(2014) 09 GAU CK 0053

In the Gauhati High Court

Case No : L.A. Appeal Nos. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of 2014

Union of India APPELLANT

Vs

Mahendra Nath and Others RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 15, 18, 23, 23(1), 23(1A)

Citation : (2015) 2 GLT 127

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : R. Bora, CGC, for the Appellant; K.N. Choudhury, Senior Advocate, N. Alam, R. Dubey, S.U. Ahmed and G. Sarma, G.A., for the Respondent

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.?These appeals are preferred against the judgment dated 22.11.2012 passed by the learned Additional District Judge No. 1, Kamrup, Guwahati in Reference Cases No. 12/2010, 14/2010, 15/2010, 16/2010, 18/2010, 19/2010, 20/2010, 21/2010, 22/2010, 23/2010, 24/2010, 25/2010, 26/2010, 27/2010, 28/2010, 29/2010, 30/2010, 31/2010, 32/2010, 33/2010, 34/2010, 35/2010, 36/2010, 37/2010, 38/2010, 39/2010, 41/2010, 42/2010, 43/2010, 44/2010, 45/2010, 46/2010, 47/2010, 48/2010, 50/2010, 51/2010, 52/2010 and 53/2010, arising out of Land Acquisition Case No. 04/2007. Reference Cases No. 13/2010, 17/2010, 40/2010 and 49/2010 were also disposed of by the said judgment dated 22.11.2012. It is submitted that though appeals have been preferred in these Reference Cases also, they are not yet ready for hearing. This batch of appeals has been heard analogously and is being disposed of by this common judgment. A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, ''the Act'') in Land Acquisition Case No. 04/2007 was issued by the Collector, Kamrup, on 08.08.2008, indicating that about 248 Bighas 0 Katha 3 Lechas of land at Village-Hahara, Mouza-Pubpar under Kamalpur Revenue Circle was likely to be needed for construction of Headquarter of 33rd Bn. SSB. Thereafter, Section 6 notification was issued on 18.02.2009 acquiring 186 Bighas 2 Kathas and 1 Lecha of land. The Collector assessed the valuation of the acquired land at Rs. 2.30 lakhs only per Bigha. The claimants accepted the awarded sum under protest and submitted applications to the Collector for referring the matters to Court by claiming Rs. 10 Lakhs per Bigha and additional compensation, solatium, 9% interest on the enhanced amount and other reliefs as admissible in law. Thus, 42 reference cases, in all, came to be referred by the Collector, Kamrup to the learned District Judge, Kamrup, under Section 18 of the Act for determination of compensation. Accordingly, Reference Case Nos. 12/2010 to 53/2010 were registered in the court of the Additional District Judge No. 1, Kamrup, Guwahati.

2. The Collector, Kamrup and the Commandant of the 33rd Bn., SSB, were arrayed as Opposite Party Nos. 1 and 2 in the said reference proceedings.

3. The Collector, Kamrup did not file any written objection. In the common objection filed by the Opposite Party No. 2 covering all the reference cases, it was stated that the acquisition was not for any benefit of a private individual or an industrial or a business house and that general public is the direct beneficiary of the acquisition. The compensation as suggested by the Revenue Departments was deposited and there was no question of any further liability. It was also pleaded that the claimants have failed to provide breakup of the amount/ quantum of claim including Jirat.

4. The learned Reference Court framed the following issues for consideration:-

1. Whether the claimant''s Reference petitions are maintainable in this present form?

2. Whether the valuation assessed by the Collector for acquisition of lands of the claimants is fair, reasonable, adequate and, if not, what should be the fair and reasonable price of the acquired lands?

3. Whether the potentiality and utility of land are to be considered for granting higher compensation?

4. Whether it is a fit case to adopt any one of the method of compensation like (1) Sales statistics, (2) Agricultural yield basis and (3) Capitalization of net income?

5. Whether the claimants are also entitled to the 12% and 30% additional compensation and solatium over the enhanced value?

6. Whether the claimants are entitled to 9% interest over the enhanced compensation from the date of taking over the possession of the acquired lands till the payment of the decreetal amount?

7. Any other relief or reliefs the claimants are entitled to?

5. The claimants had examined 6 witnesses before the Reference Court as P.W. - 1 to P.W. - 6 and had exhibited-documents numbered as Exhibit-1 to Exhibit-11, Exhibit-11(A), Exhibit-11(B) and Exhibit-12 to Exhibit-14. The Opposite Parties had examined one witness as D.W. - 1 and he had also exhibited documents numbered as Exhibit-A to Exhibit-H. Learned counsel for the parties submit that some exhibits exhibited by D.W. - 1 are not on record and, in all probability, those have been taken back to the office of the Collector. It has been pointed out by the learned counsel for the parties that certified copies of some exhibits are brought on record of LA Appeal No. 18/2014 by way of an affidavit and the Court may also rely upon the same.

6. By the impugned judgment dated 22.11.2012, the learned Additional District Judge held that the claimants are entitled to compensation at the rate of Rs. 7,00,000/- per Bigha for the acquired land with additional compensation at the rate of 12% and 30% under Section 23(1A) and Section 23(2), respectively. The claimants are also held to be entitled to receive 9% interest as provided under Section 28 of the Act, for the first year from the date of taking over possession and after that at the rate of 15% p.a. till the payment of the excess amount, providing further that the amount already paid to the claimants shall be deducted by the Collector.

7. Before proceeding further, it will be appropriate to indicate that 1 Bigha is equal to 14,400 square-feet. 5 Kathas make 1 Bigha, that is to say, 1 Katha measures 2,880 square-feet. 20 Lechas make 1 Katha and thus, 1 Lecha is equivalent to 144 square-feet.

8. Heard Ms. R. Bora, learned Central Government Counsel (CGC) appearing for the appellant and Mr. K.N. Choudhury, learned Senior Counsel appearing for the claimants in all the appeals and Mr. G. Sarma, learned Govt. Advocate, Assam for the Collector, Kamrup.

9. Ms. R. Bora has submitted that the Reference Court was wholly wrong in coming to the conclusion that market value of the land is Rs. 7,00,000/- per Bigha. She submits that though a number of sale deeds were exhibited on behalf of the claimants, the learned Reference Court relied upon Ext.-9, a sale deed executed on 07.03.2007 in respect of sale of 1 Katha of land at the rate of Rs. 1,40,000/- in village Hahara, where the land was acquired. The emphatic submission of the learned CGC is that sale of a small plot of land measuring 1 Katha vide Ext.-9 cannot form the basis to determine market value of a vast tract of land measuring 932 Kathas 1 Lecha and therefore, the very basis of arriving at the consideration amount is flawed. The submission advanced is that Ext.-9 could not have been a safe guide to determine the market value of the land acquired. It is further submitted that there is no evidence of benefit accruing from the land in question. In support of her submission, the learned counsel places reliance in the cases of (i) The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, , (ii) Land Acquisition Officer Vs. Nookala Rajamallu and Others--> and (iii) Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, .

10. Mr. K.N. Choudhury, learned Senior Counsel for the claimants, on the other hand, submits that Ext.-9 relates to agricultural land and therefore, the land covered by Ext.-9 is similar to the land acquired. He also submits that in absence of any other comparable sale deeds, surely the Reference Court can rely upon a sale deed involving small plot of land in arriving at the market value of the acquired land. He has submitted that the land is near about the National Highway and there are hospitals, markets, industries etc., as revealed by the evidence on record, and having regard to the fact that compensation was assessed at Rs. 6.50 lakh per Bigha in nearby villages of Bamungaon and Kendukona etc., no interference is called for with regard to the market value as determined by the Reference Court. Relying on paragraph 20 of the judgment of the learned Reference Court, the learned Senior Counsel submits that vide Ext.-12, the Collector himself had informed the Commandant of 33rd Bn. SSB that value of the acquired land should be in the range of Rs. 6,00,000/- to Rs. 7,00,000/- per Bigha. The learned Senior Counsel relies on (i) Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, and (ii) Mohammad Raofuddin Vs. The Land Acquisition Officer, .

11. Mr. G. Sarma, learned State counsel submits that the Collector had rightly fixed the market value of the acquired land at Rs. 2, 30,000/-.

12. Before I enter into the merits of the case and consider the submissions of the learned counsel for the parties, it will be expedient to briefly take note of a few broad principles to be kept in mind while determining the amount of compensation, which becomes payable on acquisition of land for a public purpose.

13. Section 15 of the Act provides that in determining the amount of compensation, the Collector shall be, guided by the provisions contained in Sections 23 and 24 of the Act. In order to determine the compensation which the tenure-holders are entitled to get for land which has been acquired, the main question to be considered is what the market value of the land is. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration, while determining compensation. Section 23, thus, contains a list of positive factors and Section 24 has a list of negative factors to be taken note of while determining the amount of compensation.

14. Any exercise to determine the amount of compensation begins with determination of the market value of the land on the date of publication of the notification under Section 4(1) of the Act. The concept of market value was summarized in Atma Singh (Supra) by the Supreme Court.

15. Market value is the price, which a willing purchaser would pay to a willing seller of the property having regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. Thus, market value is ordinarily the price a

property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. In considering market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded.

16. It may not be always possible to have direct evidence in respect of market value and, therefore, the court has to take recourse to certain established methods to try to arrive at the market value of the land acquired. One of the methods employed to work out market value of the land in acquisition cases, as observed in Mohd. Raofuddin (supra), is the comparable sales method. When definite materials are not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. Of course, the land sought to be compared must be similar in nature and potentiality. In absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be guiding factors for determination of market value of the land. Such an exercise may introduce an element of some guess work.

17. In the endeavor to ascertain compensation, it is beyond any cavil that the compensation, so determined, should be just and fair not merely to the individual whose property has been acquired, but to the public who is to pay for it. There should neither be unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner.

18. Having discussed the broad propositions with regard to the principles governing determination of market value, the determination of which by the learned Reference Court is the sole point for consideration in these appeals, it will be necessary to examine the contentions advanced on behalf of the appellant that Ext.-9 could not have formed the basis for determination of the market value.

19. In his evidence, P.W. - 1 has stated that acquired plots of land are situated adjacent to National Highway and within the periphery of Rangia Town and that the land had been acquired at villages of Bamungaon and Kendukona for construction of National Highway at Rs. 6,50,000/- per Bigha and that those villages are adjacent to Hahara village, where the acquired plots of land are situated. The land has great potential and the acquired land could be converted into commercial and residential area. In cross-examination, he had stated that in front of the acquired land, there is an industry named and styled as Assam Industrial Infrastructure Development Corporation, where more than 30 numbers of industries are situated. There are hospitals, schools, colleges, Railway Station, market etc. in the vicinity.

20. P.W. 1 exhibited exhibit No. 1 to Exhibit No. 11, 11A, 11-B, Exhibit-12 and Exhibit-13. Exhibit-1 to Exhibit-6 are copes of six sale deeds executed during the year 2001 to 2006. Exhibit-7 is a copy of the letter dated 16.12.2010 issued by

the Additional Deputy Commissioner, Kamrup-cum-Competent Authority, NH-31, furnishing information under Right to Information Act, 2005, relating to land value of Villages Kendukona, Bamungaon, Maranjana and Borsil for acquisition of land for National Highway. In respect of the said villages, land value was indicated as Rs. 6,50,000/-, Rs. 6,50,000/-, Rs. 4,00,000/- and Rs. 4,00,000/- (However, in the said letter it was not indicated as to what value had been paid for what area of land). Exhibit-8 is a copy of the Trace Map of Kamalpur Circle. Exhibit-9 is the sale deed by which a plot of land measuring 1 Katha, in village Hahara, was executed on 07.03.2007, at the rate of Rs. 1,40,000/-, per Katha, which formed the basis of determining the market value of the land at Rs. 7,00,000/- per Bigha as is referred to earlier. Exhibit-10 is also a sale deed, dated 12.06.2008, registered on 23.06.2008, in respect of a plot of land measuring 5 Lecha, at village Hahara, at Rs. 50,000/-. Exhibit-11A and 11-B show that in village Kendukona and in village Bamungaon, for 1 Lecha of land Rs. 13,602/- each was paid, as compensation Exhibit-12 is a letter issued by the Deputy Commissioner, Kamrup, to the Commandant, 33rd Battalion, SSB, Rangia, in connection with the acquisition of land. The said institutions are on the opposite side of the Highway. In cross-examination, he had also denied that Ext.-9 was not related to the acquired land.

21. P.W. - 2, Hafizur Rahman, is a Junior Assistant of the office of the Sub-Registrar, Rangia and his deposition centers around Ext.-1 to Ext.-6, all sale deeds, which were exhibited by P.W. - 1.

22. P.W. - 3 is the seller in Ext.-10, a sale-deed. He has stated that land sold under Ext.- 10 is adjacent to village Hahara.

23. P.W. - 4 is the seller in Ext.-9, a sale deed executed on 07.03.2007 in favour of P.W. - 1.

24. P.W. - 5 is the seller in Ext.-4.

25. P.W. - 6 is a Lat Mandal (Revenue Staff). He has deposed to the effect that the acquired plots of land are adjacent to village Bamungaon, Kendukona, Maramjan, Borsil and Naukuchi. He further stated that vide Ext.-13 letter dated 08.03.2007, the Circle Officer had written a letter to the Deputy Commissioner, Kamrup, stating therein that value of land, per Bigha, at Hahara should be around Rs. 5 lakhs. He also deposed with regard to the existence of 20 industries and of Assam Industrial Infrastructure Development Corporation as well as schools, market etc., near the acquired plots of land. The acquired land was within a radius of 5 k.m. of Rangia Town and there was a Railway station within 1 k.m., he stated. He also exhibited as Ext.-14 a Trace Map of village Hahara

26. D.W. - 1 is the Administrative Officer in the Deputy Commissioner''s Office, Kamrup. His evidence was recorded on 20.09.2012. In his evidence, he has stated that a draft notification was issued in the Assam Gazette on 08.08.2007 (wrongly, should have been 08.08.2008) vide Ext.-A and that a rectification notification was issued on 23.10.2008. Ext.-B was not mentioned in the

deposition of D.W. - 1. Section 6 notification, dated 18.02.2009, was, in fact, exhibited as Ext.-B, though marked as Ext.-C. Learned counsel for the parties submit that Ext.-C, in fact, relates to Section 6 notification dated 18.02.2009 in LA Case No. 3/2007 in respect of village-Borsil. He deposed that possession of the acquired land was taken on 26.03.2009 and he exhibited the Certificate of Possession as Ext.-D. He exhibited the Trace Map in the record as Ext.-E, which was already exhibited as Ext.-14 by P.W. - 6, and the order-sheet as well as note-sheet, each containing six pages, in LA Case No. 4/2007, as Ext.-F and Ext.-G, respectively. He also exhibited the estimate of the land at Rs. 2,30,000/- as Ext.-H. He had also stated that initially the compensation was fixed at Rs. 2,20,000/- per Bigha. In cross-examination, he had deposed that villages such as Borsil, Bamungaon, Maramjan, Kendukona and Naukuchi are adjacent to each other and that acquired land is about 1/2 furlong away from the National Highway. He had stated that though he was not aware whether at the time of acquisition there was any industry near about the acquired land, some industries have now been established. He had also stated that vide Ext.-12, the Deputy Commissioner, Kamrup had informed the Commandant, 33rd Bn. SSB, that the value of the acquired land should be in between Rs. 6,00,000/- to Rs. 7,00,000/- per Bigha.

27. Ext.-13 is a letter dated 08.03.2007 issued by the Circle Officer to the Deputy Commissioner/Collector, Kamrup. In the said letter, he had referred to 3 sale deeds - one of the year 2005 for 1 Katha 10 Lechas, one of the year 2006 for 1 Bigha 2 Kathas 10 Lechas 2 Pua and another of the year 2007 for 1 Katha totaling 2 Bigha 2 Pua, totaling Rs. 2,10,500/- as the value of the land in question. The said sale deeds pertain to Hahara and the adjacent village Bamungaon. Though the aforesaid sale deeds reflected that the value of the land per Bigha is Rs. 1,05,000/-, the Circle Officer had indicated that in view of the escalating price, sales have been effected at Rs. 5 lakh per Bigha. Significantly, there was no mention of any sale deed by which land was sold at Rs. 5 lakh. Ext.-13, however, does not show what was the sale price for 1 Katha of land in the year 2007 in village Hahara.

28. At this stage, it will be relevant to take note of Ext.-12. The relevant extract of Ext.-12 is reproduced herein-below:

"Since the process of land acquisition started in the year 2007 as per notification U/s. 4(1) published on 17.05.2007. The valuation of Govt. as well as P.P. Land was fixed on the valuation fixed by the concerned Circle Officer of Rangia and Kamalpur Revenue Circle. Due to expansion of 2 lane to 4 lane of National Highway in the area nearer to the proposed acquired land by SSB the value of the land deemed to be increased from the value fixed earlier. On the basis of the present market value the increase of 10% above the rate fixed earlier is justified.

The valuation of the land to be acquired is comparatively in lower side to that of National Highway near by land which is fixed 6(six) lakhs to 7(seven) lakhs per Bigha. Hence the valuation of land to be acquired for SSB is increased 10% above the existing rate i.e. 2,60,000.00 and 2,30,000.00."

29. A perusal of Ext.-12 letter dated 19.11.2008 of the Deputy Commissioner to the Commandant, in connection with the acquisition of land for 33rd Bn. SSB Headquarter at Borsil and Hahara village, goes to show that the Commandant was informed that after the Section 4(1) notification was published on 17.05.2007, the value of the land, proposed to be acquired, had increased due to expansion of National Highway form 2 lane to 4 lane near the acquired land and therefore, 10% increase above the rate fixed earlier is justified. It was further stated therein that the valuation of the land to be acquired is comparatively in lower side to that of the land nearby National Highway, which is fixed at Rs. 6,00,000/- to Rs. 7,00,000/- per Bigha. Accordingly, valuation of the land was increased 10% above the existing rate i.e. Rs. 2,60,000/- and Rs. 2,30,000/-.

30. Though the said letter makes a reference to a Section 4 notification dated 17.05.2007, such notification is not placed on record. However, as the instant Land Acquisition Case was numbered as 4/2007, it will be reasonable to assume that, perhaps, a Section 4 notification was earlier published on 17.05.2007, though not acted upon and that, subsequently, another Section 4 notification was issued again on 08.08.2008.

31. Apparently, Rs. 2,30,000/- is the rate fixed for Hahara village. If the existing rate, as deposed by D.W. - 1 was Rs. 2,20,000/- lakh per Bigha, 10% above the existing rate should have been Rs. 2,42,000/-. From perusal of the Ext.-12, it is clear that the evidence of D.W. - 1 that the Collector had informed the Commandant, 33rd Bn. SSB that the value of the acquired land should be Rs. 6,00,000/- to Rs. 7,00,000/- is not correct. The learned Reference Court had also misdirected in holding that vide Ext.-12, the Deputy Commissioner/Collector had written to the Commandant 33rd BN. SSB that the value of the acquired land should be Rs. 6,00,000/- to Rs. 7,00,000/-.

32. Though in the order-sheet of LA Case No. 4/2007 there is a reference of a list of land valuation, no such list has been exhibited. In the note-sheet of LA Case No. 4/2007, which is first in point of time, it appears that the price of the acquired land was estimated at Rs. 50,000/- per Katha. Subsequently, it is found that the estimate was prepared at the rate of Rs. 2,20,000/- per Bigha. In Ext.-H, however, the rate per Bigha of land is shown as Rs. 2,30,000/-. The evidence of D.W. - 1 does not throw any light regarding the basis on which the market value of the land was determined by the learned Collector.

33. The cumulative evidence of P.W. 1, P.W. 6 i.e., Lat Mandal (Revenue staff) and D.W. 1 i.e., Administrative Officer in the Deputy Commissioner''s office, would go to show that the villages of Bamungaon, Kendukona, Borsil and Naukuchi are adjacent to village Hahara and for construction of National Highway, land had been acquired at villages Bamungaon and Kendukona at Rs. 6,50,000/- per Bigha. The acquired land is about 1/2 furlong away from the National Highway. It appears that there are hospitals, schools and colleges nearby and a railway station is also located within one kilometer radius. Some industries have also come up nearby the acquired land. Therefore, it appears

that though the land is agricultural land, the same could have been developed into a commercial and residential area.

34. The analysis of the evidence on record as well as the documents exhibited points to only one comparable sale deed, which is Ext.-9, and upon which the learned Reference Court had relied upon. The fact that exemplar filed by the respondents was in respect of a small plot of land cannot be a ground to discard the same especially when exemplars of large pieces of land were not available. Therefore, per force, reliance has to be placed on the said Ext.-9 to determine the market value of the land.

35. As already noticed earlier, Ext.-9 relates to a plot of land measuring 1 Katha, which was sold at Rs. 1,40,000/-. Price of 1 Bigha of land was accordingly determined on the basis thereof at Rs. 7,00,000/- (Rs. 1,40,000/- X 5 Katha) for total area of land measuring 186 Bighas 2 Kathas and 1 Lecha. One undisputed fact is that the acquired plot of land is at some distance away from the National Highway for which, land, which is undoubtedly more valuable, was acquired at Rs. 6,50,000/- per Bigha. Therefore, fixation of market value of the acquired land, away from the National Highway, at Rs. 7,00,000/- per Bigha, does not commend for acceptance.

36. In The Collector of Lakhimpur (Supra), the Apex Court opined that when a large area, which is the subject-matter of acquisition is to be sold, it cannot possibly fetch a price at the same rate at which small plots can be sold. The sale deeds exhibited, namely, Exts.-1 to 4, considered by the Apex Court, were of comparatively small areas and though the average of the sale price of the sale deeds came to about Rs. 15,000/- per Bigha, which was the market value determined by the High Court, the Apex court opined that if the plots covered by the sale had been sold in large parcels, the price likely to be fetched would not have exceeded Rs. 10,000/- per Bigha and, accordingly, reduced the rate of compensation from Rs. 15,000/- per Bigha to Rs. 10,000/- per Bigha

37. In Nookala Rajamallu (Supra) and The Land Acquisition Officer, Kammarapally Village (supra), the Apex Court had laid down that it cannot be construed to be an absolute proposition in law that the rates fixed for the small plots cannot be the basis for fixation of the market rate. It was observed that when there is no other material, it will be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases, necessary deductions/adjustments have to be made while determining the price.

38. In Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, , the Apex Court had ruled that 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 the principle of deduction, it is necessary

to consider all relevant facts and it is not that in every case such deduction is to be allowed.

39. In Atma Singh (Supra), the Apex Court in paragraph 14 laid down as follows:-

"14. 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 basis 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 cases, is made."

40. A consideration of the judgments referred to above will go to show that the proposition that a large area of land cannot possibly fetch a price at the same rate at which small plots are sold, is not an absolute proposition and, in given circumstances, it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of development of the land, the principle of deduction of value for the purpose of comparison may not be warranted. However, if the land acquired need to be developed for laying roads or other amenities, some appropriate deduction have to be made. The learned Reference Court did not consider these aspects of the matter.

41. The land acquired being agricultural land, and bearing in mind the purpose of acquisition, which is for construction of Headquarters of 33rd Bn. SSB, it is obvious that there has to be development of the land. Roads, water supply lines, electricity lines, sewers, drains etc. have to be put in place.

42. In Viluben (supra), it is noted by the Apex Court that as a general rule for laying the roads and other amenities, 33.33% is required to be deducted. In Atma Singh (supra), it is observed that in cases of those lands where there are certain advantages by virtue of the developed area around, percentage of cut may be reduced as the development charges may be less on that count and that taking into consideration the potentiality of the acquired land for construction of residential and commercial building, deduction of 20% is also permissible.

43. It has already been observed that the acquired land has the potential of being developed into a commercial and residential area and that the nearby areas are substantially developed. Considering the evidence on record, I am of the considered opinion that a deduction of 25% of the value of the comparable sale, vide Ext.-9, will represent the market value of the land. Accordingly, the market value of the land is determined at Rs. 5,25,000/- per Bigha.

44. In the result, the appeals are allowed by determining the market value at Rs. 5,25,000/- per Bigha instead of Rs. 7,00,000/- per Bigha as determined by the learned Reference Court. The impugned judgment dated 22.11.2012 is modified to that extent and all other directions contained in the said judgment are kept intact. Registry will send down the records of the Reference Court.

