Himmat Singh And Ors vs State Of M.P. And Anr on 29 November, 2013

Author: G.S. Singhvi

Bench: C. Nagappan, Shiva Kirti Singh, G.S. Singhvi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1247 OF 2007

Himmat Singh and others ....Appellants

versus

State of M.P. and another
....Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Feeling dissatisfied with the meagre enhancement granted by the learned Single Judge of the Madhya Pradesh High Court in the amount of compensation determined by II Additional District Judge, Shivpuri (hereinafter described as, 'the Reference Court'), the appellants have filed this appeal.

2. By notification dated 28.5.1987 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), which was published on 12.6.1987, the Government of Madhya Pradesh acquired the appellants' land measuring 3.627 hectares comprised in Survey Nos.2, 10, 20, 22, 46, 48 and 166 of Village Jagatpur, Tehsil Kolaras, District Shivpuri for construction of Broad Gauge Rail Line by the Central Railway. Another parcel of land measuring 0.951 hectares comprised in Survey No.18, of which the appellants were the occupancy tenants, was also acquired by the same notification. The possession of the acquired land was taken on 30.11.1987. The Land Acquisition Officer passed an award dated 26.8.1989 and held that for the land measuring 3.627 hectares, the appellants are entitled to total compensation of Rs.16,419 with solatium of Rs.4,926 and interest amounting to Rs.985. For the land comprised in Survey No.18, no compensation was awarded to the appellants. Instead, compensation was paid to respondent Nos.3 and 4, namely, Jagdish Narayan s/o Mool Chand and Chandra Mohan s/o Ram Dayal, whose names were recorded in the revenue records.

3. The appellants did not feel satisfied and filed applications under Section 18 of the Act for determination of the amount of compensation by the Court. They also filed an application under

Section 30 of the Act and pleaded that respondent Nos.3 and 4 are not entitled to receive any compensation. Thereupon, the Collector made a reference to District Judge, Shivpuri. The latter assigned the cases to the Reference Court. The reference applications filed by the appellants were registered as Civil Miscellaneous Case No.3/1991 and 13/1998 respectively and the application filed under Section 30 was registered as Civil Miscellaneous Suit No.12/1998.

4. In Civil Miscellaneous Case No.3/1991, the appellants prayed for award of compensation at the rate of Rs.5 per square yard. They pleaded that the acquired land has good development potential and the Land Acquisition Officer committed serious error by treating the same as agricultural land. The appellants also claimed compensation of Rs.18 lacs by alleging that due to laying of railway line, their lands were bifurcated and its value was considerably diminished. They further alleged that the authorities of Central Railway had illegally taken possession of their land and the earth was dug out from an area measuring 6 hectares rendering the entire land unfit for cultivation.

5. The respondents contested the claim petition and pleaded that the Land Acquisition Officer did not commit any illegality by fixing market value of the acquired land by relying upon the sale deeds relating to agricultural lands.

6. On the pleadings of the parties, the Reference Court framed the following issues:

> "(i) Whether compensation determined by the Land Acquisition Officer is insufficient and improper and contrary to the provisions of Section 23 of the Land Acquisition Act?

(ii) Whether the petitioners are entitled to higher compensation? If yes, to what extent?

(iii) Relief and costs."

7. In support of the claim, appellant No.1 - Himmat Singh examined himself as PW-1 and produced a number of documents including sale deeds marked as Exhibits P1 to P12. He stated that on the date of acquisition, the land was fully developed for agricultural purposes; that there were several Government offices / establishments and residential premises near the acquired land. PW-1 further stated that there are metalled roads of the PWD on the North and South of the acquired land and that 90% of the Government offices of Kolaras Sub-Division are situated at Jagatpur, which was on Agra-Mumbai National Highway. Still further, PW-1 stated that he and his brothers have a farmhouse known as 'Sant Farm' at Jagatpur. In the cross-examination, PW-1 admitted that the acquired land does not fall within Kolaras Municipality and that he had never sold his land prior to the disputed acquisition. PW-1 denied the suggestion that in the application filed by him, value of the land was shown as Rs.50,000 per hectare. The second witness examined by the appellants, namely, Rajender Kumar Srivastava stated that distance between the Dak Bungalow and the railway station is about one kilometer and Agra-Bombay Road is at a distance of about one furlong from the Dak Bungalow. He also stated that water, electricity and scavenging facilities have been provided by Municipal Committee, Jagatpur. In cross-examination, Shri Srivastava admitted that Jagatpur has been divided into two parts, one of which comes under the Municipal Committee and the other is in

the village and that the Municipal Committee does not provide any facility to the area falling outside its jurisdiction. Another witness examined by the appellants was Damodar Prasad. In cross-examination, he admitted that large number of Government offices of Kolaras come under the jurisdiction of the Municipal Committee and that a specific notification had been issued for inclusion of Sant Farm within the jurisdiction of the Municipal Committee. Rishabh Chand (PW-5) stated that he had sold land measuring 825 sq. ft. for Rs.9,000 and market value of that land is Rs.6,600 per hectare. In cross-examination, PW- 5 gave out that his land was not fit for agricultural purposes and that the same can be utilised for building construction.

8. On behalf of the respondents, seven witnesses were examined. Ram Niwas Sharma (DW-1) stated that Kolaras, Gayatri Colony and Sant Farm come within the jurisdiction of Kolaras Municipal Committee. In cross- examination, DW-1 admitted that large number of Government offices of Kolaras are situated in Village Jagatpur. Gaya Prasad (DW-3) stated that Jagatpur and Kolaras are abutting each other; that there were several Government offices, Court buildings and Advocates' offices and that there were metalled roads on the North and South of the acquired land and a private colony has been constructed in the vicinity. Dharmender (DW-7) made general statement about the nature of the acquired land.

9. After analysing the evidence produced before it, the Reference Court decided the matter vide judgment dated 23.12.1999 and held that the Land Acquisition Officer committed an error by fixing market value on the assumption that the acquired land could be used only for agricultural purposes. In the opinion of the Reference Court, the determination made by the Land Acquisition Officer was unfair, arbitrary and contrary to the provisions of Section 23(1) of the Land Acquisition Act. The Reference Court then referred to the judgments of this Court in Chiman Lal v. Special Execution Officer, Poona AIR 1988 SC 1652, M/s. Printer House Pvt. Ltd. v. Siyedan AIR 1995 SC 1160, Shivamma v. Assistant Commissioner and Land Acquisition Officer AIR 1996 SC 2886 and held that only three sale deeds marked as Exhibits P7 to P9 can be taken into consideration for the purpose of determination of compensation. The Reference Court held that value of the acquired land cannot be less than Rs.3 per sq. ft. The Reference Court made 25% deduction towards development charges and 25% towards cost of development. In this manner, the rate of compensation was reduced from Rs.3 to Rs.1.5 per sq. ft. The Reference Court made further deduction of 50% on the ground that the sale instances relied upon by the appellants were in respect of very small parcels of land as compared to the acquired land and held that the appellants are entitled to Rs.3,08,295 as market value for 3.627 hectares land, an additional amount at the rate of 12% per annum from 12.6.1987 to 30.11.1987, i.e., the date on which possession was taken along with interest at the rate of 9% for a period of one year from 1.12.1987 and thereafter at the rate of 15% per annum. The Reference Court also determined the shares of the private respondents.

10. By another judgment dated 11.8.2000, the Reference Court disposed of Civil Miscellaneous Suit No.12/1998, registered on the basis of application filed by the appellants under Section 30 of the Act and Civil Miscellaneous Suit No.13/1998 registered on the basis of application filed under Section 18 of the Act in respect of land measuring 0.951 hectare comprised in Survey No.18.

11. After considering the pleadings of the parties, the Reference Court framed the following issues:

"(i) Whether compensation determined by the Land Acquisition Officer, Shivpuri, is insufficient and improper and contrary to the provisions of Section 23 of the Land Acquisition Act?

(ii) Whether the petitioners are entitled to higher compensation? If yes, to what extent?

(iii) Whether the application for reference made by the petitioners is within limitation?

(iv) Relief and Costs.

Additional Issue:

(v) Whether petitioners are in cultivatory possession of the acquired lands and hence the owners of the lands under law and therefore entitled to receive amount of compensation?" The Reference Court took cognizance of the oral and documentary evidence produced by the parties and held that being legal heirs of Sant Singh and farmers in occupation the appellants are owners of the lands. The Reference Court noted that at the time of entering his name in Panch Sala Khasra (Exhibit P4), Chandra Mohan (respondent No.4 therein) was only 5 years old and held that he could not be treated as farmer in occupation for the purpose of being treated as a person entitled to receive the amount of compensation. The Reference Court then considered the question whether the compensation awarded by the Land Acquisition Officer was insufficient and answered the same in affirmative. For arriving at this conclusion, the Reference Court assigned the following reasons:

"Now what is to be seen is 'Whether future potentiality of construction of buildings existed in the lands acquired?' Petitioners have examined Himmat Singh (P.W.1) who has stated that the date on which the lands were acquired, it was fully developed for agricultural purposes and there were several government offices e.g. Tehsil, S.D.O. Office, B.D.O. Office, Forest Department, Residence of Civil Judge, Sub-Jail, Silk Industry Center, Rest House, Hospitals etc., near the acquired lands and all of the above are residential houses wherein Doctors and Advocates are also living. Apart from this, there is a metalled road of P.W.D. on the south of the lands towards Village Rai and on the north there is a metalled road of P.W.D. going towards Village Mohara. On the south there is an ancient temple on which a huge fair is celebrated every year. More than 90% of the Government Offices of the Kolaras Sub Division are situated in Jagatpur and Jagatpur is situated near the Agra-Mumbai National Highway and a metalled road goes upto Sant Farm from this Agra-Mumbai National Highway. These statements of the witness have not been challenged during his cross examination.

> Apart from him, another witness of the petitioner namely Rishabh Chand (P.W.2) in his statement has stated that he is an Ex-M.L.A. and Chairman of Kolaras. The entire development of Kolaras is presently towards Jagatpur side. Sant Farm is only 1/2 Km. from the A.B. Road and there are Quarters of Jail employees, Indira Colony and Residence of the Judge, Quarters and houses of the Railway employees near the farm. The entire development activities of Jagatpur is taking place towards Sant Farm. Patwari has also stated that Jagatpur and Kolaras are abutting each other. There are several government offices, Advocates' offices, Court buildings in Jagatpur. Residence of the Judge is adjoining Sant Farm. College too is very near to it and there is a large habitation around Sant Farm. There is a road and habitation on the north of Sant Farm and on the south there is a temple and several persons of Kolaras are visiting this temple. On the south is a metalled road of P.W.D. going towards village Rai and on the east of the Sant Farm there are several government houses. A Private colony has been constructed on Survey nos. 161 and 163. Hence it is clear from the above that the acquired lands are close to the residential lands and bore potential of construction of buildings at the time of acquisition. In the circumstances it is clear that the determination of compensation of these lands by treating them as agricultural lands is unfair, arbitrary and insufficient and also contrary to the provisions of Section 23[1] of the Land Acquisition Act. Resultantly, Issue no.l is hereby decided in affirmative i.e. Yes." The Reference Court relied upon sale deeds Exhibits P7 to P9 and concluded that market value of the acquired land is Rs.3 per sq. ft. The Reference Court then applied various deductions and held that the appellants are entitled to compensation of Rs.80,240/- for land measuring 1,69,805 sq. ft. and by adding 12% per annum from 12.6.1987 up to the date of taking lawful possession, i.e., 30.11.1987, the appellants are entitled to Rs.4,493. The Reference Court also awarded solatium at the rate of 30% of the market value in terms of Section 23(2) of the Act and declared that the appellants are entitled to total compensation of Rs.1,08,904 with interest at the rate of 9% per annum for the first year and 15% per annum for the remaining period till the date of actual payment. However, Civil Miscellaneous Suit No.13/1998 registered on the basis of reference made by the Collector under Section 18 was held to be barred by time.

12. The appellants and Union of India challenged the judgments of the Reference Court by filing appeals under Section 54 of the Act. The learned Single Judge referred to the oral and documentary evidence produced by the parties and held that the Reference Court did not commit any error by holding that market value of the acquired land cannot be more than Rs.6 per sq. ft. The learned Judge made various deductions and held that market value of the acquired land would be Re.1 per sq.ft. The appeals were accordingly disposed of by declaring that the appellants are entitled to compensation for the land acquired vide notification dated 28.5.1987 at the rate of Re.1 per sq. ft with other statutory benefits like solatium and interest.

13. Shri U. U. Lalit, learned senior counsel for the appellants argued that the Reference Court and the High Court committed serious error by excluding various sale instances only on the ground that the contents thereof were not proved by examining the buyer and the seller. Shri Lalit invited the

Court's attention to Section 51-A of the Act and the judgments in Land Acquisition Officer and Mandal Revenue Officer v. V. Narasaiah (2001) 3 SCC 530, Cement Corporation of India v. Purya (2004) 8 SCC 270 and Deputy Collector, Land Acquisition, Gujarat and another v. Madhubai Gobarbhai and another (2009) 15 SCC 125 and argued that the view expressed by the Reference Court and approved by the learned Single Judge of the High Court on the admissibility and relevance of the copies of the registered sale deeds is liable to be overturned. Shri Lalit further argued that the Reference Court and the High Court committed serious error by not taking into consideration the highest value reflected in the sale deeds Exhibits P4 and P5 for the purpose of determination of compensation. In support of this argument, Shri Lalit relied upon the judgments in Rao Bahadur, Collector of Madras 1969 1 MLJ 45, State of Punjab v. Hansraj (1994) 5 SCC 734, Anjani Molu Dessai v. State of Goa (2010) 13 SCC 710, Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others (2012) 5 SCC 432. Shri Lalit then argued that the deductions made by the Reference Court and approved by the High Court are clearly impermissible because the land had been acquired for construction of Broad Gauge Rail Line and not for carving out a lay out for residential, industrial or commercial purpose which necessarily involves construction of road and providing of basic amenities like electricity, water and sewerage and large area is required to be left out as open spaces. Shri Lalit also referred to documents produced by the appellants showing damage to their land and argued that the Reference Court and the High Court committed serious error by not awarding compensation for severance caused due to construction of railway line and damage caused due to digging. In the end, Shri Lalit relied upon the judgments of this Court in Sunder v. Union of India (2001) 7 SCC 211 and R. Saragapani v. Special Tahsildar, Karur – Dindigul Broadguage Line (2011) 14 SCC 177 and argued that the appellants are entitled to interest on solatium.

14. Shri R. K. Khanna, learned Additional Solicitor General appearing for the Union of India supported the impugned judgment and argued that the appellants are not entitled to further enhancement in the compensation determined by the High Court. Shri Khanna argued that the sale instances produced by the appellants were in respect of very small parcels of land and the same could not supply basis for fixing market value of big chunks of land measuring 3.627 hectares and 0.951 hectare. He further argued that the deductions made by the Reference Court and the High Court in lieu of the cost of development and other charges are legally correct and the High Court did not commit any error by fixing market value of the acquired land for the purpose of determination of the compensation payable to the appellants.

15. In support of his arguments, Shri Khanna relied upon the judgments in Land Acquiring Body, Ahmedabad v. Ramprasad H. Maharaj (2007) 15 SCC 593, Mahesh Dattatray Thirthkar v. State of Maharashtra (2009) 11 SCC 141, Sabhia Mohammad Yusuf Abdul Hamid Mulla (dead) by Lrs. and others v. Special Land Acquisition Officer and others (2012) 7 SCC 595, Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam (1991) 4 SCC 506, V. Hanumantha Reddy (dead) by Lrs. v. Land Acquisition officer and Mandal R. Officer (2003) 12 SCC 642, Valliyammal and another v. Special Tahsildar (Land Acquisition) and another (2011) 8 SCC 91 and K. S. Shivdevamma v. Assistant Collector AIR 1996 SC 2886.

16. Before considering the respective arguments, we may notice the principles laid down by this Court for determination of market value of the acquired land. In Shaji Kuriakose v. Indian Oil Corpn. Ltd. (2001) 7 SCC 650, this Court held:

> "It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

17. In Viluben Jhalejar Contractor v. State of Gujarat (2005) 4 SCC 789, this Court elaborately considered the matter and culled out the following principles:

> "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.
>
> 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.

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-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

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

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."

18. In Atma Singh v. State of Haryana (2008) 2 SCC 568, the Court held:

"In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. 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 and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression 'market

value' has been the subject-matter of consideration by this Court in several cases. 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 outcome of hypothetical sale expressed in terms of probabilities. See Kamta Prasad Singh v. State of Bihar (1976) 3 SCC 772, Prithvi Raj Taneja v. State of M.P. (1977) 1 SCC 684, Administrator General of W.B. v. Collector (1988) 2 SCC 150 and Periyar Pareekanni Rubbers Ltd. v. State of Kerala (1991) 4 SCC 195.

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 a town is developing or has prospect of development have to be taken into consideration. See Collector v. Dr. Harisingh Thakur (1979) 1 SCC 236, Raghubans Narain Singh v. U.P. Govt. AIR 1967 SC 465 and Administrator General of W.B. v. Collector (1988) 2 SCC 150. It has been held in Kausalya Devi Bogra v. Land Acquisition Officer (1984) 2 SCC 324 and Suresh Kumar v. Town Improvement Trust (1989) 2 SCC 329 that failing to consider potential value of the acquired land is an error of principle."

19. We shall now deal with the question whether the Reference Court was legally entitled to discard the sale deeds Exhibits P1 to P6 and P10 to P12 and whether the market value could have been determined only on the basis of Exhibits P7 to P9 and also whether the learned Single Judge of the High Court was right in relying upon Exhibits P1 and P7 to P9 for recording a finding that the Reference Court had correctly treated market value of the acquired land as Rs.6 per sq. ft. for the purpose of determining the amount of compensation.

20. Admittedly, the appellants had produced as many as 12 sale deeds, the details of which (as contained in the written note filed by learned counsel for the appellants on 27.11.2013) are given

below:

"Exhibit No.	Date	Area	Total consideration	Rate
P1	10.07.1986	2000 Sqft	6000/-	Rs.3.00/-
P2	13.10.1992	1168 Sqft	47,000/-	Rs.40.02/-
P3	25.02.1986	600 Sqft	5000/-	Rs.8.33/-
P4	10.02.1984	112 Sqft	2000/-	Rs.17.86/-
P5	24.08.1984	112 Sqft	2000/-	Rs. 17.86/-
P6	19.01.1987	1200 Sqft	9600/-	Rs.8.00/-
P7	08.07.1986	1980 Sqft	16,000/-	Rs.8.08/-
P8	13.08.1986	1980 Sqft	16,000/-	Rs.8.08/-
P9	08.08.1986	825 Sqft	6,600/-	Rs.8.00/-
P10	17.02.1992	900 Sqft	49,500/-	Rs.55.00/-
P11	19.01.1987	1200 Sqft	9600/-	Rs.8.00/-
P12	25.02.1986	53928 Sqft	0.51 hectares	Re.0.09 (Being an example rural agricultural land beyond Jagatpur cited as a contrast example)"

21. Since all the sale deeds produced by the appellants were registered documents and authenticity thereof had not been questioned by the respondents, the Reference Court and the High Court could not have ignored the provisions of Section 51-A and discarded majority of the sale deeds. This issue is no longer res integra and must be answered in favour of the appellants in view of the judgments in Land Acquisition Officer and Mandal Revenue Officer v. V. Narasaiah (supra), Cement Corporation of India v. Purya (supra) and Deputy Collector, Land Acquisition, Gujarat and another v. Madhubai Gobarbhai and another (supra).

22. Notwithstanding the above conclusion, we are of the view that Exhibits P2 and P10 cannot be relied upon for determination of the amount of compensation because the same were executed after the issue of notification under Section 4. The remaining sale deeds show that different parcels of land were sold between 10.2.1984 and 19.1.1987. The highest value for which the land was sold was Rs.17.86 per sq. ft and the lowest was Rs.3 per sq. ft. In Anjani Molu Dessai v. State of Goa (supra), a two Judge Bench considered the methodology which should be followed for fixing market value of the acquired land where large number of sale instances are produced by the parties, referred to the earlier judgments in M. Vijayalakshmamma Rao Bahadur v. Collector (1969) 1 MLJ 45, State of Punjab v. Hans Raj (1994) 5 SCC 734 and held:

> "The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing

> the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to."

23. In Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others (supra), another two Judge Bench re-stated the law in the following words:

> "It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

24. The same view was reiterated in Chindha Fakira Patil v. The Special Land Acquisition officer, Jalgaon 2011 (12) SCALE 321.

25. It was neither the pleaded case of the respondents nor any evidence was produced by them before the Reference Court to prove that the sale transactions Exhibits P4 and P5 were not genuine or that the vendor and vendee had colluded to inflate value of the land with oblique motive. It is also not the case of the respondents that the lands specified in other exhibits was sold at the rate of Rs.8.33, Rs.8.08 or Rs.8 per sq. ft. with ulterior motive to get higher compensation in the subsequent acquisitions. Therefore, we can safely rely upon Exhibits P4 and P5 for determining the amount of compensation. Even if those sale deeds are kept aside, one can rely upon Exhibits P3, P7 and P8 for recording a finding that market value of the acquired land cannot be less than anything between Rs.8 and Rs.8.33 per sq. ft. If the rule of averaging is applied, then market value of the acquired land would be anything between Rs.9 and Rs.10 per sq. ft.

26. The next issue which merits consideration is whether the Reference Court and the High Court had correctly made deductions in the name of development charges/cost of development. The Reference Court made three- tier deduction. In the first place, 25% was deducted in the name of leaving out portions of the acquired land for the purpose of laying roads, drains, sewer line, parks, electricity line etc. Thereafter, 25% deduction was made towards expenses for development work. Finally, 50% deduction was made because of smallness of the plots sold vide Exhibits P1 to P12. The learned Single Judge of the High Court approved the deduction and determined market value of the acquired land at the rate of Re.1 per sq. ft.

27. The approach adopted by the Reference Court and the High Court in making deductions towards the cost of development / development charges from the market value determined on the basis of the sale deeds produced by the appellants was clearly wrong. The respondents had not even suggested that the development envisaged by the Reference Court, i.e., laying of roads, drains, sewer lines, parks, electricity lines etc. or any other development work was required to be undertaken for laying the Railway line. Therefore, 25% deduction made by the Reference Court and approved by the High Court under two different heads is legally unsustainable.

28. In Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others (2007) 9 SCC 447, this Court considered the question whether any deduction could be made towards development cost where the land is acquired for laying railway line and answered the same in negative. In that case, the appellant had challenged the judgments of the Reference Court and the Division Bench of the High Court fixing market value of the acquired land and contended that no deduction could be made because the land had been acquired for laying railway line. This Court reversed the judgments of the Reference Court and the High Court and observed:

> "29. Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgment of this Court in Viluben Jhalejar Contractor v. State of Gujarat. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges. In the above case, the lands were acquired because they were submerged under water of a dam. Owners claimed compensation of Rs 40 per sq ft. LAO awarded compensation ranging from Rs 35 to Rs 60 per sq m. Reference Court fixed the market value of the land at Rs 200 per sq m and after deduction of development charges, determined the compensation @ Rs 134 per sq m. In arriving at the compensation, Reference Court placed reliance on the comparative sale of a piece of land measuring 46.30 sq m @ Rs 270 per sq m. On appeal, the High Court awarded compensation of Rs 180 per sq m in respect of large plots and Rs 200 per sq m in respect of smaller plots. On further appeal, this Court held that since the lands were acquired for being submerged in water of dam and had no potential value and the sale instance relied was a small plot measuring 46.30 sq m whereas the acquisition in the present case was in respect of large area, interest of justice would be subserved by awarding compensation of Rs 160 per sq m in respect of larger plots and Rs 175 per sq m for smaller plots. In Basavva v. Spl. Land Acquisition Officer this Court held that the purpose for which acquisition is made is also a relevant factor for determining the market value.
>
> 30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways.

This Court in Hasanali Khanbhai & Sons v. State of Gujarat and Land Acquisition Officer v. Nookala Rajamallu had noticed that where lands are acquired for specific purposes, deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, highway, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs 250 per sq m with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest, etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs.59,192 as fixed. IA No. 1 of 2006 for substitution is ordered as prayed for."

29. In C.R. Nagaraja Shetty v. Special Land Acquisition Officer and Estate Officer and another (2009) 11 SCC 75, the Court referred to the judgment in Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others (supra) and observed:

> "15. The learned counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for the widening of the national highway. There would, therefore, be no question of any such development or any costs therefor.
>
> 16. In Nelson Fernandes v. Land Acquisition Officer this Court has discussed the question of development charges. That was a case where the acquisition was for laying a railway line. This Court found that the land under acquisition was situated in an area which was adjacent to the land already acquired for the same purpose i.e. for laying a railway line. In para 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for the Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation.
>
> 17. The Court in Nelson Fernandes relied on Viluben Jhalejar Contractor v. State of Gujarat where it was held that:
>
> "29. ... the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges." Further, in para 30, the Court specifically referred to the deduction for the development charges and observed:
>
> "30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. ... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise." The Court made a

> reference to two other cases viz. Hasanali Khanbhai & Sons v. State of Gujarat and Land Acquisition Officer v. Nookala Rajamallu where the deduction by way of development charges was held permissible.
>
> 18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the national highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs 25 per square foot out of the ordered compensation at the rate of Rs 75 per square foot. We set aside the judgment to that extent."

30. However, keeping in view the smallness of the plots which were sold by Exhibits P1, P3 to P8, P11 and P12, we would approve the deduction of 50% for the purpose of determining compensation payable for 3.627 hectares comprised in Survey Nos.2, 10, 20, 22, 46, 48 and 106 and 0.951 hectare comprised in Survey No.18.

31. The issue which remains to be considered relates to the amount of compensation payable to the appellants. For this purpose, we shall make calculation by adopting the following modes:

> i) If sale deeds Exhibits P4 and P5 are relied upon and 50% deduction is made on account of smallness of the land sold by these exhibits, the amount of compensation would come to Rs.8.93 per sq. ft., and
>
> ii) If sale deeds Exhibits P3, P6 to P9 and P11 are taken into consideration and 50% deduction is made due to smallness of the plots, the appellants would be entitled to compensation at the rate of Rs.4.04 per sq. ft.

32. However, keeping in view the proposition laid down in M. Vijayalakshmamma Rao Bahadur v. Collector (supra), State of Punjab v. Hans Raj (supra), Anjani Molu Dessai v. State of Goa (supra) and Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others (supra), we would adopt the first mode and hold that the appellants are entitled to compensation at the rate of Rs.8.93 per sq. ft.

33. We may have ordained payment of compensation to the appellants at the rate of 8.93 per sq. ft. (rounded off to Rs.9 per sq. ft.), but having regard to the fact that in the claim filed before the Reference Court, they had limited their claim to Rs.5 per sq. ft. and no application was filed either before the High Court or this Court for payment of higher compensation, we would restrict the enhancement to Rs.5 per sq.ft.

34. We agree with Shri Lalit that in view of the law laid down in Sunder v. Union of India (2001) 7 SCC 211, Chimanlal Kuberdas Modi v. Gujarat Industrial Development Corporation (2010) 10 SCC 635, Nadirsha Shapurji Patel v. Collector and LAO (2010) 13 SCC 234, R. Saragapani v. Special

Tahsildar, Karur – Dindigul Broadguage Line (2011) 14 SCC 177 and Bharat Heavy Electricals Limited v. R.S. Avtar Singh and Company (2013) 1 SCC 243, the appellants are entitled to interest on solatium.

35. So far as the appellants' plea for award of damages caused on account of removal of fencing of Sant Farm, loss of earning due to damage to crops/farming operation and destruction of well existing on the land is concerned, we do not consider it necessary to deal with the same because the issue is being dealt with in C.A. No.1248 of 2007.

36. In the result, the appeal is allowed, the impugned judgment and the award of the Reference Court are set aside and it is declared that the appellants are entitled to compensation at the rate of Rs.5 per sq.ft. with other statutory benefits. They shall also be entitled to interest on the element of solatium.

37. The respondents are directed to pay the amount of enhanced compensation and other statutory benefits including solatium and interest to the appellants within a period of six months from today.

.....J. (G.S. SINGHVI) .....J. (SHIVA KIRTI SINGH) .....J. (C. NAGAPPAN) New Delhi;

November 29, 2013.
