
(1993) 05 AHC CK 0074
In the Allahabad High Court
Case No : First Appeal No. 658 of 1989

Tata Chemicals Limited, Bombay	Vs	APPELLANT
Sadhu Singh and others		RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 41 Rule 1(3), Order 41 Rule 22, Order 41 Rule 5(5), 11
Evidence Act, 1872 — Section 114, 57, 61, 79
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 23(1A), 23(2)

Citation : AIR 1994 All 66 : (1994) 2 AWC 982

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Shri V.K. Bist and Mr. S.P. Gupta, for the Appellant; Shri J.C. Bhardwaj, for the Respondent

Final Decision : Partly Allowed

Judgement

1. These 39 Appeals arise out of a common judgment and award dated 20-7-1989 of I Addl. District Judge, Budaun given in 39 Land Acquisition References. Since all the references had been consolidated in accordance with Order IV, A, C.P.C. (as Amended in the State of U.P.) they are being disposed of by a common order. First Appeal No. 658 of 1989 Tata Chemicals Ltd. v. Sadhu Singh and others arising out of Land Acquisition Reference No. 5 of 1988 shall be treated as leading case. The appeals were filed by M/s. Tata Fertilizers, Babrala Project, Budaun. Subsequently vide Court's order dated 25-4-1991 the name of the original appellant was deleted and Tata Chemicals Ltd., Bombay House, Bombay was substituted in its place.

2. At the instance of U.P. State Industrial Development Corporation, the State Government acquired land in several villages including Pawari, Baghau and Mehua Hasanganj in the district of Badaun for the purpose of setting up a Fertilizer Factory by Tatas. After acquisition possession over thy acquired land was delivered to M/s. Tata Fertilizer Project, Babrala. The notification u/s 4 of the

Land Acquisition Act (hereinafter referred to as the Act) was published in the Gazette on 17-8-1985. In pursuance of notice u/s 9 of the Act, the tenure-holders whose land had been acquired filed claims to compensation. The Special Land Acquisition Officer Badaun, after holding an enquiry, gave awards as provided by Section 11 of the Act. Some of the tenure-holders who had not accepted the awards made applications to the Collector praying that the matter be referred for the determination of the court in accordance with Section 18 of the Act. The Collector then made references to Court and 40 such references have been decided by the learned Addl. District Judge, Badaun by a common judgment and award dated 20-7-1989 which is subject matter of challenge in the present appeals.

3. In First Appeal No. 659 of 1989 (arising out of Land Acquisition Reference No. 5 of 1988) the case of the tenure-holders Sadhu Singh and others, in brief, was that plot Nos. 618 area 17 biswas and 619 area 8 biswas situate in village Pawari had been acquired of which they are the owners; that the land was situate very close to Babrala Railway-station and Gunaun-Babrala. Rajpura road passes through the land; that the land was very fertile and yielded three crops in a year; that they earned their livelihood from the acquired land and they had no other source of income; that the land had great potentiality for commercial and industrial purposes; that looking to the quality and location of the land which was near the main road and the railway-station, the compensation awarded by the Special Land Acquisition Officer was inadequate; that the prevailing price of land in the area was Rs. 70,000/- to Rs. 80,000/- per acre and that the claimants were entitled to compensation at the rate of Rs. 80,000/- per acre together with additional statutory amount, solatium and interest. The Collector Badaun filed a written-statement on the ground inter alia that the acquired land was miles away from Babrala Railway-station and the road did not pass through the land; that the compensation had been awarded keeping in view the quality of the soil and the vicinity; that the compensation awarded was not less than the prevailing market prices of the land during the three preceding years of the Notification u/s 4 of the Act; that the solatium and additional amount permissible under the Act had also been awarded and the compensation had been determined and awarded to the claimants in accordance with Rules and the relevant Government Orders. M/s. Tata Fertilizer Ltd. also filed written statement on the ground inter alia that the claimants had accepted the compensation amount awarded by Special Land Acquisition Officer without protest and as such the reference was barred by principles of estoppel and acquiescence; that the acquired land was low-lying and unproductive; that the land had no potentiality for commercial and industrial purposes; that the land was not close to Babrala Railway-station and that the compensation amount had been correctly determined and the reference was liable to be rejected.

4. The parties adduced oral and documentary evidence before the learned Addl. District Judge. After examining the evidence on record; the learned Addl. District Judge held that the Reference made by the Collector was maintainable. He

further held that as the parties had not proved the sale-deeds (exemplars), the same were not admissible in evidence. Relying upon oral evidence and one sale-deed, he held that the market value of land in villages Baghau and Mehua Hasanganj was not less than Rs. 30,000/- to Rs. 32,000/- per pucca bigha and of village Pawari Rs. 20,000/- to Rs. 25,000/- per pucca bigha. Allowing a rebate of Rs. 2,000/- per bigha for land of villages Baghau and Mehua Hasanganj and a rebate of Rs. 5000/- per bigha for the land of a village Pawari for developmental and other expenditure it was held that the market value of the land of villages Baghau and Mehua Hasanganj was Rs. 30,000/- per pucca bigha and that of village Pawari Rs. 20,000/- per pucca bigha. In addition to the market value the claimants were also held entitled to 12% additional allowance on the market value of the land as statutory sum, solatium at the rate of 30% and 9% interest on the additional amount awarded, beyond what had been paid from the date of possession till the date of payment.

5. Before entering into the merits of the appeal, some preliminary points raised by Sri J. C. Bhardwaj learned counsel for the respondents may be disposed of. Along with the appeal, a stay application was filed by the appellant in which an interim order was passed on 21-10-1989 staying the execution of the award on the condition that the appellant should deposit half of the enhanced amount. By the order dated 25-4-1991 the respondents were permitted to withdraw the amount so deposited without furnishing security. Learned counsel has submitted that the appellant has not complied with the terms of the stay order and further that as the award of the learned Addl. District Judge is in the nature of a money-decree, the appeal was not competent and could not be heard on merits unless the appellant deposited the amount disputed in the appeal in view of Order 41, Rule 1(3) C.P.C., In support of his submission reliance was placed upon *State v. Roshan Lal* 1992 AWC 412, wherein a learned single Judge has held that in an appeal preferred against the money-decree the entire decretal amount had to be deposited by the appellant and if the entire amount was not so deposited, the interim stay-order would stand automatically vacated and the stay application would stand rejected. It may be noticed here that against the order dated 25-4-1991 by which the stay order had been modified, the appellant preferred Civil Appeals Nos.-3758 to 3796 of 1991 in the Supreme Court passed the following order :

"The execution of the impugned award shall remain stayed subject to the condition that the appellant deposits half of the enhanced amount awarded by the 1st Addl. District Judge Badaun within a period of two months from today. On such deposit, the respondents-claimants are permitted to withdraw half of the amount so deposited without furnishing any security and the balance on furnishing proper security to the satisfaction of the said I Addl. District Judge, Badaun."

The order quoted above would show that the Supreme Court has stayed the execution of the award on the condition that the appellant deposits half of the

enhanced amount. Therefore, there was no question of the appellant being required to deposit the entire amount awarded by the Addl. District Judge. In case the condition imposed in the stay-order dated 23-9-1991 had not been complied with, it was open to the claimant-respondents to execute the award but that would not render the appeal incompetent nor would debar the court from proceeding to hear the appeal on merits.

6. Regarding the second contention of the learned counsel for the respondents that as the appellant has not deposited the amount disputed in the appeal, the same was incompetent and could not be heard in view of Order 41, Rule 1(3) C.P.C., in my opinion the said provision has relevance at the stage when the court is making an order staying the execution of the decree and it has no bearing at all on the competency of the appeal itself. In *Union of India v. Jagan Nath Radhey Shyam*, AIR 1979 Delhi 36 *Yogeshwar Dayal, J.* (as His Lordship then was) has considered the true scope of sub-rule (3) of Rule 1 of Order 41 of the Code of Civil Procedure. After referring to the CPC (Amendment) Bill, 1974 and the report of the Joint Committee it was held that the intention of the Parliament was not to make the deposit of the decretal amount or the furnishing of the security before filing of appeal against money-decree as a condition precedent for valid presentation of the appeal. It was further ruled that reading sub-rule (3) of Rule-1 of Order 41, along with sub-rule (5) of Rule 5, all that can be said is that so long as the decretal amount is not deposited, or security is not furnished, the court may not make an order staying the execution of the decree. The same view has been taken in *Prabhakar v. Vinayak Rao*, AIR 1983 Bom 301, I am, therefore, clearly of the opinion that the deposit of the amount disputed in the appeal is not a condition precedent for the inability of the appeal and the appeal cannot be held to be incompetent.

7. During the course of hearing of the appeals learned counsel for the respondents moved an application stating that in Six appeals, some of the respondents had died and as no applications had been moved to bring on record the heirs of the deceased-respondents, the aforesaid appeal stood automatically abated. According to learned counsel the result of such abatement was that the remaining 33 appeals could also not proceed as they were directed against a common judgment and in case they were allowed, it will result in conflicting decrees being passed by this court. In support of his submission, learned counsel placed reliance upon *Dwarka Prasad Singh and Others Vs. Harikant Prasad Singh and Others*, . The submission made by the learned counsel is wholly untenable in law. If several suits are decided by a common judgment and separate appeals are preferred, the appeals do not become incompetent merely on the ground that one of the appeals has abated, or is dismissed on some grounds other than the merits of the appeal. Each appeal is preferred against the separate decree and even if appeal preferred is affirmed in one of the appeals, it does not operate as *res judicata*. It is the finding or decision which operates as *res judicata* and not a decree. The authority cited by the learned counsel has no application on the facts of the present case. In that case a suit for specific performance had

been filed wherein the plaintiff had also claimed a decree for refund of the consideration paid. During the pendency of the appeal, the vendor died and his heirs and legal representatives, were not brought on record. In these circumstances, it was held that the abatement of appeal against the vendor was fatal to the entire appeal as either inconsistent and contradictory decrees will have to be passed or proper reliefs cannot be granted in the absence of a necessary party. A Full Bench of Five Judges in *Jai Narain Har Narain and Another Vs. L. Bulaqi Das*, has held that where two suits were consolidated and disposed of by one judgment and two decrees were prepared but no appeal was filed against the decree dismissing one suit, the appeal against the decree in the other suit was not barred by *res judicata* as it is the decision and not the decree which creates bar of *res judicata*. On the facts of the present case the principle laid down in *Jai Narain's* case (*supra*) would be fully applicable. Therefore, the appeals cannot be said to be incompetent and there is no possibility of a conflicting decree being passed.

8. That apart the submission made by the learned counsel for the respondent has become of academic interest only. Shortly after the hearing had concluded in 33 appeals, Sri S. P. Gupta, learned Senior Counsel for the appellant informed the Court that substitution applications for bringing on record the heirs of the deceased respondents had been filed in the remaining six appeals. These applications were allowed by a learned single Judge on 25-2-1993 and on 16-3-1993 with the result that the appeals became competent for hearing and were thereafter heard on 30-4-1993. Since all the appeals are now competent and have been heard on merits, the submission initially made by learned counsel for the respondents has ceased to be of any bearing.

9. Coming now to the merits of the appeals, it may be noticed at the outset that the learned Addl. District Judge relying upon *Collector Kamrup v. Prabati Phukhan* AIR 1973 Gau 114 has held that the copies of those sale deeds (exemplars) of which the vendors or vendees had not been examined as witness in Court were inadmissible in evidence. The Land Acquisition Act, 1894 has undergone a major amendment by Act No. 68 of 1984 and a new Section 51-A has been incorporated. Section 51-A provides that in any proceeding under this Act, a certified copy of a document registered under the Registration Act including a copy given u/s 57 of that Act may be accepted as evidence of the transaction recorded on such document. Therefore, the view taken by the learned Addl. District Judge is not correct and the certified copies of the sale deeds filed by the parties are admissible in evidence. Sri J. C. Bhardwaj, learned counsel for the respondents also fairly conceded this legal position. Sri S. P. Gupta, learned Senior Counsel for the appellant as well as Sri Bhardwaj learned counsel for the respondents submitted that the cases should not be remanded for consideration of the copies of the sale deeds by the District Judge as that would cause great harassment to the parties specially to the claimant-tenure-holders and this Court should finally decide the appeals.

10. In order to determine the compensation which the tenure-holder are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The expression "market value" has been subject-matter of consideration by the Supreme Court in several cases. According to Apex Court, market value (is) the price that a willing purchaser would pay to a willing seller for the property having the due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arms length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. See (i) Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, ; (ii) Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, ; (iii) Administrator General of West Bengal Vs. Collector, Varanasi, and (iv) Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, .

11. The next question is what type of evidence should be taken into consideration for determining the market value of the acquired land. In Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, it has been held that the price paid in sale or purchase of the land acquired within a reasonable time from the date of acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. Similar view was taken in Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram, .

12. The parties have filed certified copies of some sale deeds executed by tenure holders regarding land situate in three villages. So far as village Pawari is concerned, Paper No. 10-Ga is a copy of sale deed executed by Birja in favour of Badan Singh on 9-9-1985 by which half share in plot No. 362 having an area of 1 bigha 7 bishwas and 5 biswansis was sold for Rs. 5000/- i.e. at the rate of Rs. 7,339/- per bigha. Paper No. 17-Ga is a copy of sale deed executed by Smt. Murti in favour of Ati Ram on 1-11-1985 by which plot No. 758 having an area of 1 bigha 4 biswas 11 biswansis was sold for Rs. 6000/- i.e. at the rate of Rs. 4,888/ -per bigha. By Basudeo in favour of Bhoop Singh on 6-8-1986 by which

half share in plot No. 362 having an area of 1 bigha 7 biswas and 5 biswansis was sold for Rs. 9,500/- i.e., at the rate of Rs. 13,944/- per bigha. Fourth sale deed is of 13-5-1985 by which plot No. 72 having an area of 9 biswas and 16.5 biswansis was sold for Rs. 5,500/- i.e., at the rate of Rs. 11,195/- per bigha. Regarding village Baghau, paper No. 18-Ga is a copy of sale deed executed by Prem Singh in favour of Megh Singh on 31-12-1984 by which plot No. 343 having an area of 1 bigha was sold for Rs. 500/-. Paper No. 19-Ga is a copy of sale deed executed by Ram Swaroop on 16-12-1985 by which 15/16 share in plot No. 227 having an area of 10 biswas was sold for Rs. 3,500/- i.e., at the rate of Rs. 7,466/- per bigha. Paper No. 20-Ga is copy of sale deed executed by Inderman on 30-1-1984 by which half share in plot No. 199 having an area of 2 bighas 11 biswas was sold for Rs. 8000/- i.e., at the rate of Rs. 6,276/- per bigha. Sale deed dated 18-6-85 shows that plots Nos. 859-Kha and 860-Ga having an area of 1 bigha 6 biswas 13 biswansis was sold for Rs. 13,000/-i.e., at the rate of Rs. 9,756/ - per bigha. Copy of sale deed dated 20-2-1984 shows that plot No. 1104 having an area of I biswa was sold for Rs. 1000/- i.e. at the rate of Rs. 20,000/- per bigha. Copy of sale deed dated 9-1-1984 shows that plot No. 1034 having an area of 3 biswas 15 biswansis was sold for Rs. 1000/-i.e., at the rate of Rs. 5333/- per bigha. With regard to village Mehua Hasanganj, paper No. 21-Ga is a copy of sale deed dated 23-12-1983 executed by Asharfi by which he sold his 1/3rd share in plot No. 480 having an area of 1 bigha and plot No. 483 having an area of 17 biswas for Rs. 4000/- i.e., at the rate of Rs. 6486/-per bigha. Copy of sale deed dated 22-6-1984 shows that an area of 1 bigha 2 biswas of plots Nos. 854,868,881 and 887 was sold for Rs.7,500/- i.e. at the rate of Rs. 6,818/- per bigha. Copy of sale deed dated 15-8-1984 shows that an area of 1 bigha 2 biswas in plots Nos. 854, 868, 881, and 887 was sold for Rs. 7,500/- i.e., at the rate of Rs. 6,818/- per bigha. Copy of sale deed dated 4-7-1985 shows that plot No. 819 having an area of 3 biswas and 13 biswansis was sold for Rs. 3000/- i.e., at the rate of Rs. 16,438/- per bigha. Copy of sale deed dated 11-3-1985 shows that an area of 13 biswas and 3 1/4 biswansis of plot Nos. 287, 519, 521, 591, 597 was sold for Rs.7,500/- i.e., at the rate of Rs. 11,386/ - per bigha. Apart from these sale deeds the appellant has also filed Forms prepared during consolidation operation and copy of circle rate of village Bhagau.

13. Parties have also examined one witness each in support of their case. P.W. 1 Devendra Singh who has been examined on behalf of the claimants is resident of village Baghau. He stated that the price of the land in all the villages was Rs. 60,000/-per acre. His grove land had been sold at the rate of Rs. 55,000/- per acre prior to and after acquisition. He has further proved the sale deed in four of Poti Ram. In his cross-examination by State, he has stated that the land is sold at the rate of Rs. 12,000/- per kuccha bigha in his village. Three kuccha bighas make one pucca bigha and 1.12 pucca bigha make one acre. The land is sold at the rate of Rs. 12,000/- per kuccha bigha in all three villages. He has also stated that a high way passes just by the side of acquired land. In his cross-examination on behalf of the appellant, he stated that the plot No. 1104 sold in

favour of Poti Ram is on Babrala-Chan-dausi Highway and is at a distance of 1 1/4 km. from Babrala. He denied the suggestion that the acquired land was "Usar or Banjar". He has further stated that water level was at a depth of 10" (feet) in villages Baghau and Mehua Hasanganj as they were situate very close to river Ganga. D.W. 1 Suneel Gupta has been examined on behalf of the appellant (Tatas). He has stated that the market rate of land in village Baghau was Rs. 13,000/- to Rs. 14000/- per bigha, that in village Mehua Hasanganj Rs. 10000/- per bigha and in village Pawari Rs. Seven-Eight thousand per bigha. The land did not yield three crops in a year. In his cross-examination, he has stated that he did not belong to either of the three villages but was resident of Babarala. He is a farmer and also works as a contractor of Horticulture and Civil Construction. He frankly admitted that he was a contractor of the Tatas and was doing plantation work in the land which had been acquired by Tata Fertilizers. He also admitted that he did not own any land nor he has ever sold or purchased any land. The acquired land was at a distance of 5 kms. from his own village.

14. Tata Fertilizer also moved an application on 2-4-1989 praying that the Court may make local inspection. The learned Addl. District Judge then went to the spot and his inspection note is on record. The inspection note shows that the acquired land of village Baghau is situate at a distance of about 2 kms. From Babarala Railway Station, if one goes by the road. However the distance is much less as the crow flies. The area of the acquired land starts from the Railway crossing of Babarala Gavan Road and is just in the vicinity of the said road. Village Pawari is not connected by any metalled road.

15. As already stated, the notification u/s 4 of the Act was published on 17-8-1985. Two sale deeds of village Pawari and one sale deed of village Baghau filed as exemplars are of a date which is subsequent to the date of notification u/s 4 of the Act. Normally, subsequent sale deeds which are not proximate in point of time of the acquisition should not be taken into consideration. However, where the market is stable and there is no fluctuation in the prices between the date of notification u/s 4 of the Act and the subsequent transaction, the same can be relied upon as held in State of Uttar Pradesh Vs. Major Jitendra Kumar and Others, . There is no evidence on record to show that there was any upward revision in prices between the date of notification u/s 4 of the Act and 16-12-1985 or 6-8-1986 as the subsequent exemplars are of these dates. Even the witness examined by the Tatas has not said anything in this regard in his statement. Therefore, these sale deeds can also be looked into to ascertain the market value of the acquired land.

16. Sri J. C. Bhardwaj, learned counsel for the claimants-respondents has also submitted that the potentiality of the acquired land should also be taken into consideration while determining its market value. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility

when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their future extension, whether near about Town is developing or has prospect of development have to be taken into consideration. See *The Collector, Raigarh Vs. Harisingh Thakur and Another*, , *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, and *Administrator General of West Bengal Vs. Collector, Varanasi*, . It has been held in *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*, and *Suresh Kumar v. T.I. Trust* AIR 1980 SC 1222 that failing to consider potential value of the acquired land is an error of principle.

17. The evidence on record shows that the I acquired land is very close to Babarala Railway Station and is almost adjacent to High way. The land is also very close to river Ganga and therefore, water is available in plenty all the year round. Learned counsel for the respondents has also shown from the map the Narora, where there is an Atomic Power Station is situate just across river Ganga. The Power Station being at a distance of less than 10 kms. it can be safely presumed that bulk power is also available in the area for industrial use. Learned counsel has also shown from the "Atlas of India" published by Oxford University Press, New Delhi that Babarala is centre for chemical industries. These facts undoubtedly show that the acquired land has potentiality for future development and this fact has to be kept in mind while determining its market value.

18. During the course of argument, learned counsel for the appellant has given a Chart showing the rate at which compensation has been awarded by the Spl. Land Acquisition Officer with regard to land in three villages. According to that chart, the maximum rate at which compensation had been awarded for some land is Rs. 14,062/- per bigha in village Pawari and Rs. 19,512/- per bigha in village Baghau. The exemplars show that the maximum rate at which land had been sold is Rs. 13,944/- per bigha in village Pawari and Rs. 20,000/- per bigha in village Baghau. Section 25 of the Act provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11. The market value of the land thus cannot be held to be less than the amount determined by the Collector. The potentiality of the land has also to be taken into consideration. Therefore, it will be safe to hold that the market value of land is Rs. 14,100/- per bigha in village Pawari and Rs. 20,000/- per bigha in village Baghau.

19. So far as village Mehau Hasanganj is concerned the Special Land Acquisition Officer has given award at the maximum rate of Rs. 7,567/- per bigha. The Exemplars show a maximum rate of Rs. 16,438/- per bigha. D.W. 1 Suneel Gupta who has been examined in behalf of Tata Fertilizers has stated that the price of land in village Pawari is Rs. 7000/- to Rs. 8000/- per bigha, while that of village

Mehua Hasanganj Rs. 10000/- per bigha. Therefore, according to the own witness of the appellant, the price of land of village Baghau is 25 per cent to 40 per cent higher than the price of the land of village Pawari. Since I have held that the price of land in village Pawari is Rs. 14,100/- per bigha, adopting the same criteria, the price of land of village Mehua Hasanganj should also be taken to be Rs. 20,000/- per bigha. Learned Addl. District Judge who had the advantage of seeing the village had also held that the price of land of village Baghau and Mehua Hasanganj was same.

20. Learned counsel for the appellant has strenuously urged that the evidence of market value shown by sale of small plots is not a safe guide in valuing large areas of land and the prices fetched for small plots cannot be directly adopted in valuing large extent of land as has been acquired in the present case. He has thus contended that a deduction of 20% to 30% should be made on account of acquisition of a large area. In support of his contention, Sri Gupta has placed reliance upon several decision of Supreme Court. In order to appreciate the principle laid down by the Supreme Court, it will be useful to refer to them in some detail. Administrator General of West Bengal Vs. Collector, Varanasi, , it was held as follows in para6 of the report.

"The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay out could with justification be adopted, then in valuing such small laid out sites the valuation indicates by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation or roads and other civic amenities; expenses of development of the sites by laying out roads drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the prices; the profits is on the venture etc. are to be made.

In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, it was held as follows in para 4 (15 of the reports).

"Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an interpreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate regarding approx, between 20% or 50% to account for land required to be set apart from carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up. will be longer or shorter and the attendant hazards."

The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracks of land are therefore, that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civil amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward depending upon the facts of each case is made.

21. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a big Fertilizer Project. The factory would produce goods worth hundreds of crores in a year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a big factory. After all the factory cannot be set up without land if such land is giving return of hundreds of crores, there is no justification for making any reduction from the price exhibited by the exemplars even if they are of small plots. Since the Project is being established by the Tatas, which is one of the biggest industrial house of the country, it can safely be presumed that there is no problem of finance and the factory must have been set up in a short time and the waiting period for the production to start would not have been a long one. There is a huge demand of fertilizer in the country so much so that the Government has to some time import the same and thus the market of the goods produced is fully assured. It is possible that a part of the acquired land might be used for construction of the residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods valued in hundreds of crores, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the principle enunciated by Supreme Court cases is not applicable.

22. Mr. Bhardwaj, learned counsel for the respondents also submitted that generally the sale deeds are under valued and the correct prices paid by the purchaser is not mentioned in the document in order to evade payment of stamp-duty and registration charges. He further urged that the Court should take judicial notice of this prevalent practice and proceed on the basis that the actual practice and proceed on the basis that the actual price paid by the purchaser was more than the price mentioned in the sale deeds. In my opinion, in absence of any evidence. It will not be proper for the Court to presume that the prices paid by the purchaser was more than what has been mentioned in the sale deeds. Though the practice of undervaluation is quite common, yet the Court would not

be justified in taking judicial notice of such a practice and draw an inference in favour of the claimants on its basis.

23. Sri Shashi Nandan, learned counsel for some of the claimant-respondents has submitted that the interest awarded by the Court is not in accordance with Sections 28 and 34 of the Act. I find substance in the submission made by the learned counsel. The learned Addl. District Judge has held in Issue No. 3 that interest at the rate of 9% per annum shall be paid on the additional sum awarded beyond what has been paid, from the date of dispossession till the date of payment. It appears that learned Addl. District Judge lost sight of the proviso to Section 28 of the Act. The law requires that the Collector shall pay interest on the excess amount of compensation awarded by the Court at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court. Where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, the interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year. Therefore, the award given by the learned Addl. District Judge requires modification in accordance with Section 28 of the Act so far it directs payment of interest only at the rate of 9%.

24. Sri S. P. Gupta, learned senior counsel for the appellant, however, contended that the claimants had not challenged the award either by filing an appeal or by filing a cross-objection and therefore, in the appeal preferred by the Tata Fertilizers it is not possible to grant relief to the respondents. Fortunately for the claimants the controversy involved is fully covered by a decision of the Supreme Court given in Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, . In this case, the possession was taken on 19th November, 1949, but the interest on compensation amount was awarded by the District Judge, w.e.f. February 1, 1955. Though the State Government filed an appeal before the High Court against the award of compensation, the tenure holder did not prefer any appeal. Subsequently, the tenure holder filed a time barred cross-objection under Order 41, Rule 22, C.P.C. The application for condonation of delay was rejected and consequently the cross-objection was also dismissed. The High Court, thereafter rejected the claim of the tenure-holder for interest w.e.f. November 19, 1949. In appeal the Supreme Court held that once the conditions u/s 28 or Section 34 of the Act are satisfied, the award of interest is consequential and automatic. The Court also held that the payment of interest is not dependent on any claim by the persons whose land has been acquired and the cost and interest under the Act, if not awarded by the lower Court, can always be awarded by higher Courts in any proceedings under the Act and to any party entitled to the same under the Act. In view of the authoritative pronouncement of the Supreme Court, the claimant respondents are entitled to interest at the rate of 15% on the excess amount awarded by the Court after the date of expiry of a period of one year.

25. In the result, the appeals are partly allowed. The claimant respondents will

be entitled to compensation at the rate of Rs. 14,100/- per pucca bigha with respect to land in village Pawari and at the rate of Rs. 20,000/- per pucca bigha with respect to land in villages Baghau and Mehua Hasan-ganj. In addition, the claimant-respondents will also be entitled to the statutory amount calculated at the rate of twelve per centum annum per on such market value for the period commencing on and from the date of the publication of the notification u/s 4, sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier in accordance with Section 23(1-A). The claimant-respondents shall also be entitled to solatium at the rate of thirty per cent on market value of the land in accordance with Section 23(2) of the Act. Besides the above amount, the claimant-respondents will be entitled to interest at the rate of nine per cent on the excess amount awarded by the Court from the date of their dispossession till the date of payment of such excess in Court. If the excess amount or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession was taken, interest at the rate of fifteen per cent shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into court before the date of such expiry in accordance with Section 28 of the Act.

26. In view of divided success parties to bear their own costs.

27. Appeal partly allowed.