
(2010) 08 MAD CK 0012

In the Madras High Court

Case No : Appeal Suit No's. 608 to 630, 632 to 636, 638 to 662 and 664 to 686 of 2010

The Special Tahsildar(LA) SIPCOT Unit

APPELLANT

Vs

P. Ranganathan and The Chairman/Managing Director SIPCOT

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Land Acquisition Act, 1984 — Section 17(4), 23, 23(1), 4(1), 5(A)

Citation : (2010) 08 MAD CK 0012

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi Special Govt. Pleader in All A.S, for the Appellant; M. Devaraj for R2 in A.S. 608 to 626, 628 to 647 and 654 to 686/2010 and for R5 in A.S. 627, 648 to 653/2010, A.S. Vijayanand, for R1 in A.S. 608 to 625, 638 to 647, 654 to 658, 660 to 662, 668 to 681 and 685 to 686/2010, G. Karthikeyan, for R1 in A.S. 626, 628 to 636, 659, 664 to 667 and 682 to 684/2010 and for R1 to R4 in A.S. 627 and 648 to 653/2010 and M. Devaraj, SIPCOT for R5 in A.S. 627 and 648 to 653/2010, for the Respondent

Judgement

K. Chandru, J.—Heard Mr. V. Ravi, the learned Special Government Pleader (AS), Mr. M. Devaraj, learned Standing counsel for

SIPCOT, the requisitioning authority, Mr. G. Karthikeyan and Mr. A.S. Vijayanand, learned Counsel for the claimants/land owners.

2. These 76 appeals arose out of a common judgment passed by the Additional District Judge-cum-Fast Track Court V, Thiruvallur in various

LAOP. Numbers dated 19.11.2007. The following table would show the Appeal Suit numbers, corresponding LAOP numbers and the claimant

connected with the said LAOP.

SI.No A.S. No. L.A.O.P. No. Name of the claimant

1 608/2010 19/2003 P. Ranganathan

2 609/2010 20/2003 Kandeepan
3 610/2010 21/2003 Mani
4 611/2010 22/2003 Krishnan
5 612/2010 23/2003 Padmavathy
6 613/2010 24/2003 Arumugham
7 614/2010 25/2003 Emarose
8 615/2010 26/2003 Andalammal
9 616/2010 27/2003 Baskaran
10 617/2010 213/2003 Devendran
11 618/2010 276/2003 Ranganathan
12 619/2010 277/2003 Thirugnana Sambanda
Moorthy, Velayutham,
Balasundaram, Palani
13 620/2010 278/2003 Kamalakannan
14 621/2010 280/2003 Vaduvambal
15 622/2010 281/2003 Baskaran
16 623/2010 282/2003 N. Anandhan
17 624/2010 284/2003 A. Cyril Joseph
18 625/2010 424/2003 Dhanabakkiam
19 626/2010 1579/2003 Kuppammal
20 627/2010 1581/2003 R. Venkatesan
21 628/2010 1582/2003 Cyril Joseph
22 629/2010 168/2004 Kristappa Naicker
630/2010 169/2004 Mariammal, Sarojammal,
23 Annammal
24 632/2010 197/2004 Dhanabakkiyam
25 633/2010 201/2004 Sampoorammal
26 634/2010 203/2004 Vaduvambal
27 635/2010 204/2004 Kistappa Naicker
28 636/2010 208/2004 Bakthavatchalam

29 638/2010 282/2004 Leo. J. Periah
30 639/2010 283/2004 A. Rajini
31 640/2010 538/2004 Cyril Joseph
32 641/2010 549/2004 Cyril Joseph
33 642/2010 21/2005 Cyril Joseph
34 643/2010 25/2005 Cyril Joseph
35 644/2010 26/2005 Arumugam
36 645/2010 27/2005 Dhandapani
37 646/2010 29/2005 Perumal
38 647/2010 30/2005 Pottiammal
39 648/2010 32/2005 Pottiammal
40 649/2010 33/2005 Cyril Joseph
41 650/2010 35/2005 Cyril Joseph
42 651/2010 36/2005 V. Dhandapani
43 652/2010 37/2005 V. Dhandapani
44 653/2010 38/2005 Kistappa Naicker
45 654/2010 41/2005 Cyril Joseph
46 655/2010 60/2005 Padma
47 656/2010 67/2005 Cyril Joseph
48 657/2010 194/2005 A. Cyril Joseph
49 658/2010 199/2005 A. Cyril Joseph
50 659/2010 203/2005 A. Cyril Joseph
51 660/2010 285/2005 R. Govindhadoss
52 661/2010 290/2005 A. Cyril Joseph
53 662/2010 1162/2003 M.S. Mani, M. Rajeswari
54 664/2010 1164/2003 K. Kuppan
55 665/2010 1165/2003 Devadoss
56 666/2010 1166/2003 D. Bubendiran
57 667/2010 1167/2003 K. Kuppan
58 668/2010 1168/2003 Irusammal

59 669/2010 1169/2003 Krishnan
60 670/2010 1170/2003 G. Radha
61 671/2010 1171/2003 G. Revathy
62 672/2010 1172/2003 Suryaprakash
63 673/2010 624/2004 Sivakumar
64 674/2010 625/2004 Devadoss
65 675/2010 632/2004 Surya Prakash
66 676/2010 958/2004 N. Dhatchayani
677/2010 959/2004 1. V. Periyasamy (died)

2. Valliamma 3. Minor

Jeevarathinam, 4. Minor

Harikrishnan 5. Minor Mohana

(Minors 3 to 5 represented by

67 the 2nd claimant)

68 678/2010 960/2004 V.S. Subramani

69 679/2010 961/2004 Ramadoss

70 680/2010 962/2004 V. Ramakrishnan

71 681/2010 963/2004 P. Selvarathinam

72 682/2010 977/2004 S. Murugan

73 683/2010 258/2004 Devadoss

74 684/2010 259/2005 Devadoss

75 685/2010 260/2005 Nagammal

76 686/2010 262/2005 Nagammal

3. The State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT), a Tamil Nadu Government owned Corporation and at the

request of the State Government, large scale lands were acquired in various villages in and around Sriperumbudur Taluk. In the present batch of

Appeal Suits, the lands were acquired in Sirumangadu No. 154 in Block Numbers 9 and 10. The proposal sent by the SIPCOT and accepted by

the Government is set out in the award proceedings are as follows:

The Government considered the proposal of SIPCOT with several multi national

companies, Non-Resident Indians and local entrepreneurs

evinced keen interest in Tamil Nadu especially near Chennai accorded administrative sanction in G.O.Ms. No. 61 Industries (MID-II) Department

Date 24.02.1997 for the acquisition of patta lands measuring 935.52.0 Hectares covering the above nine villages, invoking the urgency provisions

of the Land Acquisition Act (Central Act I of 1894). Pursuant to the Government orders the SIPCOT requisitioning body has furnished the

required requisition to District Collector, Kancheepuram District. The Government have also sanctioned special staff for attending the Land

Acquisition work vide G.O.Ms. No. 121 Industries (MID-II) Department dated 06.05.1997.

4. Pursuant to the said proposal, the State Government issued a notification u/s 4(1) on various dates starting from 05.06.1998. The State

Government exercising the emergency clause dispensed with the enquiry u/s 5(A) of the Land Acquisition Act by invoking Section 17(4) of the

Land Acquisition Act. Subsequently, a draft declaration was issued on 29.07.1999. Finally, awards came to be passed in Award No. 4/2000

dated 08.05.2000, 5/2000 dated 31.08.2000, 7/2001 dated 27.09.2001 and 8/2000 dated 05.03.2001. The possession of the lands were taken

over from the land owners from 10.12.1999 onwards. The acquiring authority fixed the compensation at the rate of Rs. 227/- per cent. The

aggrieved land owners objected to the low rate of compensation. Consequently, reference was made for the determination of market value by the

jurisdictional reference court. In respect of the very same village, the acquisition covered by L.A.O.P. 1156/2008 to 1172/2008 were sent for

determination of the market value to Sub Court, Kancheepuram. The LAOPs covered by these cases were initially referred to the Sub-Court,

Thiruvallur and under the orders of the Principal District Judge, Chengalpet, these cases were transferred from Sub-Court, Thiruvallur to the

Additional District Judge cum Fast Track Court V, Thiruvallur. The LAOPs were grouped together and common evidence was let in in LAOP.

No. 19/2003.

5. Before the reference court, on behalf of the claimants, K. Ranganathan, claimant in L.A.O.P. No. 19/2003 was examined as C.W.1 and on the

side of the claimants, 6 documents were filed and marked as Ex.C.1 to Ex.C.6.

On the side of the acquiring authority, the topo-map of the village was marked as Ex.R.1 and two witnesses were examined viz., Tmt. Varalakshmi, the then Special Tahsildar SIPCOT as R.W.1 and Mr. Sridhar, Manager SIPCOT as

6. The reference court on an analysis of both oral and documentary evidence came to the conclusion that the market rate fixed by the acquiring authority was on the lower side and therefore, had arrived at the market value at the rate of Rs. 5,250/ - per cent and after giving deduction of

25%, it fixed the market rate of Rs. 3,938/ - and in order to round off the said figure, it was further reduced to Rs. 3,900/ -. The said amount was

directed to be paid together with Solatium, additional compensation and interest to which, the claimants are entitled to.

7. Though this determination of market value has taken place as early as 19.11.2007, the Appeal suits were came to be filed defectively and

subsequent to the orders of this Court, those Appeal Suits were directed to be numbered and grouped together.

8. The acquiring authority, while determining the market rate of compensation considered the various sale transactions that took place in that area

for a period of three years before Section 4(1) notification, however, number of sale transactions were rejected on the ground that either they were

wet lands or wet and dry lands combined together or poramboke land in some cases, either they were covered by sale by mortgage or sale by

agreement. Even in respect of the dry and Manavari lands, those sale deeds were discarded. Finally in respect of 198 sale transactions, regarding

dry lands, they were rejected on the ground that they are different tharam and assessment. Finally, the data land was taken into account, which was

found in the statistical data viz., item No. 17 to the extent of 5.04 acres in Survey No. 136/2 and it was found that the said land was sold for a sum

of Rs. 1,76,4000/ - vide Document No. 652 dated 13.02.1997. The said data was recommended for determination to the Commissioner of Land

Administration for fixing the market value in respect of all the lands covered by the acquisition and the following passage found in the award

proceedings can be usefully extracted as follows:

Data Land sales:

In item No. 17 an extent of 5.04 acres in Survey No. 136/2 has been sold for Rs.

1,76,400/- vide document 652 dated 13.02.1997 has been recommended by the Land Acquisition Officer to the Special Commissioner and Commissioner of Land Administration for fixing the market value.

But the Special Commissioner and Commissioner of Land Administration vide in his proceedings Rc.Z1/17112/99 dated 03.11.2000 to fix the market value for Rs. 227/- per cent or Rs. 560.69 per Are in item No. 18 of the sale statistics an extent of 0.44 cents in Survey No. 10/1B1 has been sold for Rs. 10,000/- in Document No. 789 dated 19.02.1997. This sale is one of the lands under Acquisition. All the lands inclusive of this are barren and looks like mamool wate lands with velikathan bushes scatteredly. All the lands are similar one to each other not only on ground but also in records. This is reasonable sale and reflecting the real market value. Hence this sale is taken up as ""Data"" Land for fixation of market value of the lands covered in this award.

9. As opposed to the document relied on by the acquiring authority, the claimants filed three exhibits viz., Ex.C.4 to Ex.C.6, which had come into existence admittedly before Section 4(1) notification. In the oral evidence given by C.W.I on behalf of the claimant, he has stated that up to 1992-1993, agriculture was carried on in that village, from 1995 onwards, various lands in the village were put on lay out scheme and sold as house sites. Most of the land owners are having some extent of land and the village is situated closer to the Chennai-Bangalore National Highway No. 4; on the western side in the Mambakkam village, lands were also acquired; likewise on both sides of the Highways, lands were acquired including in Thirumangalam village. Speaking about the data land relied on by the authorities, S. No. 136 and 10/1, C.W.1 in his evidence stated that he has visited that land and it is a deep pit even before 1993, soil was taken from that land and even now, it was only a deep pit and if such lands are sold, they will reduced to price since neither agriculture can be carried on nor it can be sold as house sites. With reference to the land acquired, it is having red soil and the soil tharam and quality are similar. In respect of Survey Nos. 146 to 149, 156, 161 to 163, 166, 167, 171 and 178, they were all having lay out approval and in respect of Survey Numbers 135, 150, 152, 153, 155, 157, 159, 160, they are also covered by approved lay outs. When C.W.1 wanted to file a lay out approval, the filing of the document

was opposed by the acquiring authority. Speaking about

Ex.C.4, witness said C.1 relates to Survey No. 365/4, wherein, on 14.07.1997, a cent of land was sold out for Rs. 8,216/ -, likewise, Ex.C.5,

which was sold on 21.04.1997 in Survey No. 155, a cent of land was sold at Rs. 7,675/ -. In Ex.C.6, it was sold at Rs. 5,520/ - per cent. The

witness also said that earlier, lands were also sold to Saint Gobain Glass Factory and the same is working in that area; Ashok Leyland also

intended to purchase 300 acres as a single lot. When a suggestion was put to him in cross examination that lands in Mambakkam, the market rate

was fixed by the reference court at Rs. 4,000/ - per cent, he claimed ignorance.

10. The acquiring authority viz., Varalakshmi, the then Special Tahsildar in her cross examination stated that in the sale consideration, 490 sale

deeds were relating to sale of house sites and that with reference to the data land, she was not aware whether they were unfit for agriculture or for

selling it as house site. She agreed that the land in that village were sold as house sites, whereas, they did not calculate the market rate on the basis

as house site and in normal circumstances, the acquiring authority did not calculate the lands on the basis of house sites. She also stated that while

Survey No. 155 is found in the centre of acquired land, Survey Nos. 365, 366 did not come within the acquired lands.

11. On behalf of the requisitioning authority, the Manager SIPCOT in his cross examination feigned ignorance about the fact that 95% of the

villages were sold as house sites, whereas, even the sale transactions that took place, the lands were sold in the classification as Manavari Punjai

land; except by stating that huge sums of money were spent for the development of lands, with reference to classification particulars, he informed

the court that the details should be found only by the acquiring authority.

12. The court below on the basis of these evidence rejected the data land furnished by the acquiring authority. After referring to Section 23 of the

Land Acquisition Act, the guidelines of market value and after referring to the decisions of the Supreme Court and this Court in paragraph 17, the

court below referred to the evidence of R.W.1 and going by the admission held that the data land in Survey No. 136/2 did not have the quality or

soil comparable to the lands that are acquired and no evidence was let in by the acquiring authority with reference to the said land, whereas, his

action in discarding other lands and reliance placed on Survey No. 136/2 is erroneous. The court below placed reliance on Ex.C.4 to C.6 and held

that they are more comparable to the land that are acquired and having found in Ex.C.6, which was the last sale consideration in Survey No.

366/2, wherein, per cent of land found in Ex.C.6 was sold for Rs. 5,250/- was taken as a basis. It also found that Ex.C.6 was document prior to

4(1) notification and in considering that these are dry lands, it went to reduce 25% of the sale consideration without giving any further reasons and

reduced to Rs. 3,938/- and in order to make it a round figure, further Rs. 38/- was also reduced and ultimately fixed the compensation at Rs.

3,900/- and the said amount was directed to be paid along with other statutory payments.

13. Assailing the common judgment dated 19.11.2007 in the grounds of appeal, the appellant contended that reliance placed upon Ex.C.4 to

Ex.C.6 was improper and that granting of 25% deduction towards development charges was not fair and it should have been reduced to 65%.

The court below should have granted two separate deductions, one for the small extent of land and another for the development charges. In

support of the submissions, Mr. V. Ravi, the learned Special Government Pleader (AS) relied upon the judgment of the Supreme Court in

Mohammad Raofuddin Vs. The Land Acquisition Officer, and also referred to paragraph 14, which is as follows:

14. Thus, comparable sale instances of similar lands in the neighbourhood at or about the date of notification u/s 4(1) of the Act are the best guide

for determination of market value of the land to arrive at a fair estimate of the amount of compensation payable to a land owner. Nevertheless,

while ascertaining compensation, it is the duty of the Court to see that the compensation so determined is just and fair not merely to the individual

whose property has been acquired but also to the public which is to pay for it.

Therefore, he emphasized that ultimately, public funds have to be spent for acquisition and therefore, proper compensation has to be fixed by the

court. He has also referred to a judgment of the Supreme Court in Saibanna "Dead" by LRs. Vs. Assistant Commissioner and Land Acquisition

Officer, and referred to paragraph 10 to 13 and emphasized that atleast there should have been 33 1/3% deduction towards development charges

and the same are usefully extracted as follows:

10. This Court in *Kasturi v. State of Haryana* has extensively dealt with this aspect and observed in para 7 as under: (SCC p. 35)

7. It is well settled that in respect of agricultural land or underdeveloped land which has potential value for housing or commercial purposes,

normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain

variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic

amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land

may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area

all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in

developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for development

purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area

adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land

is abutting the main road in the developed area, does not give the land the character of a developed area.

11. This Court in *Kasturi* case also observed that there is a difference between a developed area and an area which is yet to be developed. The

fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in that area also developed to be valued

as a building site or plot, particularly when vast tracts are acquired. In substance, the ratio of the judgment in *Kasturi* is that the deduction would

depend on several factors, particularly the extent of land in question, location of the said land and the proximity of the land from the municipal

limits.

12. In the instant case, the land in question is within the municipal limits of Gulbarga City since 1965. Taj Sultanpur Village is located only at a

distance of $\frac{13}{2}$ km from Gunj locality of Gulbarga City and, therefore, it is

located within the close vicinity of Gulbarga City, Taj Sultanpur

Village is adjoining Shak Roza and Vakkalgera limits of Gulbarga City which are part and parcel of Gulbarga City for a long period. So the cost of development is not likely to be very high.

13. As laid down in K.S. Shivadevamma case, as a general rule that for laying the roads and other amenities 33 1/3% is required to be deducted.

Deduction at the rate of 53% as laid down in the impugned judgment seems to be on the higher side and is not in consonance with the ratio laid down by this Court.

14. This court is not prepared to accept the said submission so as to fix such fixed rate of deduction towards development charges. If at all claimed

that development charges should be made, then sufficient evidence should be available before the reference court. In the present case, the court

below without any further reason, simply deducted 25% stating that they were dry lands. In the present case, the purpose of acquisition is industrial

purpose and the nature of development should have been completed. The judgment in Saibanna's case (cited supra) in paragraph 14, the Supreme

Court had also observed as follows:

We would like to emphasise that there cannot be any hard-and-fast or a rigid rule. Every case has to be decided on its individual facts taking into

consideration various facts and circumstances.

15. It must also be noted that in respect of the acquisition, regarding the very same acquisition covered in L.A.O.P. No. 1156 to 1172/2008,

challenge was made before this Court in A.S. 742 to 758 of 2009 and came to be heard by this Court as noted already. In that case, the reference

court was the Sub Court, Kancheepuram and the court fixed the compensation at Rs. 7,179/- per cent after giving deduction of 25%, the

compensation was reduced to Rs. 5,384/- per cent. In appeal before this Court, this Court by a common judgment dated 22.07.2010 allowed the

appeals in part and after deducting 25% from that amount, the compensation was worked out to Rs. 3,750/- per cent. In doing so, this Court

considered that in the neighbouring villages, Thirumangalam, Katrambakkam, per cent, the market value was arrived at Rs. 5,000/-. Therefore,

there is uniformity in the price, acquired area and the compensation was directed to be paid at Rs. 3,750/- per cent in the very same village.

Taking advantage of the said judgment, the learned Counsel for the appellant submitted that in the present case, more deduction should be made

and the compensation should be further reduced. In support of the said contention, the learned Counsel also relied upon two Division Bench

judgments of this Court dated 02.12.2009 made in respect of Mambakkam village. The Division Bench granted two different rates of

compensation. Therefore, he submitted that the compensation can be different even though, the lands acquired are from the same village.

16. Per contra, Mr. G. Karthikeyan, learned Counsel for the respondents/claimants referred to judgment of the Supreme Court in Atma

Singh(Died) Though Lrs and Ors. v. State of Haryana and Anr. reported in (2008) 3 Mlj 806 (SC) to contend that potentiality of the land also

should also be taken into consideration. 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. Therefore, he submitted that the lands were acquired in large scale by the SIPCOT and it

was subsequently sold on out right basis or on a permanent lease basis by making huge profits. In this connection, he produced a copy of the news

item, wherein, the SIPCOT was paying a sum of Rs. 11.58 crores, the 20% dividend to the State Government for the year 2006-2007. This is for

the purpose of contending that the lands of the claimants are taken at throw away prices and even after making huge profits at the cost of the

claimants, the Corporation is denying their legitimate compensation. He also submitted that the possession of the lands were taken over 10 years

ago and the claimants are yet to get fair compensation. He also referred to one information, which he retrieved from the website of SIPCOT that

out of the lands acquired in that area, the SIPCOT has put out an offer of sale of the land by indicating the cost of the land is Rs. 60 lakhs per acre.

Therefore, he stated that neither there should be unjust enrichment on the part of the acquiring authority nor there should be total deprivation of the

land of the claimants. He further submitted He that there is no justification for reducing any further amount since already the reference court has

reduced the compensation by 25% without even disclosing any reason. He also submitted that while computing the market value, the authorities

have unjustly taken the details of a land among many statistical data available, wherein, it was proved that lands in that village were sold only as house sites and not as agricultural land.

17. In the light of the rival submissions, it has to be seen whether the judgment of the reference court calls for any interference, and if so, to what extent.

18. The first submission that Ex.C.4 to Ex.C.6 are exemplars of sale of small plots of lands, therefore, they cannot be taken note of can never be considered. The Supreme Court has held that the exemplars of sale of small plot can be considered in determining the market value, when other relevant material is not available and in such cases, there should be adequate discount should be given. The Supreme Court in *Rishi Pal Singh and Others Vs. Meerut Development Authority and Another*, has held that in the absence of any other reliable data, such exemplars of sale of small plots can be taken note of. It is also held that the exemplars of small plots has to be considered after making adequate discounts.

19. With reference to the deduction towards development charges, it is necessary to refer to the judgment of the Supreme Court in *Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others*, . In that case, the Supreme Court held that while considering the development charges, the purpose for which the land was acquired was relevant and in certain cases, there need not be any development charges.

20. Very recently, the Supreme Court in the latest judgment of the Supreme Court dated 11.08.2010 in *A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy* reported in 2010 STPL (Web) 595 SC in paragraphs, 20, 21 and 22 held as follows:

20. This building potentiality of acquired land must also be taken into consideration while determining compensation. In *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, this Court held as follows:

8. Building potentiality of acquired land. Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land u/s 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or

giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged u/s 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged u/s 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged u/s 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now.

21. This Court in *Hasanali Khanbhai and Sons and Others Vs. State of Gujarat*, also held that:

3. ...But it is settled law by series of judgments of this Court that the court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience;

evaluate the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its constitutional, statutory and social duty. The court should eschew aside feats of imagination but occupy the armchair of a prudent, willing but not too anxious, purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the sale deeds. After due evaluation taking all relevant and germane facts into consideration, the Court must answer as to what would be the just and fair market value....

22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, in so far as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration. The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started. The evidence on record also clearly indicates that acquired land is abutting the main road. The acquired land is also surrounded by schools, Panchayat union office, shops and residential building in all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ex.A.3 from the point of view of potential value.

21. Though Mr. V. Ravi, the learned Special Government Pleader (AS) contended that Ex.C.6 does not relate to Sirumangadu village, and it relates to a neighbouring village. In this connection, it is also necessary to refer to the judgment of the Supreme Court in Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, for the purpose of showing that if the quality and potentiality of two areas of land are similar, then the distance of the two would not by itself lead to a change in their respective market value. The following paragraphs in paragraph 12 can usefully be referred as follows:

As we have said above this High Court fell into error by reducing the quantum of

compensation on this basis. The reduction has been made for two reasons. One, that the present acquisition is of larger area and second, the distance between the land under acquisition and in Ext. 16 is about 5 km. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each landowner, it could not be said that the acquisition is of a large area. Largeness is merely when each landholder's land is clubbed together then the area becomes large. Each landowner's holdings are of small area. Even otherwise, visioning in line with the submission for the State we find Ext. 16 is about two hectares of land which cannot be said to be of a small piece of land. So far as the other question of distance between the two classes of lands is concerned, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ext.16 and the present land, even if they are 5 km. apart, would not be relevant, the relevancy could be, their distances from Viramgam town. We find, as per the map produced by the State, the present acquired land is about 3 km. away from it, while the land under Ex.16 is about 2 km. away from it. This difference is not such as to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ext.16 and the present one are similar. No evidence has been led on behalf of the state to find any difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10 per sq. m. cannot be sustained. Hence, that objection cannot be sustained.

22. In the present case, the reference court did not consider the documents in Ex.C.4 and Ex.C.5 which are the higher value and took note among the three documents and the least value found, for which, only the lands owners must be aggrieved and not the acquiring authority.

23. Under the circumstances set out above, the judgment of the court below do not call for any interference except to the extent to bring in on par with other acquisitions covered by LAOP. Nos. 1156 to 1172 of 2008 relating to the same village, wherein, this Court has fixed Rs. 3,750/ - per cent together with other statutory dues. It is because that there should not be

any discrimination between the sets of claimants of the same area.

24. The Supreme Court in its very recent decision reported in Special Land Acquisition Officer Vs. Karigowda and Others, had held that even the

extent of land, purpose of acquisition has to be taken into account. In this context, it is necessary to refer to the following passages found in

paragraphs 75, 76 and 77:

75. It is a settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land.

This principle of law is qualified by clear dictum of this Court itself that whenever direct evidence i.e. Instance of the same villages are available,

then it is most desirable that the court should consider that evidence. But where such evidence is not available court can safely rely upon the sales

statistics of adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence

tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for such determination. Once it is shown that situation

and potential of the land in two different villages are the same then they could be awarded similar compensation or such other compensation as

would be just and fair.

76. The cases of acquisition are not unknown to our legal system where lands of a number of villages are acquired for the same public purpose or

different schemes but on the commonality of purpose and unite development. The parties are expected to place documentary evidence on record

that price of the land of adjoining village has an increasing trend and the court may adopt such a price a the same is not impermissible. Where there

is commonality of purpose and common development, compensation based on statistical data of adjacent villages was held to be proper. Usefully,

reference can be made to the judgments of this Court in Kanwar Singh v. Union of India and Union of India v. Bal Ram.

77. In this regard we may also make a reference to the judgment of this Court in Kanwar Singh v. Union of India where sale instances of the

adjacent villages were taken into consideration for the purpose of determining the fair market value of the land in question and their comparability,

potential and acquisition for the same purpose was hardly in dispute. It was not only permissible but even more practical for the courts to take into

consideration the sale statistics of the adjacent villages for determining the fair market value of the acquired land.

(Emphasis added).

25. The learned Special Government Pleader (AS) contended that there should be 33 1/3 % deduction. However, in order to maintain parity and

the lands were acquired in the very same revenue village, there should not be any distinction and the purpose of acquisition is for industrial purpose

and it is only in that mind, the compensation fixed by the reference court at Rs. 3,900/- is reduced to Rs. 3,750/-. It is not with a view that some

developments have to take place as alleged by the acquiring authority and the requisitioning authority.

26. Under these circumstances, it is hereby declared that the compensation will have to be worked out on the basis of the common judgment up

held by this Court in A.S. Nos. 742 to 758 of 2009 at the rate of Rs. 3,750/- per cent together with other statutory payments to which the

claimants are entitled to.

27. The Appeal Suits are allowed in part to the extent indicated above.

28. In the light of the above order passed in the above Appeal Suits, M.P. Nos. 1 of 2010 seeking dispense with the production of certified copy

is ordered.

29. M.P. Nos. 2 of 2010 seeking for stay is dismissed as they were no longer necessary and have become infructuous since final orders are

passed in the above Appeal Suits.

30. Under the peculiar circumstances of the cases, the parties are allowed to bear their own costs. It is made clear that the learned Special

Government Pleader (AS) and Mr. M. Devaraj, Standing counsel for the SIPCOT are entitled to get separate set of fees even though a common

judgment was pronounced.