

U.P. Awas Evam Vikash Parishad vs Asha Ram(D) Th. Lrs on 23 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2832, AIR ONLINE 2021 SC 248

Author: Hemant Gupta

Bench: S. Ravindra Bhat, Hemant Gupta, Uday Umesh Lalit

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 337 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4445 OF 2020)

U.P. AWAS EVAM VIKASH PARISHAD

.....APPELLANT(S)

VERSUS

ASHA RAM (D) THR. LRS & ORS.

.....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 360 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5184 OF 2020)

CIVIL APPEAL NO. 340 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4447 OF 2020)

CIVIL APPEAL NO. 338 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4444 OF 2020)

CIVIL APPEAL NO. 361 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5185 OF 2020)

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GEETA AHUJA
Date: 2021.03.24
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Reason:

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CIVIL APPEAL NO. 348 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4685 OF 2020)

CIVIL APPEAL NO. 343 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4680 OF 2020)

CIVIL APPEAL NO. 382 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5244 OF 2020)

CIVIL APPEAL NO. 363 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5190 OF 2020)

CIVIL APPEAL NO. 381 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5242 OF 2020)

CIVIL APPEAL NO. 339 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4446 OF 2020)

CIVIL APPEAL NO. 349 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4686 OF 2020)

CIVIL APPEAL NO. 383 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5245 OF 2020)

CIVIL APPEAL NO. 350 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4687 OF 2020)

CIVIL APPEAL NO. 351 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4688 OF 2020)

CIVIL APPEAL NO. 352 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4690 OF 2020)

CIVIL APPEAL NO. 384 OF 2021

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(ARISING OUT OF SLP (CIVIL) NO. 5246 OF 2020)

CIVIL APPEAL NO. 341 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4448 OF 2020)

CIVIL APPEAL NO. 364 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5191 OF 2020)

CIVIL APPEAL NO. 353 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4691 OF 2020)

CIVIL APPEAL NO. 354 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4692 OF 2020)

CIVIL APPEAL NO. 385 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5247 OF 2020)

CIVIL APPEAL NO. 357 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4695 OF 2020)

CIVIL APPEAL NO. 365 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5192 OF 2020)

CIVIL APPEAL NO. 355 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4693 OF 2020)

CIVIL APPEAL NO. 366 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5193 OF 2020)

CIVIL APPEAL NO. 347 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4684 OF 2020)

CIVIL APPEAL NO. 342 OF 2021

(ARISING OUT OF SLP (CIVIL) NO. 4679 OF 2020)

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CIVIL APPEAL NO. 367 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5194 OF 2020)

CIVIL APPEAL NO. 358 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4696 OF 2020)

CIVIL APPEAL NO. 368 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5195 OF 2020)

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(ARISING OUT OF SLP (CIVIL) NO. 4694 OF 2020)

CIVIL APPEAL NO. 369 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5197 OF 2020)

CIVIL APPEAL NO. 344 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4681 OF 2020)

CIVIL APPEAL NO. 370 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5198 OF 2020)

CIVIL APPEAL NO. 371 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5230 OF 2020)

CIVIL APPEAL NO. 372 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5231 OF 2020)

CIVIL APPEAL NO. 373 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5232 OF 2020)

CIVIL APPEAL NO. 374 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5233 OF 2020)

CIVIL APPEAL NO. 345 OF 2021

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(ARISING OUT OF SLP (CIVIL) NO. 4682 OF 2020)

CIVIL APPEAL NO. 386 OF 2021
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CIVIL APPEAL NO. 375 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5236 OF 2020)

CIVIL APPEAL NO. 376 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5237 OF 2020)

CIVIL APPEAL NO. 377 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5238 OF 2020)

CIVIL APPEAL NO. 387 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5249 OF 2020)

CIVIL APPEAL NO. 359 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 4698 OF 2020)

CIVIL APPEAL NO. 378 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5239 OF 2020)

CIVIL APPEAL NO. 379 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5240 OF 2020)

AND

CIVIL APPEAL NO. 380 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5241 OF 2020)

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JUDGMENT

HEMANT GUPTA, J.

1. The present appeals arise out of an order passed by the Division Bench of the High Court of Judicature at Allahabad on 19.07.2019 whereby a compensation of Rs. 297/- per square yard was awarded for the land acquired in six villages apart from the statutory benefits. In the present set of

51 appeals, 38 appeals pertain to land situated at Village Prahlad Garhi; 2 appeals pertain to land situated at Village Jhandapur; 3 appeals pertain to land situated at Village Sahibabad; 2 appeals pertain to land situated at Village Jhandapur/ Sahibabad; 1 appeal pertains to land situated at Village Arthala and 5 appeals pertain to land situated at Village Makanpur.

2. The appellant – U.P. Awas Evam Vikas Parishad 1 has been constituted under the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 2. A notification was published on 26.06.1982 by the Parishad under Section 28 of the Act intending to acquire 1229.914 acres of land. Subsequently, a notification under Section 32 of the Act was published on 28.02.1987. Sections 28 and 32 of the Act are equivalent to Sections 4 and 6 of the Land Acquisition Act, 18943.

1 For Short, the ‘Parishad’ 2For short the ‘Act’ 3 For short, the ‘LA Act’

3. The Special Land Acquisition Officer announced an award on 27.02.1989 awarding compensation of Rs. 50/- per square yard in respect of land of all the six villages and compensation of Rs. 35/- per square yard was awarded in respect of land owners owning more than 8 acres. The area of the land for which the compensation was awarded in the six villages is as under:

Sr. No.	Name of Village	Area (In Acres)
1	Arhtala	358.95
2	Jhandapur	36.947
3	Prahladgarhi	437.379
4	Makanpur	76.6156
5	Mahiuddin-Re-Kanawani	141.0734
6	Sahibabad	107.05
	Total	1157.895

The remaining area measuring 72.019 acres was the land of the Gram Panchayat or the State Government, for which no compensation was awarded by Special Land Acquisition Officer.

4. The land owners being aggrieved of the compensation awarded by the Special Land Acquisition Officer sought a Reference for determining the market value. The Learned Additional District Judge while deciding the Reference awarded Rs. 120/- per square yard as the compensation apart from the statutory benefits vide award dated 23.05.2000.

5. The landowners as well as the Parishad filed appeals against the decision of the Reference Court. Such appeals were decided separately by the High Court in respect of land acquired by the above stated notification under Section 28 of the Act. The first appeal in U.P. Awas Evam Vikash Parishad v. Jawahar Lal & Ors.⁴ filed by the Parishad in respect of land situated in Village Prahladgarhi was dismissed on 21.07.2015. The land owners have relied upon the following three sale deeds in appeal before the High Court to claim higher compensation:

Sr. No. Date of Sale Deed Area/Village Rate per square Yard 1 26.12.80 130 sq. mtr./Village Rs. 180/-

Sahibabad 2 12.5.80 125 sq. mtr./ Village Rs. 150/-

Sahibabad 3 19.6.82 242 sq. mtr./ Village Rs. 150/-

Sahibabad

6. The High Court considering the three sale deeds held as under:

“28. Considering the aforesaid facts and circumstances as also the factum that the court below has already applied deduction of 25%, we do not find any fault on the part of Reference Court in determining market value of acquired land at Rs. 120/- per sq. yard. It can neither be said to be excessive or unreasonable, nor it can be said that appropriate principles in determining market value have not been considered by court below. The two judgments cited by appellant do not help it in any manner since the principles laid down therein have already been noticed by court below. In these facts and circumstances, in our view, the aforesaid point for determination formulated above is answered in favour of respondents and against appellant.”

7. The compensation awarded @ Rs.120/- per square yard vide order dated 21.7.2015 attained finality when the Special Leave Petition (Civil) No. 4636 of 2016 (U.P. Awas Evam Vikas Parishad v. Jawahar Lal (D) through LRs & Ors.) filed by the Parishad was dismissed on 28.03.2016.

8. Another appeal Asha Ram & Anr. v. U.P. Awas Evam Vikash 4 First Appeal No. 56 of 2005 decided on 21.7.2015 Parishad & Anr.5 arising against the award of the Reference Court dated 23.5.2000 filed by the land owners in respect of land situated in Village Jhandapur was initially dismissed by the High Court on 16.12.2015. The land owners in the appeal relied upon the following sale deeds in support of their contention for determining the market value:

Sl. No.	Date	Nature of document	Area	Rate (in Rs.)
1	05/05/82	Sale deed	125 sq. yard	150/- per sq. yard
2	08/06/82	Sale deed	50 sq. yard	200/- per sq. yard
3	15/01/86	Sale deed	60 sq. yard	200/- per sq. yard
4	13/01/86	Sale deed	107 sq. yard	200/- per sq. yard

9. The sale deeds dated 13.1.1986 and 15.1.1986 were not relied upon by the High Court for the reason that such sale instances were of more than 3½ years after the publication of notification intending to acquire land. The High Court found that if the compensation has to be awarded on the basis of sale deeds dated 5.5.1982 and 8.6.1982, the compensation would be lower than what has

been awarded by the Reference Court. The Court in its order dated 28.10.2015 held as under:

“13. We find that reliance placed by appellants on the aforesaid sale deeds would not help claimants in any manner. In our view the court below has already been considerate enough in determining market value at Rs. 120/- per square yard else the aforesaid two sale deeds, if relied, would have caused a lower market value. Before elaborating our aforesaid observation we 5 First Appeal No. 827 of 2000 decided on 28.10.2015 find it appropriate to remind ourselves with principles laid down in last several decades on the question how market value of land acquired forcibly under provisions of Act, 1894 should be determined.”

10. In Asha Ram & Anr. v. U.P. Awas Evam Vikas Parishad & Anr. 6, the above order of the High Court was taken as the basis to determine the market value of land acquired in the said appeal. Another appeal by the land owners Asha Ram & Anr. v. U.P. Awas Evam Vikas Parishad & Anr.7 was decided on 01.03.2016, relying upon the earlier two orders.

11. The aforesaid orders dated 28.10.2015; 16.12.2015 and 1.3.2016 were set aside by this Court on 9.11.2017 and the matters were remanded to the High Court vide the following order-

“Leave granted.

Learned counsel for the parties have filed certain documents along with the Special Leave Petitions. The said documents are taken on record, particularly the decision of this Court in SLP(C) Nos.1506-1517/2016, titled as Pradeep Kapoor vs. State of U.P. documents were not on record before the High Court. They are taken on record. These appeals are remitted back to the High Court for deciding afresh. A prayer is made for consideration of the aforesaid documents. It is open to the parties if they so desire to adduce additional evidence, in that event, the High Court may ask Reference Court to record additional evidence and to record finding and then High Court may decide the appeals afresh. The judgment of the High Court is set aside and the appeals are remitted to the High Court for being decided afresh in accordance with law.

The appeals are disposed of accordingly.”

12. The IA to produce additional documents as mentioned in the above 6 First Appeal No. 552 of 2001 decided on 16.12.2015 7 First Appeal No. 412 of 2001 decided on 1.3.2016 order has been placed along with the written submissions by the land owners before this Court. Apart from the award by the Special Land Acquisition Officer and the order of the Reference Court, various other judgments pertaining to different acquisitions were produced.

13. The High Court thereafter decided the 53 appeals on 19.07.2019, awarding a sum of Rs. 297/- per square yard as compensation for acquiring the land of the six villages as mentioned in the notification. 51 appeals were preferred in respect of acquisition of land by the Parishad and the others are in respect of the acquisition by Ghaziabad Development Authority⁸. The High Court proceeded as if the notification for the acquisition for the Parishad and GDA is the same and for the

same acquisition proceedings. The land acquired by the Parishad vide notification dated 26.06.1982 is the subject matter of the present appeals. It is pertinent to note that the said land is not for the benefit of the GDA. The High Court in the impugned judgment held as under:

“Accordingly, we find that all the appellants in both the sets of first appeals are entitled to compensation at the rate of Rs. 297/- per square yard. We have mentioned in detail regarding the other similar cases where compensation has been awarded at the rate of Rs. 297/- per square yard even though there were gaps between the different notifications, but the villages are same. As discussed above, Narendra (supra) lays emphasis on fair compensation and on parity of compensation in respect of similarly situated land. A careful analysis of the said judgment clearly shows that gaps of a few years in the notifications have been ignored by the Supreme Court and this Court also in the subsequent judgment in First Appeal No. 522 of 2009, Pradeep Kumar v. State of U.P., which has been affirmed by the Supreme Court. We do not find any reason for not awarding compensation 8 For short, ‘GDA’ at the same rate. Accordingly, the orders of the Reference Court dated 13th April, 1998, 18th February, 2000, 23rd May, 2000, 29th March, 2001 and 02nd April, 2002, which are under challenge in the respective appeals, are set aside. The appellants are entitled to compensation of the land at the rate of Rs. 297/- per square yard along with other statutory benefits under the law which shall be calculated and paid to them expeditiously within six months from today.”

14. The High Court referred to the judgment of this Court in Narendra & Ors. v. State of Uttar Pradesh & Ors. 9 wherein compensation of Rs. 297/- per square yard was provided in respect of acquisition by the State vide notification dated 12.9.1986 for the land situated in Village Makanpur for planned development of Vaishali. The High Court, in a judgment under appeal, had restricted the amount of compensation to the amount on which Court fees was affixed. This Court held as under:

“16) Simply because the appellants had paid court fee on the claim at the rate of Rs.115/- square yards could not be the reason to deny the compensation at a higher rate. This could be taken care of by directing the appellants to pay the difference in court fee after calculating the same at the rate of Rs.297/- per square yards.”

15. In another matter referred by the High Court, Pradeep Kumar v.

State of U.P.¹⁰, this Court had remanded the appeals to the High Court on 16.2.2016 as it awarded Rs.135/- per square yard as compensation vide its order dated 15.4.2015. The appeals arose out of a notification under Section 4 of the LA Act published on 15.03.1988 for acquisition of land in Village Makanpur for planned industrial development at New 9 Civil Appeal Nos. 10429-10430 of 2017 decided on 11.09.2017 ¹⁰ (2016) 6 SCC 308 Okhla Industrial Development Authority¹¹ constituted under “The Uttar Pradesh Industrial Area Development Act, 1976”. After remand by this Court, the High Court on 21.04.2016 awarded Rs. 297/- per square yard as the compensation for the land acquired.

16. Mr. Mishra, learned senior counsel appearing for the Parishad, argued that the High Court has ignored the date of notification i.e. 26.6.1982 by which the land in the present matter was acquired. In the matter of Pradeep Kumar, the notification was dated 15.03.1988 in respect of land located in village Makanpur at Noida. However, in the present matter, more than 1000 acres of land situated in five other villages is to be acquired. The land in district Ghaziabad sought to be acquired by the Parishad is on the northern side of the National Highway-24 which passes through Village Makanpur, whereas the land on the southern side of National Highway is a part of Noida, District Gautam Budh Nagar. Noida is a well-developed town as compared to the developing town of Ghaziabad situated on the other side of the National Highway.

17. Mr. Gupta, on the other hand, vehemently argued on behalf of the land owners that the land situated in Village Makanpur was the subject matter of acquisition for Noida as well as GDA apart from the Parishad. It was contended that the purpose for which the land is acquired or the authority which acquired the land is inconsequential as the land owners are entitled to compensation irrespective of any such factors. In the written submissions, reference has been made to the statement of 11 For short, 'Noida' Inderraj Singh (PW-1) to submit that at the time of acquisition, there were industrial units as well as residential colonies of Vaishali and Kaushambi. Reliance was placed upon finding of the Reference Court which is to the following effect:

“10. From the above averments it is proved that the position and status of disputed acquired land is of high quality and these lands are of good potential with a view to productivity and other usages and is fit for residential and commercial capacity.”

18. In the written submissions filed on behalf of the land owners, two maps have also been referred. First map is of Ghaziabad which is on the northern side of National Highway-24 and the second map is stated to be of an area now covered within the jurisdiction of Noida, i.e. in respect of Chalera Banger, Bhangel Begampur, Nagla Charandas, Tilpatabad, Kakrana Khawaspur. Such map submitted with the written submissions is not legible. It is submitted that the Village Makanpur is close to Delhi as compared to the above said villages which are now parts of Noida. It has been stated that a compensation of Rs.297/- per square yard has been awarded under the notification dated 19.12.1980 for the land situated in Village Makanpur, hence, the present land owners are also entitled to the same amount of compensation. As per the argument of Mr. Gupta, the land acquired is better located than the land which is the subject matter of acquisition for Noida. The distances of the villages presently under the jurisdiction of Noida and Ghaziabad from the borders of Delhi have also been submitted before us. Though, such distances are not part of the pleadings or evidence before the Reference Court or the High Court, the said table has been reproduced hereunder:

“There is no dispute that landowners of village across NH-24, ex- amples of which were cited before this Court during the course of hearing have all been awarded compensation @ Rs.297/- per square yard. The approximate distance to Delhi from the villages involved in the present case and those across NH-24 is as under:

S. No.	Village under Ghaziabad jurisdiction	under	Approximate Distance (in KM)	Village under Ghaziabad jurisdiction at the relevant time [presently under Noida]	Approximate Distance [in KM]
1	Arthla		6	Chalera Banger	6.5
4	Makanpur		3	Nagla Charandas	13
6	Kanavani Sahibabad		3.5	Chhalera Khadar Khawaspur	5

The above table would show that for villages which are at a distance of 13-14 km from Delhi, have been awarded compensation @ Rs.297/- per square yard and therefore the respondents in the present case deserve compensation at least @ Rs.297/- per square yard, if not more.”

19. In the written submissions submitted on behalf of Shri Rohit Kumar Singh, learned counsel for the land owners, it is asserted that the State Government has decided that 731 acres of land would be carved out from the total land acquired in 1982 and handed over to the GDA. It is also submitted that a notification was issued under Section 4 of the LA Act on 28.2.1987 in respect of 731 acres of land. In the present set of appeals, we are not dealing with the acquisition of land intended to be acquired by way of a notification under Section 4 of the LA Act dated 28.2.1987. Mr. Singh in the written submissions has submitted that the possession was taken over by the GDA on 14.6.1988 and 29.6.1988 which was based upon development work taken place from 1982 onwards. We do not find such facts emanate from the orders passed by the Special Land Acquisition Officer, the Reference Court and the order of the High Court. The land acquired by the GDA is not part of determination of the compensation in the present set of appeals.

20. The principles of determining the market value are delineated under Sections 23 and 24 of the LA Act and are well-settled by the plethora of judgments on the said subject matter. The provisions of the LA Act and some of the judgments are referred hereinafter-

“23. Matters to be considered in determining compensation. – (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

XX XX XX

24. Matters to be neglected in determining compensation. – xx xx xx fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;”

21. A three Judge Bench of this Court¹² indicated methods of valuation to be adopted to ascertain the market value of land on the date of the notification under Section 4(1) as: (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired.

22. This Court¹³ held that the acid test which the court should always adopt in determining the market value in matters of compulsory acquisition is to eschew feats of imagination and sit in the armchair of a prudent willing purchaser. It was held as under:

“6. No prudent purchaser would purchase large extent of land on the basis of sale of a small extent of land in the open market. The acid test the court should always adopt in determining market value in the matter of compulsory acquisition would be to eschew feats of imagination, sit in the armchair of a prudent willing purchaser, it should consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation. Taking these facts into consideration, we are of the view that the reasonable and adequate compensation for the lands would be at a net rate of Rs 22 per sq. mtr., after giving deduction of 1/3rd of the amount towards developmental charges. Therefore, the claimants would be entitled to the compensation @ Rs 22 per sq. mtr. They are also entitled to the statutory benefits on the enhanced compensation.”

23. This Court¹⁴ has also held that in fixation of rate of compensation under the Land Acquisition Act, there is always some element of guesswork but¹² Smt. Tribeni Devi & Ors. v. Collector of Ranchi and Vice Versa, (1972) 1 SCC 480¹³ Gujarat Industrial Development Corpn. v. Narottambhai Morarbhai & Anr., (1996) 11 SCC 159¹⁴ Land Acquisition Officer v. B. Vijender Reddy & Ors., (2001) 10 SCC 669 that has to spring from the totality of evidence, the pattern of rate, the pattern of escalation and escalation of price in the years preceding and succeeding the notification under Section 4 of the LA Act. The Court has held that:

“13. The first question we proceed to consider is, whether the High Court was right to enhance the rate from the rate recorded in Exhibits A-1 and A-2 by Rs 10,000 per acre per year for three years. It is true, in the fixation of rate of compensation under the Land Acquisition Act, there is always some element of guesswork. But that has to

be based on some foundation. It must spring from the totality of evidence, the pattern of rate, the pattern of escalation and escalation of price in the years preceding and succeeding Section 4 notification etc. In other words, the guesswork could reasonably be inferable from it. It is always possible to assess the rate within this realm. In the present case, we find there are three exemplars i.e. Exhibits A-1 and A-2 which are three years preceding the date of notification and Exhibit A-3 which is of the same point of time when Section 4 notification was issued.”

24. Further, this Court¹⁵ has held that for determining the market value of the land under acquisition, suitable adjustments have to be made while considering the various positive and negative factors. The following observations have been made-

“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 15 Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat, (2005) 4 SCC 789 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 under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

xx xx xx

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.”

25. This Court¹⁶ has delineated the following factors responsible for increase in land prices such as situation of the land, nature of development in surrounding area, availability of land for development in the area, and demand for the land in the area. It was held:

“16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-1995 or 1995- 1996 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would

accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are 16 General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel & Anr., (2008) 14 SCC 745 acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable.

Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should, therefore, avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.”

26. The relationship between the market value of land and its potentiality has also been discussed by this Court¹⁷ wherein it was observed that-

“4. ... The market value is the price that a willing purchaser would pay to a willing seller for the property having due 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. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price ¹⁷ Atma Singh (Dead) through LRs & Ors. v. State of Haryana & Anr., (2008) 2 SCC 568 outcome of hypothetical sale expressed in terms of probabilities....

5. For ascertaining the market value of the land, the potentiality of the acquired land 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. The question whether a land has potential value or not, is

primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration...”

27. In another three Judge Bench of this Court¹⁸, the Court held as under:

“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 therefor should be taken into consideration as laid down by this Court in *Viluben Jhalejar Contractor v. State of Gujarat* [(2005) 4 SCC 789] , namely: (SCC p. 797, para 20)...”

28. The land forming the subject matter of the present appeals was acquired in pursuance of notification under Section 28 of the Act published on 26.6.1982. Therefore, firstly, the attempt to determine the market value should be based on the sale instances, which are proximate to both the date of notification under Section 28 of the Act and to the land sought to be acquired. The land owners have relied upon seven sale instances in respect of villages of which the land was acquired. Out of such seven 18 Revenue Divisional Officer-cum-Land Acquisition Officer v. Shaik Azam Saheb & Ors., (2009) 4 SCC 395 sale instances, two are almost four years later than the publication of notification under Section 28 of the Act, and thus cannot be taken into consideration in terms of the Section 24 of the LA Act.

29. The potentiality of the acquired land is one of the primary factors to be taken into consideration to determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not primarily depends upon its condition, situation, use to which it is put or its reasonable capability of being put and also its proximity to residential, commercial or industrial areas/institutions. The existing amenities like water, electricity as well as the possibility of their further extension, for instance whether near about town is developing or has prospects of development have to be taken into consideration. It also depends upon the connectivity and the overall development of the area.

30. The record in the present matter does not suggest that there were large scale development activities. The evidence is rather of sale of small areas. There is nothing on record as to when the industrial units were set up and what was the cost of land. Furthermore, there are no sale instances of land situated in Village Makanpur prior to date of notification i.e. 26.6.1982. The sale instances produced by the land owners pertain to Village Sahibabad and Jhandapur which are at a distance of about 3.5 kms from Delhi border. This Court ¹⁹ while dealing with comparable sale instances has held that-

“14. Thus, comparable sale instances of similar lands in the neighbourhood at or about the date of notification under Section 4(1) of the Act are the best guide for determination of the market value of the land to arrive at a fair estimate of the amount of compensation payable to a landowner. 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.”

31. The sale instances of a smaller area have to be considered while keeping in view the principle that where a large area is the subject matter of acquisition, suitable deduction is required to be made as no prudent purchaser would purchase large extent of land on the basis of sale of a small extent in the open market. The Court thus has to consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation. This Court has even provided for 50% deduction for development charges on the price mentioned in the sale deed.²⁰

32. The land owners have not produced any other sale deed or award of compensation on account of acquisition of land in the northern side of National Highway-24 prior to notification in question. It could thus lead to an inference that there were not many sale transactions prior to the 19 Mohammad Raofuddin v. Land Acquisition Officer, (2009) 14 SCC 367 20 Himmat Singh & Ors. v. State of Madhya Pradesh & Anr., (2013) 16 SCC 392 notification in question. Some industries might have set up their units keeping in view the proximity to Delhi but details regarding when such units were set up and at what price, these units purchased the land have not been brought on record. As mentioned earlier, the market value has to be determined on the basis of what a purchaser is willing to pay on the date of notification. It cannot be as per any rule of thumb without any reference to the prevalent market value on the date of acquisition on record.

33. The Reference Court had applied 1/3rd deduction in respect of land situated in Village Sahibabad on the sale price of Rs.180/- per square meters of land measuring 130 square meters vide sale deed dated 26.12.1980 whereas the deduction of 40% deduction in respect of land situated in Village Jhandapur on the sale price of Rs.200/- per square meters of land measuring 50 square yards vide sale deed dated 5.5.1982 in view of the fact that the area sold was very small. The High Court has affirmed such deduction. Thus, we are of the view that the same is reasonable and adequate deduction. Therefore, the market value determined at Rs.120/- per square yard is the appropriate market value on the basis of comparable sale instances.

34. The other method to determine the market value is the judicial precedents which are proximate to the time of the acquisition and proximate to the subject matter of land acquired. A table of judicial precedents with the dates of publication of notification under Section 28 of the Act and Section 4 of the LA Act; the village where the land is situated and the authority for which the land was acquired to arrive at the market value is produced below. Such table includes the judgments referred to by Mr. Gupta that a sum of Rs.297/- per square yard is the market value of the land acquired.

Sl. No.	Date of publication	Acquisition pertain(s) to	Purpose of Acquisition	Case Details	Compensation per square
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	of Notification u/s 4	Village/Villages			yard awarded by the High Court
1.	26.6.1982	Makanpur	UP Awas- parishad	FA 56 of 2005 decided on 21.7.2015	Rs. 120/- per square yard awarded by Reference Court maintained.
2	15.3.1988	Makanpur	Noida	FA No. 522 of 2009 Pradeep Kumar v. State of UP & Anr. and other connected appeals decided on 21.4.2016	297/-
3	12.9.1986	Makanpur,	Ghaziabad Developmen t Authority	FA No. 451 of 1999 (Narendra v. State of U.P. & Ors.) decided on 5.12.2014	Rs.115/-
4	28.02.1987	Makanpur	Ghaziabad Developmen t Authority	FA No. 910 of 2000 (GDA v. Kashi Ram & Ors.) with Connected appeals by the land owners decided on 13.11.2014	297/-
5	16.8.1988	Makanpur	Ghaziabad Developmen t Authority	FA no. 41 of 2005 Rameshwar Dayal v. State of UP And other connected	Rs.160/- square awarded Reference Court maintained

				appeals. Decided on 22.7.2015	
6	19.12.1980	Chhalera Khadar	Noida	FA No. 310 of 2008 (Mohkam & Anr. v. State of U.P.) Decided on 16.2.2015	Rs.297/-
7	1983, 1986 and 1988	Bhangel Begumpur	Noida	FA No. 564/1997 Khazan & Ors. v. State of U.P. and other connected appeals decided on 11.10.2012	Rs.297/-
	1986, 1988, 1991 and 1992	Nagla Charandas, Geha Tilapatabagh & Chhalera Bangar			
8	24.03.1988	Bhangel Begumpur	Noida	FA No. 1056/1999 (Raghuraj Singh & Ors. v. State of U.P. & Anr.) With Connected appeals Decided on 19.5.2010	Rs.297/-
9	27.2.1988 Corrigendum 24.6.1989	Chhalera Bangar	Noida	FA No. 744 of 2001 Jagdish Chandra and other appeals decided on 14.12.2007	Rs. 297.50
10	Notifications were issued in different years.	Names of Villages not available from the order but land acquired is said to be situated near to the villages Bhangel Begumpur	Noida	FA 162 of 1987- Kareem v. State of UP and other connected appeals decided on 3.12.2014	Rs. 297/-

Nagla
Charandas,
Geha Tilapatabagh
&
Chhalera Bangar

35. The order passed by this Court on 9.11.2017 for fresh determination on the basis of additional documents was based on the judgments pertaining to above-mentioned acquisitions. In terms of the order passed by this Court, no additional evidence was produced before the High Court and the submissions were confined to the material already on record. Such judgments, as discussed above, are later in time except the land situated in Chhalera Khadar, now forming part of Noida, for which notification was published on 19.12.1980. It is pertinent to note that the proximity from Delhi border would not be the determining factor but the distance between the two villages inter se would be relevant as Noida spread over a large area, has different access roads from Delhi and Ghaziabad. However, such distance has not been disclosed.

36. The High Court in Jagdish Chandra & Ors. v. New Okhla Industrial Development Authority, NOIDA & Anr.²¹ had determined Rs. 297/- as the market value of the land situated in Chhalera Bangar, now forming part of Noida, intended to be acquired vide notification published under Section 4 of the LA Act on 27.2.1988. The High Court had noted the advantageous location of Noida when it held that:

“...Valuation of the landed property is enormously rising day by day. The location of the land, as stated, is nearer to developed area of NOIDA. The land is acquired for the purpose of making park. Neither it is required for commercial purpose nor for residential purpose. No question of largeness of the land is available. Therefore, we are not aware what is the basis of 21 First Appeal No. 744 of 2001 decided on 14.12.2007 deduction.”

37. The first notification for acquisition of land in Village Makanpur, the village which is located on both sides of National Highway-24, was published on 26.6.1982, for the land situated on the northern side of the National Highway, that is the notification in question.

38. In Pradeep Kumar, after remand, the High Court awarded Rs.297/- per square yard as the compensation in pursuance of notification dated 15.3.1988 of the land situated in Village Makanpur (Sr. No. 2 in the above table) for the benefit of Noida. This Court in Narendra awarded compensation of Rs.297/- per square yard for the land acquired in Village Makanpur in pursuance of the notification under Section 4 of the LA Act published on 12.9.1986 (Sr. No. 2 in the above table). Such land is in the area of Noida on the southern side of the National Highway.

39. The other villages, subject matter of acquisition i.e. Arthla, Jhandapur, Prahladgarhi, Mahiuddin-Re-Kanawani and Sahibabad are farther away from the National Highway than the land

situated in Village Makanpur. Since the Special Land Acquisition Collector as well as the Reference Court has determined uniform compensation for the entire land acquired, therefore, we do not find that the compensation awarded of land situated in Village Makanpur on the basis of notification 4-5 years later is a reasonable yardstick for determining compensation of over 1100 acres of land in the other villages. There is no judicial precedent in respect of land situated in other five villages which are subject matter of the acquisition in the present group of appeals. The orders passed by this Court relied upon are either subsequent to the notification in question and/or for the acquisition for the purpose of planned development of Noida.

40. A compensation of Rs. 297/- per square yard was awarded for land acquired for the purpose of GDA vide notification dated 28.2.1987 and 16.8.1988 (Sr. No. 4 & 5 in the above table). The said acquisition was five years after the acquisition in question. The development activity initiated vide notification dated 26.6.1982 would be relevant to determine the market value on account of acquisition by virtue of the subsequent notification, but time gap of more than five years will not entail the same amount of compensation in respect of the land acquired five years earlier.

41. The compensation determined on the basis of a notification five years later cannot be a yardstick for determining compensation of the land which is subject matter of present acquisition years earlier. Still further, the High Court was not justified in observing that gaps of few years in the notification have been ignored by this Court. In fact, on the contrary, the High Court has failed to note that the date of notification for the acquisition of land for the benefit of Parishad is five years earlier than those in the judgments relied upon by the High Court.

42. In respect of land situated on northern side of National Highway, the land was acquired vide notifications dated 28.2.1987 and 12.9.1986 in the case of Narendra and Kashi; and on 16.8.1988 in the case of Jai Prakash. Whereas, on the southern side of National Highway for the benefit of Noida, the land of Village Makanpur became subject matter of acquisition vide notification dated 10.3.1988 in the case of Pradeep Kumar and on 15.3.1988 in the case of Charan Kaur.

43. For the land situated on the northern side of the National Highway for the benefit of the Parishad, the acquisition has attained finality with the dismissal of SLP (Civil) No. 4636 of 2016 on 28.3.2016. The compensation assessed in the other aforementioned cases is subsequent to the date of notification, therefore, none of the orders are determinative of the amount of compensation. Hence, the market value as determined by the High Court cannot be sustained either on the basis of the sale deeds, or on the strength of judicial orders. There is no justification of enhancement of compensation awarded by the Reference Court i.e. Rs.120/- per square yard.

44. Consequently, the present appeals are hereby allowed. The order passed by the High Court in the appeals preferred by the land owners is set aside and the compensation awarded by the Reference Court @ Rs.120/- per square yard apart from statutory benefits is restored.

.....J. (UDAY UMESH LALIT)J. (HEMANT GUPTA)J. (S. RAVINDRA BHAT) NEW DELHI;

MARCH 23, 2021.