Periyar And Pareekanni Rubbers Ltd vs State Of Kerala on 6 September, 1990

Equivalent citations: 1990 AIR 2192, 1990 SCR SUPL. (1) 362, AIR 1990 SUPREME COURT 2192, (1991) 1 RRR 427, (1990) 2 LANDLR 435, (1991) 1 JT 450 (SC), 1992 ALL CJ 1 31, 1991 (4) SCC 195

Author: K. Ramaswamy

Bench: K. Ramaswamy, L.M. Sharma

PETITIONER:
PERIYAR AND PAREEKANNI RUBBERS LTD.

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT06/09/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SHARMA, L.M. (J)

CITATION:
1990 AIR 2192 1990 SCR Supl. (1) 362
JT 1991 (1) 450 1990 SCALE (2)525
CITATOR INFO :
RF 1992 SC 666 (1)
RF 1992 SC1406 (14)

ACT:
Kerala Land Acquisition Regulation, 1089: Sections 22(1), 22(2) and 25(3)/Land Acquisition Act, 1894: Sections 23(1), 23(2) & 28: Compulsory acquisition of Land--Payment of compensation--Market value--Determination of--Principles to be followed--Interest on solatium--Entitlement to.

HEADNOTE:
The respondent State had acquired a large extent of land out of the appellant's estate under the Kerala Land Acquisition Regulation, 1089 for river valley irrigation project and to establish an industrial project. The notification

under Section 4(1) of the Regulation was published on October 31, 1961. This was followed by the declaration under Section 6(1) published on February 22, 1962.

The Collector by his awards dated March 29, 1962 determined the market value under Section 22(1) of the Regulation at Re.O.04 per cent for certain lands, Re.O.12 per cent for certain other lands, and Rs.30 per cent for the wet lands as against the claim of Rs.40 and 50 per cent. Compensation for the trees at timber value was also given. The total compensation fixed was Rs.4.84 lakhs.

Dissatisfied therewith the appellant sought reference under Section 18 of the Regulation. They also claimed separate value for fruit bearing trees on potential value and charges for severence and injurious effects on the remaining lands. In support of the claim they relied on Ex. P. 7 dated March 9, 1951 and Ex. P. 9 dated April 4, 1957 which worked out at Rs.52.50 and Rs.43.50 per cent respectively, and the acquisition forming subject matter of Ex. P. 10 pertaining to the land in the vicinity of the industrial project awarded at the rate of Rs.80 per cent for paddy lands and Rs.43 for dry land. The Government pleader stated before the civil court that Ex. P. 9 could form the basis for determining the market value. The court enhanced the market value @ Rs.40-50 per cent as claimed in addition to a sum of Rs.30 to 38 per cent. It awarded in all Rs.20.20 lakhs on all counts including severence and injurious effects, 15 per cent solatium and also 6 per cent interest on additional compensation from the date of taking possession till date of payment.

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The High Court found that the lands covered by Ex. P. 7 and Ex. P. 9 were paddy lands cultivated by irrigation sources and situated about four miles away from the acquired lands which were not irrigated and therefore held that these could not form the basis for determining market value. Similarly, it found Ex. P. 10 could not form a base to fix the market value. The High Court did not accept the evidence adduced by the State, which was rejected by the civil court as well. The statement made by the State Advocate General across the bar that the market value could be fixed at Rs. 18 per cent was also not taken into account. Consequently, it reversed the awards and decrees of the civil court.

In these appeals by special leave it was contended for the appellant that having rejected the documents produced by the State the High Court ought to have relied upon the documents produced by the appellant as comparable sales and consumed the compensation awarded by the civil court, that Ex. P. 7, 9 and 10 furnished the best material, that the Government pleader had conceded before the trial court that Ex. P. 9 could form the basis for determining the market value, that they had incurred huge expenditure on civil works for protection of the rest of the estate from injurious effects for which they should be recompensated, that the potential value of the trees had to be taken into account in

determining the market value, that they were entitled to compensation for severence due to submersion of the lands and that they were also entitled to payment of interest on solatium.

Allowing the appeals partly, the Court,

HELD: 1.1 When the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands possessed of similar potentiality or fertility or other advantageous features made within a reasonable time of the date of notification in bona fide transactions on the hypothesis of a willing seller and a willing purchaser but not too anxious a buyer, dealing at arms length nor facade of sale or fictitious and unreal transactions of speculative nature brought into existence in quick succession or otherwise to inflate the market value. This, however, does not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive at as nearly as possible an estimate of the market value judged by an objective standard. [181C-182D]

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Gajapati Raju v. Revenue Divisional Officer, A.I.R. 1939 P.C. 98; Special Land Acquisition Officer v. Adinarayana Setty, [1959] Suppl. 1 S.C.R. 404; Tribeni Devi & Ors. v. Collector of Ranchi, [1972] 3 S.C.R. 208; Dollor Co. Madras v. Collector of Madras, [1975] Suppl. S.C.R. 403; Chandra Bansi Singh & Ors. etc v. State of Bihar & Ors. etc., [1985] 1 S.C.R. 579; Tahsildar, Land Acquisition Visakhapatnam v. P. Narasingh Rao & Ors., [1985] 1 A.P.L.J. 99; Collector, Raigarh v. Hari Singh Thakur & Anr., [1979] 2 S.C.R. 183; Administrator General of West Bengal v. Collector, Varanasi, [1988] 2 S.C.R. 1025; Mehta Ravindrarai Ajitrai v. State of Gujarat, A.I.R. 1989 S.C. 2051 and Hindustan Oil Co. Ltd. v. Special Duty Collector (Land Acquisition), [1990] 1 S.C.R. 59, referred to.

1.2 The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc. Similarly, the land situated on the frontage have special advantage and the land situated in the interior undeveloped area will not have the value at par since the latter will have lower value then the former. So is the case with orchard land and agricultural land, the former being superior in quality as compared to the latter. If such sales are relied upon reasonable reduction should be given. [182B-C]

Smt. Kaushalva Devi Bogra & Ors. etc. v. The Land Acquisition Officer, Aurangabad & Anr., [1984] 2 S.C.R. 900; Pridviraj v. State of Madhya Pradesh, [1977] 2 S.C.R. 633; Padma Uppal etc. v. State of Punjab & Ors., [1977] 1 S.C.R.

329; Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr., [1988] 3 S.C.C. 751 and Mantaben Manibhai v. Special Land Acquisition Officer, Baroda, A.I.R. 1990 S.C. 103, referred to.

1.3 In some cases for lack of comparable sales it may not be possible to adduce evidence of sale of the neighbouring lands possessed of same or similar quality. So, insistence on abduction of precise or scientific evidence would cause disadvantage to claimants in not getting the reasonable and proper market value. The courts of facts should, therefore, keep before them always the even scales to adopt pragmatic approach without indulging in facts of imagination and assess the market value which is capable to fetch reasonable compensation. They may in that process sometimes trench on the border of the guess work but mechanical assessment should be eschewed. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would
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place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes. [185D-G; 184F-G]

1.4 In the instant case, the High Court found that Ex. P. 7 and P. 9 relied on by the civil court were not applicable as the lands covered by them were paddy fields cultivated by irrigation sources and situated four miles away from the acquired unirrigated lands. Similarly, it also found that Ex. P. 10 could not be relied on. The High Court, therefore, could not be said to be unjustified in reversing the awards and decrees of the civil court. [186B-D]

2. The amount awarded by the Land Acquisition Collector forms an offer. It is for the claimants to adduce relevant and material evidence to establish that the acquired lands were capable of fetching higher market value and the amount offered by the Land Acquisition Collector was inadequate and he proceeded on a wrong premise or principle. It is also the duty of the State to adduce evidence in rebuttal. [183B, G]

Ezra v. Secretary of State for India, I.L.R. 32 Cal. 605 (P.C.); Raja Harish Chandra v. Dy. Land Acquisition Officer, [1962] 2 S.C.R. 676; Khorshed Shapoor Chenai, etc. v. Assistant Controller of Estate Duty, [1980] 2 S.C.R. 315; Dr. G.H. Grant v. State of Bihar, [1965] 3 S.C.R. 576; Asstt. Development Officer v. Tayaballi, AIR 1933 Bomb. 361; Tahsildar, Land Acquisition, Visakhapatnam v. P. Narasingh Rao
JUDGMENT:

Secretary of State, AIR 1919 Cal. 1008; Naresh Chandra Bose v. State of West Bengal & Ors., AIR 1955 Cal. 398; Smt. Kusumgauri Ramray Munshi & Ors. v. The Special Land Acquisi- tion Officer, Ahmedabad, AIR 1963 Gujarat 92; Maharao Shri Madansinhji v. State of Gujarat, AIR 1969 Gujarat 270 and Chaturbhuj Panda & Ors. v. Collector, Raigarh, [1969] 1 S.C.R. 412, referred to.

2.2 In the instant case the evidence produced by the appellant was found untrustworthy by the High Court. It also did not accept the evidence adduced by the State. [186E-F] 3.1 The Appellate Court

after rejecting the evidence may have to find whether there are any circumstantial or other material evidence on record to fix reasonable market value. The State Advocate General having stated across the bar in the High Court that the market value can be fixed at Rs.18 per cent, a concession made by him with all responsibility on behalf of the State, the High Court was not justified in not taking into account this submission. [186G-I87B] 3.2 Any concession made by the Government pleader in the trial court cannot bind the Government as it is always unsafe to rely on the wrong or erroneous or wanton conces- sion made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. [187C] 3.3 The claimants are, therefore, entitled to the market value @ Rs.18 per cent to the lands other than those to which the Collector awarded @ Rs.30 per cent, as the refer- ence court shall not reduce the market value to less than that awarded by the Collector as enjoined under the statute. From the very nature of compulsory acquisition, 15 per cent solatium as additional compensation was statutorily fixed. Therefore, determination of additional market value is unwarranted. [187E] 3.4 Section 25(3) of the Regulation contemplates payment of interest on solatium to recompensate the owner of the land for loss of user of the land from the date of taking possession tilldate of payment into court. The claimants are, therefore, entitled to interest on solatium. It is fixed at 6 per cent on the excess market value determined under the judgment including solatium from the date of taking possession till the date of payment. In other re- spects judgment of the High Court is confirmed. [189G-190B] Union of India v. Shri Ram Mehar & Anr., [1973] 2 S.C.R. 720, referred to.

4. The Commissioner who collected the evidence in re- spect of the injurious effects on the remaining lands of the claimants admitted in the cross examination that the appel- lant did not expend any money on civil works. Though from the date of the acquisition till the date of evidence more than six years had passed by the appellant had not produced any material or account books of the estate to establish that they have expended any money in this regard. Both the engineers examined on behalf of the State and also appel- lant's witnesses admitted that the road passing through the lands was being used by the appellant to carry its forest produce etc. Though during rainy season that too for a short period, at some places the water gets stagnated on the roads at lower levels but that stand no impediment for the car- riage of the goods. This phenomena was prevalent even before acquisition. The value of the land of the appellant had not been injuriously effected due to acquisition. No damage due to severence was caused. Under these circum- stances, the appellant was not entitled to compensation in this regard. [187F-188D]

5. The Sub-Judge appears to be too anxious to award whatever is asked for on mechanical appreciation without subjecting the evidence to legal and critical scrutiny and analysis. In such a case, even if the assessment of valua- tion is modified or affirmed in an appeal as apart of the judicial process, the conduct of the judicial officer, drawable from an overall picture of the matter would yet be available to be looked into. In appropriate cases it may be opened to draw inferences even from judicial acts of the misconduct. The person concerned shall not, therefore, camouflage the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land.

V.R. Katarki v. State of Karnataka & Ors., Civil Appeal No. 4392 of 1986 decided on March 22, 1990, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 543 to 570 of 1974.

From the Judgment and Order dated 22.1.1973 of the Kerala High Court in A.S. Nos. 487, 488, 489, 490, 491,492,493,495,497, 498, 499, 500, 501,502, 503,504, 505,506, 507, 509, 510, 511, 512, 5 13, 5 14, 5 15, 521 and 523 of 1969.

G.L. Sanghi and Ms. Lily Thomas for the Appellant. A.S. Nambiar, K.R. Nambiar and T.T. Kunhikannan for the Respondent.

The Judgment of the Court was delivered by K. RAMASWAMY, J. 1. This batch of 28 Appeals are against the common judgment and decrees of the Kerala High Court in A.S. No. 487 of 1969 etc. dated January 22, 1973 and leave under Art. 136 was granted by this Court on March 14, 1974. The High Court reversed the awards and decrees of land acquisition, Sub-Court, Ernakulam and confirmed the separate awards of the Collector dated March 29, 1962. The notifica- tion under section 4(1) of the Kerala Land Acquisition 1089 for short "the Regulation" was published on October 31, 1961 and the declarations which are the relevant dates for deter- mining the market value by operation of Section 22(1) was published on October 31, 1961 and February 22, 1962. The land acquired was 190.37 acres and 15.48 acres for Periyar Valley Irrigation Project and Phyto Chemicals Project both being public purposes. The Collector determined the market value at Re.O.04 per cent for certain lands and Re.O. 12 per cent for certain other lands, Rs.30 per cent to the wet lands as against the claim of Rs.40 and 50 per cent and Compensation to the trees as timber value was given. The total Compensation fixed was Rs.4.84 lakhs. Dissatisfied therewith the appellant sought reference under section 18 thereof. They also claimed sepa- rate value as fruit bearing trees on potential value. They also claimed charges for severence and injurious effects on the remaining land. The Civil Court after adduction of evidence and on consideration thereof enhanced the market value to the lands @ Rs.40-50 as claimed in addition to a sum of Rs.30 to 38 per cent. It awarded in all Rs.20.20 lakhs on all counts including severence and injurious ef- fects and 15 per cent solatium and also 6 per cent interest on additional compensation from the date of taking posses- sion till date of payment vide page 3 of short notes of the appellant. On appeals by the State, by common judgment dated January 22, 1973, the High Court reversed the award of the Civil Court and confirmed that of the Land Acquisition Collector.

Mr Sanghi, learned Sr. counsel for the appellants with his usual vehemence contended that the High Court committed manifest error of law in reversing the awards and decrees of the Civil Court which had the advantage of seeing the de- meanor of the witnesses and extensively considered the evi- dence in particular the unimpeachable documents Ex. p.7, p.9 and p. 10. The appellant, on account of the acquisition, had to incur huge expenditure to construct Kayallas, Pathways, culverts etc. for protection of the rest of the Estate. The amount expended was to prevent injurious effects to the Estate and is to be recompensated. It is further contended that the potential value of the trees have to be taken into account in determining the market value. The appellant also is entitled to compensation for severence due to submersion of the lands when the Periyar Canal passes through

the rubber estate of the appellant. Therefore, the appellant is entitled to the compensation in full measure with interest on solatium. The High Court was unjustified in reversing the awards and the decrees of the Civil Court.

2. The first question, therefore, is whether the High Court is justified in reversing the awards and decrees of the Civil Court. Admittedly 190.37 and 15.48 cents of land is part of the extensive Periyar Estate of 879.37 acres stretching over seven miles long on the banks of the Periyar River. It had a road of 14 feet width by name Alwaye Munnar Highway running through middle of the Estate. The lands were acquired for submersion due to Periyar River Valley Irrigation Project and to establish Phyto-Chemical Project. Shri Sanghi, repeatedly reiterated that in deter- mining the market value an element of some guesswork is involved. But in determining the market value the Court has to eschew arbitrary fixation keeping in view the settled principles of law in evaluating market value in compulsory acquisition on the hypothesis of a willing vendor and a willing vendee. Therefore, let us glance through the settled principles of law in this regard.

3. In Galapati Raju v. Revenue Divisional Officer, A.I.R. 1939 P.C. 98 popularly known as Vijji's case, the judicial committee of the Privy Council held that compensa- tion for compulsory acquisition governed by Section 23(1) of the Land Acquisition Act, 1894 is the market value of the land at the date of the publication of the notification under sub-sec. (1) of the Section 4 of the Act "what a willing vendor might reasonably except to obtain from will- ing purchaser". The function of the Court in awarding com- pensation under the Act is to ascertain the market value of the land at the date of notification under section 4(1) of the Act (in this case under section 6(1) of the Regulation) and the evaluation may be as pointed out by this Court in Special Land Acquisition Officer v. Adinarayana Setty, [1959] Suppl. 1 S.C.R. 404 at 412 (1) Opinion of experts; (2) The price paid within a reasonable time in bona fide transactions of purchase of the land acquired or the land adjacent to the acquired land and possessing similar advan- tages; (3) Number of years of purchase of the actual or immediately perspective profits of the land acquired. In that case while adopting the second method the High Court arrived at average price of four transactions excluding two sales and separate average was arrived fixed the market value of Rs. 13.80. This Court calculating the average of six sale transactions fixed the market rate at Rs. 11. In Tribeni Devi & Ors. v. Collector of Ranchi, [1972] 3 S.C.R. 208 at 2 12 this Court held that for determining compensation payable to the owner of the land, the market value is to be determined by reference to the price which may reasonably to obtain from willing purchasers but since it may not be possible to ascertain this with any amount of precision the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. While reiterating the three tests laid down in S.L.A. Officer's case, it was further emphasised that these methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive at as nearly as possible at an estimate of the market value. In arriving at a reasonable correct market value it may be necessary to take even two or all these methods into account inasmuch as the exact evaluation is not always possible as no two lands may be the same either in respect of the situation or the extent or potentiality nor is it possible in all cases to have reliable material from which the valuation can be accurately determined. This Court rejected the sale deeds of the lands situated farther away from the lands acquired and also disallowed 10 per cent additional compensation over market rate fixed.

In Dollor Co., Madras v. Collector of Madras, [1975] Suppl. SCR. 403 this Court held that "we may even say that the best evidence of the value of the property is the value of the sale in the very property to which the claimants are the party. If the sale is of recent date and all that need normally be proved is that the sale was between a willing purchaser and willing seller, that there has not been any appreciable rise or falls since and that nothing has been done on the land during the interval to raise the value. But if the sale was long ago, may be the court would examine more recent sales of comparable lands as throwing better light on current land value. This Court further emphasised the fact that because the appellant therein himself pur- chased the land which is 10 months prior to the date of notification under section 4, at a price of Rs.410 per ground, that would be the measure of prevailing market value. The High Court enhanced the market value to Rs. 1800 per ground and on appeal was filed by the State. Though the appellant still claimed higher value, this Court negatived further enhancement.

4. In Smt. Kaushalya Devi Bogra & Ors. etc. v. The Land Acquisition Officer, Aurangabad & Anr., [1984] 2 SCR. 900 the transaction in respect of small properties do not offer proper guidelines and, therefore, the price fetched therein cannot be taken as real basis for determining compensation for large tracts of property. This was also the view in Pridviraj v. State of Madhya Pradesh, [1977] 2 SCR 633 and Padrna Uppal Etc. v. State of Punjab & Ors., [1977] 1 SCR

329. If they are relied upon reasonable reduction should be given. Accordingly, this Court has fixed the market value in the light of the development of the land in the neighbour- hood of the township etc. In Chandra Bansi singh & Ors. etc. v. State of Bihar & Ors. etc., [1985] 1 SCR 579 notification under section 4(1) was issued for acquiring 1034 acres of land for housing construction by the Housing Board. This Court held that compensation should be paid as per the value of the land prevailing as on the date of the notification but not on the date of taking over possession.

5. In Tahsildar, Land Acquisition, Visakhapatnam v. P. Narasingh Rao and Ors., [1985] 1 A.P.L.J. 99 a Division Bench of the Andhra Pradesh High Court to which one of us (K. Ramaswamy, J) was a member while reiterating the princi- ples referred to above held that the object of determining the compensation with reference to comparable sales of the land adjacent to the land acquired is to find the fertility, quality, the probable price of the land under acquisition is' likely to fetch and the actual price paid by the vendee to the vendor under those transactions as a prudent vendee and is not actuated with any other speculative features. It is to ascertain these facts, the sale deeds are insisted to be produced. The market value fixed must be reasonable and fair to the owner as well as to avoid undue burden to the exchequer. Therefore, the transaction relating to the ac- quired land of recent dates or in the neighbour-hood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the Courts are called upon to fix the market value of the land in compulsory acquisition. the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be estab- lished by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying

principles to fix a fair market value with refer- ence to comparable sales is to reduce the element of specu- lation. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. As held by this Court in Collector, Raigarh v. Hari Singh Thakur & Anr., [1979] 2 SCR 183 that fictitious and unreal transactions of speculative nature brought into existence in quick succes- sion should be rejected. In that case it was found by major- ity that these sale deeds are brought up sales. In Adminis- trator General of West-Bengal v. Collector, Varanasi, [1988] 2 SCR 1025 that the price at which the property fetches would be by a willing seller to a willing purchaser but not too anxious a buyer, dealing at aim's length. The prices fetched for similar lands with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc.

6. In Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr., [1988] 3 SCC 751 this Court held that the land situated on the frontage have special advantage and the land situated in the interior undeveloped area will not have the value at par since the latter will have lower value than land situated near developed area. Some guesswork is permissible in determining the value and on this basis this Court did not interfere with fixation of market value by the High Court.

In Mehta Ravindrarai Ajitrai v. State of Gujarat, AIR 1989 SC 2051 this Court reiterated the ratio in West Bengal Administrator General's case that the persons to prove the fair transaction are either the vendor and the vendee or the person conversant with the sale and they are to be examined. The original sale deed or the certified copy of the sale deed are to be produced. The same is the view in Dr. Hari Singh Thakur's case. This was also the view of the Andhra Pradesh High Court in Narasingh Rao's case.

7. In Mantaben Manibhai v. Special Land Acquisition Officer, Baroda, AIR 1990 SC 103 to which one of us (L.M. Sharma, J) was a member, this Court held that when the quality of the lands are different (bagayat land and jiryat land). Bagayat land is superior in quality and to what percentage of superiority was not established by the claim- ants. This Court held that addition of 25 per cent of the value of the Jiryat land was held to be proper valuation. In Hindustan Oil Co. Ltd. v. Special Duty Collector (Land Acquisition), [1990] 1 SCR 59 this Court held that cumulative effect of all the facts and circumstances should be taken into consideration in arriving at a reasonable and fair market value.

8.' In the light of these principles, the further con- tention that having rejected the documents produced by the State, the High Court ought to have relied upon the documents produced by the

appellant as comparable sale and would have confirmed the compensation awarded' by the Civil Court does not impress us as well founded. It is well settled law that the amount awarded by the Land Acquisition Collector form an offer and that it is for the claimants to adduce relevant and material evidence to establish that the acquired land are capable of fetching higher market value and the amount offered by the [,and AcqUisition Collector was inadequate and he proceeded on a wrong premise or principle. In Ezra v. Secretary of State for India, I.L.R. 32 Cal. 605 (P.C.) it was held that the amount awarded by the Collector forms an offer. It was reiterated by this Court in Raja Harish Chandra v. Dy. Land Acquisition Officer, [1962] 2 SCR 676; Khorshed Shapoor Chenai, etc. v. Assistant Controller of Estate Duty, [1980] 2 SCR 3 15 and Dr. G.H. Grant v. State of Bihar, [1965] 3 SCR 576. In Hari Singh's case, A.P. Sen, J. held (and major- ity did not disagree) at p. 191 C to E that:

> "In a reference under s. 18 of the Act, the burden of prov- ing that the amount of compensation awarded by the Collector is in-adequate lies upon the claimant, and he must show affirmatively that the Collector had proceeded upon a wrong basis. The nature and the burden of establishing that he was wrong, depend on the nature of the enquiry held by him .....
>
> It is equally well-settled that where the claimant leads no evidence to show that the conclusions reached in the award were inadequate, or, that it offered unsatisfactory compen- sation. the award has to be confirmed."

In that ease it was held that the evidence produced was untrustworthy. Same is the view of Bombay High Court in Asstt. Development Officer v. Tavaballi, AIR' 1933 Bombay 361 at 361 D.B. and of A.P. High Court in Narsing Rao's case and T.W. Higgins-claimant v. Secretary of State, AIR 19 19 Cal. 1008; Naresh Chandra Bose v. State of West Bengal & Ors.. AIR 1955 Cal. 398 at 399; Smt. Kusumgauri Ramray Munshi & Ors. v. The Special Land Acquisition Officer, Ahmedabad, AIR 1963 Gujarat 92 at 94, 95 and Maharao Shri Madansinhji v. State of Gujarat, AIR 1969 Gujarat 270. It is also the duty of the State to adduce evidence in rebuttal. This Court in Chaturbhuj Panda & Ors. v. Collector, Raigarh, [1969] 1 SCR412 at 414 has rightly pointed out that:

> "It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As Judges of fact, it was open to the appellate Judges to test the evidence placed before them on the basis of probabili- ties."

In Narasingh Rao's case. 1 have dealt with in paragraph 8 thus: "The object of the inquiry is to bring on record the price fetched or capable of fetching, the relative situation of the land acquired and the subject of the sale transac- tion, their fertility, suitability, nature of the use to which they are put to. income derive or other special dis- tinctive features possessed of by the respective lands either single of some or all relevant to the facts in issue. In this process the courts are not mere umpires but to

take intelligent participation and to see whether the counsel on either side are directing towards this goal or the court itself to intervene in this regard." Therefore, it is the paramount duty of the courts of facts to subject the evi- dence to close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the ac- quired lands. The neighbour-hood lands possessed of similar potentialities or same advantageous features or any advanta- geous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometimes trench on the border of the guesswork but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bonafide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasises solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

In V.R. Katarki v. State of Karnataka & Ors., C.A. No. 4392/86 dated March 22, 1990 decided by Bench of this Court to which one of us (K. Ramaswamy, J.) is a member, the appellant apart from other charges, was imputed with miscon- duct of fixing, in his capacity as Civil Judge at Bagalkot, "higher valuation than was legitimate of the lands." After conducting enquiry he was dismissed from service and when he challenged it, the High Court upheld it on the judicial side. On further appeal, since the appeals against higher valuation were pending in the High Court, without going into that question, while confirming the dismissal laid the rule thus: "We would like to make a special mention of the position that even if the assessment of valuation is modified or affirmed in an appeal as a part of the judicial process, the conduct of the judicial officer drawable from an overall picture of the matter would yet be available to be looked into. In appropriate cases it may be opened to draw inferences even from judicial acts" of the misconduct. The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camaflouge the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land. Equally it is salutory to note that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensated for rehabilitation or to purchase similar lands elsewhere. In some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of notification under section 4(1). Therefore, it is the paramount duty of the Land Acquisition Judge authority to keep before him always the even scales to adopt pragmatic approach without indulging in "facts of imagination" and assess the market value which is reasonably capable to fetch reasonable market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. The guiding star would be the conduct of a hypotheti- cal willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition as on the date of the notification under section 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession of otherwise to

inflate the market value.

9. Let us consider the evidence on record from the above perspective and evaluate the circumstances on record. Shri Sanghi repeatedly stressed that an element of guesswork is inescapable and Ex. P. 7, 8, 9 & 10 furnish the best materi- al. Though he relied on Ex. P. 1 to P. 3, in fairness, he did not press for consideration in our view quite rightly as they are very small extents of 2-1/2; 4 and 3 cents respectively. They are situated in residential and commercial areas. So they cannot be relied on. But he strongly relied on Ex. P. 7 dated March 9, 195 1. The extent is Ac. 3-4 cents for Rs. 19,000. It worked out at Rs.52.50 per cent. The High Court held that the lands covered by Ex. P. 7 are situated by the side of irrigation channel and paddy cultivation was carried on. Under those circumstances, the evidence of P.W. 6, the vendor was not accepted and in our opinion quite rightly and Ex. P. 7 was rightly not relied as lands in question are not irrigated lands whereas the lands under Ex. P. 7 are paddy lands cultivated by irrigation sources and is situated four miles away from the acquired lands. Similarly Ex. P. 9 is dated April 4. 1957. The extent is Ac. 1.38 cents for Rs.6,000. PW. 5 is the vendor. It worked out at Rs.43.50 per cent. It is also four miles away from the acquired lands. It is also not of any assistance to the appellant as this land also is a paddy land irrigated by irrigation sources. It is undoubted that in Ex. P. Ii). the judgment of the Sub Court. Ernakulam in Land Acquisition Case No. 298 of 1963 etc. relate to the land in the vicinity of Phyto-Chemical Project and the Land Acquisition Court awarded (C) Rs.80 per cent for the paddy lands and Rs.43 per cent for dry land. The' High Court has pointed out that on the basis of the evidence adduced in that case. namely, comparable sales, the determination of the market value is correct. It was held that it cannot form the basis for determining the market value of the lands in this case. We have been taken through the entire judgment under Ex. P. 10 and after carefully scanning the evidence, we are not persuaded to take a different view from that of the High Court. Which has correctly appreciated the evi- dence. Accordingly Ex. P. 10 also would not form a base to fix the market value. It is undoubtedly true that the High Court did not accept the evidence adduced by the State. It was rejected both by the Civil Court as well as by the High Court. The Sub Judge appears to be too anxious to award whatever is asked for on mechanical appreciation without subjecting the evidence to legal and critical scrutiny and analysis. The appellate Court after rejecting the evidence may have to find whether there are any circumstantial or other material evidence on record to fix reasonable market value. We are relieved to undertake that exercise in view of fair stand taken by the Learned Advocate General. Kerala, who appeared in the High Court. It is clear from the judg- ment that the Learned Advocate General while arguing the case had stated across the bar. obviously on instructions or in fairness from record, that the market value can be fixed at Rs. 18 per cent. This is. therefore. a concession made by the Learned Advocate General on behalf of the State. The High Court, therefore, was not justified in not taking into account this submission of the Advocate General. It is undoubted that the High Court having rejected the evidence of the claimants has to confirm the offer made by the Collector in the award provided if there is no other evidence on record. But in view of the concession made by the Learned Advocate General, we are of the definite view that the claimants are entitled to the market value Rs. 18 per cent to the lands other than those to which the Collec- tor awarded @ Rs.30 per cent as the reference court shall not reduce the market value to less than awarded by the Collector as enjoined under the statute. As a limb of the argument Shri Sanghi has placed reliance on the concession made by the government pleader in the Trial Court that Ex. P. 9 would form the basis for determination of the market value which worked out @

Rs.43.50 per cent. We are unable to accept the submission of the learned counsel. Any concession made by the government pleader in the Trial Court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place tindue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsi- bility. In those circumstances we have no hesitation to accept the statement of Learned Advocate General and hold that the market value of the lands would be fixed at Rs. 18 per cent. From the very nature of compulsory acquisition 15 per cent solatium as additional compensation was statutorily fixed. Therefore, determination of additional market value is unwarranted.

10. It is next contended that the claimants are entitled to the severence charges and injurious effects on the re- maining lands of the claimant. From the evidence it is clear that the Commissioner who collected the evidence in this regard has admitted in the crossexamination that the appel- lant did not expend any money in erecting boundary walls, bridges, projects etc. It is an admitted fact that though from the date of the acquisition till date of evidence more than six years have passed by, the appellant has not pro- duced any material or account books of the Estate to estab- lish that they have expended any money in this regard. It is also admitted by both the engineers examined on behalf of the State and also appellant's witnesses that the road passing through the lands is being used by the appellant to carry his goods i.e. his forest produce etc. Though during rainy season that too for a short period at some places the water get stagnated on the roads at lower levels but that stand no impediment for the carriage of the goods as admitted by the witnesses. This phenomena was prevalent even before acquisition. In these circumstances we entirely agree with the High Court in its finding that the appellant has not established that they have expended any money for erection of retaining walls. culverts. bridges etc. There is no damage. due to acquisi- tion of the land of the appellant and. therefore. the award of severence charges is unwarranted. Both the counsel have taken us through the material evidence of PW. 7, 8 & 9. C.P.W. 1 and C.P.W. 2 examined on behalf of the State. We have once again carefully scanned the evidence and we are satisfied that the High Court has thoroughly considered the evidence of all the witnesses and reports of the Commission- ers. The High Court is well justified in arriving at the finding that the appellant has not expended any money for either constructing any boundary walls. culverts. bridges or roads etc. The value of the land of the appellant has not been injuriously effected due to acquisition. No damage due to severence was caused. Under these circumstances the appellant is not entitled to compensation in this regard. When we have pointed out that the appellant is not entitled separately to the value of the land and the trees as poten- tial value as fruit bearing one. The counsel agreed. on instructions, that they would confine to fix market value of the lands.

11. The only question then remains is whether the appel- lant is entitled to payment of interest on solatium. The High Court relied on Union of India v. Shri Ram Mehar & Anr., [1973] 2 SCR 720 and rejected the claim for interest. Section 25(3) of the Regulation reads thus:

> "If the sum in the opinion of the court, the Division Peishkar ought to have awarded as compensation is in excess of the sum which the Division Peishkar did not award as

compensation, the award of the court may direct that the government shall pay interest on such excess @ Rs.6 per centum per annum from the date on which the Division Peish- kar took possession of the land to the date of payment of such excess in Court " A reading thereof does postulate that in the opinion of the Court the Land Acquisition Officer ought to have awarded compensation in excess as found by the court. then the court may direct that the government shall pay interest @ 6 per centum per annum on the excess amount so found as compensation. The payment should be from the date, the land was taken possession by the Division Peishkar till the date of the payment of the excess amount into court.

The question, therefore, is whether "interest" is an inte- gral part of the word "compensation" under sub-section (3) of Section 25 of the Regulation.

12. In Shri Ram Mehar's case, the question came up for consideration was whether the words "interest on market value" in Section 4(3) of the Land Acquisition (Amendment and Validation Act, 1967) would include payment of interest on solatium. Additional 15 per cent solatium undersection (2) of Section 23 certainly forms part of compensation as under section 23 the market value of the land would include solatium. But market value and compensation are distinct expressions and have been used as such in the Land Acquisi- tion Act. The key to the meaning of the word "compensation" is to be found in Section 23(1) which consists of market value and solatium on the market value which is stated to be compensation. Therefore, this Court held that the term market value has acquired a definite connotation in judicial decision. If the word market value and compensation were intended by the legislature to have the same meaning, it is difficult to comprehend why the word compensation in ss. 28(a) and 34 and nor market value was used. So market value cannot be equated to compensation. The market value is, therefore, only one of the components in the determination of the amount of compensation, if the legislature has used the word "market value" in Section 4(3) of the Amending Act, it must be held that it was done deliberately and what was intended was that interest should be payable on the market value of the land and not on the amount of compensation. Otherwise, there is no reason why the Parliament should not have employed the word compensation in the aforesaid provi- sion of the amended Act. Webster Comparative Dictionary at p. 267, the word compensation defined (I) the act of compen- sating or (2) that which compensates payment. In Stroud's Judicial Dictionary, Fourth Edition, Volume-I at p. 523 compensation defined (Defence Act 1842 (c. 94), s. 19) includes not only the value of the land taken but also damage for severence or injuriously effecting other lands belonging to the owner of the land taken, al- though the Act contained no such clause as Land Clauses Consolidation Act, 1845. The word compensation is used to recompensate or reparation to the loss caused to the owner of the land. Therefore, we have no hesitation to hold that Section 25(3) contemplates payment of interests on solatium to recompensate the owner of the land for loss of user of the land from the date of taking possession till date of payment into court. The word compensation has been advisedly used by the legislature. Accordingly we hold that the appel-

lant is entitled to interest on solatium.

13. We allow the appeals to the extent indicated above. The market value is fixed at Rs. 18 per cent and confirm the market value at Rs.30 per cent for wet lands awarded by the Collector. Solatium at Rs. 15 per cent and interest at 6 per cent on the excess market value determined under the judgment including solatium from the date of taking possession till the date of payment. In other respects the judgment of the High Court is confirmed and in the circumstances, the parties are directed to bear their own costs throughout.

P.S.S. Appeals allowed.