
(2011) 04 GUJ CK 0171

In the Gujarat High Court

Case No : First Appeal No's. 1388 to 1392 of 2010 and 1172 of 2011 and Civil Application No. 4285 of 2011

State of Gujarat and Another

APPELLANT

Vs

Dilipsinh Baldevji Chavda and Another

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 62
Gujarat Land Revenue Rules, 1972 — Rule 37, 42
Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 4, 4(1)

Citation : (2011) 04 GUJ CK 0171

Hon'ble Judges : Jayant Patel, J;H.B. Antani, J

Bench : Division Bench

Advocate : Moxa Thakkar, Asstt. Government Pleader, for the Appellant; Jigar G. Gadhavi, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case in group of First Appeal Nos. 1388 of 2010 to 1392 of 2010 appear to be that the lands in question located at village Padhariya were acquired under the Land Acquisition Act, 1894 [hereafter to be referred to as "the Act"]. Notification u/s 4 of the Act was published on 3.7.2004 and the notification u/s 6 of the Act was published on 26.8.2004. The award was passed on 24.9.2004 and the compensation awarded was at Rs. 13/- per sq.mt.

2. The land owners had raised a dispute u/s 18 of the Act which came to be referred to the Reference Court for adjudication. Demand of Rs. 500/- per sq.mt. was made by the claimants for compensation. The Reference Court, after the adjudication has awarded compensation at Rs. 230/- per sq.mt. It is under these circumstances, the present appeal before this Court.

3. So far as the First Appeal No. 1172/11 is concerned, facts are same except that the notification u/s 4 of the Act was dated 24.6.04.

4. We have heard Ms. Thakkar, learned AGP appearing for the Appellant in all the matters and Mr. Jigar Gadhvi and Mr. A.V. Prajapati, appearing for the

Respondents-claimants in the respective matters.

5. Learned Counsel appearing for both the sides are on agreement on the point that the present group of matters is covered by the decision of this Court dated 11.3.2011 in First Appeal Nos. 761 of 2011 and allied matters. As such, First Appeal No. 1172 of 2011 as conceded by the learned Counsel appearing for both the sides, namely, Ms. Thakkar and Mr. Prajapati is left off the said group. In the above decision in First Appeal No. 761 of 2011 and allied matters, this Court observed thus:

4. The short facts of the case are that for the project Sujlam Suflam Spreading Project Canal, the land in question has been acquired under the Land Acquisition Act (hereinafter referred to as the "Act" for short). The Notification u/s 4 of the Act was published on 26.4.2004 and the land in question is located at Village Pathariya, Taluka Mehsana. The Notification u/s 6 of the Act was published on 11.8.2004. The Land Acquisition Officer passed the award u/s 11 of the Act and awarded compensation at Rs. 13/- per sq. mtrs. As the claimants were not satisfied with the compensation, they raised the dispute u/s 18 of the Act demanding the compensation of Rs. 500/- per sq. mtrs. The matters were ultimately referred to the Reference Court for adjudication and the Reference Court, for the reasons recorded in the judgment has awarded the additional compensation of Rs. 230/- per sq. mtrs., plus statutory benefits u/s 23(2) and 23(1A) and solatium, etc. It is under these circumstances, the present appeals before this Court.

5. We have heard Ms. Thakkar, learned AGP for the Appellant and Mr. Prajapati, learned Counsel for the original claimants.

6. It is undisputed position that all the lands in question are located at Village Pathariya and the said Village Pathariya is adjacent to the Village Dharusana. The boundaries of Villages Pathariya and Dharusana are touching to each other. The revenue map has been produced by the learned Counsel for the original claimants and as per the Revenue Map also, the boundaries of Village Dharusana are touching to the boundaries of Pathariya.

7. The another aspect is that the Reference Court, in the impugned Judgment, has relied upon the award passed in the case of Land Acquisition made for the same project of the land at Village Dharusana and in that case, the market value was fixed at Rs. 243/- per sq. mtrs. The pertinent aspect is that in respect of the very acquisition of the land at Village Dharusana, for which the Reference Court had assessed the market value at Rs. 243/-, the matters were carried before this Court in the proceedings of First Appeal No. 485 of 2010 and allied matters and this Court (Coram: Jayant Patel & Smt. Abhilasha Kumari, J.J.) vide its judgment dated 17.9.2010 had reduced the compensation at Rs. 107/- per sq. mtrs., plus statutory benefits. We may record that in the said decision this Court, while considering the case for compensation arising from the judgment and award of the Reference Court had observed thus:

2. It appears that for the acquisition of the lands in question, the notification u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was published on 03.07.2004. Thereafter, the notification u/s 6 of the Act was published on 09.02.2005. The Land Acquisition Officer after giving notice to the claimant awarded compensation at Rs. 7/- per square metre. As the claimants were not satisfied with the compensation, they raised dispute, which ultimately came to be referred to the Reference Court for adjudication. The reference court has awarded compensation at Rs. 240/- per square metre and has also awarded the compensation for Rs. 700/- per lemon plant in group of First Appeals No. 485/10 to 500/10, whereas in the group of First Appeals No. 1330/10 to 1336/10, as well as in the group of First Appeals No. 1572/10 to 1579/10, in addition to the compensation for the amount at Rs. 250/-, the reference court has awarded compensation at Rs. 1000/- per lemon plant and Rs. 700/- per arduosa tree. In all the matters Reference Court has awarded statutory benefit of the solatium and increase of the amount as well as the interest as per the statutory provisions. It is under these circumstances, the present appeals before this Court.

3. We have heard Mr. Trivedi, learned Additional Government Pleader for the Appellant and Mr. A.V. Prajapati for original claimants in all the matters.

4. It is undisputed position that the acquisition in question is for Sujlam Suflam Spreading Project Canal at village Dharusana and the boundary of village Dharusana are adjacent to the boundaries of village Kherva. It may also be recorded that for the acquisition of the same project for the land of village Kherva, notification u/s 4 of the Act was published on 03.07.2004 and the lands of village Kherva were also acquired. The compensation was awarded by the Special Land Acquisition Officer and the dispute was raised in respect of that land by the land owners/claimants and the matter was referred to the Reference Court. The Reference Court had awarded compensation at Rs. 253/- per square metre plus the compensation for the plants and the said judgment and award of the reference court for the land situated at village Kherva were carried in appeal being First Appeal No. 441/10 and allied matters before this Court. This Court in the judgment and order dated 09.09.2010, observed as under:

12. It appears from the judgment and award passed by the Reference Court in the respective Reference Cases that while assessing the market value of the land, the learned Judge has mainly been guided by the sale instances for allotment of the lands in the very Village by the District Collector to the Local Authority i.e. Taluka Group Water Works for Head Works of M-2 Off Take Point for supplying water of Narmada Project. The Reference Court has taken the basis as that of 31.3.06 i.e. the date on which the District Collector has passed the order for allotment of the aforesaid land at a market price, which was fixed of Rs. 224/- per sq. mtr. It further appears that another instance for allotment of the land by the District Collector vide order dated 7.2.2000 for kerosene Depot at Rs. 800/- per sq. mtrs., was produced, but the said sale instance has not been taken into consideration by the Reference Court, because of different locations of the

said land and other incidental aspects thereof. It is also an admitted position that the award of the said Land Acquisition Officer was produced on behalf of the Appellant before the Reference Court, but the sale deeds which were considered in the award by the Special Land Acquisition Officer were not produced, nor was there any other evidence led on behalf of the Special Land Acquisition Officer or the Appellant herein by examining the willing buyer or the willing purchaser or for showing the same topology and nature of the land, whose sale instances were taken into consideration by him at the time when the award was passed u/s 11 of the Act.

13. Under these circumstances, as per the evidence available on record, we are required to examine the aspects of market value assessed by the Reference Court.

14. Before we proceed to examine the other aspects, we may profitably extract the views of this Court (Coram: J.M. Panchal & Smt. Abhilasha Kumari, J.J.) in the case of *Sardar Sarovar Narmada Nigam Limited v. Patel Haribhai Manilal* (First Appeal No. 2832 of 2006 to 2843 of 2006) decided on 9.7.2007. In the said case, the sale instances considered by the Special Land Acquisition Officer were not proved and there was sale instance for allotment of the land by the Government to Anarde Foundation and the land under acquisition was also at Village Modhera. When the question arose for determination of the market price of the land in question therein, for the purpose of awarding compensation by the Reference Court, this Court observed as under at paragraph 12:

12. The principles governing determination of market value of lands acquired are well-settled. In *Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others*, the Supreme Court has emphasized that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification u/s 4(1) of the Act. What is ruled therein is that the methods of valuation are (1) opinion of experts, (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. The Supreme Court has cautioned that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. Applying these principles to the facts of the instant case, this Court finds that the claimants did not lead evidence of an expert nor enhanced compensation was claimed on yield basis to enable the Court to determine the market value of the lands acquired. The only relevant pieces of evidence produced by the claimants in the instant case are the sale-deeds relating to the grant of Government lands to Anarde Foundation at Ex.13 and to Umiya Kadva Patidar Trust at Ex.17 which will now be examined by this Court.

Exhibit 13 is the order of Collector, Mehsana, dated December 4, 1994, whereby land admeasuring 501.66 sq.mts. forming part of Survey No. 1119 of village Modhera was granted to Anarde Foundation pursuant to an application made by it for allotment of land for construction of office premises for development programme which was undertaken by the said Foundation in rural areas. A perusal of Ex.13 reveals that the land allotted to Anarde Foundation vide order dated December 4, 1994, was non-agricultural land. Initially, this land was allotted at the rate of Rs. 40/- per sq.mt. However, it was stipulated in the said order that the market value of the land on the date of order, i.e. December 4, 1994, would be one which would be determined by the Deputy Town Planner and the price so determined would be considered to be relevant market value. The record reveals that the market value of the land allotted to Anarde Foundation was determined at Rs. 65/- per sq.mt., which is quite evident from the order dated September 21, 1998, passed by the Collector, Mehsana, produced at Ex.14.

The other sale instance relied upon by the claimants is to be found at Ex.17, which relates to sale of Government land to Umiya Kadva Patidar Trust. Exhibit 17 further shows that the Collector passed an order in this regard on October 16, 1998 and the market value of the land admeasuring 186 sq.mts. of part of Survey No. 1245 of village Modhera, Taluka: Becharaji, was determined at the rate of Rs. 160/- per sq.mt. On re-appreciation of evidence on the record, this Court finds that the notification u/s 4(1) of the Act in the instant case was published in the official gazette on July 27, 1995, whereas the sale instance at Ex.17 regarding allotment of Government land to Umiya Kadva Patidar Trust was effected after publication of said notification and therefore, post notification instance should not be taken into consideration while determining the market value of the lands acquired as it is common knowledge that the prices of lands in the vicinity would escalate after the notification u/s 4(1) of the Act is published.

15. Further in the very decision, when the Court had to consider the market value, keeping in view the sale instances of the allotment of the land by the Government to the aforesaid Trust, it was observed, thus, at paragraphs 17 and 18:

17. In the ultimate analysis, this Court is of the opinion that the allotment of land vide order dated December 4, 1994, produced at Ex.13 passed by the Collector, Mehsana, is the only relevant piece of evidence which would enable the Court to determine the market value of the acquired lands. It is well-settled that for determination of compensation for a large area, rate fixed for smaller plot can be taken into consideration when there is absence of other material evidence (See: Ravinder Narain and Another Vs. Union of India (UOI), Therefore, this Court proposes to consider effect of Ex.13. As noticed earlier, the order allotting land dated October 16, 1998 (Ex.17) cannot be considered since it was passed after the issuance of the notification u/s 4 of the Act in the present acquisition proceedings. Exhibit 13, which is the order regarding grant of Government land to Anarde Foundation indicates that the lands which were subject matter of grant

were non-agricultural lands. Moreover, the piece of land was small compared to the acquired lands. Therefore, appropriate deductions will have to be made on account of the fact that the acquired lands in the instant case were agricultural lands and large tracts of lands were acquired.

It is a settled principle of law that where the acquired lands are agricultural lands, their valuation would differ to a considerable extent from the lands which are non-agricultural lands and that where a large area of land is subject matter of acquisition, certain deductions will have to be made if the market price of the acquired lands has to be determined on the basis of rate fixed for small plots. Moreover, some amount will have to be deducted towards development charges. After making deductions on the above counts, the market value of the lands acquired will have to be determined. Keeping the above principles in mind, this Court is of the opinion that interest of justice would be served if 40% from the market price of the land which was subject matter of sale vide Ex.13 as on December 4, 1994, is deducted under the heads of smallness of plot, non-agricultural land and development charges collectively while determining the market value of the lands acquired in the instant cases. The market value of the land granted vide order dated December 4, 1994, has been determined at Rs. 65/- per sq.mt. After deducting 40% from this amount, the amount that comes is Rs. 39/- per sq.mt. The said sale took place vide order dated December 4, 1994, whereas the notification u/s 4 of the Act for the acquisition of lands of village Modhera was published on July 27, 1995. Therefore, there is a gap of about six months between the two. If 5% rise in price of land is given, the amount comes to Rs. 41/- per sq.mt. which is the total amount of compensation to which the claimants are entitled. Thus, this Court is of the opinion that the claimants would be entitled to compensation at the rate of Rs. 41/- per sq.mt. and not at the rate of Rs. 54.57 ps. per sq.mt. as held by the Reference Court.

18. In view of the above discussion, the Appeals will have to be partly allowed by holding that the claimants in the instant cases would be entitled to compensation in all at the rate of Rs. 41/- per sq.mt. and to that extent, the Award rendered by the Reference Court will have to be modified.

16. The aforesaid shows two aspects; one is that the sale instance or the price at which the Government has allotted the land can be taken into consideration by the Reference Court at the time of assessing the market value for the purpose of awarding compensation under the Act, and the second is the deduction to be made keeping in view the size of the plot allotted by the Government and the land under acquisition, the nature of use, the locality and other factors namely; that agricultural use, non-agricultural use and others. It is true that in the said case, this Court found it proper to deduct 40% of the amount from the price at which the Government had allotted the land to the said Trust, but it appears that certain aspects, which did not arise for consideration in the said matter, do arise for consideration in the present group of matters, which shall be dealt with hereinafter.

17. The learned Additional Government Pleader, Mr. Trivedi heavily resisted the principle that if the Government has allotted the land to any citizen or to any organization or to any public body, the parity cannot be drawn for the purpose of assessing the marked price of the land. It was submitted that the Government may have different considerations for disposal or allotment of lands and the terms and conditions for such allotment also would be different. He submitted that such allotment orders of the Government, may be at a particular price, cannot form as the basis for the Reference Court to assess the market price of the land for the purpose of awarding compensation under the Land Acquisition Act.

18. Mr. Trivedi in furtherance to his submission also contended that if the valuation is made for the purpose of Stamp Act by the Valuation Department of Government, as per the decision of the Apex Court, such cannot be a basis for assessment of the market value and the reason being that the valuation is for different fiscal purposes of Stamp Act and further there should be statutory power for making valuation of the land in question, otherwise such valuation would not hold good for the purpose of assessment of the market value. He, therefore, submitted that irrespective of the price fixed by the Government for allotment of the land of the very village to any citizen or to any organization may not be considered by this Court and he contended that the matter may be decided on the basis of sale instances as considered by the Special Land Acquisition Officer in the award only.

19. Whereas the learned Counsel appearing for the original claimants - Respondents herein contended that there cannot be a dual stand of the Government namely; as that of one valuation if the acquisition is to be made and a different one if the land is to be allotted to the citizen. It was contended that it is not a matter where the Valuation Committee had no authority to assess the valuation of the land allotted by the Government to a citizen or to a particular body, which is a local authority in the present case. It was submitted that the Collector is exercising the power under the Land Revenue Code and as per the circulars issued by the Government in exercise of the powers under the Land Revenue Code, the resolutions are passed by the Government and the instructions are issued. The collector is to allot the land at the market price and for determination of such market price, he would be guided by his valuation made by the Valuation Committee of the Government.

20. It is, therefore, submitted that such valuation made by the Valuation Committee can be a valid basis for the Reference Court in deciding the valuation of the land for the purpose of awarding compensation, subject to any change in the nature of the land, character etc. It was, therefore, submitted that the contention raised by the learned Addl. Government Pleader may not be accepted.

21. In any welfare State, Government cannot have a dual stand for the same subject. If the land of a citizen is to be acquired, Government has to pay the market price of the land as per the provisions of the Act. Government cannot

contend that it shall not pay the market price, since as per the Act it is obligatory on the part of the Government or the acquiring Body to pay the market price as per the provisions of the Act. Similarly when the Government is to allot the land to the citizen or any organization, may be for private or public purpose, it has to be the market price, unless the allotment is for a specific public purpose or by way of a separate class, where a specific concession in the market price is made permissible. In any case, where the reduction of the market price for a specific rate is made permissible, such would be lesser than the market price. These cases where the concession or reduction is to be made, would not exceed the market price. Therefore, it is clear that unless the land is allotted at a concessional price, in normal circumstances when the Government is to allot the land to its citizen or to any body, the price would be the market prices to be fixed by the competent authority by the Government. Hence, we cannot countenance the stand on the part of the learned Addl. Government Pleader that if the Government is to allot the land to any citizen or a body, higher price shall be fixed as the market price, whereas if the Government is to acquire the land belonging to any citizen or any organization, it shall pay lesser price of the land. To say in other words, if the Government is to allot "A" land belonging to it to any citizen or to any organization, it will charge "B" price, but if the very "A" land is belonging to the citizen and the Government is to acquire under the Land Acquisition Act, the Government shall pay price lesser than the "B" price to the citizen or the organization. If such is permitted, in our view, it would result into discriminatory and arbitrary approach on the part of the State Government, which cannot be countenanced by the constitutional Court in a welfare State. As observed earlier, if the very "A" land is acquired belonging to the citizen by the Government, the Government would be required to pay the price, in any case, not less than "B" price and to be more specific, Government would be required to pay the price, in any case, not lesser than the price fixed by it for the purpose of allotment of the land to any citizen or organization, of course, subject to the change in the nature and character of the land, if any.

22. Even if the matter is to be examined in light of the aspect as to whether the price determined by the competent authority of the Government for allotment of the government land to any citizen or organization can be said as in exercise of statutory power or authority of the statute or not, it appears that the provisions of the Land Revenue Code are clear. Section 62 under the Bombay Land Revenue Code, 1879 (hereinafter referred to as "Code") reads as under:

Section 62. Unoccupied land may be granted on conditions.- It shall be lawful for the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit, before permission to occupy is given u/s 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specially reserved under the provisions of Section 40 and shall be recoverable as an arrear of land revenue.

23. Rule 37 of Gujarat Land Revenue Rules (hereinafter referred to as the "Rules") provides for manner of disposal of agricultural land, whereas Rule 42 provides for disposal of the land for building and other purposes. Rule 37 and Rule 42 read as under:

37. Survey numbers how to be disposed of.-

(1) Any unoccupied survey number not assigned for any special purpose may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder.

(2) In the case of such grants an agreement in Form F shall ordinarily be taken from the person intending to become the occupant.

(3) When the land is granted on inalienable tenure the clause specified in Form I shall be added to the agreement.

(4) When the land is granted on importable tenure an agreement in Form F(1), and, when it is also granted in alienable tenure an agreement in Form I(1), shall ordinarily be taken from the person intending to become the occupant.

(5) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

42. Disposal of land for holding and other purposes.- Unoccupied land required of suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by action to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose, but the Collector may in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him or without charge, as he deems fit.

24. The aforesaid shows that as per Rule 37 an unoccupied land can be granted for agricultural purpose to any person by the Collector and such grant of the land can be either upon the price fixed by the Collector or by public auction and can be without charge also. In the same manner Rule 42 provides that the land can be allotted for non-agricultural purpose by the Collector to the highest bidder unless the Collector in his discretion decides to dispose of the land by private arrangement, either upon the price fixed by him or without charge.

25. In the present matters, we are not required to examine the aspect of exercise of the powers by the Collector without charge or by private negotiation for disposal of the land for agricultural or non-agricultural purpose, therefore, no discussion is required on the said aspect, but the in the present matter, the aspect of power with the Collector for disposal of the land upon the payment of the price to be fixed by him (other than concessional charge) is to be taken into

consideration. If the collector has to allot the land as per Section 62 read with Rule 37 or Rule 42 of the Rules, the same shall be at the price to be fixed by him. He has to determine the price of such land before taking decision for allotment of the land. In the case of Ghunshabhai Govindbhai Pancholi v. State of Gujarat and Anr., reported in 1995(1) GLH 792, the question arose for consideration about the fixation of the price by the Collector u/s 62 of the code read with Rule 37 of the rules and this Court observed that the Collector has the authority to fix the price to be paid for the land which he grants to a person for agricultural purpose and such price has to be fair, reasonable and just and should not be arbitrary or whimsical and he has also to take into consideration the submissions or the material, which may be submitted by the allottee or the person, who is to be allotted the land. Therefore, it is not possible to accept the contention of the learned Additional Government Pleader that when a price is fixed by the Collector for allotment of the land to any citizen or organization under the Bombay Land Revenue Code read with the Rules, such action for fixation of the price is not in exercise of the statutory powers. Be it noted that the Collector has to exercise the power subject to general orders of the State Government for the mode and manner of fixation of the valuation and the Collector, therefore, while fixing the market price has to take into consideration the view of an expert body, which is the Valuation Committee and thereafter to take final decision. Therefore, it is not a matter where the exercise of the power by the Collector is not in discharge of the statutory function for fixation of the market price. At this stage, it may also be recorded that even under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, more particularly Section 43 of the said Act, while granting permission to transfer the land, which is held by the agriculturist, who was originally allotted the land as agricultural tenant under the said Act, has to exercise the power for grant of permission upon payment of the premium. At the time when the premium is to be fixed the marked price of the land is to be ascertained by the Valuation Committee of the Government and the opinion is to be considered by the Collector of the valuation made. Therefore, it is not possible for us to accept the contention of the learned Addl. Government Pleader that the valuation made by the Valuation Committee of the Government of the nearby land for the purpose of allotment of the land to any citizen by the Collector cannot be taken into consideration by the Reference Court. Under these circumstances, the contention of the learned Addl. Government Pleader deserves to be rejected, therefore, rejected.

26. The reliance placed upon the decision of the Apex Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, in the case of Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, are for the view that the fixation of the valuation in the valuation register for the stamp Act purpose cannot form as a basis for determination of the market value. Such is not the fact situation in the present case.

27. The Apex Court in the case of Lal Chand Vs. Union of India (UOI) and

Another, on the contrary at paragraph 44 has observed as under:

44. One of the recognised methods for determination of market value is with reference to the opinion of experts. The estimation of market value by such statutorily constituted Expert Committee, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by the statutorily appointed Expert Committees, in accordance with the prescribed procedure.

28. In the present case, the valuation has been made by the Valuation Committee for giving opinion to the District Collector in exercise of the statutory power. The Valuation Committee is comprising of the expert body in the field of valuation, including the District Collector himself, T.P. Authority, etc. Therefore, there is no reason why the valuation made by the Valuation Committee of the Government for fixation of the price for allotment of the land at the very village by way of sale instance or price fixed by the Government for allotment of a land to an organization should not be taken into consideration.

29. The aforesaid takes us to examine the next question about the nature of the land and change in the nature of the land, if any, and its effect for the purpose of the assessment of the market value of the land.

30. The order of the Collector dated 31.3.2006 for allotment of the land is of Block No. 1724 admeasuring 1 Hectre - 00 Are in favour of the Water Supply and Sewerage Board. The said order shows that the Valuation Committee has made the value of the land of the very village Kherwa on 10.5.2004 at Rs. 200/- per sq. mtrs. Further, the allotment of the land is for non-agricultural purpose for construction of Head Works in the Water Supply Project, whereas the land in question has been acquired as per the Notification u/s 4 of the Act on 1.12.2005 and the nature of the land was agricultural land and not non-agricultural land. If the area and the size of the different portions of the agricultural land acquired in the present case is considered claimant/owner-wise, in majority of the acquisition the area is less than 1 hectre. Therefore, so far as the area is concerned and as the land allotted is 1 hectre and the acquisition of the majority of the land is less than 1 hectre per claimant/owner-wise there would not be any change or reduction in the valuation of the land of larger size acquisition as against the price fixed for a smaller area. The nature of the land or the character of the land under acquisition and the land which is allotted by the Direct Collector appears to be different inasmuch as the land under acquisition is acquired as agricultural land, whereas the land allotted by the Director Collector is though waste land, but for non-agricultural purpose. If any agricultural land is to be converted for non-agricultural purpose, there will be about 25% deduction in the area itself and further the conversion charges of agricultural land will have to be paid for non-agricultural use and such expenses for conversion would also be

roughly 5%, by way of a burden upon the agricultural land. Therefore, it appears to us that if the aforesaid two circumstances are taken into consideration, the difference between the market price of the agricultural land and the market price of the non-agricultural land shall be minimum 30%. To say in other words, the agricultural land shall be less by 30% as against the price of the non-agricultural land.

31. Taking into consideration the aforesaid, if the market value is assessed, it appears that the valuation is on 10.5.2004 of Rs. 200/- per sq. mtrs., for non-agricultural land allotted by the District Collector by the Valuation Committee. Therefore, it can be said that on that day, for agricultural land at the same Village Kherwa, the price would be 30% less i.e. Rs. 60/- less and the net valuation would be of Rs. 140/- (Rs. 200/- minus Rs. 60/-) as on 10.5.2004. As observed earlier, the Notification u/s 4(1) of the Act in the present case is on 1.12.2005, i.e. at one year and six months later to the aforesaid period of valuation. It is by now well settled that for every year 10% rise by way of appreciation is to be considered, but as in the present case the period is of one year and six months, such appreciation would be 15%, which would come to Rs. 21.75/- (rounded off - Rs. 22/-). Therefore, if appreciation of Rs. 22/- is considered with the valuation of Rs. 140/-, it would come to Rs. 162/- per sq. mtr., being the market price of the land in question on the date of the Notification.

32. If the impugned judgment and order of the Reference Court is examined in light of the aforesaid observations and discussions, it appears to us that there is no error committed by the Reference Court in relying upon the price fixed for allotment of the land for Water Works Project to the local authority, but the Reference Court has committed error in not considering the aspect that the valuation as was made of the land in question on 10.5.2004 and the said valuation is to be considered, keeping in view the principles, as observed herein above and the Reference Court has also totally lost sight of in not considering the deduction to be made in the nature of the land allotted for non-agricultural purpose and the acquisition of agricultural land in the present case. In our view if the principles after considering the nature of the agricultural and non-agricultural land is considered, as observed earlier, the appropriate market valuation of the land would be Rs. 162/- per sq. mtrs. As against the same, the Land Acquisition Officer has awarded compensation at Rs. 18/- per sq. mtrs. Therefore, the claimants - Respondents would be entitled for additional compensation of Rs. 144/- per sq. mtrs., whereas the Reference Court has awarded additional compensation of Rs. 280/- per sq. mtrs. Therefore, the judgment and award of the Reference Court deserves to be quashed and set aside for awarding additional compensation exceeding Rs. 144/- per sq. mtrs.

33. It appears to us that the Reference Court in the judgment while enhancing the compensation for various trees has not given any basis at all. Further, no evidence has come on record about the valuation of such trees or plants.

Therefore, we find that the additional compensation at the rate of Rs. 1,000/- for lemon plant, Rs. 500/- for small plants of lemon, Rs. 1,000/- for arduosa tree, Rs. 1,000/- per mowdo tree, Rs. 2,000/- per mango tree is without there being any proper material on record, therefore, cannot be sustained.

34. So far as the other part of the increase in the additional amount of compensation as per Section 23(1)-A and 30% solatium and interest are concerned, they are by way of statutory consequences, therefore, no interference is called for, except to the extent that such amount shall proportionately stand reduced since the compensation would also be reduced on the basis of reduction of the market price.

35. In the matters wherein the Notification u/s 4 of the Act is published on 3.7.2004, the appreciation shall be only for two months, therefore, appreciation of Rs. 2.30 only and if the figure Rs. 2.30 is rounded off, it would approximately come to Rs. 2.50 plus Rs. 140/-, total Rs. 142.50, out of which the amount of Rs. 18/- has already been paid a compensation by the Special Land Acquisition Officer. Therefore, additional compensation would be Rs. 124.50 per sq. mtrs., and if the said figure is rounded off, it would come to Rs. 125/- per sq. mtrs.

6. As such, the Reference Court has in the impugned judgment and award also relied upon the view taken by it for deciding the compensation in respect of the acquisition of the land at village Kherva, which was subject matter of the aforesaid First Appeals.

7. However, the learned Additional Government Pleader contended that the additional compensation as was fixed for village Kherva at Rs. 125/- would not be the same in the present case for the land at village Dharusana and in the contention of the learned Additional Government Pleader, there is substantial difference in the location of the land inasmuch the land in question is located about 4 kms away from the land at village Kherva. It was further contended that in the award for the land at village Kherva, the Special Land Acquisition Officer had awarded the compensation at Rs. 18/- per square metre whereas in the present case, the Land Acquisition Officer has awarded compensation of Rs. 7/- per square metre. He submitted that if the said proportion on the basis of Rs. 125/- is taken into consideration, would be substantially less. However, the learned Additional Government Pleader is not in a position to show any distinguishing feature in the fertility of the land at village Kherva or the nature of the land in question.

8. Whereas, Mr. Prajapati, learned Counsel appearing for the original claimants contended that they should given the same compensation as the date of notification dated 03.07.2004 is the same as was for village Kherva and therefore, the contention is that Rs. 125/- in any case deserves to be awarded even if this Court is to follow its earlier view as taken in First Appeal No. 441/10 and allied matters, referred to hereinabove.

9. It appears to us that there is no basis has come on record for awarding such a

difference in the price fixed by the Land Acquisition Officer in awarding compensation u/s 11 of the Act while passing the award for the land at village Dharusana and for the land at village Kherva. Therefore, in absence of any material coming on record for justification of the compensation at Rs. 7/- per square metre in comparison to the compensation awarded at Rs. 18/- per square metre for village Kherva, it is not possible for us to accept the contention of the learned Additional Government Pleader that even if this Court is to take the same view as was taken in First Appeal No. 441/10, the amount of compensation may be proportionately reduced. We are inclined to take such view because of two peculiar circumstances; one is that there is more than substantial difference in the compensation fixed for the land of village Kherva and for the land of village Dharusana which is under the present case, inasmuch as though the notification u/s 4 of the Act was published on the same day, for the present land, the Special Land Acquisition Officer has fixed Rs. 7/- square metre as compensation in the award whereas for the adjacent village Kherva, the Special Land Acquisition has fixed the compensation at Rs. 18/- per square metre.

10. The second aspect is that when such a huge difference is there in fixation of the amount of compensation by the Special Land Acquisition Officer, it was required for the Special Land Acquisition Officer to justify by showing the basis of such difference or in any case, the Appellant before this Court could have done so. In absence of any material, the amount of compensation cannot be reduced on the principles of proportionality as sought to be canvassed by the learned Additional Government Pleader.

11. However, it does appear that there is distance of about 4 kilometers from the land at village Kherva. Further, the location of village Kherva, if considered with the present village Dharusana, keeping in view the map which has been made available to us during the course of hearing, in between, there is a canal and the village Dharusana is on the other side of the canal from village Kherva. Therefore, keeping in view the said aspect, it appears to us that the distinction can be considered for the assessment of the valuation of the land at village Devrasan, which is also acquired by the notification of the same date. For village Devrasan, for the reasons recorded in our judgment in First Appeal No. 1227/10 and allied matters, we have arrived at the figure of additional compensation of Rs. 113/- per square metre. The distinguishing feature in the present land is that the land of village Devrasan nearby to village Kherva is on the same direction of canal whereas village Dharusana is on a different direction of the canal, if considered with the location of village Kherva. Therefore, it appears to us that even if the distance and the adjoining boundaries are considered, in view of the factum that the land is located on the reverse direction of the canal from village Kherva, it would have minimum 5% deduction in the price of the land. If 5% is considered of Rs. 113/-, it would come to Rs. 5.65 and the said amount is deducted from Rs. 113, it would come to Rs. 107.35 and if such figure is rounded up, it would be Rs. 107 per square metre, being the additional compensation for the land in question. So far as additional amount of compensation for the lemon

plants and Arduisa tree and other plants, we are inclined to take the same view as was taken in the above referred decision of First Appeal No. 441/10 and allied matters for not awarding any compensation on such aspects.

12. In the result, it is observed and directed that the claimants would be entitled to the additional compensation of Rs. 107/- per square metre. The judgment and award passed by the Reference Court for granting compensation to the original claimant exceeding the amount of Rs. 107/- per square metre is quashed and set aside. Further, the judgment and award passed by the Reference Court for additional compensation for the trees/plants are also quashed and set aside. The judgment and award passed by the Reference Court for granting statutory benefits u/s 23(1A) and 30% solatium and interest as per the provisions of the Land Acquisition Act are not interfered with, but with the clarification that in view of the aforesaid principal amount of additional compensation, all such amount shall proportionately get reduced.

8. Thereafter, the appeals were partly allowed.

9. If the judgment of the Reference Court, which is impugned in the present proceedings is considered in light of the aforesaid referred observations of this Court, the awarding of compensation by the Reference Court exceeding Rs. 107/- per sq. mtrs., cannot be sustained. So far as the other benefits are concerned, the same are in the nature of statutory benefits and the finding for such purpose is not required to be interfered with, save and except to the extent that they shall proportionately get reduced on account of the deduction of principle amount of the compensation.

10. Hence, it is observed and directed that the claimants would be entitled to the additional compensation of Rs. 107/- per sq. mtrs. The judgment and award passed by the Reference Court for awarding compensation to the original claimants exceeding the amount of Rs. 107/- per sq. mtrs., is quashed and set aside. Further the judgment and award passed by the Reference Court for grant of statutory benefits u/s 23(1A) and 30% solatium and interest as per the provisions of the Land Acquisition Act are not interfered with, but with the clarification that in view of the aforesaid principal amount of additional compensation, all such amount shall proportionately get reduced.

11. Considering the facts and circumstances, as the matter is already covered by the above referred decision of this Court, the Appellant shall deposit the compensation within eight weeks from today with the Reference Court.

13. As such, similar view deserves to be taken in First Appeal No. 1172 of 2011. Only distinction in the group of First Appeal Nos. 1388 of 2010 to 1392 of 2010 is that the notification u/s 4 of the Act is dated 3.7.2004. It further appears that in the above-referred judgment in First Appeal No. 761 of 2011 and other allied matters, correct date of the notification u/s 4 of the Act was 24.6.2004 whereas it was wrongly typed as 26.4.2004. Therefore, if the said correct date is taken into consideration, there is difference of about 10 days in the notification u/s 4 of

the Act. Further, so far as the Reference Court is concerned, it has awarded the same amount of compensation at Rs. 230/- per sq. mt. in the group of First Appeal Nos. 1388/10 to 1392/10 at par with the decision of the Reference Court which came to be considered by this Court in First Appeal No. 761/11 and allied matters. Hence, we find that the similar view deserves to be taken even in the group of First Appeal Nos. 1388/10 to 1392/10.

14. Under the above circumstances, it is observed and directed that the original claimants would be entitled to additional compensation of Rs. 107/- per sq.mt. The judgment and award passed by the Reference Court awarding compensation to the original claimants exceeding the amount of Rs. 107/- per sq.mt. is quashed and set aside. Further, judgment and award passed by the Reference Court for grant of statutory benefits u/s 23[1A] of the Act and 30% solatium and interest as per the provisions of the Act are not interfered with but with the clarification that in view of the aforesaid principle, the amount of additional compensation, such amount shall be proportionately reduced.

15. Considering the facts and circumstances, the Appellant shall deposit the compensation within 8 [eight] weeks from today with the Reference Court. All the appeals are partly allowed to the aforesaid extent. No order as to costs.

16. In view of the order passed in the main appeal, Civil Application No. 4285 of 2011 would not survive and shall stand disposed of.