AIR 2012 SUPREME COURT 2709

G. S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.

Civil Appeal Nos. 3590 with 3591, 3670 and 3671 of 2012, D/- 2-7-2012.

Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Ors. v. Special Land Acquisition Officer and Ors.

(A) Land Acquisition Act (1 of 1894), Ss. 23, 54 — Compensation — Market value — Determination — Acquired agricultural land in proximity of national highway and bridge bringing it close to economic capital — Was also close to industrialised town — Reduction of its market value by mechanically applying criteria of distance from highway — Improper. (Para 20)

(B) Land Acquisition Act (1 of 1894), S. 23 — Acquisition compensation — Determination — Factors to be considered.

While fixing market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors :—

(i) Existing geographical situation of the land

(ii) Existing use of the land

(iii) Already available advantages, like proximity to National or State High Way or road and/or developed area

(iv) Market value of other land situated in the same locality/village/area adjacent or very near the acquired land. **(Para 13)**

Cases Referred : Chronological Paras

AIR 2010 SC 170 : 2009 AIR SCW 5810 17

AIR 2010 SC (Supp) 241 : 2010 AIR SCW 173 18

2010 AIR SCW 6231 18

AIR 2008 SC 709 : 2007 AIR SCW 7835 15

AIR 2005 SC 2214 : 2005 AIR SCW 2107 14

AIR 2004 SC 1185 : 2004 AIR SCW 75 17

AIR 2004 SC 1800 : 2004 AIR SCW 797 17

AIR 2004 SC 2006 : 2004 AIR SCW 2089 : 2004 All LJ 1438 17

AIR 2003 SC 202 : 2002 AIR SCW 4644 16

AIR 2003 SC 3791 : 2003 AIR SCW 4335 : 2003 All LJ 2288 17

AIR 1998 SC 781 : 1998 AIR SCW 497 11, 19

1997 (2) Mah LR 325 7

1994 Bom CJ 316 5, 7

1993 Bom CJ 27 5, 7

AIR 1990 SC 2192 15

AIR 1988 SC 943 15

AIR 1984 SC 892 15

AIR 1980 SC 1222 15

AIR 1979 SC 472 15

AIR 1977 SC 1560 15

AIR 1976 SC 2219 15

AIR 1969 SC 465 15

Shivaji M. Jadhav, for Appellants; T. Mahipal, for Respondents.

G. S. SINGHVI, J. :— With a view to implement the New Bombay Project, the Government of Maharashtra acquired large tracts of land in different villages of the State. The appellants' land measuring 3,86,790 square meters in Roadpali (Kolekhar) Village, Panvel Taluka, Raigad District was also acquired for the project. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 3.2.1970 and declaration under Section 6(1) was issued on 24.8.1972. The Special Land Acquisition Officer passed different awards for different parcels of land and fixed market value of the acquired land in the range of Rs.1.75 per square meter to Rs. 2.50 per square meter.

2. The appellants did not file application under Section 18 of the Act for determination of compensation by the Court, but after amendment of the Act with effect from 24.9.1984 and disposal of the references made at the instance of other landowners, they filed an application under Section 28A(1) for re-determination of market

value of the acquired land. The Special Land Acquisition Officer held that the landowners are entitled to compensation at the rate of Rs.1.20 per square meter to Rs.2/- per square meter. The appellants then filed an application under Section 28A(3) for award of compensation at the rate of Rs.100/- per square meter. They pleaded that the acquired land was very close to Sion-Panvel Highway and had tremendous non-agricultural potential, nearby area had been industrialized and District Judge, Raigad-Alibag had awarded higher compensation to other landowners whose lands situated at Village Ambetarkhar (Roadpali), Taluka Panvel had been acquired for the New Bombay Project. The Special Land Acquisition Officer controverted the claim of the appellants and pleaded that on the date of Section 4(1) notification, i.e., 3.2.1970, the appellants' land was undeveloped and was being used only for the purpose of agriculture, which depended on monsoon.

3. On the pleadings of the parties, Civil Judge, Senior Division, Alibag (hereinafter described as 'the Reference Court') framed the following issues:

"1. Whether the claimants prove that the compensation amount awarded by the opponent is insufficient and inadequate in view of the situation, location, sale statistics and N.A. potentiality of the acquired land.

2. Whether the claimants are entitled to get enhanced compensation? If yes, what quantum?

3. What order or award?"

4. In support of their claim, the appellants examined Shri Abdul Majid Mulla (one of the landowners) and Shri Vikrant Manohar Vaidya, who had prepared valuation report (Ext.24) and map (Ext.25). They also relied upon certified copies of the judgment of the High Court in F.A. No.544/90 – Chandar Krishan Gayakwad v. Special Land Acquisition Officer, Panvel (Ext.29), F.A. No.423/96 – State of Maharashtra v. Chandrakant Bhiva Patil (Ext.30), F.A. No.1074/89 – State of Maharashtra v. Laxman Bhiva Patil (Ext.31), F.A. No.457/93 – State of Maharashtra v. Ramachandra Damodar Koli and others (Ext.16) as also the awards passed by the Reference Court in L.A.R. No.168/86 (Ext.13), L.A.R. No.172/86 (Ext.14) and L.A.R. No.1334/2000 (Ext.15). On behalf of the Special Land Acquisition Officer, no evidence was produced in support of the assertion that the acquired land was undeveloped and it did not have non-agricultural potential.

5. The Reference Court considered the evidence produced by the appellants and held that the acquired land had non-agricultural potential and the Special Land Acquisition Officer committed grave error by fixing market value on the premise that it was an undeveloped land and was being used for agricultural purposes only. The detailed reasons recorded by the Reference Court for arriving at this conclusion are reproduced below:

"It is an admitted fact that civic amenities were available to Panvel Town prior to 1970. Construction of Thane Creek bridge brought various villages including village Roadpali (Kolhekhar) close to Bombay. The proximity of National Highway No.4, Panvel-Sion Highway, Diva-Panvel-Apta railway line, vicinity of Jawahar Industrial Estate, M.I.D.C. Industrial Estate Taloja, Panvel Industrial Estate, shows that even in the year 1970 the lands under reference were enjoying transport and communication facility. Thus, the lands under reference were ready-made for N.A. use and only obstacle was absence of conversion. Therefore, though the lands under reference were under paddy cultivation its non-agricultural potentiality cannot be disputed and the lands will have to be assessed as non-agricultural land. While dealing with the land Reference Appeal Nos. 92 and 94 of 1985 in respect of the lands situated at Panvel acquired on 3.2.1970 the Hon'ble High Court Bombay has taken judicial note about non-agricultural potentiality of the

nearby area of Bombay city. In the case of Shashikant Krishanji (Kandpile) Mali v. SLAO Panvel, Raigad, reported in 1993 BCJ 27 it is observed by the Hon'ble Division Bench of Bombay High Court that —

"the aforementioned towns, are, what they are because of their closeness to the Metropolitan centre of Bombay. It is also evident that the scope for growth in the direction of Pune and Nashik has been virtually exhausted, and that, growth now lies in the direction of the districts of Raigad and Ratnagiri. Judicial notice has to be taken of the fact that almost all the areas in the proximity of Bombay have been growing at a phenomenal rate and that Panvel is no exception to this feature of rapid growth."

In a case of Nama Padu Huddar v. State of Maharashtra, reported in 1994 BCJ 316 the Hon'ble High Court Bombay observed that—

"Judicial note can be taken of the fact that the industrial growth in and around Bombay has started with rapid stride from the year 1965 onwards. In fact, the growth is by leaps and bounds in the magnitude of industries as well as number of industries and virtually all the industry of the country are represented on the industrial estates scattered on this highway. It is also an admitted position that on this highway on all sides the facility of electric supply is available as also of abundant water supply. In the area in question it is also an admitted position that all the lands have suitable access roads of Zilla Parishad and State Highway including lands which are the farthest from the highway."

The Learned D.G.P. Shri P.S. Patil, for the Opponent argued that the lands under endurance were paddy yielding land depending upon mansoon, yielding once in a year, and therefore, the lands under reference were not having N.A. potentiality on the date of notification. However, in view of the observation of the Hon'ble Bombay High Court in the above cited ruling argument advanced by learned D.G.P. is devoid of substance. In view of Section 56 of the Indian Evidence Act a fact judicially noticed need not be proved. The effect of taking judicial note of any fact means recognition of the fact without formal proof and no one can question it. Even court can't insist of formal proof by evidence. Judicial note take place of proof. Nearness of Bombay City which is economic capital of our country and magnitude of industrial development around the lands under reference is sufficient to say that the lands under reference were having tremendous N.A. potentiality on the date of notification."

(Emphasis supplied)

6. The Reference Court referred to the judgments of District Judge, Raigad-Alibag in LAR Nos.168/86 and 172/86 by which compensation at the rate of Rs.90/- per square meter was awarded for the land situated at Ambetarkhar (Roadpali), Taluka Panvel, which was also acquired for the New Bombay Project, but held that the same are of no help to the appellants because in those cases, this Court had issued a direction to the Special Land Acquisition Officer to pay compensation at the market rate prevailing as on 1.1.1977.

7. The Reference Court then noticed the judgments of the High Court in Shashikant Krishanji v. Special Land Acquisition Officer, Panvel, Raigad (1993) BCJ 27, Nama Padu Huddar v. State of Maharashtra (1994) BCJ 316 and observed:

"The certified copy of the judgment in First Appeal No. 544/90 Chandrakant Gaikwad v. S.L.A.O. Panvel is at Exh. 29. After its perusal it transpires that the Hon'ble High Court Bombay granted compensation @ Rs. 25/- per sq. mtr. to the land situated at village Taloja acquired vide notification dt. 3.2.1970. It seems from the certified copy of the judgment in First Appeal No. 423/96 Chandrakant Bhiva Patil v. S.L.A.O. Panvel Exh. 30 that the Hon'ble High Court Bombay awarded compensation @ Rs. 25/- per sq. mtr. to the land situated at village Nawada acquired on

3.2.1970. Certified copy of the judgment in First Appeal No. 1074/89 State of Maharashtra v. Laxman Bhiva Patil Exh. 31 shows that the Hon'ble High Court Bombay granted compensation @ Rs. 25/- per sq. mtr. to the land of Village Pendhar, Taluka Panvel, acquired vide notification dt. 3.2.1970.

Thus, from the judgments on record it is quite obvious that the Hon'ble High Court Bombay has awarded compensation @ Rs. 25/- per sq. mtr. in respect of the lands of village Taloja, Pendhar and Nawade acquired vide Notification dt. 3.2.1970. So far as lands under reference are concerned, in a case reported in 1997(2) Mh. LR 325 State of Maharashtra, Appellant v. Ramchand Damodar Koli and others, Respondents, the Hon'ble High Court Bombay has allowed the claimants' cross-objection and ordered that the claimants shall be entitled for compensation @ Rs. 25/- per sq. mtr. on their paying additional court-fees within two weeks. The land involved in the above cited ruling belongs to Village Roadpali (Ambetarkhar). Ambetarkhar and Kolhekhar are the parts of Village Roadpali. The land involved in the reference in hand and the land involved in the above cited ruling acquired for the same purpose i.e. for New Bombay Project, vide Notification dt. 3.2.1970. It reveals from xerox copy of the letter No. Civil/Reg. No. 28.01.2002 dt. 3rd July, 2003 addressed to the Secretary, Government of Maharashtra, L & J Department Mantralaya Mumbai, by the Asstt. Govt. Pleader, High Court, Mumbai, produced on record with the list Exh. 33/1 by the Ld.D.G.P., that, in First Appeal No. 560/91 arising out of LAR No. 350/89 the Hon'ble High Court Bombay awarded compensation @ Rs. 25/- per sq. mtr. to the land from village Roadpali, and the Asstt. Govt. Pleader, High Court Mumbai, opined that the said case is not fit for appeal. The land involved in the reference in hand and the land involved in the case reported in 1997 (2) Mh LR 325 are virtually identical situated in the same area bearing similar topographical and physical characteristics covered by the same notification dt.3.2.1970. When the nearby land of the land under reference fetch market value @ Rs. 25/- per sq. mtr. on the date of notification, certainly the land under reference fetch the same market value."

(As contained in the paper book)

8. The State Government questioned the determination made by the Reference Court by filing an appeal under Section 54 of the Act and prayed for reduction in the amount of compensation on the ground that the acquired land was undeveloped and was being used for agricultural purposes. Another plea taken by the State Government was that the Reference Court had erroneously overlooked the distance criteria, which was followed by the High Court in other cases for determination of the amount of compensation. The appellants also filed F.A. No.1118/2005 and prayed that the amount of compensation be enhanced keeping in view the judgment in LAR Nos. 168/86 and 172/86. They pleaded that the Reference Court had not paid adequate attention to the fact that the acquired land was in the vicinity of the industrial estates developed at Taloja and Panvel and a number of highways.

9. The Division Bench of the High Court took cognizance of the earlier judgments in which the compensation was determined keeping in view the distance of the acquired land from Bombay-Pune Highway and held that the appellants are not entitled to compensation in excess of what was awarded to the other landowners. The Division Bench accepted the State's plea for reduction in the amount of compensation and also held that 15% of market value is liable to be deducted towards development charges.

10. The review petition filed by the appellants was partly allowed by the High Court vide order dated 7.6.2007 and it was held that those having land upto a distance

of 500 meters from Bombay-Pune Highway shall be entitled to compensation at the rate of Rs. 20/- per square meter and those having land beyond 500 meters shall be entitled to compensation at the rate of Rs.18/- per square meter.

11. Shri Jayant Bhushan, learned senior counsel argued that the Reference Court and the High Court committed serious error by not awarding compensation to the appellants at par with the other landowners whose claim for higher compensation was decided by District Judge, Raigad-Alibag in LAR Nos.168/86 and 172/86. Learned senior counsel emphasized that the appellants' land and the land situated in Village Ambetarkhar was acquired for implementation of the New Bombay Project and argued that there could be no valid ground or justification to discriminate similarly situated landowners in the matter of award of compensation. He pointed out that the acquired land is in the vicinity of fully developed industrial area as also Sion-Panvel Highway, Mumabi-Goa Highway (NH-17) apart from Bombay-Pune Highway (NH-4) and argued that the compensation awarded to the appellants should be enhanced because the Reference Court and the High Court committed an error by not considering the geography of the land and its potential use for non-agricultural purposes. Shri Bhushan submitted that while preparing valuation report (Ext.24), Shri Vikrant Manohar Vaidya had taken note of the fact that the acquired land was very close to the industrial estate developed at Panvel and Taloja and railway line had been laid, but the Reference Court and the High Court did not give due weightage to the expert report for the purpose of determination of the amount of compensation and this has caused serious injustice to the appellants. Learned senior counsel relied upon the judgment in Land Acquisition Officer, Revenue Divisional Officer v. L. Kamalamma (1998) 2 SCC 385 : *(AIR 1998 SC 781 : 1998 AIR SCW 497)* and argued that the distance from the highway cannot be made the sole benchmark for fixing market value of the acquired land which is in the vicinity of fully developed area. Shri Bhushan also invited our attention to judgment dated 21.6.2009 of the Division Bench of the Bombay High Court whereby the appeals filed by the State of Maharashtra and the landowners against the judgment of District Judge, Raigad in LAR No. 172 of 1986 were disposed of by assessing market value of the land situated at Village Ambetarkhar at Rs.60/- per square meter as on 1.1.1977.

12. Learned counsel for the respondents supported the impugned judgment and order and argued that the High Court did not commit any error by determining the amount of compensation keeping in view the distance criteria, which was applied in all other cases for fixing market value of the land acquired for the New Bombay Project. Learned counsel also submitted that the judgment of the Division Bench in FA Nos. 219-220 of 1989 and FA Nos. 568-569 of 1989 cannot be relied upon for awarding higher compensation to the appellants because in respect of the land situated in Village Ambetarkhar, Taluka Panvel, District Raigad, this Court had issued direction in the earlier round of litigation that the compensation be determined on the basis of market value prevailing on 1.1.1977.

13. We have considered the respective arguments and carefully perused the record. It is settled law that while fixing market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State High Way or road and/or developed area.

(iv) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

14. In Viluben Jhalejar Contractor v. State of Gujarat (2005) 4 SCC 577 : *(AIR 2005 SC 2214 : 2005 AIR SCW 2107)*, this Court laid down the following principles for determination of market value of the acquired land:

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

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

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

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

(See Table below)

15. In Atma Singh v. State of Haryana (2008) 2 SCC 568 : *(AIR 2008 SC 709 : 2007 AIR SCW 7835)*, the Court held *(Para 485 of AIR, AIR SCW)* :

"In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the

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

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."

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 *(AIR 1976 SC 2219)*, Prithvi Raj Taneja v. State of M.P. *(AIR 1977 SC 1560)*, Administrator General of W.B. v. Collector, Varanasi *(AIR 1988 SC 943)* and Periyar Pareekanni Rubbers Ltd. v. State of Kerala *(AIR 1990 SC 2192)*. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. See Collector v. Dr. Harisingh Thakur *(AIR 1979 SC 472)*, Raghubans Narain Singh v. U.P. Govt. *(AIR 1969 SC 465)* and Administrator General, W.B. v. Collector Varanasi *(AIR 1988 SC 943)*. It has been held in Kausalya Devi Bogra v. Land Acquisition Officer *(AIR 1984 SC 892)* and Suresh Kumar v. Town Improvement Trust *(AIR 1980 SC 1222)* that failing to consider potential value of the acquired land is an error of principle."

16. In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In Kasturi v. State of Haryana (2003) 1 SCC 354 : *(AIR 2003 SC 202 : 2002 AIR SCW 4644)*, the Court held:

".....It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft

or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

(Emphasis supplied)

17. The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P. (2003) 10 SCC 525 : *(AIR 2003 SC 3791 : 2003 AIR SCW 4335)*, V. Hanumantha Reddy v. Land Acquisition Officer & Mandal Revenue Officer (2003) 12 SCC 642 : *(AIR 2004 SC 1185 : 2004 AIR SCW 75)*, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 : *(AIR 2004 SC 1800 : 2004 AIR SCW 797)* and Kiran Tandon v. Allahabad Development Authority (2004) 10 SCC 745 : *(AIR 2004 SC 2006 : 2004 AIR SCW 2089)*. In Lal Chand v. Union of India (2009) 15 SCC 769 : *(AIR 2010 SC 170 : 2009 AIR SCW 5810)*, 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 per cent of the price of developed plots and observed:

"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. ...

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 for 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."

18. In A.P. Housing Board v. K. Manohar Reddy (2010) 12 SCC 707 : *(2010 AIR SCW 6231)*, 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 (2010) 1 SCC 444 : *(AIR 2010 SC (Supp) 241 : 2010 AIR SCW 173)*, this Court held as under:

"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.

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)

19. In Land Acquisition Officer, Revenue Divisional Officer v. L. Kamalamma *(AIR 1998 SC 781 : 1998 AIR SCW 497)* (supra), this Court held as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

20. In these appeals, we find that while determining the amount of compensation at the rate of Rs.25/- per square meter, the Reference Court had taken notice of the fact that the acquired land was in the proximity of National Highway No.4, Panvel-Sion Highway and the construction of Thane Creek Bridge which brought various villages including village Roadpali (Kolhekhar) close to Bombay. The Reference Court also noted that civic amenities were available to Panvel town prior to 1970 and industrial estates had been developed at Taloja and Panvel and concluded that the acquired land was available for non-agricultural use and the only obstruction was the absence of conversion. The High Court did not advert to the factors noted by the Reference Court and reduced the amount of compensation by mechanically applying the distance criteria, i.e., distance of the acquired land from Bombay-Pune Highway adopted in the earlier judgments. Therefore, the impugned judgment and order cannot be sustained.

21. Although, the appeals filed by the State Government and the landowner against the judgment of District Judge, Raigad in LAR No.172/86 were decided after six months of the impugned judgment, we find that compensation for the land situated at Village Ambetarkhar had been awarded at the rate of Rs.60/- per square meter primarily on the ground that in the earlier round of litigation, this Court had issued a direction to the Special Land Acquisition Officer to determine market value as on 1.1.1977.

22. In the light of the subsequent judg-

ment, we may have remitted the case to the High Court for fresh adjudication of the appeals, but keeping in view the fact that a period of 42 years has elapsed, we do not consider it proper to adopt that course and feel that ends of justice will be adequately met by restoring the determination of compensation made by the Reference Court.

23. In the result, the appeals are allowed. The impugned judgment and order are set aside and the one passed by the Reference Court for payment of compensation to the appellants at the rate of Rs.25/- per square meter is restored. The respondents are directed to pay the balance amount to the appellants with all other statutory benefits and interest within three months from today.

24. With a view to ensure that the landowners are not fleeced by the middleman, we deem it proper to issue the following further directions:

(i) Within one month from today, the Special Land Acquisition Officer shall depute an officer subordinate to him not below the rank of Naib Tehsildar or an equivalent rank, to get in touch with the landowners and/or their legal representatives and inform them about their entitlement to receive the balance amount of compensation.

(ii) The concerned officers shall instruct the landowners and/or their legal representatives to open savings bank account in a nationalized or scheduled bank, in case they already do not have such account.

(iii) The account numbers of the landowners and/or their legal representatives should be furnished by the concerned officer to the Land Acquisition Officer within a period of one month.

(iv) Within next one month, the Special Land Acquisition Officer shall deposit the amount of compensation along with other statutory benefits in the bank accounts of the landowners and/or their legal representatives in the form of account payee cheques.

Appeals allowed.

AIR 2012 SUPREME COURT 2718

(From : Bombay)

H. L. DATTU AND
ANIL R. DAVE, JJ.

Civil Appeal No. 4473 of 2000, D/- 17-4-2012.

Kulsum R. Nadiadwala v. State of Maharashtra & Ors:

Land Acquisition Act (1 of 1894) — Acquisition notification — Requirement of giving public notice — Mandatory — Acquisition made without publishing notification in public place in which land is located — Is null and void. (Paras 11, 12)

Cases Referred : Chronological Paras

AIR 2012 SC (Civ) 141 : 2011 AIR SCW 6709 12

AIR 1985 SC 1622 : 1985 All LJ 887 10

Jay Savla, for Appellant; D. N. Goburdhan, for Respondents.

ORDER :— This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No.2699 of 1987 dated 21.07.1998. By the impugned judgment and order, the High Court has dismissed the writ petition filed by one of the interested persons, having interest in Land Survey No.119/3 Pt. situated at Village Malad, Taluka Borivali, District Bombay Suburban.

2. Section 4 Notification dated 24.10.1975, under the provisions of the Land Acquisition Act, 1894 (for short 'the Act') came to be issued by the State Government to acquire certain piece of lands situated in different villages for the purpose of establishing Central Ordinance Depot for the Union of India (Military).

3. The beneficiary of these lands is the Central Government. They are served, but at the time of hearing of this appeal, they were not present before the Court and, therefore, we had no occasion to hear the learned counsel for the Union of India.

4. We have heard Mr. Jay Savla, learned