

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND FOR THE STATE OF ANDHRA PRADESH

L.A.A.S.No.545 of 2012

BETWEEN

Gaddameedi Narsa Goud and 165 others.

.....Appellants

And

The Land Acquisition Officer, Special Deputy Collector,
Land Acquisition Unit, South Central Railway,
Karimnagar

... Respondent

JUDGMENT PRONOUNCED ON: 07.04.2016

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO _____
AND
THE HON'BLE SMT. JUSTICE ANIS _____

- | | |
|--|-----|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | Yes |

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
* THE HON'BLE MRS. JUSTICE ANIS**

+ L.A.A.S.No.545 of 2012

% 06.04.2016

Sri Gaddameedi Narsa Goud and 165 others.

....Appellants

v.

\$ The Land Acquisition Officer,
Special Deputy Collector, L.A. Unit,
South Central Railway, Karimnagar

....
Respondent

! Counsel for the Appellants : Sri Ponnamm Ashok Goud
for

Sri A.Krupadhar Reddy

Counsel for Respondent: Sri P.Ganga Rami Reddy, Standing
Counsel

<Gist :

>Head Note:

? Cases referred:

- (1) (2005) 4 SCC 577
- (2) (2008) 2 SCC 568
- (3) (2009) 4 Supreme Court Cases 395
- (4) (2010) 1 Supreme Court Cases 444
- (5) (2010) 11 Supreme Court Cases 581

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE SMT. JUSTICE ANIS**

L.A.A.S.No.545 of 2012

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This appeal is preferred by the claimants under Section 54 of the Land Acquisition Act not being content with the compensation granted by the learned Senior Civil Judge at Jagtial in O.P.No.15 of 2007.

Draft Notification under Section 4 (1) of the Land Acquisition Act was published in the A.P. Gazette dated 07.11.2003 proposing to acquire a vast stretch of land for formation of Broad Gauge Railway Line. The lands in question are situated in Podur village, Kodimial Mandal of Karimnagar District. The land acquisition officer passed his award on 05.07.2006 granting Rs.60,000/- per acre towards compensation. The claimants claimed compensation at the rate of Rs.20,00,000/- per acre and hence sought for reference under Section 18 of the Land Acquisition Act for determination of correct market value. That is how the learned Senior Civil Judge, Jagtial entertained the O.P.No.15 of 2007 and by his order and decree dated 31.12.2009 enhanced the compensation to Rs.2,00,000/- per acre. Not content with this enhancement, the present appeal is preferred.

Heard Sri Ponnam Ashok Goud learned counsel for the appellants and Sri P.Ganga Rami Reddy learned standing counsel for the Railways on behalf of the respondent, Land Acquisition Officer – cum - Special Deputy Collector, Land Acquisition Unit, South Central Railway, Karimnagar.

Sri Ponnam Ashok Goud, learned counsel for the appellants, would contend that the land of small extents belonging to the several claimants has been acquired for purpose of formation of Broad Gauge Railway Line between Karimnagar and Jagtial. It is urged that the land in question is situated in Podur village, which is abutting Karimnagar – Nizamabad State Highway. This apart Pudur village is hardly 500-700 meters away from Kondagattu Anjaneyaswamyvari Devasthanam, which is a very famous pilgrim centre in and around these parts of the State, which attracts devotees not only from nearby places but from adjoining states like Karnataka and Maharashtra as well. It is also urged that on every Tuesday and Saturday and on other important festival occasions including Poornima (full moon) days, Kondagattu Anjaneyaswamyvari temple would be receiving the devotees in thousands of numbers and hence, the majority of the devotees avail the civic amenities available in Pudur village to the maximum extent as the meagre facilities available at Kondagattu are inadequate to meet the demand. This apart Pudur village is also an important commercial centre in Karimnagar District. It has recorded several developments such as a Road Transport Corporation Depot, which operates its fleet to several destinations in the districts of Karimnagar, Nizamabad etc but also to Hyderabad city on regular basis. There are hostels, colleges and various other educational institutions established in Pudur village over a long period of time. Recognising its importance, Jawaharlal Nehru Technological University, Hyderabad has established one of its outstation colleges of Engineering and Technology at Podur village. There are several Hotels and Lodging Houses in the village. According to Sri Ponnam Ashok Goud, learned

counsel for the appellants, the lands which stood acquired are running parallel to the State Highway connecting Karimnagar and Nizamabad, two of the very important district headquarters in the state of Telangana. The distance in between the lands and this main road is ranging between 500 meters to 2 Km at best. Learned counsel for the appellants, therefore, would contend that gross injustice is done both by the Land Acquisition Officer and the Civil Court in not properly taking all these developments around into account and consideration while fixing the market value for the land in question. Learned counsel for the appellants would urge that when land is used essentially for commercial purposes, only small extents of land are either sold or purchased and hence, a gross error was committed in not taking into account the registered sale deed bearing document No.1779/2007 marked as Ex.A.6 for fixation of market values. At any rate failure to take into account and consideration Ex.A.4, a sale deed bearing document No.970/2002, is grossly erroneous.

Per contra, Sri P.Ganga Rami Reddy, learned standing counsel for Railways would contend that the land in question, which is acquired by the Railways for formation of Broad Gauge Railway Line, is mostly useless land and is not put to agricultural use, but however, the claimants have urged before the Civil Court that the capitalisation method should be followed for determining the market value and consequently the Civil Court has rightly adopted the capitalisation method and awarded a sum of Rs.2,00,000/- per acre, which is a realistic and reasonable assessment of the market value. Hence, the order passed by the Civil Court under Section 18 of the Land Acquisition Act does not call for any interference.

It is only appropriate to note that the appellants have confined their claim of market value at Rs.6,00,000/- per acre, specifically while preferring the appeal.

The basic facts relating to the Civic Developments of the Pudur village are not doubted. It was also not disputed that Kondagattu

Anjaneyaswamyvari Devasthanam, a very important pilgrim centre is hardly at a distance of less than a Kilometre from Pudur Village. It is further not in doubt that the said Devasthanam is a popular destination of devotees who visit the said temple in large numbers. It is further not in doubt that the land acquired for formation of Broad Gauge Railway Line runs parallel to the State Highway, which connects Karimnagar and Nizamabad towns, which are two important commercial towns in these parts. On one side of the State Highway, the Road Transport Corporation has established its bus depot and Jawaharlal Nehru Technological University has established one of its units on the other side of the road in Pudur village. The presence of schools and colleges in Pudur village attract hundreds of people on day to day basis from nearby villages. There are several Hotels which carry on brisk business. Thus, Pudur village in Karimnagar District has undergone rapid developments in the past two decades.

The Draft Notification under Section 4 (1) of the Land Acquisition Act was published on 07.11.2003, whereas the sale deeds marked as Exs.A.1, A.2, A.3, A.4 and A.5 are all evidencing sale transactions of bits of land in Sy.Nos.34, 164, 182, 279 and 328E etc. Ex.A.1 is the sale transaction covering an extent of 484 sq. yards situated in Sy.No.34 evidencing that the land of an extent of AC.0.04 Guntas was sold for Rs.1,45,200/-, which value works out to Rs.14,52,000/- per acre. Ex.A.2 is a sale transaction covering an extent of Ac.0.13 Guntas of land, which is nearly $\frac{1}{3}^{\text{rd}}$ of an acre (40 Guntas = 1 acre), this reflects the value at Rs.9,68,000/- per acre. Ex.A.3 covers sale transaction of approximately Ac.0.06 Guntas, which also reflects the value of land at Rs.9.68,000/- per acre. Ex.A.4 also covers a sale transaction relating to 700 sq.yards, which reflects the market value at Rs.9,68,000/- per acre. Whereas Ex.A.5 covers land of an extent of 937.75 Sq.yards, the market value of which reflects Rs.7,26,000/-. Ex.A.5 deals with land situated in Sy.No.164 of Pudur village. The lands acquired and belonging to the claimants are all in

the vicinity. Further, the particulars furnished by the Land Acquisition Officer reflect that there are irrigation wells available in the lands belonging to the claimants and that they are rising crops such as Redgram, Cotton, Maize, Bengalgram, Lemon and Anumulu. There are also Mango trees, Eucalyptus trees, Neem trees, Bamboo and Sendhi trees in good numbers available.

In view of the evidence available on record, the question that is needed to be answered by us was whether the capitalisation method based upon the income derived from the land should be taken into account or its potential value should be taken into account.

Sri Ponnamm Ashok Goud, learned counsel for the appellants, would contend that the lands have great potential to be used for non-agricultural purposes than being used for agricultural purposes and hence their potential cannot be lost sight of while fixing the market value. All the more so when the respondent – Railways has taken the plea that the lands are not useful for agricultural purposes.

It should be appropriate to notice the legal principles enunciated by the Supreme Court with regard to the relevant factors for fixation of appropriate market value of the lands.

In “**Viluben Jhalejar Contractor v. State of Gujarat**^[1]”, the Supreme Court laid down the following principles for determination of market value of the acquired land:

Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the

special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section [4\(1\)](#) or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

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

In “**Atma Singh v. State of Haryana** ^[2]”, the Supreme Court held:

In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23 (1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The expression 'market value' has been subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent

necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arms length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. , a price outcome of hypothetical sale expressed in terms of probabilities. See *Thakur kanta Prasad v. State of Bihar*, AIR 1976 SC 2219; *Prithvi Raj taneja v. State of M. P. ,* AIR 1977 SC 1560; *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1988 SC 943 and *Periyar v. State of Kerala*, AIR 1990 SC 2192.

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration. See: *Collector Raigarh v. Hari Singh Thakur*, AIR 1979 SC 472, *Raghubans Narain v. State of U. P. ,* AIR 1969 SC 465 and *Administrator General, W. B. v. Collector Varanasi*, AIR 1988 SC 943. It has been held in *Kaushalya Devi v. Land Acquisition Officer, Aurangabad*, AIR 1984 SC 892 and *Suresh Kumar v. Town Improvement Trust*, AIR 1980 SC 1222 that failing to consider potential value of the acquired land is an error of principle.

In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In ***Kasturi v. State of Haryana*** : (2003) 1 SCC 354, the Court held:

...It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the

absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.

(Emphasis supplied)

A 3-Judge bench of the Supreme Court speaking through Justice S.B.Sinha in “**Revenue Divisional Officer – cum – Land Acquisition Officer v. Shaik Azam Saheb and others**”^[3] in paragraph No.11 has crystalized the relevant factors, which are as follows:

“Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors; the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required to be considered, namely, as to whether they are irrigated or non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land. ”

During the course of the said judgment, it was also held that the market value of the land would also depend upon the situation of the land. It was also further held (in paragraph No.20) that while comparing the market value of the developed lands with that of the undeveloped lands, the Court has to make suitable deductions

towards the cost of development and went on to hold that 1/3rd deduction should be made towards development costs.

The Supreme Court in “**Subh Ram and others v. State of Haryana and another**”^[4] has crystalized the relevant principles in paragraph Nos.9, 11 and 15 thereof, which are as under:

“9. We will now deal with the contention of the appellants that no deduction need be made towards development cost, from the market value of residential plots, for the purpose of determining the market value of the acquired lands in this case. It is not disputed by appellants that usually a deduction towards development cost is necessary when the 'wholesale' market value of large undeveloped land is determined with reference to 'retail' market value of small developed plots. But their contention is that having regard to the purpose of acquisition (construction of a jail), which does not involve any development activity, no deduction should be made from the market value of small developed plots. The said contention is based on the premises that the purpose for which the land is acquired is a relevant factor to decide whether any deduction should be made towards development cost or not.

11. What is the concept of deduction of development cost to arrive at market value? If the market value of a large tract of agricultural and or undeveloped non-agricultural land possessing potential for development is to be determined with reference to the market value of a small residential plot situated in a neighbouring residential layout, it becomes necessary to work back the market value of the large tract of undeveloped land from the market value of the small residential plot. This is because the value of one square yard of undeveloped land is not the same as one square yard of developed residential plot. If there is a large tract of agricultural or undeveloped land, obviously the entire extent cannot be sold as residential plots. If the agricultural or undeveloped land has to be sold as residential plots, it is first necessary to make a layout of plots in such land. This would mean that a provision will have to be made for roads to provide access to each plot in the layout.

15. Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads etc.) plus one-third (for expenditure of development) in all two thirds (or 67%), as 'development cost' from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances (See : Lal Chand vs. Union of India 2009 (11) SCALE 627, paras 8 and 9 ; (2009 AIR SCW 5810) for illustrations of such circumstances).”

Thus, depending upon the nature of land and that the land in question is under developed, the range of deduction may vary from 20% to 75%.

The Supreme Court in “**Haridwar Development Authority v.**

Raghubir Singh and others^[5] had occasion to examine the question as to whether uniform rate has to be fixed for all the lands acquired and answered the said question in Paragraph No.7 of the said judgment in the following words:

“7. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate:

(A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometers away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.”

Thus, where the lands are contiguous and they are only separated by 2 to 3 kms from each other, it may not make much difference for awarding a uniform rate.

In paragraph No.15 of the above quoted judgment as to how interest component under Sections 28 and 34 of the Act work together but not work at variance has been explained in the following words:

“In regard to the compensation that is offered by the Land Acquisition Collector, the interest is payable under Section 34 of the Act. In regard to the increase in such compensation, which is awarded by the Reference Court or any appellate court, such interest is awarded under Section 28 of the Act. Sections 34 and 28 of the Act do not duplicate the award of interest, but together cover the entire amount of compensation awarded. The award of interest on the enhanced amount under Section 28 of the Act is the normal rule. The refusal of interest should be by assigning

special or specific reasons. The contention of the Authority that the High Court ought not to have awarded interest under Section 28 is therefore untenable.”

Keeping the above principles in mind, we need to analyse the documentary evidence that was brought before the reference Court by the claimants.

Exs.A.1 to A.6 are marked reflecting the sale transactions that have taken place in the village, but however Ex.A.6 is a registered sale deed bearing document No.1779/2007, which is registered on 04.08.2008, long subsequent to the date of acquisition of the land in question. Therefore, it does not offer any basis for consideration or comparison.

Ex.A.1 is a certified copy of the registered sale deed bearing document No.856/2001, while Ex.A.2 is a certified copy of the registered sale deed bearing document No.89/2002, dated 24.01.2002, while Ex.A.3 is a certified copy of the registered sale deed bearing document No.1044/2002. Ex.A.4 is a certified copy of the registered sale deed bearing document No.970 of 2002 dated 23.07.2002. Ex.A.5 is a certified copy of the registered sale deed bearing document No.831/2002 dated 27.06.2003. Thus, Exs.A.1 to A.5 are all documents, which relate to sale transactions which took place prior to 07.11.2003, the date of publication of Draft Notification under Section 4 (1) of the Act in the present case. Ex.A.1 covers sale of land of an extent of Ac.484 Sq.yards, whereas Ex.A.4 covers sale of 700 Sq.yards, while Ex.A.5 covers sale of 937.75 Sq.yards. Ex.A.2 reflects sale of Ac.0.13 Guntas, which is relatively a large extent being nearly 1/3rd of an acre. Ex.A.3 also covers land of Ac.0.06 Guntas, which is approximately 1/7th of acre. Though, Ex.A.1 is a sale transaction dated 23.06.2001 covering only 484 Sq.Yards, which reflected value of Rs.14,52,000/- per acre. Obviously, the land covered by Ex.A.1 has greater commercial value possibly due to the proximate closeness of it to the State Highway connecting Karimnagar and

Nizamabad. Exs.A.2, A.3 and A.4 are also sale transactions, which have taken place in January, 2002, July, 2002 and August, 2002. They reflect a uniform market value of Rs.9,68,000/- per acre, whereas Ex.A.5 dated 27.06.2003 reflects a sale transaction of 937.75 Sq.yards.

The sale transaction covered by Ex.A.5 has taken place nearly one year after to Exs.A.2, A.3 and A.4. But however, it reflected the market value of Rs.7,26,000/-per acre. The extent of land covered by Ex.A.5 is not a very small extent, in as much as it covered 937.75 Sq.yards, which is almost 1/5th of an acre of land. In our opinion, Ex.A.5 nearly reflects the true market value of the lands, which are slightly at a distance from the main road and hence the same can be taken note of and relied upon for determining the market value.

The capitalisation method for determining the market value is generally adopted where the lands are used exclusively for agricultural purposes are acquired for public purpose. But however, when all-round developments are taking place around the lands which are also put to agricultural purposes, while determining the market value the developmental factors that have taken place in and around need not be discarded from being taken into account. Adopting a suitable method for purposes of arriving at the correct market value of the lands acquired is the job to be performed by the Civil Court or the Appellate Court, as they are called upon to arrive at the correct market value for the lands, initially by seeking a reference under Section 18 of the Land Acquisition Act.

Justice Dr.B.S.Chauhan speaking for the Supreme Court in “**Bhuleram v. Union of India and another**”^[6] after reviewing the earlier judgments of the Supreme Court has brought out the theme behind the determination of market value in land acquisition cases in paragraph Nos.7, 8 and 11 in the following words.

“7. The scheme of the Act is that every man's interest is to be valued *rebus sic stantibus*, just as it occurs at the time of the notification under Section 4(1). Thus, the assessing authority must take into

consideration various factors for determining the market value, but exclude the advantages due to the carrying out of the purpose of acquisition and remote potentialities. It is the duty of the claimant that he must produce the relevant evidence for determining the market value while filing his claim under Section 9 of the Act at least before the trial court or before the reference court for the reason that the appellate court may not permit the party to adduce additional evidence in appeal.

8. The market value of the land is to be assessed as per Section 23 of the Act. Valuation of immoveable property is not an exact science, nor can it be determined like algebraic problem, as it abounds in uncertainties and no strait-jacket formula can be laid down for arriving at exact market value of the land. There is always a room for conjecture, and thus the court must act reluctantly to venture too far in this direction. The factors such as the nature and position of the land to be acquired, adaptability and advantages, the purpose for which the land can be used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape of the land, the rise or depression in the value of the land in the locality consequent to the acquisition etc., are relevant factors to be considered. Section 23 mandates that the market value of the land is to be assessed at the time of notification under Section 4 of the Act. Therefore, value which has to be assessed is the value to the owner who parts with his property and not the value to the new owner who takes it over. Fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller. Though the Act does not provide for "just terms " or "just compensation ", but the market value is to be assessed taking into consideration the use to which it is being put on acquisition and whether the land has unusual or unique features or potentialities. (Vide: Raja Vyricheria Narayana Gajapatraju Bahadur Garu v. Revenue Divisional Officer, Vizianagaram, AIR 1939 PC 98; and Adusumilli Gopalkrishna v. Spl. Deputy Collector (Land Acquisition), AIR 1980 SC 1870).

11. The market value of the land should be determined taking into consideration the existing geographical situation of the land, existing use of the land, already available advantages, like proximity to National or State Highway or road and/or notionally or intentionally renowned tourist destination or developed area, and market value of other land situated in the same locality or adjacent or very near to acquired land and also the size of such a land. (Vide: Viluben Jhalejar Contractor v. State of Gujarat (AIR 2005 SC 2214), Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer & Ors. [(2011) 2 SCC 246], Bilkis & Ors. v. State of Maharashtra & Ors., [(2011) 12 SCC 646] and Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Special Land Acquisition Officer & Ors., AIR 2012 SC 2709)."

Hence, keeping in mind the proximate closeness of the lands acquired to the State Highway and also renowned pilgrim centre of Kondagattu Anjaneyaswamy temple and also closeness to the JNTU college of Engineering, R.T.C. bus depot and other educational institutions and commercial establishments situated within the limits of Pudur village, we consider that Ex.A.5 ought to have been taken as a

basis for determining the land value instead of capitalisation method.

Sri P.Ganga Rami Reddy, learned standing counsel for Railways is not totally unjustified in his criticism that the lands acquired are mostly underdeveloped lands. The Railways have to undertake lot of developmental works before the Broad Gauge Railway Line is laid thereon. Firstly, the land has got to be cleared and levelled. It has to be consolidated, compacted and a track bed of certain strength and capacity has to be developed. May be, for formation of a Railway line, there may be no necessity to form roads, or water line mains or regular drainage facility or street lighting as is normally undertaken while developing a lay-out. Therefore, 50% of the cost reflected in Ex.A.5 is liable to be deducted towards developmental costs. When so done, the land value would come to Rs.3,63,000/- per acre ($\text{Rs.7,26,000}/2=3,63,000$), and it can be approximated to Rs.3,50,000/- per acre.

Therefore, we allow this appeal by fixing the market value at Rs.3,50,000/- per acre while retaining all other statutory benefits, which the reference Court has awarded. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

07.04.2016

Note:

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[\[1\]](#) (2005) 4 SCC 577

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- [\[4\]](#) (2010) 1 Supreme Court Cases 444
- [\[5\]](#) (2010) 11 Supreme Court Cases 581
- [\[6\]](#) (2014) 11 Supreme Court Cases 307