciation was allowed at the rate of 12% p.a. and Rs. 2,240/- per sq. yard was held to be the fair market value as on 15.6.1979 of land situate in Jasola.

12. Learned Counsel for the appellant submitted that on applying the principles as laid down in *Bedi Ram vs. Union of India & Anr.* 93(2001) DLT 150 to the market rate as determined in Ram Chander's case (supra) by allowing gradual increase per year from 15.6.1979 to 6.1.1995 market value of the acquired land in these two appeals can be worked out to Rs. 13,118/- per sq. yard. He further pleaded that the instances relied upon by the appellant being the decisions of the High Court in land acquisition cases of revenue estate of Bahapur, followed in Jasola and being the arbitration award determining market value in land acquisition matter the sale instance, the rates selected in transfer of lease hold rights and also the schedule of rates etc. if put together the average of all would work out to Rs. 23,919/- per sq. yard whereas the appellants were claiming not more than Rs. 10,000/- per sq. yard.

13. The aforementioned evidence was taken note of by the reference court but was discarded on the ground that since sale instances of various plots of land had been relied upon by the respondent, namely, Ex. R-1 to Ex. R-8 being sale deeds executed on 22.3.1993, the same alone should be preferred and can be made basis in determining the market value. The reference court observed:--

Keeping in view the above principles, claimants submissions that they should be awarded the compensation keeping in view the documents Ex. A-1 to A-9 which relate to other villages like Bahapur, Tughlakabad and certain land in Greater Kailash, Tolstoy Marg, cannot be accepted in view of the defendants Union of India having proved on record the sale deeds Ex. R-1 to R-8 which all were executed on 22.03.1993 and which documents have also been relied upon by Defendant DDA as Ex. D-1, R-2 to R-5 and D-6 to D-8. Documents R-1 to R-8 clearly establish that land of village Jasola could not fetch prices like the land in Bahapur even during the year 1993.

14. As regards sale deed Ex. R-1 to R-8, learned Counsel for the appellant took serious objection that the same cannot be relied upon and cannot be made basis for determining the amount of compensation and the reference court was not justified in blindly ignoring the relevant material and placing reliance upon inadmissible evidence produced on record by the respondent.

15. Ex. R-1, R-2, R-6 and R-7 are photo copies of sale deeds and are stated to have been executed on the same date i.e. 22.3.1993. The sale deeds recite that the property being sold is plot of land being part of Khasra No. 272, which had

been notified for being acquired by notification issued u/s 4 of the Act on 6.4.1964 for which declaration had also been made on 7.12.1966. The sale deeds recite that the land was already subject matter of acquisition proceedings. Learned Counsel made reference to copy of award No. 4/97-98 (Suppl.) of village Jasola. Similar arguments were made with respect to Ex. R-3, R-4, R-5 and R-8 being photo copies of sale deeds. Land which is subject matter of all the sale deeds was notified for being acquired by notification dated 6.4.1964. The said land has now been included in award No. 4/97-98 (Suppl.) of village Jasola. The sale deeds were executed on one day on the premise that proceedings to acquire land had lapsed because of operation of Section 11A of the Act. Thus there was already a cloud cast on the title. Therefore, it can hardly be said that the transactions are bona fide or represent true market value. Possibility cannot be ruled out of speculation also. Thus the instances are not worth consideration in determining the amount of market value. Another objection was raised on behalf of the appellant about the admissibility of the documents produced on record by the respondent which are only photo copies of the sale deeds and are not even certified copies, which is the pre requisite u/s 51A of the Act. As such the same cannot be accepted as evidence. Not only these are photo copies but have also not been proved in accordance with law. Had these been certified copies the same could have been admissible evidence. Not being certified copies it was necessary to have proved these by producing vendors and vendees. Only a clerk R.W. 2, Naresh Kumar from the office of the Collector Land Acquisition produced these photo copies and the same were taken as evidence of respondent.

16. In Inder Singh and Others Vs. Union of India (UOI) and Others, such evidence was discarded holding:--

Neither the appellants nor the Land Acquisition Officer had examined witnesses in proof of the sale transactions referred in mutation entries Ex. P-4 to P-8 on behalf of the appellants and R-1 and R-2 on behalf of the respondent. It is settled law that claimant is entitled to just and reasonable compensation and u/s 23 to determine the market value of the lands the prevailing prices as on the date of the publication of the notification u/s 4(1), the sale transaction of the same lands or sales of lands situated in the neighborhood would furnish as evidence of comparable sales. The price which a hypothetical willing vendor might reasonably expect to obtain from a willing purchaser would form the basis to fix the market value. It would be possible to have reliable evidence when sale transactions are proved by either the vendor or the vendee and if either of them was not available, the attesting witness who had personal knowledge of the transaction is to be examined by producing either the original sale deed or certified copies thereof as evidence. u/s 51-A of the Act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witness is to find that the sale transactions are bona fide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price as arms length or depressed sales or brought into existence to inflate

market value of the lands under acquisition and the sales are accommodating one. Equally it must be brought on record the comparative nature of the lands covered under the sale deed and the acquired lands whether adjacent or actual distance or possessed of similar advantages and whether transactions themselves are genuine and bona fide transactions. This proposition of law, since settled law, in fairness, has not been disputed across the bar.

17. In Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, the Supreme Court examined the object in inserting Section 51-A of the Act by Land Acquisition (Amendment) Act, 1984 saying:--

If the position regarding admissibility of the contents of a document which is a certified copy falling within the purview of Section 57(5) of the Registration Act was as adumbrated above, even before the introduction of Section 51-A in the LA Act, could there be any legislative object in incorporating the said new provision through Act 68 of 1984? It must be remembered that the State has the burden to prove the market value of the lands acquired by it for which the State may have to depend upon the prices of lands similarly situate which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the State officials it was a burden to trace out the persons connected with such transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51-A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence.

18. When certified copies are received in evidence without further proof, what value is to be attached would be dependable in facts of each case. The Supreme Court in V. Narasaiah's case further held:--

The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.

19. Not only for the reason that the copies produced on record are only photo copies and are inadmissible even as per the recitals in the sale deeds Ex. R-1 to Ex. R-8, the same are not worth consideration as genuine or bonafide sale transaction representing true market value since the subject matter being the land which was under acquisition for which later on award was made by the Collector after the sale deeds were executed. The sale transactions thus are not

worth consideration to determine fair market value of land in village Jasola. There is another reason to discard the sale instances. In Delhi there is tendency to under value land for the purpose of registration, which fact has also been highlighted in the communication dated 27.4.1990 of the Land and Building Department of Delhi Administration saying:--

The problem experienced in Delhi is that there is a tendency to under-value land for the purpose of registration of sale deeds, in order to save stamp duty, conceal unaccounted money paid as part of the price, to evade Capital Gain tax and bypass income tax authorities etc. This result in low determination of rates of compensation under the Land Acquisition Act because the practice is to determine the rate of compensation on the basis of average of registered sale deeds primarily. Hence the compensation received by farmers from the Land Acquisition Collector for lands being acquired for public purposes is much below the market price. The farmers also put up still resistance to acquisition of their lands, and to evade acquisition, sell their lands for unauthorised colonisation. As a result DDA is unable to get land to undertake planned development and only unauthorised colonisation can make progress. Because of paucity of land available through regular channels, land prices continue to spiral up.

20. Even if the land as on the date of notification was being used for agriculture none the less it was necessary to have taken into consideration the potential value of the land. The mandate of law is that a person, who is deprived compulsorily of his land for public purpose by the State, under the provisions of the Land Acquisition Act, must be paid compensation in accordance with law i.e. the true market value. This Constitutional mandate of paying the true market value of land was highlighted by the Supreme Court in its decision in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, saying:--

Where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law in so many terms, declares that he shall be paid such market value.

21. In determining the amount of compensation, factors enumerated in Section 23 of the Act are to be taken into consideration and the factors enumerated in Section 24 of the Act are to be excluded. It need hardly be said that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but only by reference to the uses, which it is reasonably capable of being put in future. This potential use to which the land is reasonably capable of being put in future in the hands of the owner has to be taken into consideration and the owner is entitled to have the price assessed with reference to the advantages which will give the land the greatest value. The value of an owner's interest is not properly compensated by assessing the amount of pecuniary benefits obtained by past user in disregard of the possible benefits in future. The possibility of a mere profitable use is one

such advantage, which may be taken into consideration, which is known as the potential value.

22. Whether a land has potential value as a building site or not is primarily one of fact depending upon several factors such as its condition, situation, the user to which it is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighborhood thereof.

23. The Supreme Court in *The Collector, Raigarh Vs. Harisingh Thakur and Another*, held that the question as to whether a particular land had potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the user to which it is put or is reasonable capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighborhood thereof.

In *The Collector, Raigarh's* case (*supra*) it was held that market value of land must be determined with reference to the nature of land that whether it has potential for building sites and the matters to be considered as aforementioned.

24. It is in the light of these principles that we have to approach the question before us. In the instant case there is enough material on record and it has also been admitted by the Collector Land Acquisition in his award that revenue estate of Jasola as a whole was declared as urban on 28.5.1966 and was declared as development area in the year 1974. Four successive acquisitions took place and as on the date of notification u/s 4 of the Act it was a fully developed area on which already stood Sukhdev Vihar, Ishwar Nagar, Jasola DDA Flats/colony, Apollo Hospital, Harkesh Nagar, Sarita Vihar, part of Mohan Co-operative Industrial area and Okhla Industrial Area Part-II, Friends Colony and New Friends Colony. From the very nature of the development activities and coming up of colonies, medical institutions like Apollo Hospital and industrial area, there is no manner of doubt that the land in question much prior to notification u/s 4(1) of the Act had a great potential not only as a site for residential buildings but also for commercial and industrial development, which aspect ought to have been taken note by the reference court.

25. In *Mahabir Prasad Santuka and Others Vs. Collector, Cuttack and Others*, it was held that when land is situate near industrial area, value of adjacent land

was bound to increase manifold, which factor was duly taken into consideration in the said decision, when potential value of the acquired land in the said case was taken as fit for industrial purposes though it was being used as agricultural land.

26. In *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, on the question whether building potentiality of the land acquired under the Act requires to be taken into consideration in determining its market value and if so how the manner in which it has to be done, the Supreme Court held:--

Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land u/s 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged u/s 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonable capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged u/s 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged u/s 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being use for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonable expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the LA Act.

27 In *Hasanali Walimchand (Dead) by L.RS. Vs. State of Maharashtra*, future potential of acquired land on account of its location was taken into consideration in holding that the acquired land did have future potential on account of its location since the area around city of Ahmednagar was fast developing and the land in question was located only at a short distance of about one and a half miles from Ahmednagar town.

28 In *Union of India and others Vs. A. Ajit Singh*, the land was situated in the developed area and very near to developed localities. It was held that it

possessed potential value for being used for building purposes and was evaluated as such.

29. In view of the development activities which had already taken place much prior to the notification u/s 4 of the Act and the pace with which Delhi has been fast expanding we hold that the land had great potential for being utilised for purposes such as residential, commercial and industrial sites.

30. When land is found to be in close proximity to developed area having all amenities and situate in an advantageous position suitable for building purposes having in its vicinity roads, drainage, communication etc. the principle of deduction in land value covered by comparable sale has to be ignored in view of the ratio of Supreme Court in *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*,

31. In *Sri Rani M. Vijayalakshamma Rao Bahadur, Rnce of Vuyyur vs. The Collector of Madras* 1969 MLJ 45 SC it was held that when land is being compulsorily taken away from a person he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of acquisition.

32. We have already noticed above that in village Bahapur as on 30.6.1978 market value was determined at Rs. 2,000/- per sq. yard whereas for land acquired in Jasola in Ram Chander's case (supra) market value was determined at Rs. 2,240/- per sq. yard as on 15.6.1979. As per the schedule of rates Ex. A-6 as on 11.2.1992 the market value of residential plot was notified at Rs. 7,245/- per sq. yard and for commercial plot the market value was notified at Rs. 14,490/- per sq. yard. As per award Ex. A-5 market value was determined for land situate in village Bahapur as on 24.1.1983 at Rs. 2,157/- per sq. yard. A commercial plot in Bahapur (Nehru Place) on 13.4.1995 was given on lease hold basis @ Rs. 1,65,000/- per sq. yard. Sale deed Ex. A-4 reflects average market value of vacant plot @ Rs. 28,889/- per sq. yard as on 4.2.1995 in Bahapur.

33. Schedule of rates as fixed by Government of India have been considered to be relevant in determining fair market value, of course, after making some deduction, if required. In *RFA 299/84 Virender Singh etc. Union of India* decided on 23.4.1991 such schedule of market value of land was made use of in determining market value of acquired land. In *RFA 131/88 Ram Lal Bansiwal vs. Union of India* decided on 28.11.1995 schedule of rates issued by Land and Development Office were held to be relevant piece of evidence in determining market value of acquired land. Again in *Anil Kumar Sharma Vs. Union of India*, this view of relevance of circulars issued about market rates of commercial and residential plots was held to be relevant, judgments were also relied in *Hari Chand's case (supra)*. In *Mahant Atma Ram Chela Mahant Sita Ram Vs. Union of India*, market rates as reflected in auction of plots by DDA was held to be relevant where market value was assessed at Rs. 12,500/- per sq. yard as on

12.11.1983 for a piece of land situate in village Yusuf Sarai.

34. As on 11.2.1992 schedule of rates reflected market value of Rs. 7,245/- per sq. yard. For the difference upto the date of notification u/s 4 if appreciation is allowed @ 12% p.a., the market value would come to Rs. 9,854/- per sq. yard. Assuming that some deduction towards development charges to the extent of 25% has to be made which otherwise may not be necessary in view of the decision in Bhagwathula Samanna's case (supra), since the area was already a part of the developed area, the market value can be taken as at Rs. 7,390/- per sq. yard. In Ram Chander's case (supra) market value of land situate in village Jasola, Delhi acquired through notification dated 15.6.1979 was determined @ Rs. 2240/- per sq. yard. As such it must be taken that as on 15.6.1979 land could be had in Jasola @ Rs. 2240/- per sq. yard. It is admitted fact that from 1979 onwards there was tremendous development activity around the acquired land since major land of village Jasola and Bahapur had already been acquired for planned development. Market prices of land have been on increase at least till 1997-1998. As such the guiding factors as laid down in Bedi Ram's case (supra) can be made use of in arriving at the market value as on 6.1.1995. By allowing progressive appreciation year by year @ 12% p.a. from 15.6.1979 to 6.1.1995 the market value will work to Rs. 13,118/- per sq. yard as on 6.1.1995. In case progressive increase is not to be allowed, considering the pace of development and rising trend of market prices of land if a flat increase @ 15% p.a. is to be allowed the market value as on 6.1.1995 will work out to Rs. 7,448/- per sq. yard. Taking into consideration the market value as reflected in Ex. A-4, A-6 and also taking into appreciation at 12% p.a., average market rate works out to be more than Rs. 20,000/- per sq. yard. In view of the discussion aforementioned we are inclined to take the lower figure to be representing the wholesale market value. Thus we hold that the market value of land situate in village Jasola as on 6.1.1995 was Rs. 7,390/- per sq. yard and the appellants are entitled to receive compensation at this rate. Resultantly the appeal is allowed with proportionate costs. The appellants are held entitled to compensation at market rate of Rs. 7,390/- per sq. yard. In addition to the enhanced market value, the appellants will also be paid solarium @ 30%, additional amount u/s 23(1 A) of the Act @ 12% p.a. from the date of notification issued u/s 4(1) of the Act to the date of Collector taking possession or making of the award by the Collector, whichever is earlier. On the enhanced market value interest will also be paid @ 9% p.a. for a period of one year from the Collector taking possession and thereafter @ 15% p.a. till payment. Interest will also be paid on solarium and additional amount in view of the decision of Supreme Court in Sunder and Others Vs. Union of India (UOI) Decree will be drawn on making good deficiency in court fee, if any, within a period of four weeks from to-day.