

(2002) 07 MAD CK 0062

In the Madras High Court

Case No : Appeal Suit No's. 882 to 886/96, 914 to 918/96, 935 to 939/96, 958 to 963/96, 966/96, 968/96, 970/96, 986 to 991/96 and 1013 to 1017/96 and 188/97, 192/97, 484/97, 53/97, 28/97, 43/97, 55/97, 107/97, 126/97, 112/97, 109/97, 57/97, 129/97, 100/97, 98/97,

The Special Tahsildar (L.A.), Master Plan Complex,
Virudhunagar

APPELLANT

Vs

Kamala

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition (Amendment) Act, 1984 — Section 28A
Land Acquisition Act, 1895 — Section 23(1), 23(1A), 3, 4, 4(1)

Citation : (2002) 3 LW 730 : (2002) 3 MLJ 273

Hon'ble Judges : K. Gnanaprakasam, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : R. Muthukumarasamy, A.A.G assisted by R. Ashokan, Addl. Government Pleader, for the Appellant; R. Meenalochini in A.S. 918/96, G. Ethiraju in A.S. 207/97, M.S. Govindarajan in A.S. 887/97, Subbiah in A.S. 199/97, D. Nelliappan in A.S. 39, 54, 97, 106, 115, 206, 480, 481, 482 and 483/97 and A. Sivaji, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The Government of Tamil Nadu acquired vast extent of lands in Kooraikundu Village, Virudu Nagar Taluk

and District, which are subject matter of these appeals for the construction of Armed Reserve Administrative Block and Quarters for Armed

Reserve Men and Parade ground. Notification under Section.4(1) of the Land Acquisition Act was published in the Tamil Nadu Gazette on

15.07.1987 and in Tamil Dailies on 08.05.1988. After due notices to all concerned, the award enquiry was conducted from 4.12.1989 to

27.2.1990. The Special Tahsildar, Land Acquisition, Master Plan Complex, Virudu Nagar by Award No.1 of 1990 dated 7.5.1990, fixed the

market value of the acquired lands at Rs.24,700/- per Hectare and awarded compensation on that basis. The respondents/land owners, being

aggrieved by such fixation, sought for reference u/s 18 of the Land Acquisition Act. Before the Reference Court, the learned counsel appearing for

all the Claimants and the Government Pleader appearing for the State, filed a joint memo, requesting the Reference Court to enquire all the Claim

Petitions jointly and also to take common evidence. On behalf of the land owners, the Claimant in L.A. O.P. No.169 of 1992 by name

R.Ramaswamy was examined and for the State, one Venkatraman, Special Tahsildar, Master Plan Complex, gave evidence. Reference Court,

mainly placing reliance on Ex.C.10, a sale deed, under which an extent of 5.3 cents was sold for Rs.9,250/- in S.No.78/1 and after taking note of

the fact that the lands are adjoining National Highway and also railway line is away, fixed the market value at Rs.2,000/- per cent. Out of this

amount, after making a deduction of 20% for the reason that it is not a developed plot, fixed the compensation at Rs.1,600/- per cent.

2. The State of Tamil Nadu, being aggrieved by the award of the Reference Court, has filed the above appeals.

3. Learned Additional Advocate General appearing for the Appellant/State submitted that the Reference Court has erred in fixing the market value

of the property in question at Rs.1,600/- per cent. Elaborating the said submission, the learned Additional Advocate General contended that on

behalf of the State hundreds of sale transactions were brought to the notice of the Reference Court and in fact, those lands lie just a couple of

furlongs away from the present acquired lands and it could be safely said that the rate at which the lands were sold under those documents worked

out somewhere between Rs.600/- and Rs.900/- per cent. Learned Additional Advocate General also submitted that though this Court fixed the

market value of the lands with reference to those lying further on north of the acquired lands at Rs.1,200/- per cent, inasmuch as these lands are

situated further down from those lands, ie., at least at a distance of 1 "" to 2 Kilometers away, the proper market value that can be fixed is only

somewhere between Rs.600/- and Rs.900/- and not more. Yet another submission has also been made to the effect that if one takes into

consideration Ex.C5 which is dated 23.04.1987, the price would work out to Rs.4,000/- per cent, the same cannot be safely relied on as it

appears to be a stray incident and obviously the price has been boosted up in that transaction. As far as the sale transaction in Ex.C.10, which is

dated 29.01.1988, it is submitted that what was sold was 5.3 cents in S. No.78/1 at the rate of Rs.1,745/- per cent. Though it is a post-

notification sale, the Court can also consider it as one of the circumstances. According to the learned Additional Advocate General, that land is

more closer to Collectorate and Virudu Nagar Town. If one deducts the development charges at least about 30%, then the value would work out

to Rs.1200/- per cent and considering the location, the land in question would fetch only much lesser than that price ie., around Rs.800/- to

Rs.900/- per cent.

4. Per contra, learned counsel appearing for the land owners contended that this Court in A.S. No.840 of 1987 fixed the market value of the land

at Rs.1,200/- per cent and in those cases, the Notification was in the year 1985 ie., two years prior to the Notification with reference to acquired

lands, subject matter in these appeals. After 1985, Collectorate and other buildings started coming up fast and prices also went up high. According

to the learned counsel, that was the reason why an extent of 5.66 cents was sold at Rs.24,000/- in S. No.149, which lies very close to the

acquired lands in these appeals, on the north.

5. Yet another submission has also been made that under Ex.C6, an extent of 1.99 cents was sold on 03.09.1987 for Rs.8,640/-, which works

out at Rs.4,341/- per cent and which was after Gazette Publication but before the publication in the dailies and as the Section 4(1) is to the effect

that "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the

notification" this sale also has to be taken as a pre-notification sale. Hence, according to the learned counsel, on the basis of both C-5 and C-6,

the Reference Court ought to have fixed the value of the land at Rs.4,000/- per cent. Learned counsel would emphasise that with reference to

Exs.C-5 and C-6, it is not the case of the appellant/State that the price was boosted and that, in fact, there is not even a pleading that it was a

fancy price or boosted price at the instance of the land owners with an ulterior

motive to get more compensation. Learned counsel would make yet another submission that at least in respect of three appellants viz., A.S. Nos.30/97, 45/97 and 467/97, the respondents/landowners died during 1996 or so, but till date, no steps have been taken by the appellant/State, with the result, those appeals may have to be decided as having abated.

According to the learned counsel, when the State Government not having questioned the fixation of the market value in respect of the lands that are the subject matter of those appeals, the said circumstance would enure to the benefit of the respondents and appeals preferred by the State have to be dismissed. Finally, the learned counsel would contend, by way of an alternate plea, that inasmuch as this Court in A.S. No.840 of 1987 etc.

(batch of cases) fixed the market value in respect of the land situated north of the present acquired lands at Rs.1,200/- per cent and when the

Notification in respect of that was in the year 1985, the Court may at least add 10% on the said amount for each year and thus fix the market value

at Rs.1,440/- per cent in respect of the acquired lands above one acre and for other lands at a still higher rate as those lands are of small extent.

6. Before we take the rival contentions of the parties and arrive at findings, we deem it necessary to refer to certain aspects and settled principles

which would help a long way to appreciate and decide the matter.

7. Now the Court is called upon to decide the market value on the date of the publication of the Notification u/s 4(1) of the Land Acquisition Act.

Though Section 3 of the Land Acquisition Act, 1894 explain certain words, the word ""market value"" has not been defined so also the word

compensation"". In this context, it may be relevant to mention at this juncture, a ruling of the Supreme Court reported in *Sunder Vs. Union of India*,

, wherein the Supreme Court has held that compensation would include not only the total sum arrived at as per sub-Section(1) of Section 23 but

the remaining sub-sections thereof as well. The reason as to why the term ""market value"" has not been defined can be gathered from the further

report of the Select Committee dated 23rd March 1893. In para No.14 of the report, it is stated as under:-

We have again considered the question of definition of the term "market value" but we adhere to the opinion of our Preliminary Report that it is

preferable to leave the terms undefined. No material difficulty has arisen in the

interpretation of it; the decisions of several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a fresh harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained.

But, it has to be remembered that it is statutory that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process.

8. The price of the land, normally speaking, constantly varies according to the variations of the supply and demand and it is impossible to fix it at

any given time with mathematical accuracy. Valuation of immovable property is not an exact science. It is an enquiry relating to a subject

abounding in uncertainties, where there is more than ordinary guess work and where it would be very unfair to require an exact exposition of

reasons for the conclusions arrived at. It has been held repeatedly that in all valuations, judicial or otherwise, there must be room for inference and

inclinations of opinion which being more or less conjectural are difficult to reduce to exact reasoning or to explain to others and it is unfair to

require an exact exposition of reasons for the conclusions arrived at. Or in other words, the question of fair compensation is not an algebraic

problem which would be solved by an abstract formula.

9. So what is fair and reasonable and adequate market value is always a question of fact depending on the evidence adduced, circumstantial

evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the

lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open

market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act; but not an anxious buyer dealing

at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market

value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as

a prudent buyer he would offer the same market value which the court proposed

to fix for the acquired lands in the available market conditions.

10. In fact, the Supreme Court has repeatedly ruled that even in the absence of oral evidence adduced by the Land Acquisition Officer or the

beneficiaries the judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are

guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimant's right to compensation would place very

heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes.

Refer: Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others,

etc., Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another,

11. Way back in 1969, the Supreme Court in Chaturbhuj Pande and Others Vs. Collector, Raigarh, observed that as judge of fact, it is open to

the appellate judge to test the evidence placed before them on the basis of probabilities. The Court also emphasised that the Judges should call into

aid their experience of life in deciding the issue. Further, simply because the State failed to adduce any evidence in rebuttal, that does not mean

automatically and rather blindly that the Court is bound to accept their evidence. Keeping the above legal position in mind, let us proceed to

consider the relevant documents/materials/datas available, on the basis of which, the Court can fix the market value, necessarily always by doing

some guess-work.

12. Exs.C-1 to C-4 and the Judgment in A.S. No.840 of 1987 etc. can be considered under one heading. Exs.C1 and C2 are dated 25.07.1984

and under each of the document, an extent of 4.69 cents were sold in Survey No.53/3A for Rs.9,000/- and the rate per cent works out to

Rs.1,815/-. Exs.C-3 and C-4 are dated 08.08.1984 and they relate to S. No.60 and the area sold under these documents is 5 "" cents, each for

Rs.8,800/-, which would work out to Rs.1,454/- per cent. Just south of S. No.53/3A, certain lands were acquired in S. No.23 and the value of

the said land was fixed at Rs.1,200/- per cent by a learned single Judge of this Court in A.S. No.442 of 1992. The learned single Judge placed

reliance on those documents and for two reasons viz., that the area concerned in each of Exs.C-1 to C-4 is a small extent of land and that since it

is more nearer to Virudu Nagar Town, thought it fit to deduct 1/3rd and fixed the market value at Rs.1,200/- per cent. With reference to the lands

situate further south of S.No.23 this Court had to fix the market value in a batch of cases viz., A.s. 840 of 1987. This Court, taking into

consideration, the Judgment in A.S. No.442 of 1992 (rendered by a learned single Judge) and also taking note of the fact that no appeal has been

filed by both the parties, also fixed the same market value viz., at Rs.1200/- per cent. These lands viz., Survey No.23 and 53/3A referred earlier

are about 1 "" to 2 Kms. away from the acquired lands which are the subject matters of these appeals. Of course, the present lands were notified

u/s 4(1), two years after a similar notification in that case. Though it is claimed that as against the judgment in A.S. No.442/92 the State has filed

L.P.A., this Court has not been informed about the appeal Number. At this juncture, it has to be pointed out that A.S.442/92 came to be decided

nearly three years back by a learned single Judge of this Court. At this stage, this Court has to proceed on the basis that the Judgment in

A.S.442/92 has become final. In the above facts and circumstances, we are of the view that the Judgment of this court in A.S. No.840 of 1987

would be a relevant piece of evidence/material which this Court can take into consideration. It is settled law that the market value fixed by the

Court to a nearby land will be a relevant data and good piece of evidence for determining the market value of the acquired land in question.

Refer:- 1963 SC Notes 177(Khaja Fizuddin v. State of Andhra Pradesh) Pal Singh and others Vs. Union Territory of Chandigarh, Karan Singh

and others etc. Vs. Union of India,

13. Ex.C5:-Under this document dated 23.04.1987, an extent of 5.66 cents was sold in S. No.149/3 for Rs.24,690/-. The rate per cent would

work out to Rs.4,362/-. Learned counsel for the land owners submitted that this property viz., in S.No.149/3 situates just north of the lands

acquired in the appeal and there are two Survey Numbers intervening there viz., S. Nos.193 and 195. According to him, it is not the case of the

appellant/State that the sale under Ex.C5 was not a genuine sale in the sense that document was created with an ulterior motive to claim higher

compensation, anticipating the acquisition and the reference Court ought to have adopted that, as the value, without any hesitation whatsoever. In

fact, the learned counsel would contend that this Court may enhance the market value and permit the respondents/landowners to pay the necessary

court fee and fix the compensation at a higher rate invoking the provisions of Order-41 Rule-33 CPC.

14. The Additional Advocate General, on the other hand, would contend that even though now the settled position is that none connected with a

document need to be examined as was earlier laid down by the Supreme Court and notwithstanding the fact that the State has not attacked the

said transaction as a boosted one, still the Court can take into consideration, the other facts and circumstances and once that is done, it would be

evident that this is a very peculiar case, where matter has to be examined with reference to normal human conduct, which the Courts are expected

to do as ruled by the Supreme Court. It would not be safe to accept this document blindly and decide solely on this. In this context, the learned

Additional Advocate General would point out that under Ex.C10 that was on 29.01.1988, an extent of 5.3 cents was sold in S.No.78/1 at the rate

of Rs.1,745/- per cent only. Drawing the attention of this Court to the Plan, the learned Additional Advocate General would contend that in fact,

that land, though nearer to the Railway-line, which can be considered as a minus point, in view of the fact that there are two plus points viz., that it

is nearer to Virudu Nagar Town and further the Collectorate complex and other buildings are more closer, when compared to the lands in S.

No.149/3 which the subject matter under Ex.C5, has fetched only Rs.1,745/- per cent, that too when the transaction was admittedly eight months

later to Ex.C5.

15. This Court finds some substance in the submission made by the learned Additional Advocate General. As pointed out in Special Deputy

Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , Judges are to draw from their experience the normal human conduct of the

parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Even though the transaction under Ex.C.10 was a

post-notification one, Court can take note of it as one of the relevant factors in deciding the compensation. It is made clear that this Court is, not

for a moment, deciding the market value on the basis of that document, but what this Court is inclined to point out is that it is a relevant

circumstance that this Court can take note of.

16. Three aspects of the matter have to be pointed out with reference to land which is the subject matter of Ex.C.10. An extent of 5.3 cents in

S.No.78/1 was sold at Rs.1,745/- per cent. There is nothing to show that this land abuts the railway-line though it may be close to it. Secondly,

this transaction was in January, 1988. Admittedly, Collectorate complex and other buildings were completed in 1989, which should mean that in

1988, it should have been half a way through. If one sees the plan, it could be seen that this site is nearer to the Collectorate complex, may be, just

one-fourth of the distance, when compared to S. No.149 to the Collectorate complex. That apart, S. No.78 is closer to Virudu Nagar town, at

least 1 Km. nearer. With these plus factors, even assuming the Railway-line as a minus factor, it fetched only Rs.1,745/- per cent. Apart from that,

it is not in dispute that that hundreds of sale transactions were considered and in all those cases price varied from Rs.600/- to Rs.900/-, but

however were eschewed from consideration as they are situated 2 furlongs away from the lands in question in these appeals. In these

circumstances, this Court is of the view that it would be totally unsafe to blindly adopt the market value as given in Ex.C.5.

17. The next question that arises for consideration is as to whether the sale transactions

(a) under Ex.C6 dated 3.9.1987 relates to S. No.178/8 of an extent of 1.99 cents for a sum of Rs.8,640/- which would work out to Rs.4,341/-

per cent;

(b) under Exs.C7 and C9 dated 30.3.1988 and 23.11.1987 respectively, relating to the lands in S. No.200/2A of an extent of 2.42 cents and

1443 sq. ft. respectively for Rs.10,000/- each, which would work out to Rs.4,132/- per cent; and

(c) Under C-10 dated 29.01.1988, relates to the land in S. No.78/1, of an extent of 5.3 cents for Rs.9,250/- the rate per cent works out to

Rs.1,745/- are pre-notification sale or post-notification sale and what is the value that can be attached to it?

18. Learned counsel appearing for the respondents/landowners contended that G.O.1394 Home Department came to be passed on 12/06/1987

and Section 4(1) Notification came in the Gazette dated 15.07.1987. Section

4(1) Notification was published in the locality as well as Dailies on 08/05/1988 and as the Section viz., Section 4 clearly lays down that "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification", the date of publication is to be taken only as 08.05.1988 and all sale transactions prior to that date should be treated as pre-notification transactions.

19. Learned Additional Advocate General, appearing for the state, would contend as under:-

As per Section 6 of the Land Acquisition Act in cases where Section 4(1) Notification was published after commencement of the Land Acquisition

Amendment Act 1984, Declaration u/s 6 should be made before expiry of one year from the date of publication of the notification. As the

publication of Notification u/s 4(1) is under different modes, to make it clear as to which Notification that has to be taken into consideration for the

purpose of computing one year period, the Act was amended in the year 1984, which now makes it clear that the last of the dates of such

publication shall be the relevant criterion. According to the learned Additional Advocate General, this explanation, added by way of Amendment

Act of 1984, is only for the purpose of calculating the period between Section 4(1) Notification and Sec.6 Declaration, as otherwise, it will stand

in the way of fixing a just and reasonable compensation. Elaborating his submission, the learned Additional Advocate General contended that if the

argument of the learned counsel for the land owner is to be accepted, then, all transactions between Section 4(1) Notification in the Gazette and

publication in the news papers have to be taken into consideration and would come under the category of pre-notification transaction and it will do

havoc and the State would be put to heavy financial loss, as the dishonest land owners creating bogus transactions mentioning boosted sale price,

will be very bright and uncontrollable.

20. Land Acquisition Act, as it stood originally prior to 1923, the date of Section 6 declaration was the relevant date for the purpose of fixing the

market value. Then, the provision was to the following effect:-

take into consideration, the market value of the land at the date of publication relating thereto u/s 6

An Amendment was introduced viz., Act XXXVII of 1923, according to which, for determining the compensation, the market value of the land at the date of publication of the Notification u/s 4 sub-Section-(1) alone should be taken into consideration.

21. Prior to 1967, there was no provision fixing the time limit within which Section 6 declaration has to be made. The Legislators thought it necessary to introduce Act-13 of 1967, fixing the time limit of three years. It will be relevant to mention as to what prompted the Legislators to

introduce the said provision, which we refer to here-under. In State of Madhya Pradesh, certain lands were acquired for a public purpose and

Section 4(1) notification was made in the year 1949. Section 6 declaration was passed a few years thereafter, declaring the decision of the

Government to acquire a part of the land originally referred to in Section 4(1) Notification. For several years nothing happened and in 1960,

Section 6 Declaration was passed, acquiring the remaining land. The land owners approached the Court and ultimately, the matter came to

Supreme Court, where the Supreme Court has ruled as under (in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others,)

At the stage of Section 4, the land is not particularised but only the locality is mentioned; at the stage of Section 6 the land in the locality is

particularised and thereafter the notification u/s 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the

intention to acquire u/s 4 to the declaration u/s 6 leads to the conclusion that once a declaration u/s 6 particularising the area is issued, the remaining

now particularised area in the notification u/s 4(1) stands automatically released.

Subsequently, in the year 1984, again another Amendment Act was introduced, in which, the following were added in Section 4(1) of the Land

Acquisition Act:-

and in two daily newspapers circulating in that locality of which at least one shall be in the regional language;

the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

22. Obviously, the Legislators thought this Amendment to be made, making it clear that last of the publications shall be the relevant date only for

the purpose of fixing the starting point for the purpose of calculating three years within which Section 6 declaration has to be made.

23. Once a declaration is made by any one of the modes contemplated u/s 4(1) viz., publication in the gazette, publication in news paper or by

causing public notice of the substance of such notification at convenient places in the concerned locality, then not only the land owners but also

others are put to notice.

24. If it is to be taken that the date of publication as explained in Section 4(1) of the Act has to be applied even for the purpose of fixing the

market value as per Section 23(1) of the Act, then the possibility of the land owners creating documents between the 1st and last mode of

publication of the notification, mentioning inflated figure/price, cannot be ruled out and it would be rather impossible for the State in that event to

have a check on that.

25. Hence, the words occurring in Section 23(1) of the Act "the market value of the land at the date of the publication of the Notification u/s 4

sub-section(1)" has to be necessarily (and only) construed to mean as the market value on the date of the first publication of the Notification

amongst the three modes prescribed in Section 4(1).

Once we come to such a conclusion then Exs.C6, C.7, C.9 and C.10 cannot form a basis for fixing the market value of the acquired lands.

26. At this juncture, we have to refer to the submission made by the learned counsel for the respondents/land owners that in the event of this Court

holding that 15.7.1987 is the date of the publication of notification, then that should be the date for the purpose of Section 23(1-A) as well. The

learned counsel is right in his submission. The words "the date of the publication of the notification u/s 4, sub-section(1)" occurring in Section 23(1-

A) refer to only 15.07.1987 with reference to these appeals.

27. Next, the learned counsel for the respondent/landowners would contend that the respondent/land owners in respect of three cases viz., A.S.

Nos.30/97, 45/97 and 467/97, died way back in 1996 and the State has not taken any steps so far to bring on record their Legal Representatives

and with the result, those appeals will necessarily have to be dismissed as having abated. In such a situation, those land owners would stand to gain

for the failure on the part of the State and the effect of the same is as if the

State did not file any appeal as far as those cases are concerned. It is also contended that when the Rule-making authority thought it necessary to include Section 28-A by way of Amendment Act, considering for re-determination of amount of compensation on the basis of the award of the Court, these circumstances must be taken to the advantage of the land owners and to have uniformity, all the appeals filed by the State may be dismissed and enhanced compensation may be awarded to the land owners, even though they have not filed cross objections, in view of Order-41 Rule-33 CPC. and permit the land owners to pay the required court fee.

28. We do not find any substance in this submission. True, that Section 28-A has been included by way of Amendment Act 1984, conferring certain benefits on the land owners. It is not something automatic, but they have to satisfy certain conditions. That apart, even if the State has failed to take necessary steps to prosecute the matter diligently and which may result in dismissal of those appeals, that should not be taken to mean that the State has not filed any appeal. After all, the State functions only through its officials. If some of the officials have committed mistake that will not enure to the benefit of the land owners in any way and it is for the State Government to decide as to what actions have to be taken against those erring officials. Certainly, some lapses on the part of the officials of the State would not confer any benefit on the respondents/landowners.

29. Learned counsel for the respondent/land owners submitted that inasmuch as the acquired lands have been used mainly as a parade ground, it is not as if the Government which has acquired the land, in putting the same into use, has lost a considerable area by way of road etc. and hence the deductions from the market value towards development charges cannot be justified.

The Supreme Court, in the ruling reported in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , has clearly ruled that the purpose for which the land acquired is irrelevant while fixing compensation. Or in other words, what is relevant is what will be the best price the land owner would get on the date of Section 4(1) Notification ie., first of such Notification. In the said ruling, the Supreme Court has ruled as under:-

merely because the land is acquired for establishment of bus-stand, that use is irrelevant in determining the market value"".

30. Finally, as an alternative argument, the learned counsel contended that this Court fixed the compensation at Rs.1200/- per cent with reference

to lands lying north of these lands under a Notification of the year 1985 and subject matter of appeals in A.S.840/87 etc. In view of the fact that

two years have elapsed, the increase in value of the land at least by 10% every year, can be safely adopted, particularly in view of the fact that

people seeing coming up of the Collectorate complex etc., would have been tempted to buy for the increased price. In this regard, he referred to a

ruling of the Supreme Court reported in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, .

31. We do see some substance in this submission. But, at the same time, it has to be noted that these lands are situated at least 1 "" to 2 kms. away

from the lands that was the subject matter of the appeal in A.S. No.840 of 1987 etc. and those lands are nearer to Virudu Nagar Town, when

compared to these lands and by pointing out this, we make it clear that we are not rejecting the submission, but certainly take it as a circumstance

in favour of the respondents/land owners.

32. Let us proceed to sum up the relevant circumstances ie., draw a balance sheet which will point out both plus and minus factors:

Plus Factors:-

i) Even in respect of the acquisitions pursuant to Section 4(1) notification issued in the year 1985, this Court fixed compensation at Rs.1,200/- per

cent (in A.S.840/87 batch of cases. In that case, the Court considered Exs.C1 to C-4.)

ii) Under Ex.C.5 dated 23.4.1987, an extent of 5.66 cents in S. No.148/3, which is closely on the northern side was sold for Rs.24,690/-.

iii) In the absence of documents, value can be taken to have increased by 10% every year.

Minus Factors:-

i) The lands that are the subject matter of A.S.840/87 etc. Batch, is situated at least 2 Kms. nearer to Virudu Nagar Town ie., the present

acquired lands are 2 Kms. further south of the lands concerned in A.S.840/87.

ii) In 767 sale transactions prior to 4(1) notification lands situated 2 furlongs

away were sold and price varied from Rs.600/- to Rs.900/- per cent.

iii) Land was sold at the rate of Rs.100/- per cent in S. No.145 situated immediately north of the acquired lands (prior to notification u/s 4(1)). Of

course, this land is in a low lying area and/or abuts a pond.

iv) Though C.10 is a post-notification sale ie., 8 months after the 4(1) Gazette Notification, a cent of land was sold at Rs.1745/-. This transaction

cannot be taken as a basis being a post-notification one, but certainly it can be one of the relevant circumstances. Though it is nearer to broad

gauge line, there is nothing to show, it abutted the line. That land is nearer by 1 Km. to the Virudu Nagar Town and more closer to the

Collectorate Complex.

Considering the plus and minus factors, this Court is of the considered view that the market value can be fixed at Rs.1,500/- per cent.

33. Learned counsel appearing for the respondents/landowners made yet another submission to the effect that out of 192 appeals at least in 175

cases, the area acquired is less than one acre. Among them, 137 cases are relating to less than 25 cents, and again among them, 93 cases are 15

cents and less. Learned counsel submitted that at least in those cases, the market value has to be fixed more, when compared to other cases.

Normally speaking, the submission made by the learned counsel can be accepted. But here, the difficulty for this Court to accept the request is that

the land owner failed to let in evidence as to where exactly the lands, that are the subject matter of each appeal, are situated in that Survey

Number. When it is not known where exactly the land is situated in the entire survey number, this Court cannot blindly fix the value. So, the claim

that in all cases where the area involved is very small, more compensation must be awarded, cannot be accepted. It is settled legal position that

burden is on the land owner to prove that the value of the land is more than what is awarded by the Land Acquisition Officer or Reference Court.

While proving the same, necessarily, he has to pin-point the location, which alone would enable the Court to award higher compensation. The legal

position that the burden is on the land owner to prove when he claims more compensation is laid down in Parameshwari Devi (dead) by L.Rs. etc.

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Hence, we reject this contention as well.

In the result, the appeals are allowed to the extent indicated above.