

(2009) 03 MAD CK 0109

In the Madras High Court

Case No : A.S. No's. 707, 708 and 727 to 734 of 2003, 544 of 2005 and 706 of 2006 and Cross Appeal No's. 444 to 453 of 2008

The Special Tahsildar, Neighbourhood Scheme

APPELLANT

Vs

Jaganathan Gounder and The Executive Engineer and
Administrative Officer, Erode Housing Scheme

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2009) 5 MLJ 2

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : V. Ravi, Spl. G.P. AS and R. Gandhi for V.P. Sengottuvel, in A.S. Nos. 444 to 453 of 2008, for the Appellant; P.S. Raman, A.A.G. for K. Chelladurai, assisted by S. Kasikumar, for TNHB, R. Gandhi for V.P. Sengottuvel, for R1 in A.S. No. 707 of 2003, RR4 to 6 in A.S. No. 708 of 2003, for RR1 to 3 in A.S. No. 727 of 2003, for RR4 to 9 in A.S. No. 728 of 2003, for RR1 and 2 in A.S. No. 729 of 2003, for RR1 and 2 in A.S. No. 730 of 2003, RR1 to 4 in A.S. No. 731 of 2003, for R1 in A.S. No. 732 of 2003, for RR1 to 3 in A.S. No. 733 of 2003 and for RR1 and 2 in A.S. No. 734 of 2003, M.M. Sundaresh, for R.1 in A.S. No. 544 of 2003, S. Rajagopal, for R2 in A.S. No. 708 of 2003 and for R2 in A.S. No. 728 of 2003 and S. Dhanasekaran, for R.1 in A.S. No. 706 of 2006, for the Respondent

Judgement

K.K. Sasidharan, J.—These Land Acquisition appeals involving common questions of fact and law were taken up for consideration together and are being disposed of by this common judgment.

2. These appeals relate to the Land Acquisition Proceedings that commenced as per Section 4(1) notification dated 17.1.1997 and 19.2.1997 and published in the Gazette on 12.2.1997 and 19.3.1997 respectively.

3. The extent of property acquired as per the relevant notifications are as follows:

Notification dt.17.1.1997 -- 55.89 Acres

b) Notification dt.19.2.1997 -- 51.75 Acres

4. The details of the land acquisition Original Petitions and the related appeals and Cross Objections and the compensation awarded by the Land Acquisition Officer as well as by the Reference Court and the findings recorded after remand are detailed in the tabular columns below.

NOTIFICATION DATED 17.01.1997 -----
----- ERODE HOUSING BOARD BATCH (LAOP) -

--- DISTRICT/TALUK ? ERODE -----
----- VILLAGE-ERODE "C" VILLAGE
(KASIPALAYAM) -----
----- 4(1) NOTIFICATION- APPROVED IN G.O.Ms.No. 25
Hg.&U.D.D. Dated 17.1.1997 -----
----- 4(1) NOTIFICATION PUBLISHED IN THE
GAZETTE ON 12.2.1997 -----
----- AWARD No. 1/2000 dt.3.3.2000 -----
----- Sl. A.S.No.
Cross LAOP. Date of Survey Extent Amount Amount Amount No. Objection/ No
LAOP order No. in Hec. awarded fixed fixed Appeal No. & Acre by LAO by Refer-
after (per ence remand Acre) Court (in Sq. (Per ft.) Sq.ft.) -----
----- 1 2 3 4 5 6 7 8
9 10 -----
----- 1 707/03 452/08 26/02 27.11.02 727/3 1.01.0 50,000/- Rs.28/-
Rs.19.28 Hec/2. per per 50 Ac sq.ft. sq.ft. -----
----- 2 706/06 Nil 3/04 24.03.05
722/1, 4.18.0 50,000/- Rs. 30/- Rs.19.28 2, 3 Hec/10.33 per per Ac. sq.ft.
sq.ft. -----
----- 3 708/03 453/08 27/02 27.11.02 726/2 0.26.0 50,000/- Rs.28/-
Rs.19.28 Hec/0.64 per per Ac sq.ft. sq.ft. -----
----- NOTIFICATION DATED
19.02.1997

--- DISTRICT/TALUK ? ERODE -----
----- VILLAGE-ERODE "C" VILLAGE
(KASIPALAYAM) -----
----- 4(1) NOTIFICATION- APPROVED IN G.O.Ms.No. 73
Hg.&U.D.D. Dated 19.2.1997 -----
----- 4(1) NOTIFICATION PUBLISHED IN THE
GAZETTE ON 19.3.1997 -----
----- AWARD No. 2 /2000 dt.31.6.2000 -----
----- Sl. A.S.No.
Cross LAOP. Date of Survey Extent Amount Amount Amount No. Objection/ No
LAOP order No. in Hec. awarded fixed fixed Appeal No. & Acre by LAO by Refer-

after (per acre remand Acre) Court (in Sq. (Per ft.) Sq.ft.) -----
 ----- 1 2 3 4 5 6 7 8
 9 10 -----
 ----- 1 727/03 444/08 32/02 29.11.02 472/2 2.56.0 50,000/- Rs.28/-
 Rs.19.28 Hec./6.33 per per Ac sq.ft. sq.ft.

 ---- 2 728/03 451/08 39/02 29.11.02 487/2 0.02.0 50,000/- Rs.28/- Rs.19.28
 Hec./0.05 per per Ac sq.ft. sq.ft. -----
 ----- 3 729/03 450/08 38/02 29.11.02 474/1
 1.08.0 50,000/- Rs.28/- Rs.19.28 Hec./2.66 per per Ac sq.ft. sq.ft. -----
 ----- 4
 730/03 449/08 37/02 29.11.02 472/1B 1.15.0 50,000/- Rs.28/- Rs.19.28
 Hec./2.84 per per Ac sq.ft. sq.ft. -----
 ----- 5 731/03 448/08 36/02 29.11.02 488/4
 0.07.0 50,000/- Rs.28/- Rs.19.28 Hec./0.17 per per Ac sq.ft. sq.ft. -----
 ----- 6
 732/03 447/08 35/02 29.11.02 487/1 0.30.0 50,000/- Rs.28/- Rs.19.28
 Hec./0.74 per per Ac sq.ft. sq.ft. -----
 ----- 7 733/03 446/08 34/02 29.11.02 473/2
 0.08.0 50,000/- Rs.28/- Rs.19.28 Hec./0.20 per per Ac sq.ft. sq.ft. -----
 ----- 8
 734/03 445/08 33/02 29.11.02 473/ 1B 1.62.0 50,000/- Rs.28/- Rs.19.28 &
 474/2 Hec./4.00 per per Ac sq.ft. sq.ft. -----
 ----- 9 554/05 nil 11/03 31.03.04 487/1
 0.62.0 50,000/- Rs.28/- Rs.19.28 Hec./1.53 per per Ac sq.ft. sq.ft. -----

5. The factual matrix as projected in L.A.O.P. No. 32/2002 corresponding to A.S.No.727/2003 is extracted below as background facts.

A.S. No. 727/99 (LAOP 32/02)

At the instance of the Tamil Nadu Housing Board an extent of 6.33 acres of land was acquired from the claimants as per Section 4(1) notification dated 19.2.1997. The acquisition was for the purpose of putting up residential houses for the Tamil Nadu Housing Board. The Land Acquisition Officer, upon consideration of documents, determined the market value of the property at Rs. 50,000/- per acre even though the land owners have claimed a sum of Rs. 50/- per sq.ft. Aggrieved by the award of the Land Acquisition Officer, proceedings u/s 18 of the Land Acquisition Act was initiated. Before the Reference Court the claimants contended that the acquired property is situated very near to Erode-Perundurai as well as Sennimalai Road junction. It was further contended that the residential colonies like Anna Nagar, Sri Nagar, Bharathi Nagar, Rail Nagar, Jeeva Nagar, Subramania Nagar, Kalaingar Karunanidhi Nagar, etc., are all in the vicinity. The property was having potential value for housing as well as for business purposes. There are also Arts Colleges, Women's College, Kongu Higher

Secondary School, St.Joseph Clinic,hospitals and other infrastructural facilities in the area. A sum of Rs. 50/- per sq.ft was claimed as compensation.

6. In the counter filed by the Housing Board as well as by the Land Acquisition Officer before the Reference Court, it was contended that market value was arrived at on the basis of document No. 2290/96 dated 5.7.1996, which showed the sale value at Rs. 50,000/- per acre. According to the Land Acquisition Officer 64 documents registered during the relevant period was verified and document No. 50 alone was retained. It was only on the basis of the said document the market value was determined which according to them reflects the correct value as on the date on which Section 4(1) notification was issued.

7. Before the Reference Court, the claimants have marked documents relating to survey No. 871/2 dated 23.1.1985 wherein an extent of 1344 sq.ft. of land was sold at the rate of Rs. 17.11 Per sq.ft., sale deed dated 14.12.1988 relating to the property having an extent of 1200 sq.ft. in survey Nos. 732 and 733 which shows the value at Rs. 15/- per sq.ft., and another document dated 30/12/1988 executed by one M.Damodaran in favour of Mr. N. Ardhanareeswaran wherein an extent of 1200 sq.ft. was sold at the rate of Rs. 10.67 per sq.ft. They have also marked the following documents in support of their plea that the market rate was very high in the area during the time of acquisition.

Document	dated	Extent	square	feet	Value	per	Survey No.
							733/2
06.03.1989			1700				Rs.12/-
							735/12
15.02.1990			1185				Rs.22/-
							733/1
07.09.1990			1800				Rs.25/-
							489/2
04.09.1990			1500				Rs.20/-
							733/1 & 3
08.02.1991			1200				Rs.15/-
							733/1
15.07.1991			1800				Rs.35/-
							733/1 & 3
23.1.1992			1200				Rs.35/-
							806/2
02.04.1992			1085				Rs.33/-
							-
22.0.4.1992			-				Rs.35/-
							733/1
30.03.1993			1800				Rs.14.50
							732/1 & 2
17.11.1993			1103				Rs.41/-

-----	-----	735/1
25.04.1994	1200	Rs.40/-
-----	-----	733/1 to 3
09.11.1994	1043	Rs.47.72
-----	-----	-
27.10.1994	2400	Rs.65/-
-----	-----	733/12
30.01.1997	900	Rs.63.10
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8. The witnesses examined on the side of the claimants have also highlighted the importance of the locality, the potential of the land, income which have they have been receiving from the land as well as the locational advantages of the property.

9. The Reference Court on a consideration of Ex.C.18 marked on the side of the claimants was of the opinion that the value of property in the area has gone up to Rs. 65/- per sq.ft. The Reference Court also rendered a factual finding that from 1985 onwards vacant sites were sold at a higher rate in the area and during the time of the relevant acquisition land value was in the range of Rs. 65/- per sq.ft. The Reference Court also found from the evidence tendered by the claimants that the site was fit for using as house sites and observed that the Government have not proved that the value was boosted in the sale documents produced by the claimants. The contention of the Land Acquisition Officer that the documents produced by the claimants were all sale relating to smaller extent and as such no reliance could be placed on those documents, were negated by the Reference Court on the ground that the Government acquired several small extent of property from the claimants. The Reference Court, took note of the 1991 acquisition, wherein the Land Acquisition Officer has determined the market value at Rs. 37,500/- per acre and opined that the valuation after six years of the said acquisition would be much more in the area. Therefore the Reference Court was of the opinion that 10% increase could be given every year by fixing the valuation for the year 1991 as Bench Mark.

10. The Reference Court observed that even in the earlier acquisition initiated in 1991 market value was found to be Rs. 30/- per sq.ft. and as such the market rate in 1997 would be a sum of Rs. 53/- per sq.ft, if 10% increase is given every year.

11. The Reference Court also placed reliance on the document dated 9.11.1994 produced by the claimants, evidencing market value at Rs. 47.72 per sq.ft. The Reference Court also observed that the property was in a developed area, where residential houses could be constructed without spending any amount for development. Accordingly, the Reference Court arrived at a finding that on account of the earlier acquisition the land value has increased considerably in the area and accordingly the Court fixed the market rate at Rs. 42/- per sq.ft. and after giving deduction the market rate was arrived at Rs. 28/- per sq.ft.

12. The award of the Reference Court was challenged by the Land Acquisition Officer as well as by the claimants and the matter was remanded by this Court to the Reference Court to render its finding after taking further evidence.

13. Subsequent to the remand, the claimants have produced further evidence. In the evidence of the claimants tendered before the Reference Court they have reiterated the importance of the locality, locational advantages of the property as well as infrastructural facilities available in the area and accordingly they have claimed a sum of Rs. 60/- per sq.ft. as market value. The Land Acquisition Officer has contended that the documents produced by the claimants relate to property in a highly developed area and the extent was also very small. The Land Acquisition Officer further contended that in the connected land acquisition of the year 1991, only a sum of Rs. 2,18,500/- per acre was awarded by the Reference Court and considering the nature of the land and the necessity to spend considerable amount for development of the property, the value as shown in the documents produced by the claimants cannot be relied on for fixing the correct market rate. The Tamil Nadu Housing Board also produced documents in support of the contention that what was awarded by the Land Acquisition Officer was actually the market rate.

Findings After Remand:

14. The Reference Court found that the property is situated in a covetable locality and it is suitable for construction of residential houses. The Court rejected the contention of the Land Acquisition Officer that considerable amount was necessary to be spent for development of the property. Similarly the contention that the value should be fixed only on acre basis was also rejected by the Reference Court. The Reference Court was of the view that the documents collected by the Land Acquisition Officer and retained as data land, were all situated far away from the acquired property and some of the documents which were also part of the documents collected by the Land Acquisition Officer showed that property was sold at the rate of Rs. 3,15,200/- per acre. The Reference Court found that the documents exhibited on the side of the claimants showed a sum of Rs. 12 lakhs per acre and considering the small size of the site involved in the basic documents produced by the claimants and the amount necessary for development, the Reference Court was of the opinion that 30% of the value has to be earmarked towards development charges and accordingly market rate was fixed at Rs. 27.55 per sq.ft. and after deducting the development charges, a sum of Rs. 19.20 per sq.ft. was arrived at as the market rate.

Submissions:

15. The learned Senior Counsel appearing on behalf of the claimants contended that there was a tremendous increase in the value of the property in Erode and the value was increased substantially also on account of the acquisition of the property by the Housing Board in the year 1991. According to the learned Senior Counsel, the acquired property is located in a very covetable area surrounded by

housing colonies and the site is fit for construction of residential houses without incurring development charges. The learned Senior Counsel also submitted that the documents exhibited on the side of the claimants clearly shows the value of the property in the area as on 1997 and as such the Reference Court was not justified in fixing the lesser value and accordingly prayed for enhancing the value at Rs. 50/- per sq.ft.

16. The learned Special Government Pleader as well as learned Additional Advocate General appearing on behalf of the Tamil Nadu Housing Board supported the award of the Land Acquisition Officer. According to the learned Government Pleader, the documents relied on by the claimants have nothing to do with the market rate prevailing in the area and those documents were all sales made up for the purpose of getting enhanced compensation. According to the learned Additional Advocate General even the value fixed for the acquisition initiated in the year 1991 by the Reference Court was much than the market rate and when the said award itself is a matter under challenge, the claimants are not entitled to rely on the value as fixed by the Reference Court for the 1991 acquisition, for the purpose of determining the value, relating to the property covered by the later notification.

Concept of Markt Value:

17. There are well accepted norms for the purpose of fixing the market rate. While fixing the market value, the Land Acquisition Officer is required to consider the location of the property, its advantages as well as the potential. Neither the documents showing an inflated rate nor the distress sale is relevant for the purpose of fixing the land value. The Reference Court has to sit in the arm-chair of a willing seller and a willing purchaser and the market rate has to be determined by taking into account all the positive and negative factors. The purpose for which the property was acquired, the nature of the property, presence of roads, electricity, educational institutions, hospital facilities and other infrastructural facilities available in the area are all relevant for the purpose of arriving at the market value.

Legal Principles:

18. The Honourable Supreme Court in State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., laid down the test to be adopted for the purpose of arriving at the market value in the following words:

...It is laid down by this Court which is well settled principle that it is the duty of the Court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adduction of evidence by the parties, the acid test which the Court has to adopt is that the Court has to sit in the arm-chair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the Court is intending to fix the market value in respect of the acquired land. Since it is the compulsory acquisition, it is but the solemn duty of the Court

to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also it avoid needless burden on public exchequer. No feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no prudent man would have credulity to purchase that land on sq.ft. basis.

19. The positive as well as negative factors to be taken into consideration for arriving at the correct market value was considered by the Honourable Supreme Court in *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat*, wherein it was held thus:

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification u/s 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors Negative factors

(i) smallness of size (i) largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth (iv) nearness to developed area (iv) lower level requiring the depressed portion to be filled up (v) regular shape (v) remoteness from developed locality (vi) level vis-?-vis land under (vi) some special disadvantageous acquisition factors which would deter a purchaser (vii) special value for an owner of an adjoining property to whom it may have some very special advantage

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50%

of the total price.

20. In *Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another*, , the Honourable Supreme Court reiterated the legal position that in considering the market value, the guiding star would be the conduct of hypothetical willing vendor and willing purchaser and not an anxious dealing at arms length.

21. In a recent decision of a three Judge Bench of the Honourable Supreme Court in *Revenue Divisional Officer-Cum-L.A.O. Vs. Shaik Azam Saheb etc. etc.*, , the positive as well as negative factors indicated in *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat*, as factors germane for consideration for the purpose of determining the market value was re-iterated thus:

11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors, the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefore are also required to be considered, namely, as to whether they are irrigated or non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land.

12. The mode and manner in which determination of such valuation are to be carried out would also depend upon the facts and circumstances of each case, namely, whether any deed of sale executed in respect of similarly situated land near about the date of issuance of notification u/s 4(1) of the Act is available, or in absence of any such exemplars whether the claim can be determined on yield basis or in case of an orchard on the basis of the number of fruit bearing trees and the yield therefrom.

13. One other important factor which also should be borne in mind is that it may not be safe to rely only on an award involving a neighbouring area irrespective of the nature and quality of the land. For determination of market value again, the positive and negative factors germane therefore should be taken into consideration, as laid down by this Court in *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat*, .

22. The principles governing determination of market value with reference to the earlier decisions of the Supreme Court was considered recently by a two Judge Bench of the Honourable Supreme Court in *Faridabad Gas Power Project, NTPC Ltd., etc. Vs. Om Prakash and Others, etc.*, .

Market value ? year to year Increase Basis:

23. The learned Senior Counsel for the claimants by relying on the judgment of

this Court in A.S. No. 226 of 1991 contended that even in the year 1985 the market value was Rs. 17.11 per sq.ft. in the very same locality and as such this Court has to fix the market rate by adding certain percentage of increase every year by taking the valuation given in A.S.No.228 of 1991 as the basic value. The question regarding calculation of market rate by adding certain percentage with reference to the market value fixed earlier was considered by the Honourable Supreme Court time and again and the legal position was further reiterated in some of the recent decisions.

24. In The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, , Hon"ble Supreme Court gave an illustration of the increase in the market value and the percentage of increase to be made and the method of calculation of the increase thus:

15. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year"s market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10/- per sq.m):

-----	Year	By flat rate	By
cumulative	increase	method	increase
-----	-----	-----	-----
	1987	10.00	10.00
		(Base	Year)
	1988	10 + 1=11.00	
10.00	+	1.00	= 11.00
	1989	11 + 1=12.00	
11.00	+	1.10	= 12.10
	1990	12 + 1=13.00	
12.10	+	1.21	= 13.31
	1991	13 + 1=14.00	
13.31	+	1.33	= 14.64
	1992	14 + 1=15.00	
14.64 + 1.46 = 16.10			

16. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs. 10 per sq.m, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs. 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs. 12 per sq.m, the flat rate increase will be Rs. 1.20 per annum, for the years 1990, 1991 and 1992. If the

price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs. 13 per sq.m, then the flat rate increase will be Rs. 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs. 10/- or Rs. 12/10 or Rs. 13/31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

25. We have perused the topo-sketch of the property produced by the Land Acquisition Officer. It is found that the data land taken by the Land Acquisition Officer as the basis for fixing the market rate is situated far away from the property acquired. Therefore the valuation as shown in the said document cannot be relied on for the purpose of arriving at the market rate. It is found from the evidence as well as documents that there was a steady increase of property value in the area, consequent to the acquisition made by the Tamil Nadu Housing Board as per Section 4(1) notification issued in the year 1991. On account of the development of property in the neighbour-hood consequent to the acquisition for construction of residential houses by the Housing Board, there was an all round development in the area and it is also evident from the large number of documents exhibited on the side of the claimants. In fact even in the 1991 acquisition, the recommendation of the Land Acquisition Officer was for fixation of the market value at Rs. 87,120/- per acre.

26. On a perusal of the topo-sketch, we found that the property covered by the document in Ex.C.8 dated 8.2.1991 is situated very near to the acquired property. The said property is in a housing colony by name K.K. Nagar and the area is considered to be a developed area. Therefore we are of the opinion that the valuation as found mentioned in Ex.C.8 could be taken as Bench Mark for the purpose of fixing the market rate. In fact we have taken a document of the year 1989 showing the market rate at Rs. 20/- per sq.ft. for arriving at the market rate in respect of the property acquired as per the notification issued in the year 1991.

27. Even though as per Ex.C.8 dated 8.2.1991 the property was sold at the rate of Rs. 30/- per sq.ft., the said transaction relates to a smaller extent. However as per the subject notification larger extent of property was acquired and as such the value as shown in Ex.C.8 cannot be taken in its entirety for arriving at the market rate. The Housing Board has to develop the property for housing purposes. It is in evidence that the acquired property was only an agricultural property and it has no potential as a housing site. No evidence was placed on the side of the claimants to show that they have been getting substantial income from the property or it has got high potential as a house-site. Therefore we are of the view that necessary deduction has to be made towards development charges.

Deduction Towards Development Charges:

28. While fixing the market value, it is permissible for the Land Acquisition Officer to give necessary deduction towards development charges. In such cases, the Land Acquisition Officer must record reasons about the disadvantage of the land acquired and the purpose for which the land was sought to be acquired as well as the percentage of land necessary for providing developments like provision of roads, electricity, water and sewerage and other facilities. The extent of deduction cannot be put in a straitjacket formula and it varies from case to case. The Hon'ble Supreme court had time and again indicated the factors to be considered by the Land Acquisition Officer for making deduction towards development charges as well as percentage of deduction. Such deduction is also not automatic unless there is a factual finding that deduction was absolutely necessary in the facts of the case by taking into consideration the ground situation. In case the property has already been developed, there would be no requirement of deduction towards development.

29. In *Naganath (dead) by Lrs. v. Asst. Commissioner & Land Acquisition Officer and Anr.* 2008(13) Scale 202, the Honourable Supreme Court observed that the trend of the various Judgments of the Supreme Court indicates deduction on account of development charges in the range of 1/6th to 33%.

30. The Hon'ble Supreme Court in *Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another*, referred to an earlier decision relating to deduction towards development charges, in *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, wherein it was held thus:

In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. However, in applying this principle of deduction it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. If smaller area within the large tract is already developed and situated in an advantageous position suitable for building purposes and have all amenities such as roads, drainage, electricity, communications, etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In the present cases the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the Town Planning Trust Road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not

have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Therefore, the High Court erred in making a deduction of one-third of the value of the comparable sale and thus reducing the fair market value of land from Rs. 10 per sq yd to Rs. 6.50 per sq. yd.

31. In *Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another*, the Hon'ble Supreme Court also placed reliance on the Judgment in *Kasturi and Others Vs. State of Haryana*, and indicated the percentage of deduction towards development charges thus:

10. Shri Varma has also referred to *Kasturi v. State of Haryana* wherein it was observed that in cases of those lands where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the development charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards development charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. Therefore, in this case taking into consideration the potentiality of the acquired land for construction of residential and commercial buildings, the deduction made was only 20%.

32. In *Naganath (dead) by Lrs. v. Asst. Commissioner & Land Acquisition Officer and Anr.* 2008(13) Scale 202, cited supra, the Hon'ble Supreme Court indicated the percentage of deduction towards development charges thus:

4. We find merit in the Civil Appeal on the above three grounds. Firstly, we are of the view that deduction of 53% towards development charges is on the higher side. No reason has been given for applying the rate of 53% towards development charges. Generally, the trend of the various judgments of this Court indicates deduction in the range of 1/6th to 33%. In this case, the High Court has deducted the charges at 53% which, in our view, appears to be excessive.

33. The Honourable Supreme Court in *Revenue Divisional Officer-Cum-L.A.O. Vs. Shaik Azam Saheb etc. etc.*, indicated the extent of deduction taking into consideration the nature of land acquisition and the land involved in the subject matter of sale deed relied on for computing the market rate and deducted one third towards development cost and observed thus:

18. ...It must be bear in mind that the lands in question were agricultural lands whereas the lands which were the subject matter of the said deed of sale was a homestead land, thus, some amount, therefore, will have to be deducted towards the development cost.

19. Indisputably while comparing the market value of developed lands with that of undeveloped lands, the court has to make suitable deductions towards the cost of development.

We, however, may notice that this Court, at different times, has spoken in different voices.

In P.S. Krishna and Co. Pvt. Ltd. Vs. The Land Acquisition Officer, (Deputy Collector) Hyderabad, this Court refused to interfere with the judgment of the High Court which had given a deduction of 20% towards development charges. Recently, a Division Bench of this Court in Mummidi Apparao (D) through LRs. Vs. Nagarjuna Fertilizers and Chemicals Ltd. and Another, did not interfere with the decision of the High Court which had given a direction for deduction of 50% as development charges. However, we are not oblivious of the fact that this Court had observed in Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, :

28. In Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, and The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

29. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. See Kasturi and Others Vs. State of Haryana, , Tejumaal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P., , V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer, , H.P. Housing Board Vs. Bharat S. Negi and Others, and Kiran Tandon Vs. Allahabad Development Authority and Another, .

34. The acquired property is a manwari land and even according to the claimants it was not a house-site developed by them. The acquisition was only for construction of residential houses and therefore necessarily the Housing Board has to spend considerable amount for development and to make it fit for construction of residential units. On the other hand, the property in Ex.C.8 is a developed site and the same was sold only as a house-site. Therefore considering the advantages, development and potential of the property in Ex.C.8 vis-a-vis the disadvantages, undeveloped state and lack of potential of the acquired property, we are of the view that deduction at the rate of 40% has to be given towards development charges.

Documents Relating to Smaller Extent ? Deduction:

35. While fixing the market rate, very often, documents of smaller extent would be taken as the basis. The normal rule in fixing compensation for large extent of land with reference to the value shown in the sale document of lesser extent is that there must be suitable deduction. It is common knowledge that larger extent of property invariably fetch less when compared to smaller extent. No prudent buyer would buy large extent of land by quoting the price prevailing in the market for a small piece of land.

36. The Hon''ble Supreme Court in Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, , by placing reliance on some of the earlier Judgments regarding deduction in the case of smaller extent when compared to the larger extent acquired, explained the legal position thus:

11. In *Chimanlal Hargovinddas v. Special Land Acquisition Officer* it was held as follows:

4. (15) ...Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, 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 entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for 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.

12. *Shri Dwivedi* has also referred to *Basant Kumar v. Union of India*, *K. Vasundara Devi v. Revenue Divisional Officer (LAO)* and *H.P. Housing Board v. Bharat S. Negi*. In the first cited case, land was acquired for planned development of Delhi and in the other two cases for housing boards and a deduction of 33% was applied.

13. The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracts of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic 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.

37. The document in Ex.C.8 is in respect of a property having only 1200 sq.ft. However as per the present notification, large extent of property was acquired. Therefore we are of the considered opinion that necessary deduction on account of small size of the property retained for fixing the market value has to be given. On an overall consideration of the matter, we fix the deduction on account of small size of the plot taken as the basic document at 20%.

38. Taking an overall view of the matter we are of the opinion that 40% deduction should be made towards development costs and 20% on account of small size of the plot taken as the basis to arrive at the market value. Accordingly, while retaining Ex.C.8 dated 8.2.1991 (Rate Rs. 30/- per sq.ft.) as the basic document for arriving at the market rate, we deduct 40% by way of development charges and 20% by way of small size of the plot and arrive at the market rate at Rs. 5,22,720/- per acre.

To Sum Up:

39. In the result, all the appeals and cross appeals are disposed of by re-fixing the land value at Rs. 5,22,720/- per acre (Rs.12/- per sq.ft.). The claimants are also entitled to all the statutory benefits. The learned Special Government Pleader and the learned Counsel appearing on behalf of the Housing Board are entitled for separate fees for each of the first appeals as well as cross appeals. Consequently the connected Mps are closed. No costs.