

(1957) 12 MAD CK 0010

In the Madras High Court

Case No : Appeal No's. 100 to 105 etc. of 1953

State of Madras

APPELLANT

Vs

Balaji Chettiar and Others

RESPONDENT

Date of Decision : 05-12-1957

Acts Referred:

City Improvement Trust Act, 1945 — Section 173(2)
Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 11, 23, 23(1), 23(2), 4
Madras City Improvement Trust Act, 1950 — Section 173(2), 73

Citation : AIR 1959 Mad 16 : (1958) ILR (Mad) 891 : (1958) 2 MLJ 330

Hon'ble Judges : Panchapakesa Ayyar, J; Ganapatia Pillai, J

Bench : Division Bench

Advocate : Government Pleader, R.G. Rajan, C. Rangaswami Aiyangar, T.R. Sundaram, R. Desikan, M.S. Sethu and T. Ramakrishna, for the Appellant; S.E. Sankara Ayyar, K. Rajah Aiyar, V. Seshadri, V. Ganapati Ayyah, T.S. Nagaswami Aiyar, J. Nagarajan, S. Rangaswami Aiyangar, T.R. Srinivasa Aiyangar, S.V. Venkatasubramaniam, N.B. Raghavachari, K.C. Manickavachagam, M. Natesan, K. Srinivasan, P.R. Varadarajan, S.K. Ahmed Meeran, M. Khaja Mohideen, M. Karunakara Menon, T.R. Srinivasa Aiyar, T.S. Rangarajan, S. Ramanatha Davay, V.K. Ramanatha Aiyar, V. Thyagarajan, Pais, Lobo, Alvares, S.R. Krishnamacharya, D.R. Krishna Rao, M. Subramania Sarma, V.N. Srinivasa Rao, C.S. Rajappa, Subramaniam, Rajagopal, D. Thandavakrishna Naidu, T. Srinivasamoorthi, P.S. Rajabathar, V.V. Raghavan, V. Srinivasan, P. Ram Reddi, V. Venkatarma Reddy, S. Ramayya Nayak, D. Narasaraju, Y. Suryanarayana, M.R. Narayanaswami, V.C. Gopalaratnam, M. Subramania Mudaliar, A. Nagarajan, A. Viswanathan, V. Somasundaram, C. Santamurthi Naidu, K. Soundararajan and T. Krishnaraja Nayakar, for the Respondent

Judgement

Panchapakesa Ayyar, J.—These are sixty five appeals and four memoranda of cross-objections, and relate to two big Land Acquisitions

resulting in the two batches of appeals and memoranda of cross objections. The first big land acquisition is what can be shortly called the

Mandavalli scheme, for building houses by the Madras City Improvement Trust. This covers an area of 1400 grounds of land bounded on the east

by the South Beach Road, on the west by Broadies Road, on the north by Mandavalli street and the Mada Church Road, and on the south by the

Adyar river backwaters.

The properties acquired are mostly vacant lands, but in some of the cases there were also structures, like houses and compound walls, and in some

also wells for which compensation was claimed and awarded. The date of the notification u/s 47 of the City Improvement Trust Act of 1945.

which was held by the Land Acquisition Officer to be the relevant date for determining the market valuation of the lands, as u/s 4(1) of the Land

Acquisition Act, was 24-8-1948. Section 53 notification, corresponding to Section 6 notification under the Land Acquisition Act, was published

on 23-5-1950. The award itself was passed on 22-11-1951. Possession was taken thereafter.

2. The Land Acquisition Officer divided the lauds into two groups ""the developed group"" and ""the undeveloped group"". The ""developed"" group,

called group I, by him, comprised the lands which had already amenities, or which were in the immediate vicinity of amenities like water,

underground drainage, electricity etc., and were small plots which could be easily built on. They were also level.

The ""undeveloped"" group, called group II by him, consisted of bigger plots not having the amenities, and not in the immediate vicinity of the

amenities. The Land Acquisition officer valued the group I lands at Rs. 1550 per ground, and the group II lands at Rs. 1050 per ground. He gave

only Rs. 650 per ground for 2 grounds and odd in A. S. No. 297 of 1953. He did not also award the 15 per cent solatium for compulsory

acquisition. The claimants took out references u/s 18.

3. The learned Judge, after considering the relevant sale deeds exhaustively, gave Rs. 2,000 per ground for group I lands, and Rs. 1500 per

ground for group II lands. He has added in the judgment that all the parties agreed to the grouping and the gradation. He gave also the 15 per cent

solatium for compulsory acquisition u/s 23(2) of the Land Acquisition Act, holding that even though the actual award itself, in this case, and the

taking of possession, were after 27-2-1951, when the new City Improvement

Trust Act had abolished the solatium, still the 15 per cent solatium should be given, because the Land Acquisition proceedings had been begun earlier, and the valuation had to be as on the date of the Section 4(1) notification, which was 24-8-1948, long before the abolition. He gave also certain sums for superstructures, wells etc., and made certain deductions for levelling up in the case of low lying lands. These details will be considered later, wherever necessary, in the respective appeals.

4. The Government have filed 31 appeals (of which 29 appeals are covered here) not only attacking the award of the 15 per cent solatium for compulsory acquisition but also attacking the market value as enhanced by the learned Judge below. The claimants have filed 15 independent cross appeals, in appeals filed by the Government, and two memoranda of cross objections, They have also filed an appeal (A. S. No. 375 of 1953) where the Government have not filed any appeal. In all, there were 32 land cases. All of them are completely covered by the 31 appeals filed by the Government and by A. S. No. 375 of 1953 filed by the claimant. So, all the Parties who were before the Court below and before the Land Acquisition Officer are before us today.

5. The other big scheme of acquisition may be referred to as the Mowbray's road scheme. It comprised 20 land cases involving 689 grounds. The area acquired in this scheme was bounded on the west by Mowbrays Road, on the south by Bishop Waller's Avenue, on the east by Sullivan Garden road, Vivekananda College and Ramakrishna Mission Home, and on the south by Oliver Road. These acquisitions were also made for a house building scheme undertaken by the City Improvement Trust.

The notification u/s 47 of the City Improvement Trust Act corresponding to the notification u/s 4(1) of the Land Acquisition Act, was published in this case on 26-10-1948. The Section 53 notification, corresponding to the notification u/s 6 of the Land Acquisition Act. was published on 23-5-1950. The award itself was passed on 17-4-1952. The Land Acquisition Officer had divided the lands into four groups, but really into two main groups. Groups 1-a, 1-b and 1-c, called by him and the court below groups 1, 2 and 3, represented the lands unto a depth of 150", abutting three important roads, namely, Mowbrays Road, Oliver Road and the Bishop Waller's Avenue, which were considered to be of diminishing importance

inter se.

He valued them at Rs. 1800, Rs. 1700 and Rs. 1600, per ground respectively. Group 4, before him, represented the hinter land lying between

these three groups. He valued that land at Rs. 1200 per ground. He did not give her also the 15 per cent solatium. We need not now concern

ourselves with some minor details like deductions for levelling, greater deductions regarding two ponds etc. He gave the land covered by A. S.

No. 614 of 1953 Rs. 1600 per ground as it was in a lane.

5-a. The learned Judge below, on reference, made only by some of the parties in the land cases, increased the prices of groups 1 to 3 to Rs. 2400,

Rs. 2300 and Rs. 1900 respectively per ground. He fixed the valuation, after reference to all the relevant sale deeds, at Rs. 2500, Rs. 2400 and

Rs. 2400 respectively per ground but deducted Rs. 100 per ground in each group for not very convincing reasons.

He valued the land of the cross objector in A. S. No. 614 of 1953, lying 200 feet behind Mow-brays Road, in the Pilliar Koil lane, 14 feet broad,

at Rs. 1750 per ground but did not give anything for 10 per cent of the land required for roads. Regarding group 4, or the main group II, he

increased the price from Rs. 1200, fixed by the Land Acquisition Officer, to Rs. 1350 per ground.

He also deducted (without any compensation) one fourth of the entire area of this hinter land for providing roads, and deducted another Rs. 450

per ground for providing the amenities, that is, for making the land equal to developed building land, like that in groups 1 to 3, and deducted Rs.

100 more per ground for levelling up. He allowed 15 per cent solatium, as addition for compulsory acquisition, in these cases too, on the same

ground as in the other batch, though the award was passed long after the abolition of the 15 per cent solatium under the City Improvement Trust

Act, 1950, and possession was taken even later.

6. There was also, in this scheme, one claimant, now represented by the cross objector in A. S. No. 613 of 1953, who claimed some Rs. 8000 as

compensation for his superstructures and for his having levelled and improved the lands, as lessee, and wanted it to be paid from out of the

amounts payable to the claimant the claimant in A. S. No. 613 of 1953). The learned Judge below gave him only Rs. 700 as cost of

superstructures and nothing for improvement.

The Government have filed 19 appeals regarding the learned Judge's order in this batch, all or them being directed only against the giving of the 15

per cent solatium as addition to the market value u/s 23(2) of the Land Acquisition Act. There is no attack by the Government on the enhanced

market value fixed by the learned Judge below in this case, as in the other batch. There are two regular appeals by the claimants in this batch,

wanting much more than the market value given by the court below.

There is also a memorandum of cross objections in A. S. No. 614 of 1953 praying for enhancement of the market value to Rs. 3000 per ground in

land case No. 82 of 1952. Then there is the memorandum of cross objections in A. S. No. 613 of 1958, wherein the cross objector, sobered by

his experience in the court below, has confined his claim to an additional Rs. 2000 for levelling and improvements, to be paid out of the amounts

payable to the claimant, regarding that land, in addition to the Rs. 700 he has been awarded for the superstructures.

Though there were minor claims regarding Other matters in this batch all of them have disappeared now, and only the cross objector's claims in A.

3. No. 613 of 1953 and A. S. No. 614 of 1953 relate to something outside the scope of the 15 per cent solatium on the market value.

7. We have perused the entire records and heard the learned Counsel on all sides, and the learned Government Pleader. The appeals have been

argued before us very ably and lucidly by the learned Government Pleader and by Messrs. Rajah Ayyar, V. Thyagarajan and others for the

claimants, and we have been greatly helped by the arguments relating to the market value and especially those relating to the vexed question as to

whether the 15 per cent solatium can be claimed in these cases,

We shall first deal with that point, which is common to both the batches. We may add here that the 15 per cent solatium amounts to nearly 2 1/2

lakhs so far as the Mandavalli scheme is concerned, and in the Mowbrays Road scheme batch it amounts to nearly 1 1/2 lakhs. That is why this

question has become of vital importance and has been fought out vigorously.

8. The learned Government Pleader urged that as the 15 per cent solatium was abolished on 27-2-1951 by the City Improvement Trust Act of

1950, and the awards in both these cases were passed only long after that date,

and possession has been taken still later, there was no right at all

to the 15 per cent solatium on the part of any one of the claimants covered by these appeals and memoranda of cross objections.

9. The answer given by Mr. Rajah Aiyar, Mr. Thyagarajan and the other learned counsel on the other side was manifold. The first contention was

that the abolition itself was ultra vires as in the City of Madras, at the time of this acquisition and even at the present moment, there is the

possibility, and indeed practice, of acquiring of lands under any one of the three Acts, namely, the Land Acquisition Act, passed by the Central

Legislature, and the Town Planning Act and the City Improvement Trust Act passed by the Madras Legislature, and that Under the Land

Acquisition Act the 15 per cent solatium or addition to the market value is given u/s 23(2) and still subsists, while under the Town Planning Act it

never existed, and under the City Improvement Trust Act of 1945, it was abolished only partially, namely, regarding lands in slums and congested

areas where the owners were not in occupation actually, but under the City Improvement Trust Act of 1950 it has been totally abolished without

any such reservation.

Learned counsel before us did not rely on Articles 19 and 31 of the Constitution as was done in the lower court by the claimants' counsel. But

they relied on Article 14 of the Constitution, and on discrimination, urging that in the same area and for the same purpose, namely, acquisition for

house building, there should be equal protection of the laws and equality before the law for all persons, whose lands are acquired compulsorily,

and there should be no discrimination, and especially no unfettered discretion given to the Government to acquire lands under the Land Acquisition

Act, giving the 15 per cent solatium, or under the other two Acts, as they stand now, giving no such solatium, and that there is no reasonable or

understandable ground for such discrimination, and that such a discrimination is likely to lead to capricious favouritism and injustice.

The answer of Mr. Viswanatha Iyer, the learned Government Pleader, to this was that there is really no discrimination, and that there is a sensible,

reasonable, and easily understandable classification. He pointed out that the Land Acquisition Act is all Act of the Central Legislature, of the

Government of India, which is a richer Government, and can legislate as it

pleases, and give more liberal terms to persons from whom lands are acquired, whereas the other two Acts are by the Madras Legislature, with lessor resources in the State, and has therefore to legislate differently, giving no solatium.

Secondly, the objects of acquisitions are different in the three cases, though sometimes they may coincide as it is inevitable, and as they actually do regarding housing schemes, where this court has had occasion to deal with acquisitions for house building under the Land Acquisition Act and under the City Improvement Trust Act, and even under the Town Planning Act, though to a limited extent.

The third contention of Mr. Viswanatha Aiyar was that there is no discrimination when the class of persons for whom the acquisitions are made

under the Acts differ, like profit-making companies and non-profit making trusts or Corporations like the City Improvement Trust. Mr. Viswanatha

Aiyar relied on the ruling of the Supreme Court in *Baburao Shantaram More Vs. The Bombay Housing Board and Another*, where a contention

that discrimination under Article 14 existed was repelled as on one of the grounds urged by Mr. Viswanatha Aiyar, and the reason given was that

the classes of tenants were different as also the classes of landholders.

10. Another case relied upon by Mr. Viswanatha Aiyar was a Bench decision of this court, to which one of us was a party, and that is *Globe*

Theatres Ltd. and Others Vs. State of Madras and Others, where too the contention that there was discrimination under Article 14 was repelled

on one of the grounds relied upon by Mr. Viswanatha Aiyar. We are satisfied that in the present case also Article 14 cannot be invoked as the

discrimination is neither arbitrary nor whimsical, but based on a reasonable, sensible and easily understandable classification. The City

Improvement Trust, a non-profit making quasi-Governmental body, is given the privilege of acquiring, lands under the City Improvement Trust Act

without having to pay the 15 per cent solatium.

11. The next argument of Mr. Rajah Aiyar and others is that, under the City Improvement Trust Act, reference is made, for the purpose of

awarding compensation, to Section 4(1) and other sections of the Land Acquisition Act, including admittedly also Section 23(1) of the Act, and

that the solatium of 15 per cent for compulsory acquisition, given u/s 23(2), is

an integral part of the compensation payable under the Act, and cannot be separated from it, and therefore, must always go along with it, and any provision in the City Improvement Trust Act purporting to abolish it will be of no avail, and will be null and void for that reason.

Reliance was placed upon the wording of Section 15 of the Land Acquisition Act, which runs, ""In determining the amount of compensation the

Collector shall be guided by the provisions contained in Sections 23 and 24"", and it was urged that the compensation consists of both the market

value u/s 23(1) and the additional solatium u/s 23(2) which are inter-connected, and integrated and cannot be separated.

12. Mr. Viswanatha Aiyar's answer to this was that a mere reference to the provisions of the Land Acquisition Act will not invoke all these

provisions unalloyed but only subject to the express provision of the City Improvement Trust Act, and that the invocation of the provisions of the

Land Acquisition Act is only similar to the provisions in other self-contained independent Acts, that the provisions of the CPC will apply wherever

they are not inconsistent with the express provisions of the Act.

He pointed out that Section 15 will not entitle every person whose land is acquired to all the heads of compensation in Section 23 and Section 24

but only to the heads allowable. He also urged that it will be impossible to consider the solatium u/s 23(2) to be a vital part of the market value u/s

23(2) and to be so integrated with it is not to be capable of being separated from it. The question is whether the solatium u/s 23(2) is so integrated

with the market value in Section 23(2) as to be incapable of separation.

In other words is it like a cow and its tail or a cow and its calf? We are of opinion that it falls under the latter category, and can be separated. Our

reasons are these. In the old Land Acquisition Act of 1870, this 15 per cent solatium figured as Section 40, and in the objects and reasons when

enacting the new Act, it was specifically stated that it was brought and put in as Section 23(2), so that it may be nearer Section 23(1). Again, the

very word ""addition"" shows that it is an addition to, and not a part of the market value.

Further, Section 23(1) deals with no less; than six things which may be taken into consideration for the purpose of awarding compensation. But

only the first item relates to the market value, and only that item is covered by

Section 23(2) and the 15 per cent solatium. It will be strange indeed if Section 23(2), which relates only to an addition regarding one of the six factors in Section 23(1) is to be considered as an integral part of Section 23(1).

We may also add that when the full market value has to be paid u/s 23(1) first clause, it is obvious that the addition of the 15 per cent u/s 23(2) is

only a kind of solatium or gift, though it is not a gift of a capricious individual, to be given or not at his will, but a creature of statute to be given or

withheld as the statute requires. No one can really claim a gift as part of the compensation when there is no law entitling him to that gift.

The word "compensation" in Section 15 of the Land Acquisition Act is put in rightly there, because under the Land Acquisition Act, the 15 per

cent solatium still stands, and therefore, the compensation payable to any person whose land is compulsorily acquired under the Land Acquisition

Act will include this 15 per cent. But the compensation claimable by any person whose land is acquired under the Town Planning Act or the City

Improvement Trust Act will not include that 15 per cent, as it has been expressly abolished.

13. Of course, it is significant that the claimants in this case did not want to compare themselves with persons whose lands are acquired under the

Town Planning Act, without any 10 per cent at any time, but only with the persons whose lands have been acquired under the Land Acquisition

Act with the 15 per cent.

14. For all the above reasons, we are of opinion that this contention of Mr. Rajah Iyer and others, based on discrimination and ultra vires, will not

stand, and reject it.

15. The next contention of Mr. Rajah Aiyar and others was that, even so, the City Improvement Trust Act of 1950 has not been made

retrospective, and that regarding Land Acquisition proceedings initiated before 27-2-1951, when alone the 15 per cent solatium was abolished, it

must be granted, as here, as part of the compensation. The learned Government Pleader Mr. Viswanatha Aiyar, argued, somewhat unconvincingly,

that the City Improvement Trust Act of 1950 is really retrospective.

We cannot agree. It is well settled now, by decisions of the Privy Council, Supreme Court and the High Courts, that no Act can be held to have

retrospective effect unless it expressly states so, or it is clearly so by necessary implication, neither of which factors is present here. It is

unnecessary to discuss the rulings on this well-settled point. But Mr. Viswanatha Aiyar is on firmer ground when he urges that even if the City

Improvement Trust Act of 1950 is not retrospective, no right to the entire compensation u/s 23 of the Land Acquisition Act, including the 15 per

cent solatium u/s 23(2), accrued or was acquired by any one of the claimants in these cases. We have now to examine the opposing contentions

on this point.

16. Mr. N. R. Raghavachari, learned counsel for one of the claimants, went to the utmost extreme, and urged that even when a notification u/s 4(1)

is published, the ownership in the lands covered by the notice passes to the Government, and the land vests in the Government, which must be

deemed to have become the purchaser thereof, and that, therefore, the entire compensation due u/s 23(i) and Section 23(2) of the Land

Acquisition Act will be payable, and that in these cases the S 4 (1) notices were published on 24-8-1948 and 16-10-1948 long before 27-2-1951

when the City Improvement Trust Act of 1950 came into force, and the 15 per cent solatium was abolished.

Mr. Rajah Iyer and others did not support this extreme contention. Asked to quote authority for this extreme proposition, Mr. Raghavachari

confesses he has none. We are not surprised, for it is very unlikely that there will be any authority in support of this strange proposition. Section 4 is

the stage when the Government think that some land is likely to be needed for a public purpose. In other words, it is the stage of mere intention to

acquire some land if it should become eventually necessary on further investigation.

Even the intention has not become firm. The only consequence of publishing the Section 4 notification is that the Government surveyors and other

officers may enter on the land for the purpose of surveying, examining and testing it, for which, of course, if the acquisition is finally dropped, the

Government will have to pay damages u/s 48 of the Land Acquisition Act to the person affected, to the extent of the actual damage.

Section 5(a) is the stage when the person interested in the land case can raise his objections regarding the intended acquisition. Section 6 is the next

stage, when the Government, after hearing the objections, declare that the land is needed for a public purpose. So Section 6 marks the stage of a

firm declaration that the land is required for a public purpose, and the owner can no longer refuse to part with it, though the Government can drop

the acquisition.

No doubt, it involves painful consequences to the owner of the land. He cannot build on it thereafter, till the Government have decided whether to

proceed with the acquisition or not. He may not also find any willing purchasers for these lands, which will have a cloud on the title, owing to the

possible acquisition. Even here, it is obvious that tile ownership has not passed; and no relationship of vendor and purchaser, or any relationship

analogous thereto has sprung into existence.

There is no ""notice to treat"" yet, as no negotiations regarding the value have started. We are still far from the stage of vendor and purchaser. No

doubt, even the Section 4(1) notification has got a certain blighting influence on the owner. For if the Government finally decided to acquire the

land, they will pay him only the market value as on the date of the Section 4 notice, whereas the market value might have increased, and often

increased very much, after that date upto the time of the award, though sometimes it does decrease also, and it cannot therefore be termed an one-

sided liability.

This provision is put in as when a big acquisition is taken in hand and is bruited abroad by the notification u/s 4(1), the prices of lands in the vicinity

will artificially increase. That is a common phenomenon, which cannot be denied. So, in public interests, this provision has been put in. So too the

prohibition regarding improvements thereafter. Any damage suffered by the withdrawal of the notification can be claimed u/s 48(2).

All this will show that neither at the stage of Section 4 notification nor at the stage of Section 6 notification does the relation of purchaser and

vendor spring into existence, or anything analogous to that, and that only damages can be claimed if the proposed acquisition is withdrawn, and not

compensation proper.

17. Mr. Viswanatha Aiyar, the learned Government Pleader, goes, in our opinion, to another extreme when he says that the compensation amount

u/s 15 of the Land Acquisition Act is claimable, even if the acquisition is to be

proceeded with, only after possession is taken either u/s 16 or

Section 17 of the Land Acquisition Act, and that the stage when the relationship of purchaser and vendor and the right to compensation arises is

the stage of award and possession or possession and award.

He relied for this position on a ruling of a Bench of (his court, consisting of Govinda Menon and Ramaswami JJ., in *V. Chockalinga Mudaliar Vs.*

State of Madras and Another, where the learned Judges affirmed substantially the view of Somayya J., in *P.S.B. Bommanna Chettiar and*

Another Vs. The Province of Madras and Another, that taking of possession is the crucial point, but modified it to some extent by stating that the

relationship of purchaser and vendor may arise with the beginning of the enquiry for acquisition, which, according to Mr. Viswanatha Aiyar, is the

stage of award u/s 11, and not the earlier stage u/s 9.

We need not bother ourselves in this case with the question whether absolute vesting of the lands in the Government takes place only when they

take possession. That appears to be so as stated in Sections 16 and 17 of the Land Acquisition Act. It is also true that Government cannot

withdraw from the acquisition after that. It is enough for our purpose to decide whether compensation is payable u/s 15 because of the relationship

of purchaser and vendor or a relationship analogous to that of purchaser and vendor has sprung, into existence and the liability to pay has,

therefore, arisen.

Mr. Rajah Iyer and the other learned counsel for the claimants did not worry themselves with the exact point of time of vesting of lands in the Gov-

ernment, a corner stone of Mr. Viswanatha Aiyar argument. The relationship of purchaser and vendor or the analogous relationship is enough, in

our opinion, for claiming compensation u/s 23 of the Land Acquisition Act, if acquisition had gone through as in both cases. Then the question is at

what stage does the relationship of purchaser and vendor or a relationship analogous to it arise.

In our opinion, it arises at the state of Section 9 where for the first time a notice is given to the owner of each plot, intended to be acquired u/s 6, to

put in his claim for compensation, which will, of course, include the solatium u/s 23(2) if it has not by then been abolished under the City

Improvement Trust Act. Though Mr. Viswanatha Aiyar was not willing to concede

that Section 9 is the point where the enquiry begins, and the negotiations start, and at least a relationship analogous to that of purchaser and vendor is established, when the acquisition is gone through, we have no doubt whatever on the subject.

As Mr. Rajah Aiyar has pointed out, the House of Lords has held in *Tiverton and North Devon Rly. Co. v. Loosemore*, (1884) 9 AC 480 (E),

that when the "notice to treat" is given, which in England amounts to notices under Sections 4, 6, and 9, consolidated together, the analogous

relationship of purchaser and vendor comes into being, and the right to compensation arises. Paragraph 76 of Halsbury's Laws of England Vol. 10

is also to the same effect.

Mr. Agarwala, at page 424 of his commentaries on the Land Acquisition Act, relied on by Mr. Rajah Aiyar himself, states that "notice to treat"

corresponds to Section 9 of the Land Acquisition Act, and not to Sections 4 and 6, as contended by Mr. Rajah Iyer. The earlier mention in his

book, relied on by Mr. Rajah Iyer, that Section 6 notice corresponds to the "notice to treat" appears to be a misprint where 9 is inverted into 6, as

the same learned author says deliberately, later on, at page 424, that it corresponds to Section 9, notice.

18. Mr. Rajah Iyer then urged that "notice to treat" is the first notice given in England and includes notices u/s 4, 6 and 9, and so may be held to

cover the stage of the notice u/s 4 or at least Section 6 of the Land Acquisition Act, as starting the relationship analogous to that of purchaser and

vendor. We cannot agree. In advanced countries and times, several independent things are clubbed together to save time, money and energy.

Thus, in India, in modern days, *nichithartham*, or engagement, *muhurtham*, or marriage ceremony, and *ritu santhi*, or consummation of the marriage,

are combined together into one ceremony, on the same day, in order to save money, energy and time.

Rut it is obvious that the relationship started by one of the three things is different from the relationship established by the other two, since in the

English "notice to treat" there is also included the notice u/s 4, asking for details of claims. Therefore, the "notice to treat" was referred to as

establishing the analogous relationship of purchaser and vendor. We are satisfied that at the stage of Section 9 the analogous relationship of

purchaser and vendor is established, but only if the acquisition is proceeded with will the claimant have right to compensation.

It will include the solatium of 15 per cent, u/s 23(2) of the Land Acquisition Act, if it has not been abolished by then. Where acquisition is not

proceeded with and is dropped, the claimant will get damages based on the compensation he would have got if the notice u/s 9 stage is reached, or

in any later stage. We cannot agree with Mr. Viswanatha Aiyar that that stage will be reached only at the stage of award, u/s 11 of the Land

Acquisition. Act.

A Bench of this Court has held in *Mantharavadi Venkayya v. Secretary of State for India*, ILR 27 Mad 535 (F), that, where a Collector refused to

give an award, after possession had been taken, and withdrew from the acquisition on the ground that the man was not the owner of the land and

that the Government itself was the owner, and where it was proved that the man was the owner and not the Government, the man was entitled to

damages u/s 48 based on the full compensation payable under Section. 23.

The same will be the effect, in our opinion, whenever an acquisition is withdrawn after the notice u/s 9. It makes little difference whether it is called

damages, u/s 48, or compensation u/s 23 of the Land Acquisition Act.

19. No doubt, Mr. Viswanatha Aiyar is right in contending that u/s 23(1) of the Land Acquisition Act it is the date of the last notice u/s 4, where

there are successive notices, that is the date for fixing the market value. A ruling of the Privy Council in *Ma Sin v. Collector of Rangoon*, ILR 7

Rang 227 : AIR 1929 PC 126 (G) and a Bench ruling of this court in *Akilandammal v. Special Dy. Collector Vm. T. Rly., Trichinopoly*, 1932

MWN 853 (H), show this beyond doubt.

But, far from helping the Land Acquisition Officer, it helps the claimants usually, because it is the claimants who generally lose by the market value

being fixed as on the date of the first notice, as the prices often rise after the first notice. Whatever that be, there is no doubt that the date on which

the market value is to be fixed is the date of the last valid notice u/s 4(1). But, in these two acquisitions there is only one notice each u/s 4(1).

20. Mr. Rajah Iyer, Mr. Thiagarajan and others urged that when the market value is to be fixed as on the date of the notice u/s 4(1), the 15 per

cent, solatium to that market value provided u/s 23(2) must inevitably be added

to it at least in equity, because the claimants usually lose by the price being fixed as on some earlier date, when the prices were undoubtedly low, and would not correspond to the prices at the time of the award.

Unfortunately, equity cannot prevail over law.

We have already held that the 15 per cent solatium, is not integrated with the market value but is a gift or addition provided under the statute. The

claim to it will disappear when the statute providing for it is withdrawn. In the present cases, the Section 9 notices were published only on 7-9-

1951, that is, long after the abolition of the 15 per cent, solatium by the amended City Improvement Trust Act of 1950, on 27-2-1951. So none of

the claimants in all these 65 appeals was entitled to the 15 per cent, solatium on this basis, and the Land Acquisition Officer was right in refusing it

and lower court was wrong in allowing it.

21. Then it was urged by Mr. Rajah Iyer, Mr. Thiagarajan and others that the market value ought to have been fixed not as on the dates of the

Section 4(1) notifications published under the City Improvement Trust Act, 1945, namely, 24-8-1948 and 26-10-1948 respectively, but on the

date of coming into operation of the new City Improvement Trust Act of 1950, namely, 27-2-1951. They urged with great vigour that the market

value on 27-2-1951 was very much higher than the market value on 24-8-1948 and 26-10-1948, and that, as they are losing the 15 per cent,

addition, owing to our interpretation of the law, they should be at least given the benefit of the later date, 27-2-51, for the purpose of fixing the

market value.

They urged that u/s 173(2) of the City Improvement Trust Act of 1950 it is expressly provided that notwithstanding the repeal of the Act of 1845,

all action taken, all notifications published, all rules and orders issued, and all things done under that Act shall be deemed to have been taken,

published, issued and done under this Act, and may be continued thereunder. Mr. Rajah Iyer argued that when it was deemed to be done under

this new Act, and it is continued under the new Act, the date of the notice u/s 4 must be taken to be at least 27-2-1951, the date when the new

Act of 1950 came into operation. The argument is unconvincing. The notice was only deemed to have been published under the new Act. The

word ""deemed"" shows that a legal fiction is imposed, and that the act was

done long ago, but it is adopted as if it is done under the new Act.

Many recent pieces of legislation contain such legal fiction. This fiction may, of course, often, operate to the disadvantage of those affected

adversely. But where the legislature has power to do so, as it has undoubtedly the power, like the power, to make an Act retrospective, court

cannot help the aggrieved or affected persons.

22. Then Mr. Rajah Aiyar urged that the phrase ""may be continued thereunder"" would mean that the point of continuation is 27-2-1951, and that

the relevant date for fixation of the market value is that date. This argument is equally unsustainable. Nothing can be continued unless it has existed

earlier, and the original source alone is the real source. Thus, if the river Brahmaputra, which rises in Tibet and which runs nearly 700 miles there as

the Sanpo, before it comes to India, is to be deemed to be an Indian River, and is to be continued thereunder, that is, from Tibet, it will be quite

unsustainable to argue that the river Brahmaputra takes its origin only in India, that its continuation is only from the point where it enters India, and

that the river is wiped out so far as the Tibetan section is concerned.

So, we have no hesitation in agreeing with the court below that, u/s 173(2) of the new City Improvement Trust Act the relevant date for fixing the

market value in these cases will be only the dates of publication of the Section 4 notices, under the 1945 Act, namely, 24-8-1948 and 26-10-

1948 respectively.

23. Then Mr. Rajah Aiyar, Mr. Thiagarajan and others urged that, u/s 8 of the Madras General Clauses Act, all rights accrued or acquired under

any enactment repealed would continue under the new enactment normally. Even if that is so, the right to claim damages, u/s 48 of the Land

Acquisition Act for any act done by Government by its officers entering on the land after the Section 4 notification, or for the inability to sell the

land or erect a building thereon after the Section 6 notification will continue, but as the right to claim the solatium u/s 23(2) of the Land Acquisition

Act did not accrue till the state when the Section 9 notification was published and by that time the solatium was abolished under the City

Improvement Trust Act, and, so, that right, which did not exist, could not continue.

24. Lastly, Mr. Thyagarajan, Mr. Rajah Aiyar and other relied on the theory of

contingent right precipitating and becoming vested, and relied on a ruling of a Bench of the Calcutta High Court in *Makar Ali v. Sarfaddin*, AIR 1923 Gal 85 (I). Though Mr. Viswanatha Aiyar denied the possibility of any contingent right becoming a completed right in the event of the contingency contemplated occurring, we cannot agree with him, in view of the above ruling and several other rulings to the same effect. Unfortunately for the claimants in these cases, the contingency did not occur here. It arose only with the Section 9 notification, when alone negotiations regarding the price began and the analogous relationship of purchaser and vendor is established. After that stage the contingent right would have become perfected, and the claimants would have become entitled to damages u/s 46, based on the compensation payable u/s 23, if the acquisition had been dropped. If the acquisition had been proceeded with, they would have been entitled to the compensation u/s 23. But, in this case, as the Section 9 notification was published only after the abolition of the 15 per cent, solatium, this argument will be of little use.

25. Therefore, we are of the opinion that the learned Government Pleader, Mr. Viswanatha Aiyar, is right in urging that the giving of the 15 per cent, solatium by the learned Judge was illegal and without justification in all these cases. That amount will be directed to be refunded by the claimants, subject to their setting off whatever amounts, by way of excess are given to them on merits regarding the market value in the later portions of this judgment, and subject also to those claimants, who have not drawn out the 15 per cent, solatium owing to their inability to pay security, not being liable for any interest on any excess amount refundable by them, and subject to those claimants, who have been forced to have the amounts invested, being unable to receive them, being only liable to pay 3 per cent interest per annum on the excess as they are not getting more under the investments.

26. Now, we come to the points of fact raised on merits. We shall take up the Mandavalli batch first. The learned Government Pleader has filed A.

S. Nos. 100 to 105, 107 to 122, and 124 to 130 of 1953. attacking the market value of the lands awarded by the Judge below, enhancing the value awarded by the Land Acquisition Officer. Some of the claimants have filed cross appeals, namely, A. S. Nos. 219, 243, 270 to 272, 297,

300, 312, 313, 376, 377 & 414 to 417 of 1953, and one of them has filed an independent appeal A. S. No. 375 of 1953, for the Government

has not filed any appeal in that case, and two of them have filed memoranda of cross-objections in A. S. Nos. 101 and 102 of 1953. The other

claimants have appeared and resisted the claim of the learned Government Pleader to reduce the market value fixed by the lower court,

All the parties involved in the Mandavalli acquisition are before this Court. Though the learned Government Pleader has confined himself to the

market value awarded by the learned Judge below, some of the claimants have raised also other questions like, in one case, the value of the

Superstructure; in another, the value of the wells; in some others, the deduction for levelling; up; in one, the non-valuation of some 2 and odd

grounds covered by a pond etc., which will be dealt with separately in the proper appeal where it has been pressed before us, some of the

claimants not thinking it worthwhile to press some of their claims of this sort, being trivial as compared with the main issue.

27. The claimants who filed appeals have sought to raise a ground that the grouping and grading by the learned Judge below are not correct,

though most of them have admitted that they did not raise any objection whatever there to such grouping and grading by the court below. Mr. N.

R. Ragnavachari alone contested the statement in the judgment of the court below that the claimants had not objected to the grouping and

gradation but had accepted them. We cannot accept his statement at the Bar. unsupported even by an affidavit, to the statement in the judgment.

That principle is well settled by the rulings. But the learned counsel for some other claimants raised a rather interesting, and, in our opinion, tenable

contention that, though they did not object to the grouping and gradation, into broad groups of different values, they should not be held to be

precluded from urging classes within the same group let alone special equities like nice small plots of theirs, which would be hankered after by

every citizen aspiring to build a house and would therefore fetch a higher value than the nearby lands and blocks. The extreme contentions of Mr.

Raghavachari and others that, even in the case of big blocks of land, there ought to be splitting up into plots for the purpose of valuation cannot find

acceptance with us, especially when the grouping and gradation were accepted by all in the court below.

But there is great force in the contention that group 1 has to be divided into two sub-groups 1(A) and 1(B), and group II into two sub-groups 2(A)

and 2(B), group 1(A) consisting of nice desirable small plots exceeding one ground and below three grounds, which would be highly sought after

especially if facing well-known, convenient and already formed roads like the Mandavalli road, and 1(B), the rest of the developed lands included

in that group by the learned Judge below. So too, group 2(A) will consist of all the lands in the second group which abut on roads like Mandavalli

Road, Mada Church Road, Brodics Road, Adams Road, Roberts Lane etc. but not lands abutting channels, which become dry and can be used

as cart-track, foot-paths, etc., which will only fall in 1 (B) like land-locked blocks. We are of opinion that 1(A) lands should normally be valued at

Rs. 250 more than the valuation of the standard 1(B) lands, and that 2(A) lands should be valued at Rs. 150 more per ground than the standard

2(B) lands. The learned Government Pleader has given us a list of the 1(A) and 1(B) lands and of the 2(A) and 2(B) lands on the basis adopted by

us. The lists are approved by us and are appended to this judgment.

28. Now we have to consider three questions: firstly, whether the standard value of Rs. 2000 per ground for the 1(B) lands adopted by the

learned Judge below erred either by being in excess, as contended by the learned Government Pleader, or by being in deficit, as contended by the

learned counsel for the claimants who have filed the appeals or the memoranda of cross-objections. We are of opinion that the learned Judge has

correctly fixed the price of the 1(B) lands at Rs. 2000 per ground on the available and reliable sale-deeds of similar lands in the vicinity.

He rightly ignored, in our opinion, sale deeds near slum areas, naturally fetching unusually low prices, relied on by the learned Government Pleader,

sale deeds of very small plots and after the relevant date, and naturally fetching unreal high prices, relied on by the learned counsel for the coa-

testing claimants, sale deeds on concession prices which may be called Good-Samaritan sale-deeds for low prices executed by the Co-operative

Society in favour of their friends. Leaving also these types of sale deeds, we come across the significant fact that the actual price realised one day

before the relevant date in this case under Ex. C. 38, admittedly a genuine and normal sale deed was Rs. 2000, and that, under Ex. C. 5, another

reliable sale deed also, it was Rs. 2000 per ground.

There is no need, therefore, to consider the sale deeds mentioning Rs. 700 to Rs. 1500 per ground, relied on by the learned Government Pleader,

or the sale deeds mentioning Rs. 3000 to Rs. 3500 per ground, many of them after the relevant date, relied on by the learned Counsel for the

contesting claimants. It is clear that Rs. 2000 per ground cannot be said to err on the side of excess, as it was undoubtedly a rising market, and

even on the date of Ex. C. 38, the price of Rs. 2000 per ground; and after allowing for the smallness of the plot covered by Ex. C. 38, the price of

Rs. 2000 on the relevant date, namely, 24-8-1948, is found by us too, beyond all doubt, to be the most reasonable and fair market value, taking

into account all the circumstances, for the lands covered by group 1(B).

29. As already stated, some of the lands in this group have been classified by us on the basis mentioned above as group 1(A) lands, and they will

be given Rs. 2250 per ground. There will be no estoppel operating against the claimants regarding such a higher class in the same group, as they

had only agreed to the main grouping but not given up a light to higher price for better lands in the same group. These are the lands covered by A.

S. Nos. 104 and 106 of 1953. They abut the already existing roads like the Mandavalli Road, and measure more than one ground and less than

three grounds. Though the land in A. S. No. 107 of 1953 abuts Adams Road, it is less than one ground and is until for building a nice house and

does not deserve to be classified except under 1(B). So too, the lands covered by A. S. Nos. 122, 128 and 129 deserve only to be classified

under group 1(B). We may add here that even the claimants covered by those appeals are alive to that fact, and they have not filed either cross

appeals or memoranda of objections claiming a higher value

30. The claimants in A. S. Nos. 271 and 272 of 1953 covered by the Government appeals, A. S. Nos. III and 118 of 1953, certainly own lands

which will fall in group 1(A); but they have in addition a special equity. Those very lands were purchased by them at Rs. 2900 per ground, and a

special equity of being paid this actual higher price paid by them exists in their favour, and they will be entitled to Rs. 2900 per ground. They stand

in a special class of special equity, into which class no other land except that in A. S. No. 121 of 1953 falls in this case.

31. The land in A. S. No. 121 of 1953 also undoubtedly falls in group 1 (A), but it has special equity as it has some special advantages like having

three roads, and was, for that reason, given already Rs. 2250 by the learned Judge below, as against the Rs. 2000 he gave the test. That land will

be given Rs. 2500 now, that is, Rs. 250 more than the value of similar lands in group 1(A).

32. All the lands in group I are thus valued and disposed of.

33. Now, we come to the second Question, namely, what should be the difference between group 1(B) lands, the standard lands, and group 2(B)

lands, the standard lands. Group 2(A) consists of the lands with road frontage, and group 2(B) consists of the land-locked lands which have only

cart-track, foot-paths, etc., and no road frontage. The learned Judge below has put the gap between 1(B) lands and 2(B) lands at Rs. 500 per

ground, taking that to be the amount required for developing the blocks. We have been taken through the entire evidence and we are satisfied that,

in the case of the Mandavalli scheme lands which we are considering now, Rs. 400 per ground will be sufficient.

There is evidence to show that 52 grounds of these lands had all the amenities provided with Rs. 2,00,000, which works out roughly at Rs. 400

per ground. No doubt, extreme claims were made. the claimants contending that Rs. 200 per ground will do, and the other side, that anything less

than Rs. 750 will not do. So, we reduce the gap between 1(B) and 2(B) lands to Rs. 400 per ground. It follows that the 2(B) lands will be valued

at Rs. 16(1) per ground, instead of Rs. 1500 per ground, as was done by the court below. After taking all the representations on all sides into

consideration, we value the 2(A) lands at Rs. 1750 per ground or Rs. 150 more than the 2(B) lands, Because of the road frontage. A list of the

lands in groups 1(A), 1(B), 2(A) and 2(B) as given by the learned Government Pleader on the basis of our judgment, and accepted by us as

correct is annexed to this judgment.

34. When dealing with 2(A) lands, we must deal with a special equity in favour of the claimant in A. S. No. 113 (A. S. No. 219). This persons

land is situated in a specially advantageous locality among the other 2(A) lands and is valued at Rs. 1850 per ground, at Rs. 100 more than the

valuation of Rs. 1750 per ground accorded to the other lands.

35. We are of opinion that the revised rates we have allowed for the lands falling in all the categories 1(A), 2(A) and 2(B) should be allowed also

to those claimants under the Mandavalli scheme who have filed neither appeals nor memoranda of objections, as they are all before us, and they

have had to defend themselves against the Government Pleader's onslaught on them regarding the price allowed by the learned Judge below and

we consider that, as the whole matter of the fair market price was in issue in all the cases, in the interests of fairplay and equity, we should not

allow these non-litigious persons to suffer. So exercising our powers under Order 41 Rule 33 C. P. C. we allow them also any excess which they

may get under our judgment on condition of their paying the requisite court fees.

36. We then come to various equities, claims and other things revised by individual claimants and not dealt with already. The first is the claim of

Mr. K. Rajah Aiyar for the claimants in A. S. No. 101 of 1953. Mr. Rajah Aiyar pressed only one contention. It was that Rs. 50 deduction per

ground for non-access was unjustified, as there is an old abandoned road which gives access, and that the Rs. 100 deduction for levelling up is too

high and that Rs. 50 per ground will do. The learned Government Pleader could not meet this contention. We agree with Mr. Rajah Aiyar and

direct the total deduction to be only Rs. 100 per ground and not Rs. 150 per ground, as was done by the learned Judge below. The claimant will

get the excess.

37. The next is the claim of the claimant in A. S. No. 103 of 1953 for being refunded the sum of Rs. 2157-7-6 he had already paid for the

improvements, since he has had the amenity deduction applied to him also in full. The learned Government Pleader has no valid contention

regarding this, but he urges that interest should not in any event be paid on this amount. We agree; but this amount will be added on to the amount

of compensation payable to him otherwise.

38. In A.S. No. 297 of 1953, the claimant has been disallowed any compensation for 2 grounds 1551 sq. ft. covered by a pond. Mr.

Rangaswami Aiyangar, the learned counsel for the claimant, vigorously urges that no man's land can be taken away without paying him something,

and that if it is a pond not worth acquiring, it should not be acquired or notified, and that, in any event, what the Land Acquisition Officer gave,

namely, Rs. 650 per ground cannot be taken away under the law. The learned Government Pleader has no valid contention to allowing the

claimant Rs. 650 per ground allowed by the Land Acquisition officer. We see no reason to give this claimant Rs. 1200 per ground, as urged now by

Mr. Rangaswami Aiyangar, because we are satisfied that the cost of filling up this enormous pit will be appalling and that what the Land Acquisition

Officer gave was fair and it alone can be given.

39. In A. S. No. 219 of 1953, the claimant will be given Rs. 2500 in addition for severance. He must be given something for it. He made a

fabulous claim for severance at Rs. 5000 per month, for all these five long years, that is for three lacs and then reduced it to what he considered to

be a reasonable amount of Rs. 28000 which still sounds fabulous. Considering that the land acquired was in part the land covered by his cinema

licence, and that it would be very useful for him for his cinema for extension purposes we are satisfied that Rs. 2500 should be paid to him for

severance in addition to the other compensation he is entitled to.

40. In A. S. No. 376 of 1953, the claimant wanted a severance compensation of Rs. 50000 as he has a rhombus-shaped land left to him now, and

has had much of its frontage on the road diminished, He conceded that he can still cross comfortably to the road. But, something must be given for

his loss of the greater amenity of getting into the road anywhere he pleased. We fix the compensation for severance and injurious affection in this

case at Rs. 1000 (one thousand rupees), and that will be added on to the compensation otherwise due. In that same appeal, the claimant has urged

that, regarding superstructures Nos. 5, 11 & 25, the deduction of 2 per cent for depreciation in the case of strong buildings, unlike the jerry-built

buildings of today, is unwarranted, and that one per cent will be ample. After hearing the learned Government Pleader on the point, and going

through the relevant evidence, we consider that 1 1/2 per cent, deduction for depreciation will do in the case of these three buildings; the excess

half per cent will be taken off and added on to the compensation.

41. In A. S. No. 243 of 1953, Mr. Srinivasa Ayyar, the learned Counsel for the claimant, rightly urged that Rs. 50 per ground deducted owing to

the proximity of a stinking channel (which is mostly dry and can be used as a cart-track) should be taken off. We agree, especially as we have

rejected his contention that the channel, though a cart track, will entitle his land to be classified in group 2(A). The advantage and disadvantage

cancel each other. Mr. Srinivasa Aiyar's claim that the valuation of the five wells on this land should be increased somewhat is rejected, as the wells

have been carefully valued on a graded basis and according to their real worth.

42. In A. S. No. 121 of 1953, the claimant has claimed for severance in his memorandum of cross-objections. His claim is that, after the

acquisitions, a small rectangular plot, 30" by 119" is left on his hands, on which he cannot build a suitable building and he is not rich enough to

afford raising a garden of crotons there and be content with watching its beauty. He says that something should be given to him for severance. We

agree, and award him Rs. 250 under this head, which would be added on to the compensation.

43. In A. S. No. 376 of 1953, it was urged that a deduction of Rs. 10,000 has been made, at Rs. 50 per ground for 200 grounds, for raising the

level, whereas, really, only a deduction of Rs. 100 per ground on the really lowlying 50 grounds would be justified. We agree and reduce the

deduction from Rs. 10000 to 5000.

44. We now come to the Mowbray's road acquisitions. Here, the first question is whether the learned judge below was justified in considering the

Mowbray's road to be superior to Oliver road, and the Oliver road to be superior to the Bishop Waller's avenue, for the purpose of higher

valuations and whether the gaps between the valuation can be justified. We have no doubt whatever, after going through the evidence and hearing

the arguments, on all sides, Mowbray's road is certainly a more important road than the Oliver road, and the Oliver road a more important road

than a mere avenue like the Bishop Waller's avenue, and that a difference in the valuation of lands fronting those roads will be justified. But we are

of opinion that while the Rs. 100 gap in valuation between Mowbray's Road and Oliver road is justified, the enormous gap of Rs. 400 between

Oliver road and Bishop Waller's Avenue is not justified, as Bishop Waller's avenue is more or less a minor road, being 30 feet broad, and is not a

mere quiet lane used by quiet loving people for evening walks. We consider, after going through the relevant evidence and arguments, that a gap of

Rs. 150 per ground will do between Oliver Road and Bishop Waller's avenue.

45. The next question is whether the standard value of Rs. 2400 adopted by the learned Judge below for the lands facing Mowbray's road is

correct, and whether the depth of 160 feet adopted by him for including lands in groups 1(A), 1(B) and 1(C) (called by him groups 1 to 3) is

Justified. We have no doubt whatever that the depth of 150 feet is justified. Only palaces, High Courts, cinema halls, assembly halls, etc., will have

a depth of more than 150 feet in Madras city. 150 feet is a recognised and reasonable depth. Coming to the valuation at Rs. 2400 we are of

opinion that it ought to have been Rs. 2500, and not Rs. 2400. The learned Judge, for some curious reason or other, deducted Rs. 100 from what

he considered to be the proper price for group 1(A) lands facing Mowbray's Rd. The so-called reasons given by him, if there are really any

reasons are not convincing.

There is ample evidence to show, from the sale deed, Ex. P. 50 for instance, that similar lands, hardly 2000 feet away, were sold at Rs. 2400 more

than a year before. So, the price of Rs. 2500 on the relevant date, namely, 26-10-1948, for the Mowbray's road lands in group 1(A) is the

correct price, and not Rs. 2400. The exaggerated rates of Rs. 3000 to 3500, claimed by the contesting claimants in A. S. Nos. 1044 and 1087 of

1953 and in the memo of cross objection in A. S. No. 614 of 1953) based on sales of tiny plots or on sales after the relevant date, do not carry

any conviction.

The learned Government Pleader has not filed any appeals against the valuation adopted by the learned Judge below. Nor have the remaining

claimants filed any appeals or memos of cross-objections. We are of opinion that the valuations of groups 1 (A), 1 (B) and 1 (C) (groups 1, 2 and

3 in the lower court) should be fixed at Rs. 2500, Rs. 2400 and Rs. 2250 per ground respectively; and we do so. The price of the undeveloped

land in A. S. No. 614 of 1933 should have been fixed at Rs. 2000 per ground, deducting 10 per cent for roads, as we shall see below.

46. We then come to the fourth group, or really second group according to our classification. This consists of undeveloped lands inferior to the

undeveloped lands in A. Section 614 of 1953. The learned Judge has awarded only Rs. 1350 per ground for these lands, fixing a sum of Rs. 1900

initially and deducting Rs. 550 for amenities and levelling.. He also directed one-

fourth of the total extent of the lands -- (where they exceeded 100 grounds and 10 per cent of the lands where they did not exceed 100 grounds) to be not valued as it would be required for laying roads and a sum of Rs. 36000 and odd to be deducted from the land covered by A. S. No. 1044 of 1953 for the extra levelling-up required.

47. We agree with Mr. V. Thyagarajan, the learned counsel for the appellant in A. S. No. 1044 of 1953, that to value all this hinter land as if it lay only behind Bishop Waller's Avenue, -- the most inferior of these three roads -- is not correct, and that the proper thing would be to take the average of the valuations of the lands facing all the three roads and then deduct whatever is justified for amenities and levelling, and not make any extra deduction for farther levelling.

He had no objection to the deduction of one-fourth of the and for laying roads, which is, of course proper Roads cannot be laid without space, & huge blocks of lands cannot be split into building plots and valued per ground without roads. Nor can they be treated as developed lands without deducting such space. So, the space required for roads is something different and additional to the cost of laying the roads themselves and providing other amenities like electricity, water, underground drainage etc So the deduction of 25 per cent, in this appeal and of 10 per cent, in A. S. No. 614 of 1953 was correct.

Mr. V. Thiagarajan's argument regarding the taking of average of the values fixed for groups 1(A) 1(B) and 1(C), as the initial value, before deduction for amenities and levelling, is reasonable. Doing so, we get Rs. 2380 per ground as the initial value for group 2 (group 4 in the lower court) as developed lands. The cost of providing amenities and for levelling up has of course, to be deducted from it. The cost of providing the amenities was estimated by the lower court at Rs. 450 per ground, in the case of this series of acquisitions, and that is not disputed before us. The cost of levelling, -- taking the whole land together -- and providing also for the extra levelling estimated at Rs. 36000 and odd -- will be in our opinion about Rs. 300 per ground in A. Section 1044 of 1953.

So, in all, a deduction of Rs. 750 per ground must be made out of the initial value of Rs. 2380, leaving Rs. 1630 per ground as the proper value for the 247 grounds 831 sq. ft included in group 2 in A. S. No. 1044 of 1953, and

the deduction of Rs. 3600 and odd must be taken out. We order accordingly. The cross-objector in A. S. No. 614 of 1953 from whom 10 per cent, was collected for laying roads will not get any relief regarding that for the reason already mentioned by us. But his land is in Pillial Koli lane behind Mowbray's road and will have to be valued at Rs. 2000 per ground, after deducting the ten per cent.

48. We now come to A. S. 1087 of 1933. Here Mr. Thyagarajan urged that the price of Rs. 2000 per ground fixed by the lower court was too

low, taking into account the sale deed, Ex. P. 50, fetching a price of Rs. 2400 per ground for an adjoining similar land, let alone the sale deeds

which fetched Rs. 3000 to Rs. 3500/- per ground. The learned Government Pleader rightly pointed out that the lands covered by this appeal are

low-lying and cannot fetch Rs. 2400 per ground. Indeed he urged that Rs. 2000 per ground awarded by the lower court was the proper price.

After considering the entire evidence, and the arguments on both sides, we fix Rs. 2250 per ground for the land covered by this appeal.

49. The only point remaining is the memorandum of cross objections in A. S. No. 613 of 1953. As already mentioned, the cross objector has

claimed Rs. 2000, more than the Rs. 700 awarded to him for superstructures, on the ground of levelling and improvements, and had prayed that

the claimant in A. S. No. 613 of 1953 should be made to pay this extra amount also to him. Mr. Thyagarajan, for the claimant, demurred. He says

that this cross objector did nothing at all, and that his claim to have levelled up this land at enormous labour is mere moonshine. He said that he

ought to be glad at getting the Rs. 700, which he termed as wholly undeserved, awarded by the lower court. After hearing Mr. Nagarajan, we

think that Rs. 1500 in all will be the reasonable amount to be paid to him, (Rs. 700 for superstructures and Rs. 800 for levelling), and not merely

Rs. 700; that is, Rs. 800 more will, therefore, be given to him from the amount due to the claimant in A. S. No. 613 of 1953. The order directing

this cross objector to pay Rs. 500/- as court fee to Government is also deleted as inequitable.

50. The cross objector in A. S. No. 614 of 1953. who owns a big plot 200 feet behind the Mowbray's Road, but in an existing lane 14 feet

broad, will get, for the 90 per cent excluding the ten per cent for roads, Rs. 2000

per ground, that is, Rs. 500 less than the Rs. 2500 we have allowed for the land falling within group Ia. He cannot claim anything more, considering all the circumstances. The excess due will be paid to him after deducting the 15 per cent, solatium wrongly paid.

51. We add that by our giving some enhanced compensation to the claimant in A. S. No. 1044 of 1953 the legal flaw in the lower court's order, pointed out by Mr. Thiagarajan, namely that a sum of Rs. 5000 less than what was awarded by the Land Acquisition Officer was awarded by the lower court, has been set right once and for all.

52. Though the learned counsel for the claimants who have not filed any appeals or memos of cross objections in this batch want to urge that we should give them the benefit of Order XLI Rule 33 C. P. C. as in the Msndavalli batch, we are unable to agree. It is only regarding the lands

covered by A. S. Nos. 014, 1044 and 1087 of 1953 that the question of altering (that is, raising) the market value was raised. The claimants who

have not filed appeals or memoranda of cross objections will not get any increase, by applying, Order 41, Rule 33, G. P. C., as the learned

Government Pleader never wanted any reduction of the market value fixed by the lower court as in the Manilavalli batch, but only wanted the 15

per cent solatium illegally awarded by the court below, to be taken off. We may add here that several of the claimants in the land cases have not

figured either in the lower court or here in this batch.

53. In the circumstances, all the parties to all these appeals and the memoranda of cross-objections will bear their own costs. We do not consider

that even those against whom we have decided regarding the 15 per cent solatium, without enhancing the market value, and who are therefore

bound to refund that portion of the amount should be made to pay the Government's costs as the question regarding the 15 per cent, has not been

decided so far, and we have had to hear for two days arguments of able counsel before the matter was cleared up and we could come to a definite

conclusion and decide the point against the claimants. The executors in A. S. Nos, 375 to 377 of 1953 will be allowed to take their costs out of

the estate. The trustees in some other appeals also will be allowed to take their costs from the trust estate as in the case of A. S. Nos, 375 to 377

of 1953.

54. The excess compensation now awarded under both the schemes, excepting Rs. 2157-7-6 awarded to the claimants in A. S. No. 103 of 1953

will carry interest at 6 per cent per annum from the date of taking possession. Wherever the 15 per cent solatium had to be refunded to the

Government, but has not been drawn out by the claimants, owing to their inability to furnish security, no interest will be due by the claimants on the

excess liable to be refunded, and wherever it has had to be invested in trust security, fetching a lower interest, owing to disability to receive it the

Government will get only interest at 3 per cent per annum. (Appendix not material for purposes of report and hence omitted--Ed.)