

P.Ram Reddy Etc vs Land Acquisition Officer Hyderabad on 27 January, 1995

Equivalent citations: 1995 SCC (2) 305, JT 1995 (1) 593, 1995 AIR SCW 871, 1995 (2) SCC 305, (1995) 1 SCR 584 (SC), (1995) 2 ANDH LT 15, (1995) 1 CURCC 372, (1995) 1 RENTLR 462, (1995) 1 JT 593 (SC)

Author: N Venkatachala

Bench: N Venkatachala, K. Ramaswamy

PETITIONER:

P.RAM REDDY ETC.

Vs.

RESPONDENT:

LAND ACQUISITION OFFICER HYDERABAD

DATE OF JUDGMENT 27/01/1995

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1995 SCC (2) 305 JT 1995 (1) 593

1995 SCALE (1) 332

ACT:

HEADNOTE:

JUDGMENT:

VENKATACHALA, J.:

1. Having granted leave to appeal sought for in the above Special Leave Petitions directed against the common judgment and decree dated 19.4.1993 rendered in Appeal Nos. 1565 and 2087/91 by the High Court of Andhra Pradesh at Hyderabad

and heard arguments of learned counsel appearing for the contesting parties in the appeals, we propose to dispose of all these appeals by this common judgment.

2. Sri P. Ram Reddy, the appellant in appeals arising out of S.L.P's. Nos. 1336263/93 and respondent in appeal arising out of S.L.P. No. 18202/93, to be referred to hereinafter as 'the claimant', was the owner in possession of dry land of, as large an extent as, 10 acres 17 guntas comprised in Survey Nos. 48/24 and 48/26 of Katedhan Village lying in the outskirts of Hyderabad. One acre 25 guntas of land out of 5 acres 22 guntas of land in Survey No. 48/24 and 2 acres 15 guntas of land out of 4 acres 35 guntas of land in Survey No. 48/26 were the lands included in the total extent of 14 acres and 35 guntas of land proposed to be acquired by Hyderabad Urban Development Authority - "HUDA" for formation of inner ring road required to connect Old Karnool Road with Hyderabad-Bangalore National Highway No.7, under Land Acquisition Act, 1894 as amended by Act 68 of 1994 -- 'the L.A. Act', by a Notification under Section 4(1) thereof, published in the modes prescribed thereunder, by issuance of public notice in the locality on 2.9.1985. The acquisition of the said lands having been completed by a declaration made and published under Section 6 of the LA Act, notice under section 9 was issued to the claimant calling upon him to make his claim for compensation of the acquired land before the Land Acquisition Officer of the HUDA -hereinafter to be referred to as "the LAO". In response to the said notice, the claimant claimed award of compensation by the LAO for his acquired lands at the rate of Rs. 1 50/- per square yard apart from the statutory benefits which he was entitled to get under the LA Act. The LAO, by his award made under Section II of the LA Act, determined the market value of the claimant's acquired land at Rs. 12 per square yard and awarded to him the amount of compensation together with statutory benefits. Since that award of the LAO was unacceptable to the claimant, he made an application to the LAO under Section 18 of the LA Act and got the application referred to the Court of the Subordinate Judge, Ranga Reddy District -- "Civil Court", for determination of the just compensation payable to him. On that reference registered as A.S. 129/88, the Civil Court held the inquiry as required by the LA Act and on the basis of the inquiry so held, determined the market value of the claimant's lands at Rs.80 per square yard and accordingly made an award and decree dated 18.4.1991 together with the statutory benefits. That award and decree being appealed against in the High Court by the claimant and the LAO respectively in A.S. No. 1565/91 and A.S. No.2087/ 91, the former seeking grant of further enhanced compensation and the latter seeking reduction in the granted compensation.

Both the appeals being clubbed together and heard by the Division Bench of the High Court, the market value of the claimant's land was reduced to Rs. 32 per square yard with proportionate reduction in the statutory benefits, by its common judgment and decree rendered on 19.4.1993. While the claimant questioned the correctness of the said judgment and decree of the High Court by filing appeals arising out of S.L.P's. Nos. 13362-13363/ 93, the LAO challenged the correctness of the same judgment and decree by filing appeal arising out of S.L.P. No. 18202/93, as stated at the

outset. The above stated facts make it clear that the LAO, by his award (Ex.B-1) fixed the value of the acquired land at Rs.20 per square yard on the basis of the value fetched by sale of residential building plots at Rs. 20 per square yard under Sale Deed dated 14.10.1982 whereunder 200 square yards of plot in Survey No.48/13 of Katedhan Village was sold at Rs. 20 per square yard (Ex. B-3); sale deed dated 16.10.1982 whereunder 200 square yards plot in Survey No. 48/14 was sold at Rs. 20 per square yard (Ex.B-4), and Sale Deed dated 1.2.1983 whereunder 200 square yards plot in Survey No. 48/12 had been sold at Rs.20 per square yard, Ex.B-5. However, he fixed the market value of the acquired land at Rs. 12 per square yard by deducting 40% area towards lay-out losses. He granted statutory benefits also payable for the acquired land. It also becomes clear from that award that the sale deeds were seen and the local inspection had been held by the LAO before making that award.

3. The Civil Court by its judgment and decree, which is referred to by us earlier, enhanced the market value of the acquired land to Rs. 80 per square yard relying upon the amounts of consideration mentioned under sale deeds and gift deeds (Exs. A-1 to A-5) and also the probable value of building plots in the locality of the acquired lands mentioned in Ex. A6 - the extract of Basic Valuation Register, after making certain percentage of deduction out of such amount or value towards what is called as "lay-out losses".

4. When that award and decree of the Civil Court was challenged in the High Court, it was found by the High Court that Exs. A-1 to A-5, the Sale Deeds and Gift Deeds were unreliable and could not be acted upon by it for the reasons it gave in that regard. It also refused to place any reliance on Ex.A-6, the Basic Valuation Register extract, on its view that it was not safe to determine the market value of lands acquired under the LA Act on the value found in Basic Valuation Register. However, it found that the value of Rs.20 per square yard, on which the LAO had determined the market value of the acquired lands, was on the lower side for determining the market value of that land. Consequently, it increased the value of Rs.20 per square yard relied upon by the LAO by another Rs.20 per square yard. Thereafter, the High Court deducted 20% towards lay-out losses out of Rs.40 per square yard and determined the market value of the acquired lands at Rs.32 per square yard. Therefore, it rendered its judgment and decree in the appeals by reducing the market value of the acquired lands from Rs.80 per square yard awarded by the Civil Court to Rs.32 per square yard of the claimant's acquired land of 4 acres and 3 guntas and granted in addition 30% solatium on the market value, 12% additional amount on such market value from the date of the notification i.e. 24.7.1985 till the date of the award i.e. 14.7.1988 and interest on the enhanced amount of compensation under Section 28 of the LA Act.

5. Shri P.P. Rao, learned Senior Counsel, who appeared before us for the claimant, raised several contentions against the correctness of the judgment and decree of the High Court. He contended, firstly, that the High Court had failed to take into consideration the very statement of the LAO made in his award that the acquired land had high potentiality for developing into a Housing Colony, in determining its market value of the acquired land and that non-consideration had resulted in reducing the market value of the acquired lands instead of enhancing their market value; secondly, when the Civil Court had determined the market value of the acquired land of the claimant at Rs.80 per square yard on the basis of amounts of consideration of building plots mentioned under Exs. A-1

to A-3 (Sale Deeds) and Exs. A-2, A-4 and A-5 (Gift Deeds) and Ex. A-6, Basic Valuation Register extract, it should not have rejected Exs. A-1 to A-6 themselves as unreliable documentary evidence for fixing the market value of the acquired land; thirdly, when the Civil Court had determined the market value of the acquired land of the claimant at Rs.80 per square yard on the basis of the amounts of consideration mentioned in Exs. A-1 and A-3 (Sale Deeds) and Exs. A-2, A-4 and A-5 (Gift Deeds), and Ex. A-6 (Basic Valuation Register extract), the High Court should not have rejected Exs. A-1 to A-6 themselves as unreliable documentary evidence for fixing the market value of the acquired land, particularly, when nothing damaging was elicited in the cross-examination of the witnesses who had spoken about those documents; fourthly, when the High Court had held that the Sale Deeds, Exs. B-3 to B-5, the Certified copies of the Sale Deeds produced in evidence on behalf of the LAO had not been proved by examination of the witnesses connected with them, it could not have determined the market value of the acquired land on the basis of the value of land fixed by the LAO at the rate of Rs.20 per square yard particularly when that rate was referable to value of the plots of land sold under Ex. B-3 to B-5, marked in evidence under section 51 of the LA Act; fifthly, when the High Court had doubled the value of plots fetched under Ex. B-3 to B-5 for arriving at the correct market value of the acquired land, it could not have determined the market value of the acquired land at Rs.32 per square yard, by deducting 20% out of it towards lay-out losses; and lastly, that the High Court had committed an error in not granting the amount calculated at the rate of 12% per annum payable under section 23(1A) of the LA Act on the market value of the acquired land from the date of the preliminary Notification till the date of taking possession of the lands.

6. Shri G. Prabhakar, the learned counsel, who appeared before us for the LAO, while refuting the contentions raised for the claimant, submitted that although the High Court had held that the Sale Deeds, Ex. B-3 to B-5 had not been proved by examination of witnesses connected with them, the High Court could not be found fault with, for fixing the market value of the acquired land on the basis of the award of the LAO based on Exs. B-3 to B-5 when the claimant's evidence adduced in disproof of that award had not been accepted by it (the High Court). It was further submitted by him that the High Court could not have doubled the rate of Rs. 20 per square yard fixed as the value of the acquired land by the LAO when it had not adverted to the basis on which the value was so doubled. The High Court, it was also submitted by him, was not right in granting the amount in addition to the market value under Section 23 (IA) of the LA Act, in the manner in which it had done. It was lastly submitted by him that the market value of the acquired land determined by the High Court calls to be reduced to the level of the market value of such land determined by the LAO and such market value should form the basis for grant of statutory benefits under the L.A. Act.

7. In view of the aforesaid contentions and submissions of learned counsel for the contesting parties, the questions which require to be considered and answered in deciding the appeals, could be formulated thus :

- (1) Whether the building potentiality of a land acquired under the LA Act requires to be taken into consideration in determining its market value, and if so, how has that to be done ?

(2) Whether the value of building plots as found in the Basic Valuation Register maintained under the Stamp Act or its Rules, could form the basis for determination of the market value of lands acquired under the LA Act ?

(3) Whether the value of land mentioned in an instance of sale or an instance of gift claimed to compare with the acquired land warrants acceptance as the correct value of such land merely because the witnesses who will have given evidence as regards them, on behalf of the claimants had not been cross-

examined or effectively crossexamined on behalf of the L.A.O.?

(4) Whether the value fetched by sale of a small extent of land can be made the basis for determination of the market value of a large extent of the acquired land ?

(5) Will it not be open to a Court which rejects the evidence adduced by the claimant in support of his claim for enhanced compensation for his acquired land made in a reference under section 18 of the LA Act, to rely upon the contents of the award of the LAO made under section 11 thereof to enhance the compensation awardable for such land ? If the LAO's award is based on value fetched under sale deeds on their perusal as contained in the registers maintained under the Registration Act, has he to prove those sale deeds in Court for sustaining his award ?

(6) What is the amount which could be awarded under section 23 (1-A) of the LA Act, in addition to the market value of the acquired land ?

(7) Does the market value in respect of which solatium is awardable under section 23(2) of the LA Act include the amount payable under section 23 (1-A) of the LA Act ?

(8) What is the amount of compensation awardable for the lands of the claimant acquired under the LA Act which could be regarded as just and reasonable?

8. We shall now proceed to consider and answer the said questions seriatim.

Re: Question (1)

9. Building Potentiality of acquired land Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of Notification or giving of public notice of substance of such Notification according to section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be

determined with reference to the date envisaged under section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under section 4(1) of the LA Act, ought to necessarily include, that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now.

10. An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building potentiality, in that, under clause (4) of section 24 of the LA Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged under Section 4(1) of the LA Act, of being used for putting up buildings either immediately or in the near future but not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as :

- (i) the situation of the acquired land vis-a-vis, the city of the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;
- (ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;
- (iii) possibility of obtaining water and elec-

tric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purposes;

(v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

11. The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

12. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubtedly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged under Section 4(1) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or near about the relevant date under Section 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if had been sold by making it into building plots similar to those sold. In other words, an hypothetical layout of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the layout actually made should form the basis for fixing the total price of the acquired land with building potentiality, to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved

in the process.

13. Prices fetched by sales of building plots which may become available could be of building plots in either a fully developed layout of building plots or in an undeveloped layout of building plots, situated in the vicinity of the acquired land with building potentiality. If the market value of the acquired land with building potentiality has to be fixed on the basis of the evidence of the said prices, the first thing required to be done is to prepare a hypothetical layout of building plots of the acquired land itself. Then, how much of land out of the acquired land becomes available to be made into plots similar to those in the developed layout of building plots or in the undeveloped layout of building plots has to be found out. If the building plots which so become available were to be sold at the prices at which the building plots in the developed layout of building plots or undeveloped layout of building plots could have been sold on the date envisaged in section 4(1) of the Act, what would be the total amount of such prices which could have been obtained has to be seen. Then, what could have been the losses suffered or expenses incurred for getting such total amount has to be found out. The market value of the acquired land with building potentiality, can then be regarded as the total amount of the prices of sales of all the building plots envisaged in the hypothetical layout of building plots in the acquired land minus the losses which could have been suffered or expenses which could have been incurred in making the hypothetical layout of building plots in the acquired land on par with the developed layout of building plots or the undeveloped layout of building plots, as the case may be. If losses to be suffered or expenses to be incurred for making a layout of building plots in the acquired land with building potentiality for purposes of selling such building plots at the prices to be fetched by similar building plots in the developed layout of building plots or in the undeveloped layout of building plots are to be found out, the losses which might have been suffered or expenses which might have been incurred by the owners of the lands of either of a developed layout of building plots or of an undeveloped layout of building plots, in making such layouts, could prove to be the best evidence. The evidence of losses suffered or expenses incurred in having made a layout of building plots may relate to lands lost for laying roads, drains, sewerages, parks etc., costs incurred in the making of roads, drains, sewerages, providing water supply, electric supply, losses on investments and paying of conversion charges, development charges etc. in a developed layout or an undeveloped layout in which building plots had been laid and sold and which sales form the basis for determining the market value of the acquired land. If evidence to be adduced in the said regard is of public authorities or local boards or private developers who will have formed such layouts of building plots in the lands in the neighbourhood of the acquired land and sold them, it could be of great value. No difficulty arises when all the materials needed to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be formed in respect of it is made available to the Court, so as to enable it to find out the possible market value of the acquired land with reference to the price to be fetched by sale of building plots to be made in such land. But, owners of the acquired land with building potentiality, rarely produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be thought of by the Court in respect of such land, although they rely on the price fetched by sale of plots in a developed layout or an undeveloped layout for determining the market value of their lands with building potentiality in the vicinity of such layout. It is where, the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the prices got in the

sale transactions relating to the building plots in a developed or an undeveloped layout, relied upon by the owners of the land, if such transactions are found to be genuine. A simple method, therefore, is evolved by courts in determining the market value of the acquired land with building potentiality with reference to the retail price to be fetched by sale of plots in a fully developed layout as on the date of publication of Notification under section 4(1) of the Act In *Bombay Improvement Trust v. Marwanji Manekji Mistry* reported in AIR 1926 Bombay 420, the said method is referred to by Macleod, C.J. as that where the wholesale price of the acquired land with building potentiality could be fixed at one-third to one-half of the retail price fetched by sale of building plots in a developed layout of building plots, depending upon the nature of development taken place in such layout. Thus, when it becomes inevitable for the Court to fix the market value of the acquired land with building potentiality on the basis of the price fetched by sale of a building plot in a developed layout of building plots in the vicinity, it must, in our view, fix the wholesale market value of the acquired land with building potentiality at one-third to one-half of the retail price got by genuine sales of plots in a developed layout in the vicinity, by deducting two-thirds to one-half out of the retail prices of plots, as losses or expenses involved in having made the land where the plots are formed as developed, according to the degree of development. For instance, if the retail price of plot is Rs. 12/- per square yard, the wholesale price of the acquired land with building potentiality could be fixed at rupees varying between Rs.4/- and Rs.6/- depending upon the nature of development found in the layout of the plot sold in retail. Coming to fixation of the wholesale price of the acquired land with building potentiality on the basis of retail price of a building plot sold out of an undeveloped layout of building plots, such wholesale price ought to be fixed by deducting at least one-third of the retail price of the building plot in such layout, because such would be the least loss to be suffered in forming a layout of building plots in the acquired land with building potentiality, after leaving out land for roads, drains etc. by obtaining the needed permissions from public authorities for making such layout. Therefore, the wholesale price of the acquired land could be fixed at Rs.8/- per square yard if the price fetched or to be fetched by sale of building plot in an undeveloped layout is Rs. 12/-. However, in either of the said cases whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of plots in a well developed layout in the neighbourhood or whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of building plots in an undeveloped layout of building plots in the neighbourhood, it becomes inevitable for the Court to find out what will be the price fetched or to be fetched by the sales of plots in the layouts, relied upon by any of the parties with reference to the price which the plots could have fetched if sold on the date of the publication of the preliminary notification under Section 4(1) of the Act. Further, where no evidence of price fetched by the sales of the plots in layouts of building plots in the neighbourhood of the acquired lands becomes available, then what could be done is to find out the market value of the acquired land with reference to the relevant date of publication under Section 4(1) of the LA Act, according to the actual use to which it was put and increase its value by a small percentage having regard to the degree of its building potentiality ascertained on the basis of evidence to be made available in that regard. A small percentage increase to be given shall not exceed 1/5th of the market value of the land found out according to its actual user since resort to the method of giving increased value for such building potentiality arises only when there is no evidence of sales of building plots in the neighbourhood of the acquired land indicating that there was no immediate demand, as such, for building plots even if formed in the acquired land.

14. Hence, whether the acquired land has building potentiality or not, while has to be decided upon reference to the material to be placed on record or made available by the parties concerned, the market value of the acquired land with building potentiality, is also required to be determined with reference to the material to be placed on record or made available in that regard by the parties concerned and not solely on surmises, conjectures or pure guess. Re: Question (2)

15. Value of building plots found in the Basic Valuation Register The value of building plots mentioned in the Basic Valuation Register can be of no assistance in determining the market value of the land acquired under the LA Act is no longer res Integra. In *Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others* [(1994) 4 SCC 595], it is ruled by this Court that the value of lands mentioned in the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty since lacks statutory base, the same cannot form the foundation to determine the market value of the lands acquired under the LA Act by observing thus:

"It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc."

16. Therefore, the value of building plots as found in the Basic Valuation Register maintained under the Stamp Act cannot form the basis for determining the market value of the lands acquired under the LA Act.

Re: Question (3):

17. Non cross-examination or ineffective cross-examination of witnesses for the claimant Oral evidence is generally adduced in the enquiry held by Court for determination of the compensation payable for lands acquired under the LA Act. Such oral evidence, generally, comprises of either of the claimants or their witnesses examined in support of the claims of claimants for grant of enhanced compensation, which in its very nature, would be referable to matters of situation of the acquired lands, their surroundings, their value or the like. Several statements would be made by such claimants or their witnesses when they are examined-in-chief in Court, on matters that may bear on the market value of acquired lands. If the witnesses who make such statements are not subjected to cross-examination or effective cross-examination or no contrary evidence is adduced, is the Court obliged to accept such state-

ments to be true in determining the market value of the acquired lands ? It is, no doubt true, that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for Court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not credit worthy. But, in land acquisition references before Civil Courts, when witnesses give oral evidence in support of the claims of claimants for

higher compensation the ineffective cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State. Indeed, when a question arose before this Court whether the Court is bound to accept the statements of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced, it was observed by this Court in *Chaturbhuj Pande and Others v. Collector, Raigarh*, [AIR 1969 S.C. 255], thus :

"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..... they are bound to call into aid their experience of life and test the evidence on the basis of probabilities."

18.Hence, we are unable to think that whenever the statements made by claimants' witnesses in courts are not got over on behalf of the Collector or the LAO by subjecting the witnesses to effective cross-examination or by not adducing evidence in rebuttal, the courts are obligated to accept such statements of witnesses as true, if tested on the basis of probabilities, become unreliable. If the courts were to accept such statements of witnesses as true merely because they are not subjected to cross-examination or effective cross-examination or because evidence in rebuttal thereof has not been adduced, it would amount to doling out public money to the claimants far in excess of their legitimate entitlement for just compensation payable for their lands. If such situation is prevented by courts dealing with claims for compensation by testing the statements of witnesses for claimants on the basis of probabilities, the Court will have performed the duty justly expected of them. Hence, no Court which tests the oral evidence of the claimants on the touch-stone of probabilities calling into aid, its experience of life, men and matters and find such evidence to be untrustworthy, the same cannot be found fault with.

Re: Question (4)

19. Market Value of large extents of acquired lands vis-a- vis value fetched by small extents - It is a matter of common knowledge that the large extents of lands if are to be sold, they cannot fetch the value which may be fetched by sale of small extents of land. It is for that reason the courts do not ordinarily accept the value fetched by small extents as the basis for determination of the value of large extents of acquired lands. In fact, where the small extent of land sold is insignificant when compared with large extent of land acquired, the market value of large extent of acquired lands shall not be determined on the basis of value fetched by sale of infinitesimally small extent of land. But, in exceptional cases when small extent of land sold for a price as compared with the acquired large extent of land, the market value of which is required to be determined is not so insignificant, the Court depending upon the possibility of the large extent of land of the claimant being sold as a small extent of land as that already sold for a price the market value of the large extent could be fixed on the basis of the price fetched by sale of small extent. Even then, how far the price fetched by sale of small extents can be made the basis for determining the market value of large extents must necessarily depend on the fact situation including that as to why the purchase was made, in each case, which has come on its record. However, when the value fetched by small extents, are of

building plots, in a building lay-out formed of a large plot, it has to be seen whether the large acquired land if is laid out into small building plots and sold, whether they could fetch the price fetched by sale of small building plots in the already formed building lay-out. Then, the market value of the acquired land has to be determined with reference to the value fetched by sale of small plots by making allowances for various factors, such as; loss of land required out of the acquired land to be used for roads, drains, parks, the expenditure involved in forming the layout waiting involved in sale of plots and several other factors which will necessarily reduce the wholesale price of the acquired land. Thus, how far the value fetched by sale of small extents of lands could form the basis for determining the market value of the acquired land has to inevitably depend upon the allowances to be made for factors which distinguish the acquired land from the plots of land sold and the sale value of which is relied upon as the basis for determining the market value of the acquired land.

Re: Question (5) :

20. Section 51-A of the Land Acquisition Act 7 Section 51 -A of the LA Act reads thus :

"51-A. Acceptance of certified copy as evidence. In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

21. Certified copy of a document registered under the Registration Act, 1908, but for the above provision could have been only secondary evidence which could have been accepted by the court when primary evidence relating to the original documents were shown to be unavailable. Section 51-A of the LA Act, as seen therefrom, is enacted to enable the parties in land acquisition cases, to produce certified copies of documents, to get over the difficulty of parties, in that, persons in possession of the original documents would not be ready to put them in courts, for when once they are put in Court, they cannot be sure, when they could take their return from Court. However, the mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not dispense with the need for a party relying upon the certified copies of such documents produced in court in examining witnesses connected with documents to establish their genuineness and the truth of their contents.

Therefore, the certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to act upon the contents of those documents unless persons connected with such documents give evidence in court as regards them and such evidence is accepted by the Court as true. But, when the LAO or the Collector has made his award, based on the contents of documents, as found in the registers kept under the Registration Act and produces registration copies of such documents in support of his award in Court, they could be regarded acceptable as evidence by Court given in support of the award unless it is shown by contra-evidence on behalf of the claimants that such documents could not have been relied upon by the Collector or LAO in making the award. It would be so for the reason that when the LAO produces in court Registration (certified) copies of those documents which he had made the basis for determining the market value, that would be only to support his award and not to establish

something independent of the award. If that be so, when such documents are produced on behalf of the LAO in court, they cannot be rejected on the ground that the witnesses associated with those documents cannot be examined by the LAO, inasmuch, even without producing such documents he can rely upon the award made by him to show that he had looked into those documents and he had determined the market value on their basis. Hence, the mere fact that witnesses associated with such certified copies of documents produced as evidence in court were not examined on behalf of the LAO will not in any way affect the award of the LAO, if he has determined the market value of the acquired land having perused those documents as found in the Registers kept under the Registration Act or their certified copies, before determining the market value of those lands on the basis of such documents.

Re: Questions (6) and (7):

22. Section 23 (1-A) of the Land Acquisition Act Section 23 (1-A) of the LA Act reads thus :

"23 (1-A). in addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded. "

23. -It is clear from a reading of the above section that in addition to the market value of the land awardable for the acquired land under first clause of sub-section (1) of section 23, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the Notification under section 4(1) of the LA Act, in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation, merely disentitles the claimant for the amount during the period referred to in the subsection, that is, the proceedings for the acquisition of the land were held up by any stay or injunction by the order of any court. The amount awardable under sub-section (1-A) of section 23 of the LA Act, therefore, would be an amount of 12 per centum per annum on the market value of the land determined under first clause of sub-section (1) of section 23 for the period between the date of publication of Notification under section 4(1) (i.e., the last of the dates of such publication and the giving of such public notice) and to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

24. In this context it has to be noted that the amount payable is 12 per centum per annum on the market value in the first clause of sub-section (1) of section 23 of the LA Act. It has also to be noted that solatium under sub-section (2) is not payable in respect of the amount awardable under sub-section (1-A), in that, sub-section (2) says that in addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such

market-value, in consideration of the compulsory nature of the acquisition.

25. Since the amount payable under sub-section (1-A) of section 23 as well as the solatium payable under sub-section (2) are in addition to the market value of the land, as above provided, they necessarily refer to the market value of the land awardable in the first clause of sub-section (1) of section 23 of the LA Act.

Re: Question (8) :

26. Market value of the lands of the claimant The High Court has refused to act upon documents. Exs. A-1 to A-6 relied upon on behalf of the claimant for obtaining enhanced compensation for his acquired land. Ex. A-1 is a certified copy of Sale Deed dated 16.2.1985. It was sought to be proved by examination of PW2 the purchaser under that document. The amount of consideration passed under that document, though was mentioned as Rs.60,000/- for 250.80 sq. yards of land sold thereunder, it had been said that that amount had been paid before the witnesses. The High Court has refused to believe the evidence as to passing of consideration of Rs.60,000/- under that document. Whether the consideration mentioned in a document, like sale deed did pass from the buyer to the seller of land, being a matter of pure appreciation of evidence and when the High Court in appreciation of such evidence has refused to accept that evidence and rejected the document, we find it difficult to interfere with such finding of fact recorded by the High Court and take a contrary view in the matter.

27. Similar is the view taken by the High Court in respect of Sale Deed dated 26.7.1985, Ex. A-3, in proof of which the vendor has been examined. Here again, the High Court has rejected the sale deed by refusing to accept the oral evidence adduced. Here also there is no justification for us to take a view in the matter contrary to the view taken by the High Court in the matter. Insofar as documents Exs. A-2, A-4 and A-5 are concerned, those are gift deeds of different dates. The claimant sought to rely upon the amounts mentioned in them as the value of lands for purposes of registration of documents, as those which could be taken for purposes of determining the market value of the acquired land in the vicinity. The High Court took the view that the parties to the gift deeds, when were near relatives, as father and daughter or husband and wife, consideration mentioned in them as the value of land which is solely for the purpose of registration cannot represent the real market value of any of those lands and hence cannot form the basis for determination of the market value of the acquired land. Consequently, High Court rejected the gift deeds as unhelpful for determination of the market value of the acquired land. When rejection by the High Court of the gift deeds is made on the basis of appreciation of evidence available before it, there can be no justification for us to interfere with such rejection. The other document on which reliance was placed by the claimant was Ex. A-6, which is an extract of the Basic Valuation Register. As we have already held following an earlier judgment of this Court that Basic Valuation Register extracts cannot be of any assistance in determination of market value of an acquired land, the rejection by the High Court of Ex. A-6, the basic register extract, on its view, that on its basis the market value of the acquired land cannot be determined, it is difficult for us to hold that the High Court was unjustified in rejecting Ex A-6 as that which cannot form the basis for determination of the market value of the acquired land. Thus, the said documents which were made the basis for determination of the market value of the acquired

land by the civil court were rejected by the High Court on reappraisal made by it of the oral evidence adduced in respect those documents by taking into consideration the relevant factors to which we have already referred, such rejection, cannot be found fault with. However, what the High Court has done in determining the market value of the acquired land is to double the amount of the market value disclosed in the sale deeds referred to in that award and on that basis to fix the market value of the acquired land after giving deduction of 20 per cent out of it towards allowance of lay-out and then fix the market value of the acquired land at Rs.32/- per sq. yard.

28. No doubt, as pointed out on behalf of the LAO, no specific reason is given by the High Court in its judgment as to why it doubled the amount of Rs.20/- per square yard, the value fetched by sale deeds (Exhibits B-2, B-3 and B-4) for fixing the market value of the acquired land. But, then whether the award of the LAO himself lends support for such doubling of the value of plots of land sold under the sale deeds, Exhibits B-2, B-3 and B-4, for determining the market value of acquired lands which were notified under Section 4(1) of the Act a few years thereafter, requires to be seen. The award of the LAO (Ex. B-1) insofar, it concerns the question reads thus:

"The land under acquisition is located between the National Highway No. 7 and Old Kurnool road and the proposed ring road connects these two roads. The lands are also located near Shivarampally railway station and in close proximity to Katedan Industrial Estate and fall within the newly formed Rajendranagar Municipality. The area is fast developing and there is much demand for residential house plots particularly after developing the N.G.Os colony at Mylardevally and Madhuban residential complex of HUDA in the neighbouring area. The area is also served with all modern amenities like power, transport, telephone etc., with high potentiality for developing housing colonies."

29. Therefore, when the LAO himself has stated as above of the fast development of the area where the acquired lands and adjoining building plots sold at Rs. 20 per square yard were situated and the rush of people for purchase of residential building plots in that area, the High Court cannot be said to have gone wrong in stating that the building plots sold under Exhibits B-2, B-3 and B-4 if had been sold at the time of acquisition concerned, could have fetched double the rate of Rs.20/per square yard. Even so, the High Court, in our view, could not have fixed the wholesale price of acquired lands of the claimant at Rs.32/- per square yard by deducting only 20% of Rs.40/- per square yard fixed as the retail value of building plots in the undeveloped layout of building plots formed in the land adjacent to the acquired lands as on the date when they were notified for acquisition under Section 4(1) of the Act. As we have pointed out earlier whenever the wholesale price of the acquired land with building potentiality is required to be determined on the basis of prices of retail sales of building plots in an undeveloped layout of building plots in the vicinity of the acquired lands, at least one-third of the retail price to be got by sale of plots in an undeveloped layout of building plots had to be deducted to arrive at the wholesale price of the acquired lands with building potentiality since the entire acquired land cannot be sold as building plots, and some expense will have been incurred by the owners of lands in laying it into building plots and selling them even though they might not have spent any amount on development of the layout.

30. When considered in the above perspective, the wholesale price of the entire acquired lands of the claimant could be fixed at Rs.27/- per square yard, that is, Rs.40/- per square yard retail price to be got by sale of plots in the undeveloped layout minus one-third of it to be deducted for making of layout. Thus, the market value of the entire land of the claimant would be Rs. 27/- per square yard and it has to be determined accordingly.

31. In the result, we determine the market value of the claimant's acquired land of 4 acres 3 guntas i.e. 19723 square yards at Rs.27/- per square yard and that would be Rs.5,32,521/-. The claimant would be entitled to get solatium at the rate of 30 per cent on that market value of the land. In addition to the market value of the land of Rs.5,32,521/-, the claimant would be entitled to get an amount at the rate of 12 per cent per annum thereon from the date of publication of Notification under section 4(1) of the LA Act, i.e., 2.9.1985 till the date of the award, i.e., 14.7.1988. Again, the claimant would be entitled to get interest on the enhanced compensation at the rate of 9 per cent per annum from the date on which he gave the possession of the land to the date of payment of such excess amount. However, if such amount has not been paid by the expiry of the period of one year from the date when possession was taken, enhanced compensation would be payable at the rate of 15 per cent per annum from the date of the expiry of the period of one year till the excess amount was paid to the claimant or paid into court.

32. We, accordingly, allow Civil Appeal arising out of S.L.P (C) No. 18202 of 1993 partly and dismiss Civil Appeals arising out of S.L.P. (C) Nos. 13362-63 of 1993. However, we make no order as to costs.