

[2022] 9 S.C.R. 743

STATE OF MADHYA PRADESH & ANR.

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v.

RADHESHYAM & ORS.

(Civil Appeal Nos. 8857-8858 of 2022)

NOVEMBER 24, 2022

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[S. ABDUL NAZEER AND KRISHNA MURARI, JJ.]

Land Acquisition Act, 1894: s.4(1) – Market value of land acquired – Determination of – Standard method of determination is by evaluating the land on the date of publication of notification u/s. 4(1) of the Land Acquisition Act – Thus, it is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification – In the instant case, none of the principles were followed by High Court – Matter remitted to High Court for fresh consideration.

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Land Acquisition Act, 1894: Deduction to be made towards utilization of land and development charges – Deduction depends upon the evidence to be brought on record by the parties in respect of land under acquisition – If land under acquisition is capable of being used for the purpose for which smaller plots are used and is situate in a fully developed area with no requirement of any further development to be made, there would be no need for deduction of the value – Where all civic and other amenities are to be provided to make the land suitable for the purpose for which it is required, deduction is liable to be made.

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Allowing the appeals, the Court

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HELD: 1. The market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value. Thus, insofar as the determination of the market value of the land in question by the High Court is concerned, the same is not sustainable and the matter needs to be remitted back to the High Court to determine the valuation of compensation

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- A for fresh consideration in accordance with law and the settled principles culled out for such determination. [Paras 22, 28][753-D; 755-H; 756-A-B]
 - 2. The deduction to be made towards development of the land depends on various factors and there cannot be a straight jacket formula. The principles are whether there should be any deduction or not and the ratio of deduction depends upon the evidence to be brought on record by the parties in respect of the land under acquisition. It stands settled that if there is a large tract of land under acquisition but is capable of being used for the purpose for which smaller plots are used and is situate in a fully developed area with little or no requirement of any further development to be made, there would be no need for deduction of the value. Similarly, when all civic and other amenities are to be provided to make the land under acquisition suitable for the purpose for which it is being acquired setting aside some part of the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made. The view taken by the High Court in this regard, is also not liable to be sustained. Thus, this issue also requires reconsideration by the High Court in the light of the evidence and material on record of the case. [Paras 29, 33, 34, 36 and 37][756-B; 758-D-F; 759-A-B]
- B jacket formula. The principles are whether there should be any deduction or not and the ratio of deduction depends upon the evidence to be brought on record by the parties in respect of the land under acquisition. It stands settled that if there is a large tract of land under acquisition but is capable of being used for the purpose for which smaller plots are used and is situate in a fully developed area with little or no requirement of any further development to be made, there would be no need for deduction of the value. Similarly, when all civic and other amenities are to be provided to make the land under acquisition suitable for the purpose for which it is being acquired setting aside some part of the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made. The view taken by the High Court in this regard, is also not liable to be sustained. Thus, this issue also requires reconsideration by the High Court in the light of the evidence and material on record of the case. [Paras 29, 33, 34, 36 and 37][756-B; 758-D-F; 759-A-B]
- C developed area with little or no requirement of any further development to be made, there would be no need for deduction of the value. Similarly, when all civic and other amenities are to be provided to make the land under acquisition suitable for the purpose for which it is being acquired setting aside some part of the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made. The view taken by the High Court in this regard, is also not liable to be sustained. Thus, this issue also requires reconsideration by the High Court in the light of the evidence and material on record of the case. [Paras 29, 33, 34, 36 and 37][756-B; 758-D-F; 759-A-B]
- D the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made. The view taken by the High Court in this regard, is also not liable to be sustained. Thus, this issue also requires reconsideration by the High Court in the light of the evidence and material on record of the case. [Paras 29, 33, 34, 36 and 37][756-B; 758-D-F; 759-A-B]
- E 34, 36 and 37][756-B; 758-D-F; 759-A-B]

Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat (2005) 4 SCC 789 : [2005] 3 SCR 542 – followed.

- F *Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty [1959] 1 Suppl. SCR 404; Bhagwanthulla Samanna & Ors. v. Special Tehsildar and Land Acquisition Officer (1991) 4 SCC 506 : [1991] 1 Suppl. SCR 172; Lal Chand v. Union of India & Anr. (2009) 15 SCC 769 : [2009] 13 SCR 622; Charan Dass (Dead) by LRs. v. H.P. Housing & Urban Development Authority & Ors. (2010) 13 SCC 398 : [2009] 14 SCR 163; Noida v. Surendra Singh 2015 SCC OnLine ALL 5945 – relied on.*
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Kasturi & Ors. v. State of Haryana (2003) 1 SCC 354 : [2002] 4 Suppl. SCR 117; *U.P. Awas Evam Vikas Parishad v. Jainul Islam and Anr.* (1998) 2 SCC 467 : [1998] 1 SCR 254; *Trishala Jain & Anr. v. State of Uttarakhand & Anr.* (2011) 6 SCC 47 : [2011] 8 SCR 520 – referred to.

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Case Law Reference

[2002] 4 Suppl. SCR 117	referred to	Para 8	
[1998] 1 SCR 254	referred to	Para 9	
[2011] 8 SCR 520	referred to	Para 10	C
[1959] 1 Suppl. SCR 404	relied on	Para 23	
[2005] 3 SCR 542	followed	Para 24	
[1991] 1 Suppl. SCR 172	relied on	Para 29	
[2009] 13 SCR 622	relied on	Para 30	D
[2009] 14 SCR 163	relied on	Para 31	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8857-8858 of 2022.

From the Judgment and Order dated 20.06.2016 and 08.09.2017 of the High Court of Madhya Pradesh Bench at Indore in First Appeal No. 131 of 2010 and MCC No. 304/2017.

Ms. Ankita Choudhary, Dy. AG, Abhinav Srivastava, Sunny Choudhary, Advs. for the Appellants.

S. R. Singh, Sr. Adv., Ardhendumauli Kumar Prasad, Ms. Shreya Srivastava, Ashish Madaan, Vikas Upadhyay, Rajesh Kandari, Sachin Daga, Advs. for the Respondents.

The Judgment of the Court was delivered by

KRISHNA MURARI, J.

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Leave granted.

2. These appeals are directed against the orders dated 20.06.2016 and 08.09.2017 passed by the High Court of Madhya Pradesh Bench at Indore (hereinafter referred to as “**High Court**”) in First Appeal No. 131 of 2010 and MCC No. 304/2017 respectively. By the said orders,

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- A the High Court allowed the MCC as well as first appeal and dismissed the appeals of the Appellant State by reducing the deduction awarded by the Reference Court from 65% towards largeness of plot + 48% towards development to 35% on the market value of Rs.1,04,64,000/- per hectare for the irrigated land and Rs. 69,76,000/- per hectare for the un-irrigated land.
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 - 3. Brief facts necessary for the disposal of these appeals are as under:
 - 3.1. A Notification dated 27.02.2004 u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as “**the act**”) was published in the official gazette for acquisition of land admeasuring 38.178 hectares of Village Sala, Tehsil, Dharampuri, District-Dhar for the purpose of “*rehabilitation of displaced persons*” of villages which came under the submergence due to increase of height of Sardar Sarovar Dam. A declaration under Section 6 of the Act in respect of Village Sala was issued on 14.05.2004, 11.05.2004 and 05.05.2004, respectively.
 - 3.2. The Land Acquisition Officer (hereinafter referred to as “**LAO**”) vide award dated 23.12.2004 passed an award for the acquired land in Village Sala, District- Dhar, MP, wherein the learned LAO assessed the market value and awarded compensation which is enumerated as below:
 - i. Irrigated Land - Rs. 47,165/- per hectare
 - ii. Unirrigated Land - Rs. 29,621/- per hectare
 - iii. Solatium – 30%
 - iv. Additional Compensation -12%
 - 3.3. The Respondent landowners being dissatisfied with the amount of compensation, sought Reference under Section 18 of the Act claiming enhancement of compensation. The Reference Court vide order dated 09.09.2009, after determining the market value of the irrigated land to the tune of Rs. 36,62,400 per hectare and unirrigated land to the tune of Rs. 24,41,600 per hectare on the basis of sale deeds filed as exemplars enhanced the compensation along with 48% deduction towards development charges. The enhanced compensation made by reference court is enumerated as below:
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- i. Unirrigated land – Rs. 24,41,600 – 48% deduction = A
Rs.11,71,968/- per hectare
- ii. Irrigated Land - Rs. 36,62,400 – 48% deduction =
Rs.17,57,952/- per hectare
- iii. interest @ 12% per annum on enhanced compensation from
27.02.2004 to date of passing of award on 23.12.2004 B
- iv. solatium @ 30% of enhanced compensation.

It is pertinent to mention here that the Reference Court assessed the market value of land of the village sala on the basis of sale deed Ex-P/2 dated 11.02.2002, Ex-P/3 dated 06.05.2002 and Ex-P/4 dated 04.02.2004 measuring 0.017 hectare, 0.013 hectare and 0.011 hectare, respectively. C

3.4. The Appellant State as well as the Respondent Landowners filed appeals before the High Court assailing the order dated 09.09.2009 passed by the Reference Court. It was contended by the Appellant state that the enhancement of compensation by the Reference Court from the amount awarded by the LAO is on the higher side and that the enhancement on the basis of small exemplars is contrary to the law settled by the Apex Court. It was contended by the Respondent landowners that the Reference Court erred in law in deducting 65% from the market value on account of development charges and other possible expenditure and looking to the fact that the land was acquired for “rehabilitation of displaced persons”, deduction of around 25% from the market value would be justifiable. D

3.5. The High Court vide impugned judgment and final order dated 20.06.2016, partly allowed the appeals filed by the Respondent landowners and dismissed the appeals of the Petitioner State by reducing the deduction for both the components to 35% on the market value of Rs. 1,04,64,000/- per hectare for the irrigated land and Rs. 69,76,000/- per hectare for the unirrigated land. The operative portion of the aforesaid judgment reads as under: - E

“37. In the instant case, having regard to the extent of land acquired and the development in and around for “rehabilitation of displaced persons” of villages which comes under the submergence due to increase of height of Sardar Sarovar Dam of Tehsil- Dharampuri in District – Dhar, in G

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- A *our view it is appropriate to make 20% deduction towards utilisation of the land area in the layout for roads, drains, civic amenities etc. So far as the expenditure for development of the large extent of land into a developed area by construction of roads, drainage, civic amenities etc., it is appropriate to make further deduction of 15% towards development charges. Two components taken together, the total deduction to be made would be 35%. Thus, it is a case of less deduction. In our opinion, a deduction of 35% from the market value on account of development charges and other possible expenditure would be justifiable and called for in the facts and circumstances of the present case."*
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- 3.6. Respondent filed an application being MCC No. 304/2017 before the High Court under Section 152 of Code of Civil Procedure, 1908 for correction of an alleged accidental slip in the judgment dated 20.05.2016 and prayed to correct the market value of the irrigated land
- D as well as the unirrigated land in the impugned judgment dated 20.06.2016. The High Court vide impugned order dated 08.09.2017 corrected the market value (per hectare) for irrigated land as well as unirrigated land in para 13 and 21 of the judgment dated 20.06.2016 in respect of Village Sala from Rs. 11,71,968/- per hectare for unirrigated land to Rs. 69,76,000/- per hectare and from Rs. 17,57,952/- for irrigated land to Rs. 1,04,64,000/- per hectare.
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4. Being aggrieved by the impugned orders of the High Court, the Petitioner State have preferred these appeals.

ARGUMENTS ON BEHALF OF THE APPELLANT :

- F 5. Learned counsel for the appellant has submitted that the learned Reference Court enhanced the compensation multi-fold by relying on a small portion of land to determine the market value of large pieces of land. It was also submitted that the High Court failed to appreciate the point and further reduced deductions from 48% to 35% as development charges from market value as decided by the Reference Court.
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- H 6. It was further submitted that the Reference Court has considered the exemplar sale deed of Ex P2 to P4 which were produced by landowners in order to determine the market value. These are small plots of land as follows:

- Ex P2 – seller Abdul Samad, sold 0.017 hectare out of Rakba 0.732 hectare in Village Sala to the buyer Shakil for Rs. 2,43,000. A
- Ex P3 – seller Nasru Mohd., sold 0.013 hectare out of Rakba 0.185 hectare in Village Sala to Sadiranbai for Rs. 1,40,500. B
- Ex P4 – seller Ramkunwarbai, sold 0.011 hectare out of Rakba 0.109 hectare in Village Sala to the buyer kamal for Rs. 64,000. C

It was submitted that the sale price of the land Ex P2 to P4 (**the small plots**) mentioned comes to be Rs. 69,76,000/- per hectare for unirrigated land and Rs. 1,04,64,000/- per hectare for irrigated land. Out of the per hectare sale price of small plot, 65% was justified to get the market value of the acquired land by the government.

7. It was submitted that as a result of impugned order dated 08.09.2017, on the basis of misinterpreted calculation, the amount of compensation has been raised exorbitantly i.e., six times of the compensation awarded by the learned LAO and comes to an amount which is actually higher than the present market rate of the land in question, which is not sustainable in the eyes of law as well as principle laid down by this Hon'ble Court in respect of determining the market value of large chunks of land on the basis of sale deeds of small areas. D E

8. It was vehemently submitted that the High Court has failed to appreciate that the deduction for development charges is dependent on the various facts and circumstances and the rationale behind the same is required to be considered. It was submitted that in the case at hand, no evidence was led by the Respondent land owners regarding facility of electricity, water, road, drainage, etc. being available on land, and as a matter of fact admitted the land in question was being used for agricultural purposes. The learned counsel for the Appellants placed reliance on the judgment of this Court in case of *Kasturi & Ors. Vs. State of Haryana*¹ to substantiate the above stated argument. The relevant para referred are as hereunder: - F G

"7. ... A claimant claiming that their land is fully developed and nothing more is required for a development purpose has

¹(2003) 1 SCC 354 H

A *to show evidence that it is such a land. If no such evidence is shown, merely saying that adjoining land is developed is not enough, especially when the land is large.”*

9. It was further submitted that this Court has settled that the cost of small acquired plot cannot be made basis for fixation of price of plots of large area, because the price on which the small plots are sold, the big plots cannot fetch that price. Even if there is no basis available then the transaction of small plot can be made basis but in this regard the proper deductions should have been done, which can be 1/3rd of cost of sale of small plot. It was further submitted that Reference Court rightly made deductions placing reliance on the judgment of this Court in case of ***U.P. Awas Evam Vikas Parishad Vs. Jainul Islam and Anr.***² to determine the market value.

10. Learned counsel for the appellants also referred to judgment rendered by this Court in ***Trishala Jain & Anr. Vs. State of Uttarakhand & Anr.***³ whereby it was held that deduction is to be applied on account of carrying out development activities like providing roads or civic amenities.

11. A calculation chart depicting the break-up of total value of the irrigated and unirrigated land has also been submitted on behalf of appellants which is as under :-

E	Kind of land	MV per hectare as per exemplar	After reduction of 65% on account of largeness of area for determining the MV	After 48% deduction on account of development charges (Reference Court order dated 09.09.2009)	After 35% deduction on account of development charges (High Court order dated 20.06.2016)
F	Irrigated Land	Rs. 1,04,64,000/-	Rs. 1,04,64,000 - 65% = Rs. 36,62,4000/- (valuation of land)	Rs. 36,62,400 - 48% = Rs. 17,57,952/- (as calculated by Reference Court)	Rs. 36,62,400 - 35% = Rs. 23,80,560/-
	Unirrigated Land	Rs. 69,76,000/-	Rs. 69,76,000 - 65% = Rs. 24,41,600	Rs. 24,41,600 - 48% = Rs. 11,71,968 (as calculated by Reference Court)	Rs. 24,41,600 - 35% = Rs. 15,87,040/-

G ARGUMENTS ON BEHALF OF THE RESPONDENTS:

12. Learned counsel for the respondents submitted that the impugned order is a covered matter which has already been decided by

H ²(1998) 2 SCC 467

³(2011) 6 SCC 47

this Hon'ble Court wherein the SLP (C) D No. 12907/2017 now registered as (SLP No. 23225-226/2017) *Upendra Singh Vs. State of M.P. & Anr.* has been dismissed by this Hon'ble Court vide order dated 18.07.2017. A

13. It was submitted that the High Court in the case of *Upendra Singh* had determined the value of the land as per the exemplars provided by the land owners and laid down the principle that the **total deduction** would be 35% ie., 20% towards deduction of utilization of the land and 15% towards development charges. B

14. It was also submitted that in the case of *Upendra Singh*, the High Court rejected the computation done by the Reference Court of initially deducting 65% from the valuation of land arrived on the basis of the exemplars/sale deed and then further deducting 48% from the remaining value. C

15. It was also submitted that the order passed by the High Court in the case of *Upendra Singh* has been challenged before this Hon'ble Court by the Land Owners only and that the order of upendra singh is being implemented by the state government by disbursing the compensation; which implies that the state government has accepted the said order and did not challenge it before the Hon'ble Supreme Court nor filed any review petition. D

16. Following order dated 18.07.2017 was passed by this Court in the case of *Upendra Singh Vs. State of M.P.* :- E

"Delay condoned in filing application for substitution, abatement, if any, is set aside and application for substitution is allowed in Diary No.13816/2017. Heard. Delay condoned." F

We do not see any ground to interfere with the impugned order except to direct that the petitioners shall be entitled to all statutory benefits including the one under Section 28 of the Land Acquisition Act, 1894 in accordance with law.

The special leave petitions are accordingly disposed of. G

Pending application(s), if any, shall also stand disposed of."

17. The impugned order of the High Court has been passed relying upon the order passed in FA NO. 566/2010 and the connected appeals in matters of *Upendra singh Vs. State of MP*, wherein the High Court H

- A decided the principle of deduction and to what extent deduction should be made.

18. The order of the High Court in the case of *Upendra Singh* has attained finality as the SLP being Diary No. 12907 of 2017 now registered as (SLP No. 23225-226/2017) and other connected matters, B preferred by the land owners against the order of the High Court was disposed of vide order dated 18.07.2017 and the state never challenged the order of the High Court.

19. Learned counsel for the Respondents submitted a comparative valuation of land by various authorities.

	Upendra Singh Lot – 49.413. Hectares			Radheshyam Lot – 38.178 Hectares	
		Non-Irrigated	Irrigated	Non-Irrigated	Irrigated
	Valuation as per exemplar/sale deed per hectare	Rs. 20,14,000/-	Rs. 30,21,000/-	Rs. 69,76,000/-	Rs. 1,04,64,000
D	LAO	Rs. 30,225/- + solatium and statutory benefits	Rs. 46,484/- + solatium and statutory benefits	Rs. 29,621/- + solatium and statutory benefits	Rs. 47,165 + solatium and statutory benefits
E	Reference Court	Rs. 20,14,000 - 65% = Rs. 7,04,900/- (valuation of land)	Rs. 30,21,000 - 65% = Rs. 10,57,350/- (valuation of land)	Rs. 69,76,000 - 65% = Rs. 24,41,600/- (valuation of land)	Rs. 1,04,64,000 - 65% = Rs. 36,62,4000/- (valuation of land)
F		Rs. 7,04,900 - 48% = Rs. 3,66,548/- (valuation after deductions)	Rs. 10,57,350 - 48% = Rs. 5,49,822/- (valuation after deductions)	Rs. 24,41,600 - 52% = Rs. 11,71,968/- (valuation after deductions)	Rs. 36,62,4000 - 52% = Rs. 17,57,952/- (valuation after deductions)
G	High Court	Rs. 20,14,000 - 35% = Rs. 13,09,100/- + solatium and statutory benefits	Rs. 30,21,000 - 35% = Rs. 19,63,650/- + solatium and statutory benefits	Rs. 69,76,000 - 35% = Rs. 45,34,000 + solatium and statutory benefits	Rs. 1,04,64,000 - 35% = Rs. 68,01,600/- + solatium and statutory benefits
H	Hon'ble Supreme Court (upheld the order of the High Court)	Rs. 20,14,000 - 35% = Rs. 13,09,100/- + solatium and statutory benefits	Rs. 30,21,000 - 35% = Rs. 19,63,650/- + solatium and statutory benefits	Sub-judice	

20. We have carefully considered the submissions made at the bar and perused the materials placed on record.

21. The two main issues which arise for consideration before this Court are :

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i. Determination of market value of land acquired. A

ii. Deduction to be made towards utilization of land and development charges.

Reference Court after determining the market value of the land deducted 65% from the valuation so determined and further deducted another 48% from the value so determined after deducting 65% from the market value.

The High Court made a total deduction of 35% from the valuation, out of which 20% deduction was towards utilisation of land area in the lay out for roads, drains, civic amenities, etc., and 15% towards development charges.

ISSUE NO. 1

22. The standard method of determination of the market value of any acquired land by a valuer is by evaluating the land on the date of publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

23. This Court in the case of *Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*⁴, indicated the methods of valuation to be adopted in ascertaining the market value of the land on the date of notification, as under:-

(i) Opinion of experts. F

(ii) The price paid within a reasonable time in bona-fide transactions of purchase of the land acquired or the lands adjacent to the lands acquired and possessing similar advantages; and G

(iii) A number of years' purchase of the actual or immediately prospective profits of the lands acquired.

24. It is well settled by various judicial pronouncements of this Court that in order to determine the market value of the land under

⁴ 1959 Supp.(I) SCR 404

⁵ (2005) 4 SCC 789 H

- A acquisition, certain positive as well as negative factors have to be taken into consideration. A three-Judge Bench of this Court in the case of *Viluben Jhalejar Contractor (Dead) by LRs. Vs. State of Gujarat*^s has laid down the following principles for determination of market value of the acquired land :-
- B “17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification Under Sub-section (1) of Section 4.
- C 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 therefore 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.
- D 19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.
- E 20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition....
- F 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
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an entrepreneur. Such development charges may range A between 20% and 50% of the total price.”

25. From a perusal of the impugned judgment passed by the High Court, we find that none of the above principles enunciated for determining the valuation of the acquired land has been taken into consideration by the High Court. The High Court blindly relied on the case of *Upendra Singh Vs. State of M.P. & Anr.*, on the ground that the judgment of the High Court in the said case has attained finality on account of dismissal of the Special Leave Petition being Diary No. 12907 of 2017 now registered as SLP No. 23225-226 of 2017 and other connected matters, preferred by the land owners vide judgment and order dated 18.07.2017.

26. From a perusal of the judgment of the High Court in the case of *Upendra Singh (Supra)* filed as Annexure P-3 goes to show that in the said case, the area of the acquired land was 49.413 hectares whereas in the case at hands, it is 38.178 hectares. Apart from above, the Reference Court in the case of *Upendra Singh*, fixed the value of non-irrigated land at Rs.20,14,000/- per hectares with irrigated land at Rs. 30,21,000/-. Whereas in the present case, the Reference Court fixed the value of irrigated land to the tune of Rs. 1,04,64,000/-. The difference in value of the land as per the exemplars/sale deeds in the two cases works out to be 346.38%. We failed to understand that as to how the market value determined in the case of *Upendra Singh* would automatically be applied to the land acquired in the present case, without recording any finding that both the lands are in vicinity and identical in nature and similarly situated. In our considered opinion, the High Court fell in a grave error in applying the market value of the land determined in the case of *Upendra Singh* to the land involved in the case at hands.

27. The High Court in the impugned order has failed to discuss as to how the market value of the acquired land determined in the case of *Upendra Singh* would be applicable in the facts and circumstances of the land acquired in the present case. Except for the fact that the land in both the matters have been acquired for the same purpose, we do not find any material on record to draw a conclusion that the market value of the land determined in the case of *Upendra Singh* would automatically be applicable to the land acquired in the present case. In the absence of any such material to justify the market value determined in the case of *Upendra Singh* would be applicable to the land acquired in this case, the reliance placed by the High Court on the dismissal of the Special

- A Leave Petition by this Court, in the case of *Upendra Singh*, appears to be totally mis-founded.
28. Thus, insofar as the determination of the market value of the land in question by the High Court is concerned, the same is not sustainable and the matter needs to be remitted back to the High Court
- B to determine the valuation of compensation for fresh consideration in accordance with law and the settled principles culled out for such determination.

ISSUE NO. 2

- C 29. In so far as, issue no. 2 is concerned, the deduction to be made towards development of the land depends on various factors and there can not be a straight jacket formula. Laying down the principles for deduction to be made towards the development of the land *vis-a-vis* largeness of area, this Court in the case of ***Bhagwanthulla Samanna & Ors. Vs. Special Tehsildar and Land Acquisition Officer***⁶, observed as under :-
- E *"In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."*
- F *".....If the larger tract of land because of advantageous position 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 further development, the principle of deduction of the value for purpose of comparison is not warranted."*
- G 30. A two-Judge Bench of this Court in the case of ***Lal Chand Vs. Union of India & Anr.***⁷ observed that the deduction towards

H ⁶(1991) 4 SCC 506

H ⁷(2009) 15 SCC 769

development can range from 20% to 75%, depending on various factors. A
The Court has observed as under :-

"13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. B

14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilized for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilize around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.... C

20. Therefore the deduction for the "development factor" to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorized private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure." E F

31. In the case of *Charan Dass (Dead) by LRs. Vs. H.P. Housing & Urban Development Authority & Ors.*⁸, this Court has observed as under :-

"32. It is well settled that it is not every case that deduction towards development charges has to be made when a big chunk of land is acquired for housing colonies, etc., where the acquired land falls in the midst of an already developed land with amenities of roads, electricity, etc., deduction on G

⁸(2010) 13 SCC 398

- A **this account may not be warranted.** At the same time, where all civic and other amenities are to be provided to make it suitable for building purposes or under the local building regulations setting apart of some portion of the lands for providing common facilities is mandatory, an appropriate deduction may be justified...."
- B 32. The same view has been reiterated by this Court in the case of *Noida Vs. Surendra Singh*⁹, as under :-
- "57. With respect to determination of rate of Rs.135/- there is no ground that this by itself is bad. The next and last ground taken in these appeals is that there should not have been any deduction. To this extent, we find substance that the land in question was situated in an area which was already sufficiently developed, and land was being sold there in square yards. **There was thus no justification to apply any deduction, whatsoever, since it is not a rule of thumb that in every case deduction must be applied."**
- C 33. The principles culled out from the above pronouncements clearly go to show that whether there should be any deduction or not and the ratio of deduction depends upon the evidence to be brought on record by the parties in respect of the land under acquisition.
- D 34. It stands settled that if there is a large tract of land under acquisition but is capable of being used for the purpose for which smaller plots are used and is situate in a fully developed area with little or no requirement of any further development to be made, there would be no need for deduction of the value. Similarly, when all civic and other
- F amenities are to be provided to make the land under acquisition suitable for the purpose for which it is being acquired setting aside some part of the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made.
- G 35. The High Court again fell in error in respect to this issue as it failed to analyse the evidence brought on record by the parties in this regard, if any, and without recording any finding in respect of the various factors required to be considered for making deduction, simply relying

upon the case of *Upendra Singh (Supra)*, has held that deduction of A 35% from the market value on account of development charges and other possible expenditure is justifiable.

36. The view taken by the High Court in this regard, is also not liable to be sustained.

37. Thus, this issue also requires reconsideration by the High Court B in the light of the evidence and material on record of the case.

38. In view of the above and for the reasons stated above, we hereby set aside the impugned judgment of the High Court dated 20.06.2016 and remit the matter back to the High Court for fresh consideration to determine the compensation appropriately in accordance with law and by taking into account the settled principles and all the relevant evidence and material available on record for the irrigated as well as the unirrigated land. The High Court shall also re-determine the deduction to be made towards development charges afresh taking into account all the relevant evidence, facts and materials on record. Insofar as, the order dated 08.09.2017 passed by the High Court in application being MCC No. 304 of 2017 for correction of alleged accidental slip in judgment dated 20.06.2016 is concerned, the same also hereby stands set aside as a fresh determination of the market value is to be made. C D

39. The appeals, accordingly, stand allowed.

Devika Gujral
(Assisted by : Shevali Monga, LCRA)

Appeals allowed.