

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Soumen Sen

Hon'ble Justice Uday Kumar

FAT 446 of 2015
NTPC Ltd. and Anr.
Vs.
Sri Rashtropati Ghosh & Ors.

With

FA 17 of 2018
M.D. WBPDC
Vs.
Ajit Kr. Ghosh & Anr.

With

FA 48 of 2018
The Managing Director, W.B.P.D.C.L
Vs.
Rabindranath Roy & Anr.

With

FA 54 of 2016
The Managing Director, W.B.P.D.C.L
Vs.
Rashtropati Ghosh & Anr.

With

FAT 447 of 2015
NTPC Ltd. & Anr.
Vs.
Rabindra Nath Roy & Anr.

With

FAT 448 of 2015
NTPC Ltd. & Anr.
Vs.
Ajit Kumar Ghosh & Ors.

For the N.T.P.C. Ltd	: Mr. Debayan Bera, Adv., Mr. Uttam Kumar Mondal Adv., Ms. Maitree Roy, Adv.
For the W.B.P.D.C.L.	: Mr. Bhaskar Mitra, Adv., Mr. Sujit Sankar Koley, Adv.
For the Respondents	: Mr. Partha Pratim Roy, Adv., Mr. Mukteswar Maity, Adv., Mr. Prabir Rej, Adv., Mr. Pranab Kumar Das, Adv.
For the State	: Mr. Supratim Dhar, Adv., Mr. Dhananjay Nayek, Adv.,
Hearing Concluded on	: 29 th March, 2023
Judgment on	: 31 st March, 2023

Soumen Sen, J: These appeals are taken up together by consent of the parties for consideration, as these appeals are arising out of a common judgment and award passed by the learned Land Acquisition Judge at Burdwan arising out of reference cases being L.A. case no. 7/11, L.A. 6/11 and L.A. 8/11 respectively under Section 18 of Act 1 of 1894 of Land Acquisition Act.

The learned Land Acquisition Judge (in short L.A. Judge) modified the award passed by the LA Collector Burdwan by enhancing the market price of the acquired land of the petitioners from Rs.6000/- to Rs.8000/- per satak for Sali class of land.

The present appellants are the successor-in-interest of the original requiring body.

Briefly stated, vast acres of land measuring about 555.895 in the district of Burdwan situated at Mouja Srikhanda, Debkunda and Kashigram, P. S. Katwa was acquired on divers dated upon publication of Notifications under Section 4 of the Land Acquisition Act, 1894 for the purpose of Katwa Thermal Power Project. The land was acquired by the State of West Bengal for and on behalf of West Bengal Power Development Corporation Limited (In short "WBPDCCL"), the original Requiring Body.

The notification in respect of 133.090 acres of land being the subject matter of this appeal was published on 12th May, 2008. On diverse date possession was taken by the State in respect of acquired lands in phases and possession of the said acquired lands was also handed over to WBPDCCL on diverse dates.

After obtaining possession, WBPDCCL started construction on the said lands but ultimately on the basis of the cabinet decision of the State Government taken on 18th April, 2012, the entire thermal power project at Katwa was transferred to NTPC Limited, the appellants herein. The possession of the entire land was delivered back by WBPDCCL to L.A. Collector, Burdwan on 16.01.2015 and thereafter the L.A. Collector, Burdwan handed over possession of the lands to NTPC Ltd on 24th February, 2015.

The Collector declared the award on 22.02.2009 of Mouza: Srikhanda. Being aggrieved by the said award, the respondents filed applications for reference to court under Section-18 of the Land Acquisition Act.

The reference case was disposed of on 16th December, 2014. The present appellant, however, became aware of the judgment after they got possession of the land. Three reference cases were heard analogously by the learned LA Judge.

In the aforesaid reference cases Mr. Rastrapati Ghosh the respondent in FAT no. 446 of 2015 (petitioner in L.A. Case no. 7 of 2011) was examined as witness and in the two other reference cases no independent witness was examined but they relied upon the oral evidence of Sri Ghosh and the sale deeds being Exbt.1 to 5 filed by Mr. Ghosh in L.A. Case no. 7 of 2011. Neither the State nor the requiring body adduced any evidence before the reference court.

The learned Judge proceeds on the basis of the evidence adduced by Mr. Ghosh on behalf of himself and others similarly placed. Mr. Ghosh in order to prove his claim for higher compensation relied upon the 5 sale deeds which were marked as Exbt. 1 to 5. They are

Sl. No.	Particulars of Sale Deed	Measurement of Land	Mouza	Amount
Exbt.1	sale deed no. 3992	14 decimals of land Aman which means Sali	Srikhanda	Rs 1,40,000/- i.e. at the rate of Rs. 10,000.00 per decimal.
Exbt.2	sale deed No 3887	8 cottahs [13 11/50 decimal] Sali land	Srikhanda	Rs. 1,46,000.00 ie., @Rs 11,043.00 per decimal.
Exb.3	sale deed No.3701	19.78 decimal	Srikhanda	Rs.2,15,000/-

		of Sali land		ie., @of Rs. 10,869.56 per decimal
Exbt.4			Srikunda	
Exbt.5	sale deed No.3703	measuring 22.54 decimal	Srikhanda	Rs 2,50,000/- i.e., at the rate of Rs. 11,091.39 per decima

Although no oral evidence was adduced either on behalf of State or the Requiring Body, WBPDC. However, some documentary evidence were filed on behalf of the State/WBPDC that were marked as Exbt.A to F. The said exhibits are:

Exhibit A: Copy of award declared by the Collector in LA. Case No.39(IV) of 2007-08 dated 22nd February, 2009.

Exhibit B: Copy of the award in LA. Case No.39(IV) of 2007-08 i.e respect of the respondents in FAT 446 of 2015.

Exhibit-C: Copy of payment voucher in LA Case No.39(IV) of 2007-08.

Exhibit-D: Copy of the notification for acquisition dated 12th May, 2008 for 133.090 acres of land of Mouza Srikhanda.

Exhibit-E: Copy of the estimate note in Land Acquisition Case dated 19th January, 2009 with annexures.

Exhibit. F: Copy of the map of Mouza Srikunda, J.L. No. 37 Sheed no. 04.

The price was assessed on the basis of estimate prepared by the Land Acquisition Collector. In assessing the rate, the Collector relied upon various contemporaneous sale deeds and ultimately in assessing the market value of the acquired land adopted belting method.

From the award it appears that in assessing the valuation of the acquired lands, the Collector assessed two different valuations in respect of Sali Classes of lands. The Sali at the rate of Rs.6,00,000/- per acre i.e. @Rs.6000.00 per decimal and Sali-A at the rate of Rs.7,80,000/- per acre i.e @ of Rs.7,800.00 per decimal.

The lands situated within 600 feet from the Katwa Burdwan Road was classified as Sali-A and the rate for the same was assessed at Rs.7,80,000/- per acre i.e. @ Rs.7,800.00 per decimal. The Sali lands situated beyond 600 feet was assessed at Rs 6,00,000/- per acre i.e. @ of Rs.6000.00 per decimal).

This award of the LA Collector was challenged by the land owners appellants before the learned LA Judge in which the impugned judgment was passed.

Mr. Debayan Bera, the learned Counsel representing the NTPC has submitted that exhibits A to D and F are public documents and those documents can be relied upon in deciding the case, however, Exbt.E i.e. estimate of land acquisition collector dated 19th January, 2009 the basis of assessment based on several sale deeds could be looked into only for the limited purpose of understanding the distinction made by the Collector in

respect of two Sali land i.e. Sali and Sali A and from the said document it could be found that Sali land was assessed at Rs.6 lacs per acre i.e. 6000/- per decimal and road side Sali land that is Sali A situated within 600 ft. from Katwa Burdwan Road was assessed at RS.7,80,000/- per acre i.e. at the rate of 7800 per decimal. Mr. Bera, however, in all fairness has submitted that the basis of such assessment with reference to various sale deeds could not be looked into in this appeal as the copies of the sale deeds relied upon by the L.A. Collector were not filed before reference court. We appreciate the fairness shown by Mr. Bera in assisting the court and deciding the matter.

The learned Counsel has submitted that from the judgment of the reference court it would appear that the learned Trial Judge considered 5 exhibits in assessing the market value of the acquired land. Out of 5 deeds, Exbt. 4 has been discarded by the reference court since the said comparable sale deed situated in different Mouza. The learned Court in assessing the market value has relied upon the Exbt. 1, 2, 3 and 5. It is submitted that the learned trial Court has also found that the acquired land was vast and large in area and was required to be developed by preparing lay out plan, carving roads, leaving open space, plotting for smaller plots, waiting for purchaser to purchase the land and the hazards to the entrepreneur as some of the factors to be considered in assessing the compensation and observed that considering the smallness of the comparable plots being Exhibit Nos. 1, 2, 3 and 5 in comparison to large acquired lands deduction is required to be made ranging from approximately 20% to 50% on account for the lands required to set apart

for carving out lands and plotting of smaller plots allowed only 20% deduction disregarding the consistent views of the Hon'ble Supreme Court in various decisions that in a like a situation it would be minimum 33 and 1/3 per cent.

The learned Counsel has submitted that the learned trial Judge upon consideration of the documents exhibited on behalf of the land owners have noted that all the documents exhibited are in respect of land situated near Burdwan-Katwa Road and they are all within 600 ft. from the Burdwan-Katwa Road whereas a vast area is beyond 600 ft. and accordingly, there is a need to decide the compensation amount separately for land situated within 600 ft. and land situated beyond 600 ft. Mr. Bera has submitted that in **Viluben Jhalejar Cortractors v. State of Gujarat** reported at **2005(4) SCC 789** the Hon'ble Supreme Court in paragraph 20 of the report has laid down the guide lines to be followed in assessing the market value. The said decision has pointed out in great detail the plus and minus factor to be taken into consideration in assessing the market value.

Mr. Bera has submitted that if the Comparable sale deeds i.e., Exhibit 1, 2, 3 and 5 are placed in juxtaposition to the acquired lands of the respondents, it would appear that comparable sale deeds are situated near to Katwa-Burdwan Road but acquired lands are situated far away from the road and the findings of the learned LA Judge supports the same. It is the finding of the learned LA Judge that all Exhibits 1, 2, 3 and 5 are situated near the Katwa-Burdwan Road. The learned LA Judge also observed that "I do not find from

Map (Ext. F) about the actual location of the lands but it appears from material on record that the land is situated in same Mouza Srikhanda".

Mr. Bera has submitted that from the said decision it would appear that a comparable sale instance has to be identified having regard to the proximity from situation angle. In the said decision it has been held that situation in the interior at a distance from the main road is a negative factor.

Considering that the acquired lands are situated at a far away distance from Burdwan-Katawa road, the same is a negative factor and appropriate deductions are required to be made from Exhibit Nos. 1,2,3, and 5 which are all situated nearer to Katwa Burdwan roads and the same has been found by the Learned LA Judge.

The learned LA Judge has erred in not allowing any deduction towards situation angle. Appropriate deductions ought to have been made towards situation angle of the acquired lands from the comparable deeds.

It has been submitted that the development charge consists of two components. When large tract of lands are acquired two types of development is necessary. Firstly, certain amount of lands will be required to prepare a layout plan for construction of roads, drains, parks and other amenities for which a certain percentage of land area is required to be deducted. This deduction is based on largeness of the area of acquired lands and the purpose of acquisition. Secondly, when agricultural land or under developed low land is acquired certain amount would have to be expended for developing the lands

by filling of the lands by earth and making it a levelled land which could be utilized for the project purpose. The same is based on actual expenditure of development and is also to be deducted in order to assess market value of acquired lands, hence, in order to assess the market value of large acquired lands two types of deduction are to be made. The same is the consistent view of the Hon'ble Apex Court when large tract of agricultural land or under developed land are acquired for a large project for setting up new township or establishment of Thermal Power Plant like the present one. For these purpose the two types of deduction is necessary. The Hon'ble Supreme Court in large number of decisions has consistently held that for the first criteria deduction will be from 33.33 % to 40% while deduction on account for second criteria will be about 30 %.

In the instant case admittedly about 555.895 acres of Sali (agricultural) undeveloped low lands of three different Mouzas was acquired which includes Mouza: Srikhanda for Katwa Thermal Power Project. In the present case comparable deeds relate to very small pieces of lands of Mouza Srikhanda in comparison to acquisition of vast tract of lands measuring more than 133 acres of Mouza: Srikhanda.

Mr. Bera has submitted that the learned Judge also found that there is a real necessity of development and has observed:

“because a large area of land will have to be developed by preparing layout plan, carving out roads, having open space plotting of smaller plots...”.

The Learned Judge also found that deduction towards development cost ranges from 20% to 50%. But ultimately the learned Judge allowed only 20% deduction from the value of comparable deeds which is which is negligible and inadequate in the present case.

Mr. Bera submits that in ***Major General Kapil Mehra & Ors. vs. Union of India*** reported in **2015 (2) SCC 262** the Hon’ble Supreme Court has taken into consideration the nature of the development required and its approximate cost in percentage basis and had allowed deduction of 35% towards utilization of land area in the layout for roads, drains, parks etc. and 25% towards expenditure cost for construction of road, underground drainages, sewerage etc.

Mr. Bera has also placed reliance upon the decision of the Hon’ble Supreme Court in ***State of Haryana v. Rohtas & etc. reported at AIR online 2018 (SC) 568*** (paragraph 35) and ***Sabha Mohammed Yusuf Abdul Mulla (D) by LRs & Ors. v. Special Land Acquisition Officer & Ors.***, reported at **AIR 2012 SC 2709** (paragraphs 16 and 17) for the proposition that for fixing market value of acquired land, which is underdeveloped or undeveloped 1/3rd of market value has to be deducted towards development cost.

It is submitted that if the principles of the above decisions are applied in the present case, then the learned judge ought to have allowed normal deduction of at least 33 1/3% ie. 33.33 % from the value of comparable sale deeds (Exhibit 1, 2, 3 and 5) towards largeness of the acquired lands only on account of utilisation of land area in the layout for roads, drains, parks, etc.

Mr. Bera has submitted that the purpose of acquisition is not a relevant factor in determining compensation. The purpose of acquisition cannot be a factor to increase the compensation has held in ***Subhram & Ors. v. State of Haryana & Anr.***, reported in **2010(1) SCC 444**.

Mr. Bera has submitted that when the acquired land is a large underdeveloped land it is just and reasonable to make appropriate deduction towards expenses for development of acquired land and the percentage of the deduction may vary from 10% to 86% as observed in ***Vithal Rao & Anr. v. Special Land Acquisition Officer*** reported at **2017(8) SCC 558**.

Mr. Bera however, in all fairness has submitted that no deduction towards expenditure cost for construction of road, underground drainages, sewerage etc. is necessary since the land of comparable sale deeds and acquired lands are both agricultural in nature. In this case comparable sale deeds (Exhibit 1, 2, 3 and 5) could not have accepted as comparable deeds at all on account of proximity from situation angle since admittedly lands in (Exhibit 1, 2, 3 and 5) are near to Katwa Burdwan Road whereas acquired lands are far far away from the said. It is thus argued that even if, the said deeds are

accepted as comparable deeds, appropriate deductions should be made which according to Mr. Bera would be at least 15%, if not more towards situational angle. Accordingly a total deduction of 48.33% from comparable deeds are to be made to assess the market value of acquired lands. Mr. Bera has however, fairly submitted that in view of Section 25 of the LA Act, 1894 as amended with effect from 24th September, 1984 the amount of compensation awarded by Court is not to be lower than amount awarded by the collector under Sections 11 of the LA Act, 1894.

Market value of comparable deeds have been assessed by the Court below @ Rs. 10,000.00 per satak/decimal. If 48.33% is deducted from that, the value of acquired land would come to Rs. 5,147 00 per satak/decimal. Ashok Kumar the Collector has awarded Rs.6000.00 per satak/decimal and the award passed by the LA Court cannot be less than Collector's award. Hence total 40% deduction is to made in this case. After deduction of 40% from Rs. 10,000.00 land value comes to Rs. 6000.00 per satak/decimal.

Mr. Bera accordingly submits that the market value of the acquired land is required to be reduced to Rs.6000/- per satak.

Per contra, Mr. Partha Pratim Roy appearing on behalf of the award holders has submitted that the land was acquired for construction of Katwa Thermal Power Station and it was compulsory and permanent acquisition of agricultural land. Rastapati Ghosh in his evidence as PW1 has stated about

the situation, locality and potentiality of the lands acquired and produced 5 sale samples they are:

Exhibit	Date	Plot no.	Area covered in Decimal	Market Value/Decimal.	Appreciation 10% per year	Market Value as on date of Notification
Exbt.1	22/05/2006	10733	14	10000/-	20%	12,000/-
Exbt.2	27/04/2006	11118	13/11 50	11000/-	20%	13,200/-
Exbt.3	29/03/2006	11119, 11146	19/53 100	11000/-	20%	13,200/-
Exbt.4	04/12/2000	3166	01	60000/-	80%	10,800/-
Exbt.5	29/03/2006	11146, 11119	21/27 50	25000/-	20%	30,000/-

Except the area mentioned in Exbt.4 all areas are more than 10 decimals can be considered to arrive at the market value on the date of Notification u/S.4 of the Act. Mr. Roy has submitted that appreciation in price by 12% p.a. be considered to calculate market value as on the date of notification u/s.4.

LA Collector did not produce any oral evidence but produced few documents which were marked as Exbt. A to F respectively.

The L.A. Collector, however, has failed to produce any sale samples or other material document in support of his assessment of market value of the land acquired. Mr. Roy has submitted that it would appear from the evidence that the land mentioned in Exbt. 1 to 5 relied upon by the award holders for assessing market value are situated nearer or nearest to the plot of land relied upon by the LA Collector in the estimate note being Exbt. E. Mr. Roy has relied upon the following comparative table to vindicate the claim of the award holders.

Sl. No.	Plots in Exbt. 1 to 5 (as relied by respondent land owners)	Plots in Exbt. E (as relied by the collector in its Estimate Note)
1	10733	10829
2	11118	11119, 11110,11183,11139,11245, 11507
3	1119, 11146	Do
4	3166	3034

It is submitted that plots mentioned in both sides of the above table are within the same Mouza Map Exbt.F. Mr. Roy has submitted that it is pertinent to mention that plot in Exbt.1 (10733) has been acquired by the LA Collector for the self-same project under the same notification being Exbt. D and it is the best evidence of market value of land acquired. It is submitted that both the

LA Collector and the respondent land owner relied upon the market value for the plot No. 11119 for determination of market value of acquired lands on the date of Notification, hence, this document being Exbt. 3 is the best evidence to assess the market value.

Mr. Roy has submitted that the estimate note cannot be treated as an evidence as the copy of sale samples in support of such estimate were not produced. In such a situation adverse inference should be drawn against the assessment made by the Collector and having regard to the fact that a reference under Section 18 is a fresh proceeding, the market value of land acquired is to be determined afresh on the basis of the evidence adduced by the parties.

Mr. Roy has submitted that in view of the failure of the LA Collector to produce any oral or relevant reliable documentary evidence before the reference court in denial of the land owners' claim and adverse inference is required to be drawn against the LA Collector since the respondents' land owners for successful discharged their burden to prove the insufficiency of the market value. The LA Collector in assessing the market value of the land in question has collected near about 44 sale samples and from those have selected 34 sale Samples.

It appears that L.A., Collector considered value of various plots in Mouza - Srikhanda starting from plot No. 275 to plot No. 15342 which are scattered in

various parts of the Mouza and thereafter calculated market value on average method.

Therefore, by adopting average method Collector has admitted the similarity of lands acquired with the lands mentioned in Ext. - E and in the Ext.- 1 to 5 and assessed the basic market value of Sali class of land at Rs. 6,000/- per decimal equal to Rs. 6,00,000/- per acre. Thereafter, a premium of 30% has given to road side land (Sali- A Class) which comes at Rs. 7,800/- per decimal equal to Rs. 7,80,000/- per acre. In these factual background neither the L.A. Collector nor the requiring body can take inconsistent plea before this appellate Court that the lands are differently situated or having no similarity for the purpose of assessing market value. Now, the appellant should not be allowed to challenge the market value as determined by the reference Court on the ground that the lands involved in this appeal are not similar with the lands in sale samples. Admission by the Collector binds the requiring body as the Appellant requiring body never disputed the similarity of lands acquired either before the Collector or before the reference Court. Such issue of similarity cannot be reopened by the required body in this appeal.

The largeness and vastness cannot be considered by aggregating acquired area of each land owner particularly when L.A. Collector assessed a common or basic market value for all Sali class of lands, in view of the law laid down in ***Thakarsibhai Devjibhai & Ors. v. Executive Engineer, Gujarat & Ors.***, reported in **AIR 2001 SC 2424**.

The reference Court has assessed market value on the settled principle though has fixed it at lower side. The reference Court also failed to calculate the market value of the Ext. 1 to 5 on the date of Notification u/s. 4. The rule of deduction was also misapplied in the present case because when the purpose of acquisition of land was for commercial exploitation of the land which would generate good return for years after years then no deduction is permissible as held in ***AIR 2008 (NOC) 1084 (ALL) and Atma Singh (died) through L.Rs & Ors. v. State of Haryana & Anr.***, reported in ***AIR 2008 SC 708***. That apart, it is on the record that the L.A. Collector itself has made no deduction on this count so the appellant cannot claim any deduction in assessing the market value.

On the basis of the aforesaid submission and the evidence on record the objection raised by the appellant with regard to the compensation amount assessed by the learned LA Court at Rs.8,000/- per Satak for Sali class of land is to be considered.

The facts are not in dispute.

The principal argument of the appellant is that the learned trial judge after having taken into consideration that the sale deeds relied upon by the award holders are all adjacent to the Burdwan-Katwa Road could not have relied upon the said valuation in determining the market value of the lands situated beyond 600 feet. The lands that are adjacent to Burdwan-Katwa

Highway admittedly are of a higher value than the lands situated away from the highway and beyond 600 feet.

The sale deeds exhibited by the award holders land owners before the LA Court would show that exhibit no.1,2,3 and 5 are of comparable units, however, from the Mouza map being Exbt. F the actual location of the land could not be ascertained. The value set forth in of the aforesaid 4 sale deeds vary from Rs.11,000/- to Rs.13,200/- per Satak. The learned Trial Court observed that in order to determine the actual market price of land in question it should not be valued only on the basis of its use, classification of the land, comparison of the sale prices of different plots but its potential value should also be considered and it cannot be adjudicated with mathematical precision. It must be based on sound discretion.

In deciding the market value the court applied the test of prudent buyer and a prudent seller, that is to say, what a willing buyer would offer as consideration amount to a willing seller on taking into consideration the nature of the land and the prevailing market value of the land in the area in other words, the main criterion to determine the market value is what a willing purchaser would pay a willing vendor. The test of informed buyer to offer the price is one of the principles for determination of the amount of compensation. In other words, the hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that date would

be the real test. The willingness of the vendor to sale the land at a reasonable price has to be assumed.

It appears from the estimate note that the LA Collector has preferred a rate of Rs.6 lacs per acre for Sali class of land of Mouza Srikhanda and Rs.7.80 Lacs for Sali class of land which is situated 600 feet away from the Burdwan-Katwa road and has assessed the land value of the award holders in all the three cases of acquisition at the rate of Rs.6 lakhs per acre. This method of valuation was questioned by the LA Judge as the LA collector was required to take into consideration those sale deeds registered near to the date of acquisition as they would serve as best exemplar for the assessment of actual value of the land acquired only after reasonable deduction which in the instant case was allowed at 20 per cent for the purpose of development, lay out plan, curving out plots and other factors.

Significantly, the LA collector in assessing the market value did not provide any deduction for the purpose of construction of road, underground drainage and other expenses reasonably to be incurred for the construction of the thermal project. In absence of any evidence it can be reasonably presumed that those factors were not found relevant having regard to sale transactions for comparable units in determining the compensation amount which is discernible from the award where the LA Collector has disclosed the basis as: "The valuation of the land was determined on the average of sale available on the local sub-register office prior of the date of Publication of Notification u/s.4

of L.A. Act, 1894.”. Moreover, no deduction towards expenditure cost for construction of road, underground drainages, sewerage etc. is necessary since the land of comparable sale deeds and acquired lands are both agricultural in nature.

Mr. Bera has argued that the purpose of acquisition is not material and relied upon the observation of the Hon’ble Supreme Court in paragraph 22 of **Subh Ram & Ors.** (*supra*) to argue that

“22. the use to which the acquired land may be put, can have no bearing upon the deduction to be made towards development cost”

23. If the purpose of acquisition is a relevant factor in determining compensation, then it would lead to the absurd and unjust situation, that the compensation payable for the same land will be different, depending upon the purpose of the acquisition; and that compensation will be less if the acquisition is for a sewage treatment plant, more if the acquisition is for an industrial layout, much more if acquisition is for residential layout and highest if the acquisition if for commercial value. The purpose of acquisition cannot therefore be a factor to increase the compensation”.
(emphasis supplied)

In **Subhram & Ors.** (*supra*) in paragraph 17 to 20 the Apex court has considered the instances where the courts have felt that when large plots of land are acquired under a common notification for a common purpose the benefit of uniform compensation can be extended and applied. The said paragraphs read:

“17. It is no doubt true that this Court in some decisions has observed that purpose of acquisition will also be relevant. But it is made in a

different context. The Land Acquisition Collectors in some cases adopt belting methods for valuation of land, with reference to a focal point, that is either with reference to the distance from the main road, or distance from a developed area. Lands that adjoin a developed area or a main road is given a higher value than a land farther away from the road or the developed area. The Land Acquisition Collectors also award different compensation depending upon whether the acquired land is a dry land or wet/irrigated land.

18. When different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have sometimes felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification.

19. The logic employed by the court is that categorising the lands acquired for a common purpose, say for a residential colony, into high value irrigated land and low value dry lands is meaningless, as all lands are to be levelled and used for the same purpose that is for formation of a residential layout and once the layout is formed, it makes no difference whether the land was previously a land with irrigation facilities or a dry land.

20. It is in this context, in some cases, to avoid the need to differentiate the lands acquired under a common notification for a common purpose, and to extend the benefit of a uniform compensation, courts have observed that the purpose of acquisition is also a relevant factor. The said observation may not apply in all cases and all circumstances as the general rule is that the land owner is being compensated for what he has lost and not with reference to the purpose of acquisition.” (emphasis supplied)

Mr. Bera has emphasized on the observation of the Hon'ble Supreme Court that "The principle is that the quality (class) of land, the situation of the land, the access to the land are all relevant factors for determination of the market value".

In the factual matrix it is quite evident from the estimate prepared by the LA Collector and four deeds relied upon by the award holders at the trial and admitted in evidence without objection that 22.54 decimal of land of comparable unit in the same Mouza was sold at Rs.11,091 per decimal. The said land is situated in Katwa Burdwan Road. LA Collector did not produce any evidence in support of the Rate Chart and in absence of production of sale deeds mentioned in the Rate Chart the said estimate has no evidentiary value.

However, the sale statement prepared by the Collector would show that for the plot 12506/12507, a Sali land measuring 105.5 decimals was sold on 18th March, 2007 at Rs.11,60,5000/- and for plot no.111,9 another Sali land of 5 decimal was sold at Rs.15 lakhs on 1st February, 2008. These transactions are proximate to the date of acquisition and presumably possessing same characters and nature. In a situation where there may not be uniformity of the sale transactions the highest exemplar would be the useful guide for determining the compensation. The preference to highest exemplar in a situation of this nature is highlighted and reiterated by the Hon'ble Supreme Court in ***Mehrawal Khewaji Trust, Faridkot & Ors., v. State of Punjab &***

Ors., reported in **AIR 2012 SC 2721: 2012(5) SCC 432** in which it is stated paragraph 12:

“12. As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext.A-61 dated 22.07.1977. In this regard, it is useful to refer the decision of this Court in Sri Rani M. Vijayalakshamma Rao Bahadur, Ranee of Vuyyur v. Collector of Madras (1969) 1 MLJ 45 (SC). In this case, this Court has held thus:

... where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case.

13. In State of Punjab and Anr. v. Hansraj (Dead) by L.Rs. Sohan Singh and Ors. (1994) 5 SCC 734, this Court has held that method of working out the 'average price' paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method. This Court further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value.

14. This Court in Anjani Molu Dessai v. State of Goa and Anr.(2010) 13 SCC 710, after relying upon the earlier decisions of this Court in M. Vijayalakshamma Rao Bahadur (supra) and Hansraj (supra) held in para 20 as under:

20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered.

Again, in para 23, it was held that "the averaging of the prices under the two sale deeds was not justified."

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

In the aforesaid case the reference court relied upon 3 exhibits like the present one having different sale transactions including other sale transactions. In the instant matter the compensation was enhanced by applying the rule of average. However there is no cross appeal. The principle of law that the highest exemplar is required to be accepted, is fortified by the aforesaid decision. In fact, the 4 sale deeds relied upon by the land owners for higher compensation are instances of sale proximate to the date of acquisition possessing same nature and character similar to the situation in **Vithal Rao** (*supra*) where the appellants urged that out of 11 sale the highest value should

have been made the basis for determination of the market value of the acquired land.

In the said decision reference was made to ***Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Ors.***, reported in **1988(3) SCC 751** and ***Union of India v. Raj Kumar Baghal Singh*** reported in **2014(10) SCC 422**. In **Chimanlal** (*supra*) in paragraph 15 the Hon'ble Supreme Court has observed that there cannot be any hard and fast or rigid rule in determining the compensation. Common sense is the best and most reliable guide. One of the distinguishing features would be smallness and the largeness of the plot as a large block of land would have to be developed by "preparing a lay out, carving out roads, leaving open spaces, plotting out similar plots, waiting for purchaser (meanwhile the invested money will be blocked) and the hazards to the entrepreneur. The factors can be discounted by making a token by way of allowance at an appropriate rate range approximately 20% to 50% to account for land required to set apart for carving out lands and plotting of small plots. It would also depend upon whether it is a rural area or urban area. It laid down the principle that every case must be dealt with on its "own fact pattern bearing in mind all these factors as a prudent purchaser of land in which possession the judge must place himself".

Upon consideration of the relevant judgments in **Vithal Rao** (*supra*) the law is summarized thus:

“27..... These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also *Union of India v. Raj Kumar Baghal Singh (Dead) Through Legal Representatives and Ors.* (2014) 10 SCC 422).

28. In addition to these principles, this Court in several cases have also laid down that while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified Under Section 23 of the Act. (See *Trishala Jain and Anr. v. State of Uttaranchal and Anr.*, (2011) 6 SCC 47).

30. Keeping the aforementioned principles in mind when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (30 acres approx.); Secondly, the purpose of acquisition is "Establishment of Rehabilitation Centre"; Thirdly, it is situated within the municipal limits; Fourthly, its one side is abutting the main district road (MDR); Fifthly, it is not fully developed; Sixthly,

some buildings have come up in its near proximity; Seventhly, the Appellants (land owners) have not filed any exemplar's sale deeds relating to large piece of land sold in acres to prove the market value of the acquired land; Eighthly, all sale deeds relied on by the Appellants pertain to very small piece of land such as, 25x55ft., 40x20ft., 40x40ft, 12x45ft, 30x40ft., 12x45ft, 60x60ft, 10x65ft, 50x65ft., 40x65ft. and 29x49ft. whereas the land acquired, as mentioned above, is quite large (30 acres) and, the price at which these small plots were sold is Rs. 85/- per sq. ft., Rs. 70/- per sq. ft., Rs. 80/- per sq. ft., Rs. 69/- per sq. ft., Rs. 55/- per sq. ft., Rs. 64/- per sq. ft., Rs. 65 per sq. ft., Rs. 100/- per sq. ft., and Rs. 218/- per sq. ft.,; Ninthly, these eleven plots were sold prior to the date of acquisition (2000, 2001 and 2002) whereas the acquisition was in the year 2003; Tenthly, the small parcel of lands sold under these sale deeds are situated in near proximity of the acquired land and some were part of the acquired land; Eleventhly, all the eleven sale deeds are held bona fide and proper and lastly, these sale deeds, therefore, can be relied on for determining the proper market value of the acquired land.”
(emphasis supplied)

In the aforesaid decision the purpose of acquisition was considered to be one of the relevant factors and the Apex court determined the compensation amount by applying the rule of average and made deductions of 40% of the amount towards development charges out of the average price worked out. **Kapil Mehra** (*supra*) however, did not consider its earlier decision in **Mehrawal Khewaji Trust, Faridkot & Ors.** (*supra*) which says that the highest exemplar should be preferred unless there are strong circumstances justifying a different course.

In ***Mohammad Yusuf & Ors. v. State of Haryana & Ors.***, reported in **2018(16) SCC 105** it was reiterated that when there are several exemplars with reference to similar land usually highest exemplars which is bona fide transaction is to be considered.

However, in **Kapil Mehra** (*supra*) it is stated in paragraph 20 of the said report that where the lands acquired are of different type and different locations, averaging is not permissible. But where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible. If the number of sale deeds of the same locality and the same period with short intervals are available the average price of the number of the sale deeds shall be considered as a fair and reasonable market price. In the instant case if we apply the said principle the determination of the market value by way of learned LA judge is perfect and unquestionable.

Vithal Rao (*supra*) has reiterated that the purpose of the acquisition is a relevant factor. If we apply the rule of average we would arrive almost at the same valuation as determined by the learned LA Judge. If we apply the highest exemplar test then for the comparable unit the highest market price would not be less than Rs.11,000/- per Satak and on that amount appropriate allowance for development cost by making a deduction at an appropriate rate has to be made. It has been fairly submitted that no deduction towards expenditure cost

towards construction of road, sewerage, drainage etc is not necessary since comparable sale deeds and acquired lands are both Sali land.

The term 'compensation' under Section 23 of the LA Act, 1894 would mean "a just equivalent of what owner has been deprived of" and hence acquisition must pass the test of compensation being reasonable, just and fair.

[See. **Mohammad Yusuf & Ors.**, (*supra*)]

The learned Trial Judge in fact has applied the principle of average value although unaware of **Vithal Rao** (*supra*). However, in the instant case the estimate prepared by the LA Collector is an amalgam of smaller and bigger plots of land in the same Mouza having same nature and characteristic indicating different consideration amount. If we accept that the estimate truly represent the sale value of lands of different sizes for a small plot situated 600 feet away from Burdwan-Katwa Road an average of the sale transaction read with the Exhibit 1 to 3 and 5 would give us a market value which would be higher than determined by the LA judge.

Learned Trial Judge however, has determined Rs.10,000/- per Satak for the purpose of compensation and applied appropriate deduction. Mr. Roy has submitted that although no claim for higher compensation has been made in the appeal by way of cross appeal the award holders have been able to demonstrate that on the basis of the evidence the market value would be more than Rs.10000/- per Satak. Mr. Roy submits that in a matter where a person is deprived of his land he would be entitled to just and fair compensation.

There is always an element of guess work and it cannot be decided with mathematical precision. In ***Trishala Jain & Anr. v. State of Uttaranchal & Anr.***, reported in **2011(6) SCC 47**⊗**AIR 2011 SC 2458: 2011 AIR SCW 3582**: Honble Supreme Court held:

“The value of sale of small pieces of land can be taken into consideration for determining the value of large tract of land but with a rider thatn the Court while taking such instances into consideration has to make a reasonable deduction keeping in view of other attendant circumstances.”

“Similar view has been expressed in State of Madhya Pradesh & Ors. v. Kashiram (dead) by L.Rs. & Ors., 2010 (14) SCC 506 and Prabhakar Raghunath Patil & Ors. v. State of Maharashtra, 2010(13) SCC 107: AIR 2011 SC (Civ) 143: 2010 AIR SCW 7016.”

Considering the nature of the evidence, the purpose of acquisition and the expenses required towards development cost applying the principles laid down in several judgments alluded to above we are of the opinion that the market price of the land for the purpose of determining compensation would be assessed at Rs.11,000/- per Satak. However, in absence of any cross appeal we accept the value determined by the learned LA Judge which is on the lower side, i.e. Rs.10,000/- and it would be just proper and reasonable to allow deduction at 30% on Rs.10,000/- considering the largeness of the property, thereby the market value of land acquired for the purpose of determining compensation would be Rs.7,000/- instead of Rs.8,000/- per satak.

The appeal succeeds in part.

The judgment and order under challenge is modified to the aforesaid extent.

All other directions in the judgment under challenge, however, are affirmed. In fact the only challenge was with regard to fixation of market price of the acquired land and not the other consequential directions. The market price of the acquired land of the petitioners in terms of this order is fixed at Rs.7,000/- per Satak for Sali class of land.

The Ld. Registrar General is directed to prematurely encash the fixed deposit and disburse the amount to the respondents according to their share in terms of the modified award upon due identification by their advocates and return the balance amount to the appellant no.1, NTPC by demand draft within four weeks from the date of communication of this order by either of the parties.

All the appeals, namely, FAT 446 of 2015, FA 17 of 2018, FA 48 of 2018, FA 54 of 2016, FAT 447 of 2015, FAT 448 of 2015 are allowed in part and stand disposed of.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)

Later:

After the judgment is pronounced, learned counsel appearing for the NTPC has prayed for stay of the operation of the judgment.

Such prayer is considered and rejected.

(Soumen Sen, J.)

(Uday Kumar, J.)