

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2019

Pronounced on : 06.09.2019

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**

and

The Hon'ble Mr. Justice **M. NIRMAL KUMAR**

A.S. Nos. 579 to 593 of 2018

A.S.No. 579 of 2018

The Special Tahsildar
Land Acquisition Unit – I,
Aromatic Complex, MRL
Saidapet, Chennai 600 018.

...Appellant

-VS-

Ponnammal (died)

1.Vethagiri

2.The Company Secretary,
The Madras Refineries Limited,
Teynampet,
Chennai -18.

... Respondents

and batch cases.

WEB COPY

For Appellant
(in all the
appeals) : Mr.J.Bala Gopal
Spl. Government Pleader

For Respondents : Mr.Ravikumar Paul
(in all the Sr. Counsel
appeals) for Mr.V.Chandrakanthan
for R1
Mr.M.S.Krishnan
Sr. Counsel
for Mr.Arjun Suresh for R2

COMMON JUDGMENT

M.M.SUNDRESH, J.

As all these appeals arise from a common judgment rendered by the Sub-Court of Ponneri, being the Reference Court, enhancing the compensation from Rs.600/- per cent to Rs.20,000/- per cent along with solatium and the other statutory interest, they have been taken up together and disposed of by a common judgment.

2. The lands to the extent of 15.6 acres situated in Manali Village, Madhavaram Taluk, Thiruvallur District were acquired for the purpose of setting up Aromatic Complex and other Petro based down

stream projects. The notification was passed in G.O.Ms.No.1183 by the Industries Department dated 31.10.1990. After dispensing with the procedure contemplated under Section 5A of the Land Acquisition Act 1894 (for brevity, "the Act"), by invoking urgency provisions available under Section 17 of the Act, a draft declaration was passed in G.O.Ms.No.304, Industries Department, dated 23.07.1992. Awards have been passed after due inquiry for fixing just and adequate compensation in Award Nos.2/93, 3/93, 3/94, 4/94, 5/94 and 9/94.

3. The Land Acquisition Officer fixed the market value at Rs.600/- per cent. This was done by taking into consideration Document No.2264, dated 16.05.1988 for an extent of 0.33 acres situated in Survey No.168/11, which is abutting and adjoining the acquired lands. In fact, the lands acquired are found in two parts. The similar part is in Survey Nos.141 and 143. This is slightly far away from other part in Survey Nos.165, 176 and 181. As stated, the sale deed relied upon by the Land Acquisition Officer falls exactly within the acquired land. Therefore, based upon the aforesaid document, it was accordingly fixed at Rs.600/- per cent. The acquired land belongs to few farmers and industrialists. The lands have been purchased by the

industrialists in most cases, which is prior to the issuance of notification for the purpose of putting up their respective industries. Many of land owners also got alternative lands. The compensation amounts were also received. Thereafter, some writ petitions have been filed by some of the land owners. Pursuant to the opinion given by the learned Government Pleader, reference was made and all the cases were taken up together. Thus, it appears that there was reference made immediately after the award was passed within the time granted under the Act and thereafter in pursuance of the orders passed by this Court.

4. Before the Reference Court, the claimants made a joint statement. It is their contention that the acquired lands were under cultivation. They were originally agricultural lands. The cultivation was done personally by the claimants by raising various crops. They are wet lands. They are also very close to the developed industrial area of Manali and the development has taken place in the nearby area. Hence, plots have come with the approval of the Madras Metropolitan Development Authority and, therefore, they are being sold for very high price. The lands are well connected with the roads.

5. The Land Acquisition Officer was not right in taking the wrong documents for consideration. The highest price will have to be taken for fixing the valuation. In support of the aforesaid statement, the claimants examined only one person as C.W.1 and marked four documents under Exs.C1 to C4. Ex.C1 is the agreement of M.M.D.A Steel Authority of India, Chennai. Ex.C2 is the publication made by the said authority in the newspaper on 21.11.2010. Ex.C3 is the sale deed in Document No.1719/1991, dated 10.05.1991 with respect to Survey No.202/15 for an extent of 812 Sq.ft indicating the value of one cent at Rs.21,800/-. Ex.C4 is with respect to Document No.4402/1990, dated 10.10.1990, which pertains to the land in Survey No.203/2 to an extent of 540 sq.ft indicating the value of one cent at Rs.21,800/-.

6. On behalf of the appellant, it is contended that the data sale deed relied upon forms part of the acquired lands. The exemplars relied upon by the claimants are with respect to lands situated far away. They are house sites. No proper reduction has been made by the Reference Court, except 8%. The lands are wet lands. There are no full crops available. They are not fully surrounded by developed

lands. Therefore, the claims made are to be rejected. To buttress their case, the appellants have only examined R.W.1.

7. The Reference Court, upon hearing, awarded a sum of Rs.20,000/- per cent. As on the date of notification, it would amount to Rs.2 crores per acre in the year 1990. This was done by placing reliance upon Ex.C4. Though the Reference Court made reliance upon the judgments on the deduction which are to be made towards the developmental charges, only 8% deduction was given. Such a conclusion was arrived at by the Reference Court on the ground that the document which is more beneficial to the claimants will have to be taken for fixing the valuation. Aggrieved over the same, these present appeals are before us.

8. Though the second respondent was arrayed as a party, yet he did not choose to appear being the beneficiary of the acquisition and, thus, the requisitioning body.

9. The learned Special Government Pleader appearing for the appellant would submit that the Land Acquisition Officer has made a

thorough inquiry and thereafter arrived at the land value out of 288 data sale deeds collected. The acquisition was for large extent of lands. Therefore, the sale deed indicating very small extent ought not to have been taken into consideration. Exs.C3 and C4 are only of 812 and 540 sq fts respectively. These documents also are pertaining to the land situated far away. Ex.C3 has been registered five months after the issuance of notification under Section 4(1) of the Act. The learned Special Government Pleader also made reliance upon the Land Acquisition value as a Sketch drawn and signed by the appellant indicating the acquired lands, data sale deed and the exemplars relied upon under Exs. C3 and C4 by the claimants. The Reference Court has passed the award without any basis. There was not even any deduction towards the developmental charges, except 8 per cent. Alternative sites were also given to many of the land owners. It is not as if all the beneficiaries are farmers, but many of them are big industrialists. It is not correct to state that the lands are strategically located. Therefore, the awards passed would require interference.

10. The learned Senior Counsel appearing for the second respondent would submit that some of the references have been made

after more than a decade. Therefore, the Reference Court ought to have considered the maintainability of the reference itself. The Reference Court did not consider the issue with respect to the alternative site given and the fact that more extents of lands were owned by industrialists. The Reference Court did not even consider the fact that interest cannot be awarded for more than 20 years. The delay was mainly due to the claimants. Some of them approached this Court in which the second respondent was not a party and obtained orders. Strangely, based upon the opinion of the learned Government Pleader references were entertained. In any case, the amount awarded and that too with solatium and statutory interest is too huge and it will be practically impossible for the second respondent, being the Public Sector Undertaking, to pay the compensation. The contentions made are sought to be supported through the following decisions:

- (i) *Bhagwan Das and others v. State of Uttar Pradesh and others* reported in (2010) 3 SCC 545,
- (ii) *Brijesh Kumar & others v. State of Haryana and others* reported in (2014) 11 SCC 351,

- (iii) *Additional Spl. Land Acquisition Officer, Bangalore v. Thakoredas Major and others*, reported in (1997) 11 SCC 412,
- (iv) *Popat Bahiru Govardhane and others v. Special Land Acquisition Officer and another* reported in (2013) 10 SCC 765,
- (v) *Officer in Special Duty (Land Acquisition) and another v. Shah Manilal Chandulal and others* reported in (1996) 9 SCC 144,
- (vi) *Dhanraj v. State of Maharashtra*, reported in (2018) SCC Online SC 967,
- (vii) *Food Corporation of India and others v. Babulal Agrawal*, reported in (2004) 2 SCC 712,
- (viii) *State of Gujarat v. Kothari and Associates*, reported in (2016) 14 SCC 761,
- (ix) *Padma Uppal and others v. State of Punjab and others*, reported in (1977) 1 SCC 330,
- (x) *Special Land Acquisition Officer Davangere v. P. Veerabhadarappa and others* reported in (1984) 2 SCC 120,
- (xi) *Haridwar Development Authority v. Raghubir Singh and others* reported in (2010) 11 SCC 581,
- (xii) *Bijender and others v. State of Haryana and another* reported in (2018) 11 SCC 180 and
- (xiii) *Gulzar Singh and others v. State of Punjab and others*, reported in (1993) 4 SCC 245.

11. The learned Senior Counsel appearing for the claimants would submit that not all of them are industrialists. A mere fact that alternative sites have been given would not dis-entitle them from getting the just compensation. Even this was not done to all the land owners though the lands were acquired and thereafter allotted. The Reference Court considered the settled principles governing payment of compensation and, therefore, took the best sale deed available and fixed the compensation. The question of improper reference cannot be gone into at this stage. The claimants are yet to receive any other money except the one received by some of them as per the award. Reliance was made on the following judgments:

- (i) *Meherwal Khewaji Trust v. State of Punjab & Ors* reported in (2012) 5 SCC 432
- (ii) *A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Trichy* reported in (2010) 9 SCC 118
- (iii) *Mohinder Singh and others v. State of Haryana* reported in (2014) 8 SCC 897
- (iv) *Mohammad Yusuf and others v. State of Haryana and others* reported in (2018) 16 SCC 105
- (v) *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another* reported in AIR 1998 SC 1652

(vi)Thakarsibhai Devjibhai and others v. Executive Engineer reported in AIR 2001 SC 2424

(vii)H.V.Krishna Rao v. Assistant Commissioner & Land Acquisition Officer reported in 2004 (7) Kant LJ 89 and

(viii)Ka Sylvia Dohling v U Nodro and another reported in 1962 SCC Online Gau 45

12. Let us first deal with the issue of reference sought to be raised by the learned Senior Counsel appearing for the second respondent. The second respondent was a party before the Reference Court. Unfortunately, the second respondent did not choose to contest and accordingly it was set ex-parte. This is the reason that some of the references have been made pursuant to the directions issued by this Court in the writ petitions and after obtaining the opinion of the learned Government Pleader. Unfortunately, neither the order passed by the Court nor the opinion is available before us. It was also not placed before the Reference Court. In fact, the appellant has not raised any plea with respect to the reference being bleated. Even in the grounds of appeal, no such plea has been taken. It is not as if all the references were made belatedly beyond the time. Even we do not have any specific particulars regarding the same. The second

respondent has not challenged the awards passed. While there is no difficulty in holding that the Reference Court is required to go into the issue governing the maintainability of reference, we are not inclined to go into the same at this stage, as the same is raised for the first time at the instance of the second respondent. It also involves a disputed question of fact. Thus, the objections raised on the question of competence of some of the references stand rejected. The judgments relied upon by the learned Senior Counsel in this regard, in our considered view, are not applicable to the facts of the case. We may note the issue raised is not a jurisdictional issue, but one of adjudication. The second respondent having stepped out of the matter cannot raise a plea which is required to be proved by oral and documentary evidence and that too at the stage of hearing the appeal, especially when no such appeal has been filed by it. Accordingly, the plea of improper reference raised by the second respondent stands rejected.

13. The other statements made by the learned Senior Counsel appearing for the second respondent with respect to interest and other consequences flowing for a long period of time also cannot be

countenanced. It is true that the second respondent would suffer a lot, but in the absence of any materials, the contentions raised cannot be countenanced.

14. Coming to the core issue which is the compensation fixed, we have perused the documents available, especially Exs.C3 and C4 and the land acquisition valuation sketch. We do not propose to go into the law governing fixation of just compensation. As rightly submitted by the learned Senior Counsel appearing for the first respondent, the Reference Court will have to sit in the arm chair of the intending seller and the purchaser and fix the compensation. Suffice it is to refer to the judgment of the Apex Court in *Valliyammal and others v. Special Thasildar(Land Acquisition) and others* reported in (2011) 7 MLJ 761, which also arose from the Division Bench judgment of this Court. The Apex Court laid down the principles governing any determination of market value and the deductions which are to be made. We may appositely refer to the following paragraphs:-

13. In *Shaji Kuriakose v. Indian Oil Corpn. Ltd.* (2001) 7 SCC 650 this Court held: (SCC pp. 652-53, para 3)

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

these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

(emphasis supplied)

14. In *Viluben Jhalejar Contractor v. State of Gujarat*— (2005) 4 SCC 789 this Court laid down the following principles for determination of market value of the acquired land: (SCC pp. 796-97, paras 17-21)

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

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price 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.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

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

<i>Positive factors</i>	<i>Negative factors</i>
<i>(i) smallness of size</i>	<i>(i) largeness of area</i>
<i>(ii) proximity to a road</i>	<i>(ii) situation in the interior at a distance from the road</i>

- | | |
|---|---|
| (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 | (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 | |
21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

15. In *Atma Singh v. State of Haryana*— (2008) 2 SCC 568 the Court held: (SCC pp. 572-73, paras 4-5)

"4. In order to determine the compensation which the tenure-holders are entitled to get for their land which

has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression 'market value' has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of

hypothetical sale expressed in terms of probabilities. See Kamta Prasad Singh v. State of Bihar, Prithvi Raj Taneja v. State of M.P., Administrator General of W.B. v. Collector—and Periyar Pareekanni Rubbers Ltd. v. State of Kerala.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about a town is developing or has prospect of development have to be taken into consideration. See *Collector v. Dr. Harisingh Thakur, Raghubans Narain Singh v. U.P. Govt. and Administrator General of W.B. v. Collector. It has been held in Kausalya Devi Bogra v. Land Acquisition Officer and Suresh Kumar v. Town*

Improvement Trust that failing to consider potential value of the acquired land is an error of principle."

16. *In fixing market value of the acquired land, which is undeveloped or underdeveloped, 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: (SCC pp. 359-60, para 7)*

"7. ... 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; maybe 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, maybe 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)

17. *The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P., V. Hanumantha Reddy v. Land Acquisition Officer, H.P. Housing Board v. Bharat S. Negi and Kiran Tandon v. Allahabad Development Authority. In Lal Chand v. Union of India the Court indicated that percentage of deduction for development to be made for arriving at market value of large tracts of undeveloped agricultural land with potential for development can vary between 20% and 75% of the price of developed plots and observed: (SCC pp. 779-80, paras 14 & 20)*

"14. The 'deduction for development' consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works.

20. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of

undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure."

19. *In A.P. Housing Board v. K. Manohar Reddy (2010) 12 SCC 707 the rule of 1/3rd deduction towards development cost was invoked while determining market value of the acquired land. In Subh Ram v. State of Haryana, this Court held as under: (Subh Ram case, SCC pp. 451-52, paras 24-25)*

"24. Deduction of 'development cost' is the concept used to derive the 'wholesale price' of a large undeveloped land with reference to the 'retail price' of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the 'development cost'. Two factors have a bearing on the quantum (or percentage) of deduction in the 'retail price' as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as

on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land.

25. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water, etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition play a role in determining the percentage of deduction towards development cost."

(emphasis supplied)

As there is no dispute on the legal position qua just compensation, we are not inclined to reiterate further by discussing the settled principle mentioned in the judgments cited at the Bar.

15. In the case on hand, the Reference Court has substantially placed reliance upon Ex.C4. Ex.C4 is admittedly for an extent of 540

Sq. ft. situated in Survey No.203/2. On a perusal of the Sketch produced, it is very clear that this Survey Number is bit far away from the acquired land. It is more farther from the first part of the acquired land. The acquisition was made over the agricultural lands. Ex. C4 only deals with the fully developed plot for an extent of 540 Sq ft. Therefore, we are of the view that the Reference Court ought not to have relied upon those documents. Ex. C3, admittedly is after the acquisition and in any case, there is no difference between the valuation fixed under Exs.C3 and C4. It is to be noted in both these documents, the valuation of one cent has been fixed at Rs.21,800/-, namely even in respect of the land in Survey No.202/15, which is a residential area. Therefore, we are of the view that the entire approach of the Reference Court cannot be sustained. We are dealing with a case where the value of one cent of land fixed at Rs.600/- by the Land Acquisition Officer has been enhanced to Rs.21,800/- without any basis. We may note, many of the Industrialists have purchased their land just prior to the acquisition. Strangely, neither of the parties nor the Court took that into consideration. Nobody knew about the valuation fixed in those documents. Be that as it may, the valuation fixed by the Reference Court cannot be sustained, apart from it being

for a very small extent in a developed residential area situated far away from the acquired land. The Reference Court has not even considered adequate deduction in view of the admitted case projected by the claimants themselves that the acquired lands are agricultural lands.

16. The data sale deed indicates that Document No.2264 dated 16.05.1988 for an extent of 0.33 acres in Survey No.168/11 has been taken as the basis for the valuation. As stated, this land is immediately next to the acquired land. This is with respect to the larger part of the acquired land. This is also nearer to the smaller part as against Exs.C3 and C4. There is absolutely no reason as to why this document has been eschewed. The Reference Court ought to have relied upon this document which, in our considered view, is situated very nearer or forming part of the acquired land having higher valuation. It also did not find any other data sale deed of the appellants worthy of consideration. The other factors, though incidental, such as the Award being passed way back in the year 1993 and 1994 and the alternate lands provided by acquiring new lands were not given due weightage by the Reference Court. The Reference Court is not supposed to

award a bounty. It is not as if all the claimants are agriculturists. Substantial part of the acquired lands was purchased just few years prior to the acquisition by the industrialists concerned. Some of the land owners are also stated to have been provided with the alternative sites, which we are not willing to go into it by undertaking a deeper scrutiny. The Reference Court also not properly considered the evidence adduced by the parties. On the contrary, it simply quoted the judgments while placing reliance upon Ex.C4. Therefore, we are inclined to accept the valuation given by the Land Acquisition Officer particularly in the case where the valuation has to be fixed as available in the year 1990. It could not have been stated that valuation of agricultural land, though classified as wet, would be Rs.2 crores per acre in that area.

17. However, we find that the data sale deed relied upon was of the year 1988. It was the sale deed which was executed on 16.05.1988, whereas the notification was issued on 30.10.1990. More than two and half years have elapsed since. Further, the fact remains that the nearby area has been recently developed though the lands have been acquired as agricultural lands. Hence, we cannot lose sight

of the fact that lands acquired are of some value. Thus, an element of guess work is also required. On the element of guesswork or guesstimation, it has been held by the Supreme Court in *Trishala Jain and another v. State of Uttaranchal and another* reported in (2011) 6 SCC 47 as under:-

"56. *More often than not, it is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the persons interested in the acquired land.*

57. *"Guess" as understood in its common parlance is an estimate without any specific information while "calculations" are always made with reference to specific data. "Guesstimate" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time "guess" cannot be treated synonymous to "conjecture". "Guess" by itself may be a statement or result based on unknown factors while "conjecture" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. "Guesstimate" is with higher certainty than mere "guess" or a "conjecture" per se.*

58. *The concept of "guesswork" is not unknown to various fields of law. It has been applied in cases relating to insurance, taxation, compensation under the Motor Vehicles Act as well as under the Labour Laws. All that is required from a court is that such guesswork has to be used with greater element of caution and within the determinants of law declared by the legislature or by the Courts from time to time.*

59. *In Charan Dass-this Court on the use of guesswork for determining compensation, has held as under: (SCC pp. 404-05, paras 19-22)*

"19. Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act. Section 23 provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall, inter alia, take into consideration the market value of the land at the date of the publication of the notification under Section 4 of the Act. The section contains a list of positive factors and Section 24 has a list of negatives vis-à-vis the land under acquisition to be taken into consideration while determining the amount of compensation.

20. As already noted, the first step being the determination of the market value of the land on the date of publication of notification under sub-section (1) of Section 4 of the Act, one of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired.

21. One of the preferred and well-accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands which have similar advantages and disadvantages are considered as a good piece of evidence for determining the market value of the acquired land.

22. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in

the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guesswork is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."

60. *Even in Kamta Prasad Singh v. State of Bihar this Court had held that there is an element of guesswork inherent in most cases involving determination of the market value of the acquired land and observed as under: (SCC pp. 774-75, para 6)*

"6. Section 23 of the Act provides that in determining the amount of compensation to be awarded for land acquisition under the Act the court shall inter alia take into consideration the market value of the land at the date of the publication of the notification under Section 4 of the Act. Market value means 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 laid out in the most advantageous manner excluding

any advantages due to the carrying out of the scheme for which the property is compulsorily acquired. In considering the market value, the disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. There is an element of guesswork inherent in most cases involving determination of the market value of the acquired land, but this in the very nature of things cannot be helped. The essential thing is to keep in view the relevant factors prescribed by the Act. If the judgment of the High Court reveals that it has taken into consideration the relevant factors, its assessment of the fair market value of the acquired land should not be disturbed. No such infirmity has been brought to our notice as might induce us to disturb the finding of the High Court. The appeal consequently fails and is dismissed but in the circumstances without costs."

61. Similar view was taken by another Bench of this Court in *Land Acquisition Officer v. Karigowda* where this Court held: (SCC p. 740, para 90)

"90. ... The Court is entitled to apply some [amount] of reasonable guesswork to balance the equities and fix [a] just and fair market value in terms of the parameters specified under Section 23 of the Act."

62. *The observations made by this Court in a case under the Central Excise Valuation Rules, 1975 titled as CCE v. Rajasthan Spg. and Wvg. Mills Ltd. can be aptly referred to at this stage wherein this Court had held that valuation is not an exact science and some amount of guesswork exists in valuation. Different methods for valuation are prescribed by the Valuation Rules which may be applied by the Department but it has to be ultimately ascertained by applying the rule of convergence, the estimated ad valorem value of which would constitute the base of the assessable value.*

63. *Under the Act, as settled by various judgments of this Court, there are different methods of computation of compensation payable to the claimants, for example it can be based upon comparable sale instances, awards and judgments relating to the similar or comparable lands, method of averages, yearly yields with reference to the revenue earned by the land, etc. Whatever method of determining the compensation is applied by the court, its result should always be reasonable, just and fair as that is the purpose sought to be achieved under the scheme of the Act. For attaining that purpose, application of some guesswork may be necessary but this principle would have hardly any application in a case of no evidence. In other words, where the parties have not brought on record any evidence, then the court will not be in a position to award*

compensation merely on the basis of imagination, conjecture, etc.

64. *These precedents clearly demonstrate that the court may apply some guesswork before it could arrive at a final determination, which is in consonance with the statutory law as well as the principles stated in the judicial pronouncements. As already noticed, the guesswork has to be used for determination of compensation with greater element of caution and the principle of guesstimation will have no application to the case of "no evidence". This principle is only intended to bridge the gap between the calculated compensation and the actual compensation that the claimants may be entitled to receive as per the facts of a given case to meet the ends of justice.*

65. *It will be appropriate for us to state certain principles controlling the application of "guesstimate":*

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the

limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto."

18. In the light of the above said pronouncement and taking into consideration of the fact that the data sale deed relied upon was of the year 1988, which is sought to be applied for the acquisition made after two and half years, we are of the view that certain enhancement is certainly to be given particularly in the light of the development that is in existence. Courts have held that 10% towards the appreciation of land per year is reasonable one, while relying upon earlier year document. However, as stated, the evidence also suggests the potential value of the locality. Hence, by taking into consideration the above said factors, we are inclined to fix the valuation of the acquired land at Rs.1,000/- per cent from Rs.600/- per cent. We may also note that the claimants/respondents also would stand to gain through the solatium and interest attached which would start running as mandated under the Land Acquisition Act, 1894. This amount alone would be a windfall as the interest payable arises for nearly three decades.

19. Accordingly, the judgment and decree awarded by the Reference Court stands set aside and the compensation is fixed at Rs.1,000/- per cent with the proportionate solatium and interest as awarded by the Reference Court.

In view of the above, the appeals stand allowed in part. No costs. Consequently, connected C.M.P. Nos. 12826, 12831, 12833, 12834, 12835, 12841, 12843, 12846, 12848, 12885, 12887, 12908 and 12912 of 2019 stand closed.

[M.M.S.,J.] [M.N.K.,J.]

06.09.2019

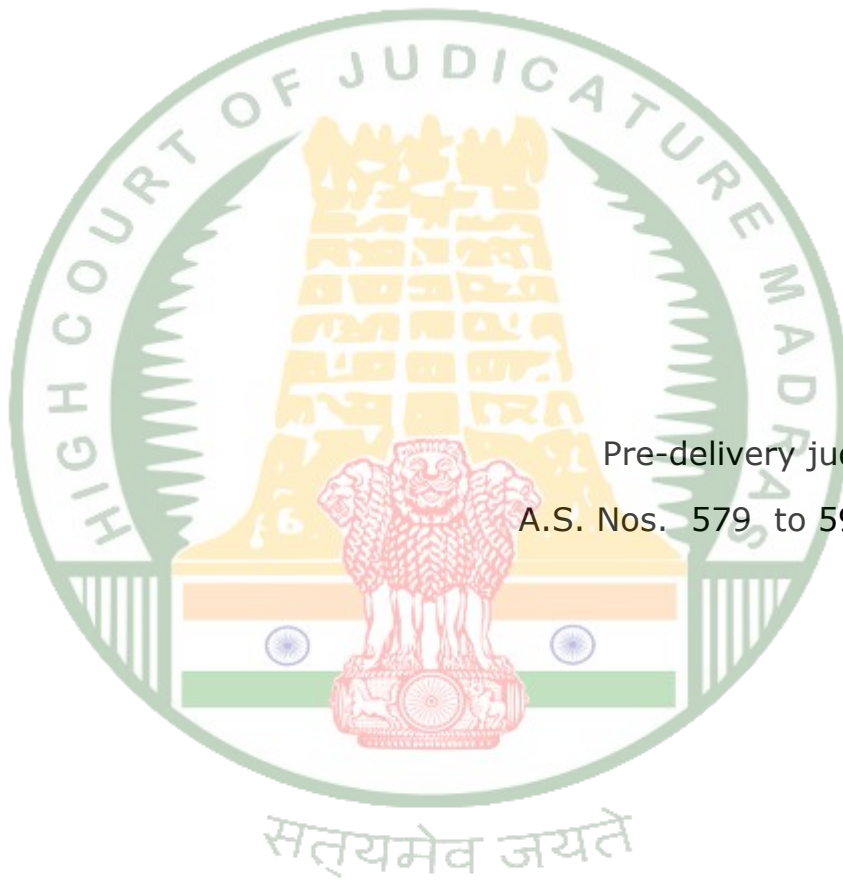
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A.S. Nos. 579 to 593 of 2018

**M.M.SUNDRESH, J.
and
M. NIRMAL KUMAR, J.**

(ssm)



Pre-delivery judgment in
A.S. Nos. 579 to 593 of 2018

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6.09.2019

A.S.Nos.579 to 593 of 2019

M.M.SUNDRESH,J.

And

M.NIRMAL KUMAR,J.

(Order of the Court was made by M.M.Sundresh,J.)

After pronouncement of the order, it has been brought to the notice of this Court by the learned counsels appearing for the parties that for other similarly placed land owners covering the very same acquisition, a lump sum payment of Rs.25,000/- per cent in full quit without solatium and interest has been paid by the appellant by way of settlement before the Lok Adalath, in the year 2014. Neither the learned Special Government Pleader nor the learned Senior Counsel for the respondent No.2 has any serious objection for the payment on the same lines. In fact, it was also the statement made earlier by the learned Senior Counsel for the Respondent No.2. Accordingly, the matter was adjourned earlier to come to an amicable settlement. It is also represented that this amount would be more than the one awarded by us in these appeals.

2. In such view of the matter, though we have passed an order on merit, inasmuch as the appellant paid the above said amount way back in the year 2014 sans interest and solatium, in the interest of

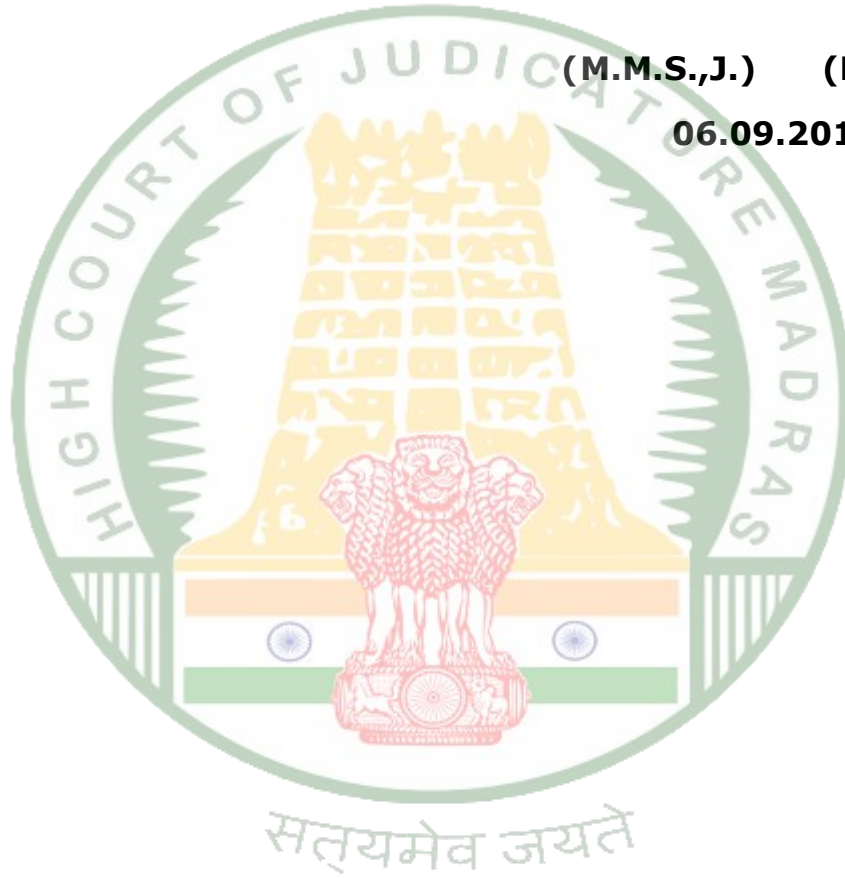
justice, the same yardstick will have to be followed in the case of respondents also. We also keep in mind the object and principle enshrined under Section 28-A of the Land Acquisition Act, 1894. Thus, we fix the compensation amount payable at Rs.26,000/- per cent (Rupees twenty six thousand only). This we do so by taking note of the fact that the settlement was in the year 2014 and we are in 2019. The compensation amount will have to be paid by the appellant within a period of eight weeks from the date of receipt of a copy of this order.

3. We have further clarified that of the amount of Rs.26,000/- per cent fixed and directed to be paid, the amount of compensation fixed by the appellant and received by the land owners at Rs.600/- per cent will stand deducted.

4. We also note that the second respondent has made deposit in pursuant to the interim order passed by this Court. The learned Senior Counsel appearing for the second respondent has stated that the aforesaid amount can be permitted to be withdrawn by the respondents in tune with the order passed by us, the balance amount will alone remain to be paid and deposited. The said statement stands recorded.

5. We make it clear that the learned Special Government Pleader is entitled to separate fees for each of the appeals.

raa



(M.M.S.,J.) (M.N.K.,J)

06.09.2019

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A.S. Nos. 579 to 593 of 2018

M.M.SUNDRESH,J.

And

M.NIRMAL KUMAR,J.

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**A.S.Nos.579 to 593 of
2019**

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