% 27.04.2006



Present: Mr.R.Sethi, Sr. Adv. with Mr.Vikram Nandrajog, Mr.S.L.Verma, Mr.S.S.Tomar for the appellant.
Mr.L.S.Rana for the appellant.
Mr.S.K.Rout for the appellants in item Nos.85,86, 90, 99, 107, 115, 116, 118, 119, 121, 12,125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175, 177, 178, 180, 183, 184, 187, 188, 189, 210, 213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386 and 410
Mr.Sanjay Poddar and Mr.Sachin Nawani for the UOI.
Mr.Gaurav Sarin for the DDA.

+ **RFA Nos. 789/1994, 797/1994, 14/1995, 29/1995, 44/1995, 93/1995, 148/1995, 191/1995, 192/1995, 194/1995, 197/1995, 200/1995, 204/1995, 223/1995, 227/1995, 233/1995, 237/1995, 238/1995, 239/1995, 242/1995, 243/1995, 244/1995, 262/1995, 264/1995, 276/1995, 280/1995, 285/1995, 301/1995, 302/1995, 303/1995, 307/1995, 308/1995, 318/1995, 322/1995, 324/1995, 826/1995, 330/1995, 340/1995, 363/1995, 365/1995, 367/1995, 387/1995, 188/1995, 411/1995, 413/1995, 432/1995, 438/1995, 521/1995, 523/1995, 537/1995, 543/1995, 544/1995, 547/1995, 577/1995, 584/1995, 588/1995, 594/1995, 651/1995, 667/1995, 691/1995, 719/1995, 729/1995, 742/1995, 747/1995, 896/1995, 934/1995, 982/1995, 988/1995, 995/1995, 997/1995, 1001/1995, 1004/1995, 1005/1995, 1011/1995, 1022/1995, 7/1996, 64/1996, 93/1996, 108/1996, 113/1996, 218/1996, 250/1996, 397/1996, 327/1996, 355/1997, 5/1998, 6/1998, 27/1998, 27/1998, 41/1998, 89/1998, 104/1998, 146/1998, 157/1998, 160/1998, 164/1998, 166/1998, 209/1998, 224/1998, 247/1998, 252/1998, 255/1998, 265/1998, 299/1998,**

484/1998, 498/1998, 501/1998, 517/1998, 520/1998, 521/1998, 522/1998, 525/1998, 9/2006, [redacted]3, RFA 232/95, 198/95, 889/1987, [redacted], 336/1990, 144/1988, 183/1990, 535/1998, 564/1998, 565/1998, 573/1998, 600/1998, 81/1999, 115/1999, 240/1999, 250/1999, 326/1999, 348/1999, 358/1999, 383/1999, 442/1999, 448/1999, 482/1999, 489/1992, 505/1999, 551/1999, 703/1999, 715/1999, 722/1999, 125/2000, 253/2000, 438/2000. 457/2000, 461/2000, 493/2000, 553/2000, 555/2000, 562/2000, 563/2000, 588/2000, LAA 565-67/2005, LAA 23/2006, RFA Nos. [redacted], 887/1987, 888/1987, 892/1987, 902/1987, [redacted], 182/1988, 365/1988, 716/1988, 314/1989, 316/1989, 318/1989, 333/1989, 361/1989, 368/1989, 399/1989, 466/989, 306/1990, 330/1990, 504/1990, 21/2001, 411/2001, LA App.8/2006, RFA 323/1990, [redacted], 394/1990, 395/1990, 396/1990, 404/1990, 406/1990, 487/1990, 505/1990, 509/1990, 521/1990, 522/1990, 523/1990, 524/1990, 628/1990, 836/1990, 850/1990, 139/1993, 434/1993, 435/1993, 436/1993, 486/1993, 493/1993, 515/1993, 576/1993, 585/1993, 677/1993, 430/1995, 437/1989, 438/1989, 440/1989, 447/1989, 484/1989, 185/1990, 643/2002, 683/2003, 885/1987, [redacted], 887/1987, 887/1987, 889/1987, 892/1987, 908/1987, 930/1987, 933/1987, 9/1988, 144/1988, 716/1988, 314/1989, 368/1989, 437/1989, 438/1989, 440/1989, 447/1989, 466/1989, 185/1990,306/1990, 323/1990, 330/1990, 336/1990, 336/1990, 394/1990, 395/1990, 404/1990, 405/1990, 406/1990, 487/1990, 504/1990, 505/1990, 509/1990, 521/1990, 523/1990, 628/1990, 836/1990, 850/1990, 434/1993, 435/1993, 493/1993, 515/1993576/1993, 751/1994, 749-74/2005, 797/1994, 71/1995, 148/1995, 187/1995, 192/1995, 194/1995, 200/1995, 230/1995, 237/1995, 238/1995, 280/1995, 303/1995, 322/1995, 411/1995, 432/1995, 438/1995, 537/1995, 584/1995, 826/1995, 896/1995, 995/1995, 108/1996, 113/1996, 327/1997, 6/1998, 146/1998, 160/1998, 209/1998, 247/1998, 252/1998, 265/1998, 498/1998, 501/1998, 520/1998, 521/1998, 525/1998, 564/1998, 565/1998, 600/1998, 250/1999, 383/1999, 442/1999, 448/1999, 489/1999, 703/1999, 722/1999, 562/2000, 588/2000, 139/1993, 486/1993, 233/1995, 239/1995, 243/1995, 5/1998, 255/1998, 573/1998,

115/1999, LA.APP. 4/2004, LA.APP.722/2005, LA.APP. 228/2004, LA.APP. 695/2005, LA.APP. 723-48/2005, RFA 141/1996, LA.APP.696-716/2005, RFA 118/2003, 522/2003, LA.APP.300/2006, [illegible], RFA 351/1995, 664/1998 and 353/1999

For orders see RFA No.751/1994.

SWATANTER KUMAR, J.

S.L. BHAYANA, J.

April 27, 2006
vk

55

**IN THE HIGH COURT OF DELHI**

\+ **RFA NO. 751/94**

% **Judgment reserved on : April 25, 2006**
**Judgment delivered on : April 27, 2006**

\# Jas Rath

....Appellants.

! through: Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for appellants in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

**L.A. APP. NO. 9/2006**

\# Union of India

....Appellants.

! through: Mr.Sanjay Poddar, Advocate for LAC.

Mr. Gaurav Sarin, Advocate, for DDA.

Versus

$ Ran Singh and others.

....Respondents

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

**L.A. APP. NO. 7/2006**

# Union of India

....Appellants.

! through: Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

Versus

$ Ran Singh and others.

....Respondents

^ through : Mr. Ravinder Sethi, Sr. Advocate

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with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

\+ **RFA NO. 232/1995**

\# Hardhian Sivsh

....Appellants

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344,

345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

+ **RFA NO. 198/1995**

# Ranvir Singh

....Appellants.

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for

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LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

\+ **RFA NO. 889/1997**

\# Sher Singh

....Appellant

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, ,115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

\+ **RFA NO. 893/1997**

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# Shiv Dhan Singh (Deceased)

....Appellant

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05. 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107. 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

+ **RFA NO. 336/1997**

# Suresh Pal Singh

....Appellant

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05,

381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

+ **RFA NO. 144/1988**

# Ved Prakash

....Appellant

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180,

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183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through : Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

+ **RFA NO. 183/1990**

# Surat Singh & Ors.

....Appellants.

^ through : Mr. Ravinder Sethi, Sr. Advocate with Mr. Vikram Nandrajog, Advocate.
Mr. Chander Lal Verma, Advocate.
Mr. L.S. Rana, Advocate, in RFA Nos. 365/95, 367/1995, 388/05, 381/95, 327/97, 81/99, 995/95 & 247/98.
Mr. S.K. Rout, Advocate, for respondents in 85, 86 ,90, 99, 107, 115, 116, 118, 119, 121, 124, 125, 132, 138, 143, 144, 149, 160, 161, 162, 163, 165, 175,177, 178, 180, 183, 184, 187, 188,189,210,213, 225, 226, 280, 281, 282, 283, 344, 345, 358, 383, 385, 386, 410 shown in cause list dated 25.4.2006.

Versus

$ Union of India

....Respondents

^ through: Mr.Sanjay Poddar, Advocate for LAC.
Mr. Gaurav Sarin, Advocate, for DDA.

**AND**

RFA Nos. 789/1994, 797/1994, 14/1995, 29/1995, 44/1995, 71/1995, 93/1995, 148/1995, 187/1995, 191/1995, 192/1995, 194/1995, 197/1995, 200/1995, 204/1995, 223/1995, 227/1995, 233/1995, 237/1995, 238/1995, 239/1995, 242/1995, 243/1995, 244/1995, 262/1995, 264/1995, 276/1995, 280/1995, 285/1995, 301/1995, 302/1995, 303/1995, 307/1995, 308/1995, 318/1995, 322/1995, 324/1995, 826/1995, 330/1995, 340/1995, 363/1995, 365/1995, 367/1995, 387/1995, 188/1995, 411/1995, 413/1995, 432/1995, 438/1995, 521/1995, 523/1995, 537/1995, 543/1995, 544/1995, 547/1995, 577/1995, 584/1995, 588/1995, 594/1995, 651/1995, 667/1995, 691/1995, 719/1995, 729/1995, 742/1995, 747/1995, 896/1995, 934/1995, 982/1995, 988/1995, 995/1995, 997/1995, 1001/1995, 1004/1995, 1005/1995, 1011/1995, 1022/1995, 7/1996, 64/1996, 93/1996, 108/1996, 113/1996, 218/1996, 250/1996, 397/1996, 327/1996, 355/1997, 5/1998, 6/1998, 27/1998, 27/1998, 41/1998, 89/1998, 104/1998, 146/1998, 157/1998, 160/1998, 164/1998, 166/1998, 209/1998, 224/1998, 247/1998, 252/1998, 255/1998, 265/1998, 299/1998, 484/1998, 498/1998, 501/1998, 517/1998, 520/1998, 521/1998, 522/1998, 525/1998, 535/1998, 564/1998, 565/1998, 573/1998, 600/1998, 81/1999, 115/1999, 240/1999, 250/1999, 326/1999, 348/1999, 358/1999, 383/1999, 442/1999, 448/1999, 482/1999, 489/1992, 505/1999, 551/1999, 703/1999, 715/1999, 722/1999, 125/2000, 253/2000, 438/2000. 457/2000, 461/2000, 493/2000, 553/2000, 555/2000, 562/2000, 563/2000, 588/2000, LAA 565-67/2005, LAA 23/2006, RFAs No. 885/1987, 886/1987, 887/1987, 888/1987, 892/1987, 902/1987, 928/1987, 929/1987, 930/1987, 931/1987, 932/1987, 933/1987, 8/1988, 9/1988, 182/1988, 365/1988, 716/1988, 314/1989, 316/1989, 318/1989, 333/1989, 361/1989, 368/1989, 399/1989, 466/989, 306/1990, 330/1990, 504/1990, 21/2001, 411/2001, LA.App.8/2006, 323/1990, 393/1990, 394/1990,

395/1990, 396/1990, 404/1990, 406/1990, 487/1990, 505/1990, 509/1990, 521/1990, 522/1990, 523/1990, 524/1990, 628/1990, 836/1990, 850/1990, 139/1993, 434/1993, 435/1993, 436/1993, 486/1993, 493/1993, 515/1993, 576/1993, 585/1993, 677/1993, 430/1995, 437/1989, 438/1989, 440/1989, 447/1989, 484/1989, 185/1990, 643/2002, 683/2003, 885/1987, 886/1987, 887/1987, 887/1987, 889/1987, 892/1987, 908/1987, 930/1987, 933/1987, 9/1988, 144/1988, 716/1988, 314/1989, 368/1989, 437/1989, 438/1989, 440/1989, 447/1989, 466/1989, 185/1990,306/1990, 323/1990, 330/1990, 336/1990, 336/1990, 394/1990, 395/1990, 404/1990, 405/1990, 406/1990, 487/1990, 504/1990, 505/1990, 509/1990, 521/1990, 523/1990, 628/1990, 836/1990, 850/1990, 434/1993, 435/1993, 493/1993, 515/1993576/1993, 751/1994, 749-74/2005, 797/1994, 71/1995, 148/1995, 187/1995, 192/1995, 194/1995, 200/1995, 230/1995, 237/1995, 238/1995, 280/1995, 303/1995, 322/1995, 411/1995, 432/1995, 438/1995, 537/1995, 584/1995, 826/1995, 896/1995, 995/1995, 108/1996, 113/1996, 327/1997, 6/1998, 146/1998, 160/1998, 209/1998, 247/1998, 252/1998, 265/1998, 498/1998, 501/1998, 520/1998, 521/1998, 525/1998, 564/1998, 565/1998, 600/1998, 250/1999, 383/1999, 442/1999, 448/1999, 489/1999, 703/1999, 722/1999, 562/2000, 588/2000, 139/1993, 486/1993, 233/1995, 239/1995, 243/1995, 5/1998, 255/1998, 573/1998, 115/1999, LA.APP. 4/2004, LA.APP.722/2005, LA.APP. 228/2004, LA.APP. 695/2005, LA.APP. 723-48/2005, RFA 348/1987, 141/1996, LA.APP.696-716/2005, RFA 118/2003, 522/2003, LA.APP.300/2006, 301/2006, 302/2006, RFA 351/1995, 664/1998 and 353/1999

CORAM :

**HON'BLE MR. JUSTICE SWATANTER KUMAR**
**HON'BLE MR. JUSTICE S.L. BHAYANA**

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be referred in the Digest? Yes

**SWATANTER KUMAR, J.**

The Supreme Court vide its judgment dated 7th September, 2005 remitted the above appeals to this Court with the following directions :-

> "Keeping in view the facts and circumstances of this case, we are of the opinion that the impugned judgment cannot be sustained and accordingly the same are set aside. The matters are remitted to the High Court for consideration of the matter afresh. The High Court shall proceed to determine the market value of the acquired land upon taking into consideration the materials on record and all other relevant factors necessary for determining the market value of the lands in question.
>
> The appeals are disposed of with the aforementioned directions. However, we would request the High Court to consider the desirability of disposing of the appeals as expeditiously as possible and preferably within a period of six weeks from the date of communication of this order and receipt of records. No costs.?

We feel that it will be appropriate for the Court to cull out the submissions which weighed with the Supreme Court in remitting these appeals to this Court for determination of market value afresh. The important points can be summed up as follows:-

(a) Concededly the High Court in its impugned judgment did not place any reliance whatsoever upon the sale instances whereupon strong reliance has been placed by the parties solely on the ground that neither

vendors nor vendees thereof have been examined as witnesses. The High Court had also not placed any reliance upon any judgment or award filed by the parties. In view of the Constitution Bench Judgment of the Supreme Court in the case of **Cement Corporation of India Ltd. Vs. Purva and Others,** (2004) 8 SCC 270, the approach of the High Court was found to be lacking in law and High Court was required to look into these sale instances for determining the market value of the acquired land and even the contention of the counsel that sale deeds were liable to rejected in face of Section 51A of the Land Acquisition Act was also rejected. The Supreme Court further stated that claimants themselves filed Xerox copies of the sale deeds and they could not be permitted to resile therefrom and contend that these documents should be totally ignored.

(b) The notification issued by the Union of India determining the circle rate of the land in Delhi was held to be not a correct guide for determining the fair market value of the land at the time of acquisition and in fact the counsel conceded that notification issued by Union of India could not have been solely relied upon by the High Court for determining the market value of the land.

(c) DDA had got no opportunity to raise any contention as to why the sale brochure should not be considered as a determinative criterion for the purpose of fixation of market value of land in question particularly when housing scheme for Rohini for which the land was acquired was floated by the DDA i.e. the agricultural land was to be converted into a developed

land and the High Court was not right in basing its conclusion quite strongly on the brochure.

(d) The Supreme Court also stated that while adopting the method of determining the market value of the land on the basis of value stated in the brochure after deducting 60% value on account of development, the High Court committed manifest error as the market value of fully developed land cannot be compared with wholly undeveloped land although they may be situated at a little distance.

(e) Finally, the Supreme Court rejected the contention of the claimants that the value of the land fixed in the year 1961 should be increased by applying the rule of escalation and the market rate should be determined by calculating the increase @12% per annum and remitted the matter to this Court.

Thus, before we proceed to determine the fair market value of the acquired land at the time of issuance of notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act), we may refer to basic facts giving rise to the present appeals.

For acquiring various tracts of land in the revenue estate of Village Rithala in the Union Territory of Delhi, the Government issued four different notifications under Section 4(1) of the Land Acquisition Act

dated 13th February, 1981, 20th February, 1981, 13th March, 1981 and 31st December, 1981. This acquisition was for construction of supplementary drain, sewage treatment plan, remodelling of Nangloi drain and planned development of Delhi.

Vide notification dated 31st December, 1981, the land measuring about 5947 Bighas 18 Biswas was sought to be acquired. In furtherance to the notifications issued, four different awards were made and pronounced by the Collector under the provisions of the Act being Award Nos.4/85-86, 20/82-83, 1/83-84 and 16/85-86. The Land Acquisition Collector divided the entire land into three categories. In Block A, the value was fixed at Rs.10840/- per bigha, in Block B, the value was fixed at Rs.9000/- per bigha and for category of Block C the rate was fixed at Rs.7000/- per bigha with solatium and additional amount, interest etc in accordance with law. Being aggrieved from the award of the Collector, the land owners preferred reference petition under Section 18 of the Act. These reference petitions were disposed of by the learned reference court, which enhanced the compensation and awarded the compensation at the flat rate of Rs.21,000/- per Bigha for all the acquired land without differentiation of categories as made by the Collector. The claimants were also held entitled to additional amount in terms of Section 23(1A) of

the Act at the rate of 12% per annum from the date of notification plus solatium @30% of the market value . The claimants were also entitled to interest as per the prescribed rates. The claimants were still dis-satisfied and they filed Regular First Appeals under Section 54 of the Act. These Regular First Appeals were partly allowed vide judgment dated 4th September, 2001. All the appeals were disposed of and compensation was enhanced to @Rs.67 per sq. yard. (Rs.67,000 per bigha) in relation to three notifications i.e. dated 13th February, 1981, 20th February, 1981 and 13th March, 1981 while for the land acquired vide notification dated 31st December, 1981, the amount was enhanced to Rs.73 per sq. yard (73,584 per bigha). In the judgment, there was typographical error in granting compensation @Rs.95,000 and Rs. 104 per sq. yards, which was corrected by the Order of the Division Bench dated 27th September, 2002. The claimants as well as the State had gone up in appeal before the Supreme Court, which as noticed above, had remitted the matter to this Court vide judgment dated 7th September, 2005. As recorded in the judgment of the Supreme Court, 342 appeals were before the Supreme Court. 179 appeals were filed by the Union of India while 165 were filed by the claimants. Out of these, 244 appeals were listed before the Supreme Court and were disposed of by judgment dated 7th September, 2005 and the cases were

remitted to this Court for decision afresh.

As large number of appeals arising out of four notifications relating to acquisition of land in Village Rithala have been remitted to this Court, with the consent of counsel appearing for the parties and after perusing the record, we had directed that RFA 751/94 titled as **JasrathVs. Union of India** , RFA 232/95 titled as **Hardhian Singh Vs. Union of India** , RFA 198/95 titled as **Ranvir Singh Vs. Union of India**, RFA 889/87 titled as **Sher Singh Vs. Union of India** , RFA 893/87 **Shiv Dhan Singh (Deceased) Vs. Union of India** , RFA 336/90 titled as **Suresh Pal Singh Vs. Union of India** , RFA 144/88 titled as **Ved Prakash Vs. Union of India**, RFA 183/90 titled as **Surat Singh & others Vs. Union of India** , LA APP. 9/2006 **Union of India Vs. Ran Singh & Ors ,** LA APP. 7/2006 titled as **Union of India Vs. Ram Kumar & Others** and RFA 797/94 titled as **Pat Ram Vs. Union of India** and other cases aforestated be listed for final disposal. The records of the trial Court in all these cases were also before us and particularly LAC No.367/93, LAC No. 9/88, LAC No. 50/83, LAC No. 15/86 and LAC No. 62/83. However, with the consent of counsel appearing for the parties, arguments were heard treating the case of Jasrath and Ranvir Singh, Hardhian Sivsh, Sher Singh,

Shiv Dhan Singh, Suresh Pal Singh, Ved Prakash, Surat Singh and the appeals filed the Union of India in LA APP. No. 9/2006 and LA APP. No.7/2006 as lead cases. Besides these, we would be referring mainly to the fact of the case of Jasrath and record of all these cases. The evidence in all these cases relied upon by learned counsel appearing for the parties is available either in RFA 751/94 or in the record of the afore-referred 5 Land Acquisition Cases, which were summoned from the Reference Court.

Now we may refer to the facts of the case of Jasrath. In that case the land of the claimants measuring about 67 bighas 2 biswas was acquired vide notification under Section 4 of the Act dated 31st December, 1981. In furtherance of which, declaration under Section 6 was issued on 16th April, 1984 and the Land Acquisition Collector had made and published his award on 10th September, 1985 being Award No. 16/85-86 and possession of the land was admittedly taken by the Government on 19th September, 1985. While in the case of Ranvir Singh, the concerned claimants were land owners of nearly 48 bigha 9 biswa forming part of Kh. Nos. 44/23 (4-16), 24 (4-16) 85/6 (4-16), 7(4-16), 14/2 (2-2), 15 (5-1) 86/9 (4-16), 10 (4-16) 19/1 (1-2), 86/11 (4-16), 12 (4-16), 18/2/2 (1-16) in the revenue estate of the same village but it was pointed out during

hearing before the reference court that in terms of Section 19 of the Act, the possession of Khasra No.85/6, 7, 14/2, 15, 86/9, 10, 19/1, 86/11, 12 and 18/2/2 was not taken and thus, the award was limited to the land measuring about 9 bighas 12 biswas out of the aforestated land. The claim of the petitioners was allowed by the Collector vide award No.16/85-86 dated 10th September, 1985. The reference court, after taking into consideration, the reference petitions and reply, permitted the parties to lead evidence on the following 3 issues, which were commonly framed in all cases :-

1. What is the effect of the applicability of the provisions of Delhi Land Reforms Act on the market value of the land in suit?
2. To what enhanced compensation, if any, is the petitioner entitled to receive?
3. Relief.

The reference court while enhancing the compensation in Jasrath's case (supra), in turn relied upon the judgment in the case of **Patram Vs. Union of** India LAC NO. 557/93. As noticed by the reference court in its judgment, the petitioner in support of their case had produced 13 exhibits i.e. copies of the sale deeds and copies of the judgment of the court and

they were tendered in evidence as Exhibits A-1 to A-13 while the Union of India also tendered in evidence copies of the sale deeds and judgments being Exhibit R-1 to R-7. None of the parties had examined any oral evidence. With the above evidence on record, the learned reference court had decided the first issue in favour of the petitioner and answered the other issues partly in favour of the petitioners and had enhanced the compensation at a uniform rate of Rs.21,000/- per bigha. The examination of entire documentary evidence as afore-referred clearly shows that the claimants have produced Exh. A-1 to A-3 and A-10 to A-13 which are sale deeds and Exh.A-4 to A-9, which are judgments of the Court. The date, area, value and location of the land, subject matter of these exhibits can be tabulated as under :-

| *Sr. No.* | *Details of sale deed* | *Village* | *Date of execution* | *Value per bigha* |
|---|---|---|---|---|
| 1 | Rs.35,000/- for land measuring 1 bigha in Kh. No.967 (Ex.A1) | Rithala | 9th April, 1981 | Rs.35,000/- |
| 2 | Rs.35,000/- for land measuring 1 bigha in Kh. No.937 (Ex.A2) | Rithala | 15th September, 1981 | Rs.35,000/- |

| *Sr. No.* | *Details of sale deed* | *Village* | *Date of execution* | *Value per bigha* |
|---|---|---|---|---|
| 3 | Rs.49,000/- for land measuring 1 bigha out of Kh. No.1217 (Ex.A3) | Rithala | 27th September, 1981 | Rs.49,000/- |
| 4 | Rs.24,000/- for land measuring 7 biswas in Khasra No.132 (Exh. A.10) | Rithala | 3rd November, 1981 | Rs.68,571/- |
| 5 | Rs.24,000/- for land measuring 7 biswas in Khasra No.132 (Exh. A.11) | Rithala | 3rd November, 1981 | Rs.68,571 |
| 6 | Rs.49,000/- for land measuring 7 biswas in Khasra No.880 (Exh. A.12) | Rithala | 1st December, 1981 | Rs.49,000/- |
| 7 | Rs.35,000/- for land measuring 7 biswas in Khasra No.937 (Exh. A.13) | Rithala | 15th September, 1981 | Rs.35,000/- |

Similarly, the details of the respondent's documents i.e. Exh. R-1 to R-7 can be stated as under :-

| *Sr. No.* | *Details of sale deed* | *Village* | *Date of execution* | *Value per bigha* |
|---|---|---|---|---|
| 1 | Rs.46,000/- for land measuring 4 bigha 12 biswa out of Kh. No.59/15 (Ex.R.3) | Rithala | 28th November, 1981 | Rs.10,000/- |
| 2 | Rs.32,500/- for land measuring 3 bigha 12 biswa out of Kh. No.58/15 (Ex.R4) | Rithala | 05/06/81 | Rs.9028/- |
| 3 | Rs.10,800/- for land measuring 1 bigha 3 biswa out of Kh. No.6/17. (Ex.R.5) | Rithala | 90.2.1981 | Rs.9391/- |
| 4 | Rs.34,000/- for land measuring 3 bigha 3 biswas out of Kh. No.58/14 (Exh. R.6) | Rithala | 17.7.1981 | Rs.10,793/- |
| 5 | Rs.10,800/- for land measuring 1 bigha 3 biswa out of Kh. No.6/19 (Exh. R.7) | Rithala | 09/02/81 | Rs.9391/- |

The Reference Courts mainly relied upon earlier judgments of the Reference Courts and the sale deeds produced by the parties on record except one award given in the case of Trilok Chand Vs Union of India

(LAC 5/86) . In all awards, compensation was enhanced to uniform rate of Rs.20,000/- for three notifications relating to Village Rithala dated 13.2.1981, 20.2.1981 and 13.3.1981 and in respect of the land acquired vide notification dated 31st December, 1981, the compensation was enhanced to Rs.21,000/- per bigha. As already noticed, the claimants had preferred appeals before this Court and the matters are now listed for fresh hearing before the Court in furtherance to the order of the Supreme Court dated 7th September, 2005.

During the pendency of these appeals, the appellants have filed applications under Order 41 Rule 27 CPC read with Section 151 CPC for leading additional evidence primarily by placing the documents on record. We would at the very outset deal with these applications.

**Application under Order 41 Rule 27 of CPC read with Section 151 CPC.**

By the applications under Order 41 Rule 27 read with Section 151 of the CPC prayed that they be permitted to lead additional evidence by placing certain documents on record. The documents referred to in these applications are policy decision of the respondents dated 27.12.1980 in relation to land user and development of Rohini. They wish to place on

record the *Aks Shajra* of Village Rithala, which according to them was produced at the time of hearing of the appeals previously but is not on record, the DDA brochure of the year 1981 relating to Avantika for 'Rohini Residential Scheme' and some other documents, letters or correspondences and they also sought an opportunity to prove the sale deeds, and prayed that the same be read in evidence.

The applications were opposed by the respondents and particularly the DDA. It was argued that in terms of paragraph 129 of the judgment of the Supreme Court in *Union of India vs. Pramod Gupta (Dead) through LRs and Ors. JT 2005 (Vol.8) Supreme Court 203 :* 2005 (12) SCC 1, the applications itself are not maintainable and all these documents are inadmissible and be not read in evidence. However, the authenticity of the documents issued by the DDA have not been questioned.

These objections have to be considered keeping in mind the factual matrix and pendency of these cases before the courts since 1980. The brochure, issued by the DDA was prepared in the year 1980 notifying the applications to be submitted by 31.3.1981 and was on record of the Court. Even the *aks shajra* of Village Rithala was on record of the Court. Though, the site plan/map was exhibited as Ex.A3 but the brochure was not exhibited. When the appeals came up for hearing before the High

Court earlier there were detailed arguments on this document and in fact the judgment of the High Court was substantially based upon the brochure. Again this brochure was the basis of submissions of learned Counsel appearing for the parties before the Supreme Court. The judgment of the High Court was set aside and the cases were remitted for consideration by this Court afresh. There is nothing in the judgments of the Supreme Court, either in the case of *Pramod Gupta (supra)*or in the present cases, which would render this brochure inadmissible in evidence. On the contrary, the observations of the Supreme Court in the order of remittance clearly indicates that the High Court has to hear the matter and consider the aspect pleaded by the appellants on the basis of the brochure but only after providing an opportunity to the DDA to raise other issues in regard to the brochure in question. These two documents which were part and parcel of the record of the Trial Court for last more than two decades have been all through referred by the parties while arguing their respective cases with reference to these documents.

In view of the fact that these documents have been the subject matter of serious discussion by the courts at various stages and parties have acted for all this period taking these documents to be part of the judicial record, it will be travesty of justice if these documents, as argued

by the learned counsel appearing for the respondents, would be held inadmissible and outside the zone of consideration by the High Court. While deciding these applications, the ends of justice would demand that these documents should be the subject matter of consideration by the Court, of course without commenting upon their evidential value and effect on the fixation of the market value of the acquired land at this stage. It is not a case where the parties have acted with neglect or where the parties have not produced the documents which were in their power and possession. These documents had been placed on record right at the initial stages and they were subjected to detailed discussion but were not exhibited. Once the documents are taken on record and parties participate in the entire trial/appeal with reference to these documents, without protest and objection, then they can hardly question the admissibility of such documents, may be its evidential value will have to be discussed in its proper perspective.

The appellants are not establishing a new fact. Additional evidence is a permissive provision and in the event its ingredients are satisfied, the court would normally be inclined to take such evidence and decide the matter rather than denying to decide fully and finally the controversies raised between the parties. In the case of *Sunda Ram vs. Rameshwar Lal*

*AIR 1975 SC 479*, the Supreme Court even permitted additional evidence to be adduced at the appellate stage even by change of the ground of eviction in eviction proceedings. Some delay and non-exhibition of the documents before the Trial Court, *per se*, would not be a sufficient ground to decline the application of the appellants for reading these documents in evidence now, in accordance with law. The evidence sought to be produced/exhibited now is certainly relevant for determining the matters in issue and there is no apparent error on the part of the applicants which in law would disentitle them from making such a prayer before this court. The power of the Appellate Court to take additional evidence, subject to the satisfaction of the conditions, is very wide. The basic purpose is to serve the interest of justice and not to hamper the process of proper determination of respective disputes raised by the parties. Reference in this regard can also be made to the judgment of the Supreme Court in the case of *Jaipur Development Authority vs. Kailashwati Devi AIR 1997 SC 3243.*

It may be noticed that during the hearing of the RFAs in the first round, the appellants had filed CM No. 1419/2000 making the same prayer before the court which was ordered to have been rendered infructuous after passing the judgments. The brochure and map (site plan)

were discussed in the judgments itself.

In our considered view it would be appropriate to allow the application under consideration at least partially. The brochure and *Aks Shajra* for village Rithala (site plan), which were on record of the court and formed part of the record before the Supreme Court and in fact, were discussed in great detail in appeal, are ordered to be exhibited as Ex.X and X1 (P3) respectively.

As far as the other documents are concerned, we do not think that the applicants have been able to show sufficient cause or to satisfy all the conditions in relation to permission for grant of additional evidence except the resolution dated 27.12.1980, which is a document of the DDA furnished by the DDA to one of the claimants by a covering letter dated 12.4.2006. The said letter is the basis for issuance of the brochure Ex.X1. Thus, we would allow the consideration of this document also in accordance with law, as the parties have been given due opportunity to meet the contentions raised on this basis as well as the contents of these documents.

The applications are accordingly disposed of. Rest of the documents i.e. letters and correspondences, would not be looked into by this court for adjudication of any rights.

Before we proceed to discuss the evidence in these appeals, we may refer to the order of the Court dated 21.04.2006 wherein at the very outset of hearing, the scope of hearing these cases afresh was deliberated upon and with the consent of the counsel for the parties, it was directed as under:-

"% 21.04.2006

Present: Mr. Ravinder Sethi, Sr. Adv. With Mr. Vikram Nandrajog for the appellants
Mr. Chander Lal Verma, Advocate
Mr. Gaurav Sarin for DDA
Mr. Sanjay Poddar with Mr. Ramesh Ray for LAC

+ CM No.5332/2006 in RFA 751/1994 (item No. 44)
*

This application has been filed by the appellant/applicant in RFA 751/1994 under Order 41 Rule 23 of the CPC for permission to lead additional evidence. Notice of this application is accepted by the learned counsel appearing for the non applicants. They may file reply their reply to this application by tomorrow with advance copy to the counsel for the applicant.

List this application for arguments on 24.04.2006. In the meanwhile, we require the counsel appearing for the applicant to flag the documents which have been mentioned in the application.
Appeals shown at item no. 6,8,10, 44 to 180, 181 to 211, 212 to 237, 238 to 245, 283 to 295, 334-345, 346-439, 440-448

In all these appeals, arguments have commenced. RFA Nos. 695/95, LAApp. 699-716/2005, 749-75/2005, 732-748/2005, RFA 118/03 and RFA 522/03 which relate to the same notification and acquisition of land in the revenue estate

of village Rithala are listed on 5th September, 2006 and/or on any other date in future. However with the consent of learned counsel appearing for the parties who are present in the court today and arguing other listed appeals, these cases are also directed to be tagged with the present appeals.

The learned counsel appearing for the parties are ad item that in terms of the judgment of the Supreme Court dated 07.09.2005 all the appeals which have been remanded for decision to this court, could be argued while keeping the following admitted position in mind:-

1. This court in terms of paras 21,24, 25, 27, 29, 39 and 41 of the judgment would decide the appeals afresh for determining the fair and reasonable market value of the land in question as on the date of notifications issued under Section 4 of the Land Acquisition Act dated 31.12.81, 20.2.81, 13.2.81and 13.3.81.

2. In terms of the concession recorded by the Supreme Court in its judgment, it is agreed that the notification issued by the UOI determining the circle rates is inadmissible and would not be looked into by this court for determining the compensation payable to the claimants.

3. The photocopies of the sale deeds which are on record in any of the RFAs listed for hearing would be admissible in evidence. However their comparability and evidential value could be examined independently.

4. The brochure issued by the DDA in relation to housing scheme at Rohini which has been referred to in the judgment of the Supreme Court would be looked into by the court subject to orders which may be passed in CM 5332/06 and after hearing the DDA as they are entitled to an opportunity to raise contentions as to why the sale brochure should not be considered to be a 'determinative criterion' for the purposes of fixing the market value.

We also direct the learned counsel appearing for the parties to make their submission in regard to the following observations of the Supreme Court in its order of remand:-

"While adopting the said method, in our opinion, the High Court committed manifest errors. The market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is trite, the nature of the land plays an important role.

Having heard the learned counsel appearing for the parties at some length, we adjourn these appeals for further hearing on 24.4.2006 at 11.30 a.m."

**Location and Potential** :-

Out of the defined criteria for determination of reasonable market value of the land on the date the notification under Section 4 of the Act, location and potential are the essentials. The potential and location of the acquired land is a material consideration which would weigh with the court while making such final determination. This aspect of acquisition proceedings is not to be seen in isolation but has to be examined in light with other factors. It is a pertinent aspect in this process. Prospective use of land or its future potential by itself is not a relevant consideration as stated by the Supreme Court in the case of *Trilochan Singh vs. State of*

*Punjab 1995 LACC 283 Supreme Court.* But the existing evidence of potential and scope of development of that area with reference to the surrounding areas is a relevant consideration. The court would not be able to ignore the effect of surrounding lands being residentially, commercially or industrially developed. This would be an indication as to what use the land is capable of being put to on the date of its acquisition. Due weightage would have to be given by the Court if the surrounding areas of the acquired lands are fully developed and that too in a planned way. The acquisition being for 'Planned Development of Delhi' and particularly when the acquired lands form part of the whole development plan, it is difficult to say that despite the sale deeds describing it as an agricultural land, its potential would be of no consequence.

The potential of the land would include in its ambit the utility, likely output and its user as residential, commercial or industrial. The potential of the land has to be seen as on the date of the notification but the potential of the surrounding land adjacent to the acquired land would have some bearing. Potentiality of the acquired land in terms of future may not be very relevant but it must be kept in mind that as on the date of notification do the schemes of development have any provision for acquisition of the land. In the case of *Sarwan Singh and Others Vs. State*

*of Punjab and Others (1975) 1 SCC 284* the Supreme Court while taking a view that post notification sale instances are not very relevant for determination of market value but in regard to the potential and effect of development schemes held as under :-

> "..... It is well-known that once a notification for acquisition is published people start upon various speculations and the future potentiality of the land becomes very important and that affects the price of the land sold in the area sought to be acquired or in close proximity to it and this rise in potential value has a definite connection with the issuance of the notification for acquisition of the land. The sale that takes place after the date of a notification under Section 36, as distinct from one under Section 4 of the Acquisition Act, cannot be taken as a reasonable guide for determination of compensation under Section 23 of the Acquisition Act as amended by the Improvement Act. The Tribunal has, therefore, not adopted any unreasonable principles in ignoring the sales that have taken place after the date of notification under Section 36."

Similar view was also expressed by the Supreme Court in the case of *The Special Land Acquisition Officer, Karnataka Housing Board & Ors Vs. P.M. Mallappa & Ors JT 1997 (4) SC 191* wherein the Court held as under:-

> "5.....The potential value shall be determined for the land existing as on the date of the notification and not after subsequent developments have taken place."

Signifying the importance of potential factor in determination of the

market value, a Division Bench of this Court in the case of *Sh. Prabhu Dayal, (deceased by LRS) and others Vs. Union of India, New Delhi and another AIR 1984 DELHI 406* held as under :-

> "Potentiality is also a true element of the market value . The value of the land has to be determined in its actual condition at the time of expropriation with all its existing advantages and with all its future possibilities. The land in question has potential value as building sites. There is not the slightest reason for not giving to the owner the benefit of potential value."

Future user by itself in terms of judgment of the Supreme Court in the case of *Rajashekar Sankappa Taradandi and Others Vs. Assistant Commissioner and Land Acquisition Officer and Others (1996) 9 SCC 642* may not be of great significance but while determining the market value of the land, potential and location of the land, which would obviously include the effect of surrounding developed areas adjacent to the acquired land as well as declaration of development activities on the acquired land will have to be looked into by the Court.

The location of the acquired land is another important aspect. What is the location of the land, it is surrounded by what kind of land, whether there are roads or not and to what use the land could be put as part of the general development of the area would need to be examined by the Court during such proceedings. In the present case, the counsel appearing for

the appellants have heavily relied upon the Zonal and Master Plan of 1962. These were the development plans, which have the force of law under the provisions of Delhi Development Act, notified by the authorities in the year 1962. According to the appellants, the area of Village Rithala was part of low and medium density residential user. In fact the villages and area beyond Rithala was also shown to be a residential area and was part of the larger development scheme of Delhi. They have also relied upon a resolution passed by the DDA on 27th October, 1980 vide which the acquired area of 2497.30 hectare was stated to be taken for development in different stages within 5 years. This scheme was named as "Rohini Residential Scheme, 1980" and the purpose was to build houses for weaker sections of the society. In the Zonal plan, the area that has been shown to be covered under Block H-7 and H-8 of the Master Plan in the North-West Delhi was the area covered under the resolution of the DDA. The area under Zone H-7 and H8 is stated to be the area covering villages of Mangolpuri and Rithala. The Master plan and the Zonal plan show that the acquired area is part and parcel of larger developed residential scheme floated by the DDA. The plans were notified in 1962 and the resolution was passed in the year 1980 i.e. prior to acquisition of the land.

In the resolution itself it has been stated that site has a great advantage of existing Haiderpur Water Treatment Plan and Rithala Sewage Treatment Plant. Under the brochure, applications were invited under the "Rohini Residential Scheme" for different categories being Janta, LIG and MIG. In this brochure besides providing the terms and conditions for such allotments, it was stated that the applications should be submitted prior to 31st March, 1981. The rates for such allotment were varied from Rs.100 per sq.mtr to Rs.200 per sq.mtr. In the Map shown in this brochure, the area of revenue estate of Village Rithala has clearly been shown abutting the roads leading from Wazirpur Industrial Area and Ashok Vihar to Nangloi drain. As per legend of brochure, which we have exhibited as Exh.X, the area have been shown to be commercial, industrial, residential and recreational. The area of Rithala Village is covered under the residential user. This brochure Exh. X was issued by the DDA, after the resolution was passed and terms and conditions were finalised, inviting applicants to file their applications by 31st March, 1981. A Map showing the revenue estate of Village Rithala also shows that the acquired land is surrounded by different villages.

Of course, as per the sale deeds placed on record by the parties, the effect of which we will shortly discuss, there is no other evidence led by

the claimants to show the user and potential of the land. The result of the above discussion is that the acquired land was an agricultural land but had a great potential. It was to be put to residential scheme as per the plan declared in the year 1962 and the resolution of the authorities passed in the year 1980. The surrounding areas have already been developed and this fact is sufficiently established by the documentary evidence on record of this file. Notifications issued under Section 4 of the Act for acquiring the land in question was for a purpose "Planned development of Delhi". The exact public purpose as stated was for widening of the Nangloi Drain and construction of water sewage treatment plant at Rithala. This acquisition in question, thus, was for completing the development project and was not for the purpose dehors the residential scheme. In the resolution describing the location, which ultimately forms part of the brochure, it is described as under:-

> "F.-**LOCATION** :
>
> The project AVANTIKA is bounded by G.T. Karnal Railway Line on one side, Mangolpuri Resettlement Colony on second side. Outer Ring Road on the third and 1981 Delhi Urban Limits on the fourth side.
>
> This pocket is loargely unacquired, generally flat with some local pits, mostly fertile, approacheable by three major roads namely – Outer Ring Road with R/W of 60

mt., road connecting Naharpur and Rithala Village with a R/W of 68 Mt., and third road connecting Mangolpur Kalan and Mangolpur Khurd with 30 mt. R/W. Buses are already plying on these roads."

Thus, it can safely be concluded that the land in question had a declared potential and user as residential and its location was near the roads of the developed areas in accordance with Master and Zonal Plans of Delhi.

**Determination of market value of the land** :-

The criteria and methodology for determining the fair market value of the land at the time of acquisition of the land has been stated with great elaboration by the Supreme Court in *Union of India vs. Pramod Gupta (Dead) through LRs and Ors. JT 2005 (Vol.8) Supreme Court 203* : 2005 (12) SCC 1. Even in the order remitting the appeals to this court the Supreme Court has referred to the relevant factors which are to be taken into consideration for determining the market value as stated in the case of *Viluben Jhalejar Contractor (Dead) by LRs vs. State of Gujarat (2005) 4 SCC 789,* and has stated that the provisions of Section 23 of the Land Acquisition Act, 1894 are the precepts for determination of the fair market value of the land. These precepts have been elucidated and explained by

the Supreme Court in its various judgments. The matters to be taken into consideration as well as the matters to be included in determining the compensation have been stated under the provisions of the Act. It is not necessary for us to go into any greater detail of this aspect. The potential, location and comparable instances in relation to the acquired land are some of the essential features which would be a relevant consideration in finally determining the market value of the land. Comparability must be understood and construed in its wider scope and not in a limited manner. Its relevancy must be determined in regard to the time, location, potentiality and quality in application of other general principles applicable to acquisition of the land (*Krishan Singh and Ors. vs. Haryana State through Collector 2000 (3) PLR 162).* In the case of *Viluben Jhalejar Contractor* (supra), the Supreme Court while referring to the relevant factors to be considered in regard to comparable instances of sale of lands stated that its proximity from the time angle as well as the situation angle can be considered and suitable adjustments be made having regard to various positive and negative factors. These positive and negative factors were stated in paragraphs 20 and 21 of that judgment which read as under:-

"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 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-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

| *S.No.* | *Positive factors* | *S.No.* | *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-a-vis land under acquisition | (vi) | Some special disadvantageous factors which would deter a purchaser |

| *S.No.* | *Positive factors* | *S.No.* | *Negative factors* |
|---|---|---|---|
| (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 the 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."

The instances of sale deeds in relation to the land subject to acquisition are the most relevant pieces of evidence for assessing the market value of the land. The awards/judgments of the court in relation to the acquired land as well as the surrounding lands are again relevant pieces of evidence. Once these two material evidences are available on record, it is not necessary for the court to travel beyond this evidence to determine the market value of the acquired land. The Supreme Court while dealing with the present cases *[Ranvir Singh & Anr. vs. Union of India 123 (2005) Delhi Law Times 252 (SC)]*, stated that the market value of a fully developed land cannot be compared with a wholly under-developed land although they may be adjoining, and the prices indicated

in the brochure may not be of relevant consideration. The Court further held as under:-

> "Furthermore, it is well-settled that the sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. [See *Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Others, VIII (2001) SLT 498 = (2002) 10 SCC 570].*"

The learned counsel appearing for the Delhi Development Authority (for short 'DDA') as well as for the Land Acquisition Collector (for short 'LAC') vehemently argued that the brochure relied upon by the applicants is irrelevant and cannot be looked into by this court while determining the fair market value of the land. In fact, according to them this document is inadmissible. Some of these contentions have already been rejected by us while dealing with the application filed by the applicants in this Court under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for additional evidence. Furthermore, it will be unjust not to take this document into consideration as it has already been noticed above that the document was filed in the Trial Court, though not exhibited. Previously, the judgment of the High Court was entirely based upon this brochure and this brochure now exhibited as Ex.'X' has

been the subject matter of detailed discussion even before the Supreme Court. The Supreme Court has remitted the matter to this court primarily on the ground that the DDA had no opportunity to raise any contention as to why the sale brochure should not be considered as a determinative criterion for the purposes of fixation of the value of the land in question. Now, to say that this document cannot be referred to or be taken into consideration by the court would be impermissible. As per the order of the Supreme Court itself, the document has to be looked into and the DDA has been given the right to make its submissions in that behalf. Whether the value stated in the brochure can be a 'determinative factor or criterion' for fixing the market value of the acquired land or not is one question but the other question is whether the brochure Ex.X can be looked into by the Court at all or not? The learned counsel appearing for the respondents while relying upon the case of *Pramod Kumar Gupta (supra)* as well as *State of Haryana vs. Joginder Singh JT 1997 (2) SC 102* and the order of remittance of these cases to this court argued that the fully developed lands cannot be compared to the agricultural lands for determining the fair market value.

Having heard the learned counsel appearing for the parties at some length on this aspect of the matter, we have no hesitation in coming to the

conclusion that the brochure Ex.X cannot be treated as a determinative factor for determining the fair market value of the acquired land at the relevant time but it certainly is a relevant piece of evidence, which the court would have to examine particularly in relation to potential, location and other aspects. It would also be a relevant piece of evidence to show what kind of prices were prevailing in the adjacent areas which were fully developed and that the land in question had been acquired for completing the larger residential scheme of Rohini by providing essential amenities i.e. sewage system, drainage and water treatment plant. Thus, Ex.X cannot be excluded from the zone of consideration for ultimately deciding this issue. As far as the respondents are concerned they can hardly deny the said document and all that has been argued on behalf of the respondent is that it is a price of a developed area and thus is not comparable as it includes various elements of costing. Both these submissions are factually correct but as already noticed this document is a desirable indicator in relation to various factors essentially to be considered by the court in terms of the above judgment. Therefore, Ex.X has to be looked into and treated as a relevant piece of evidence but certainly not a determinative evidence for fixing the market value of the land in question and particularly when other direct evidence by way of

sale instances and judicial pronouncements in relation to the acquired land itself are available on record.

Learned counsel appearing for the appellants vehemently argued that the brochure Exh. X and x-1 and resolution dated 24th December, 1980 have to be taken into consideration and the market value of the land should be determined on that basis after deducting development charges. In the alternative, his submission is that the compensation payable to the claimants should be determined on the basis of the sale deeds and without deducting any charges on account of development as the areas including the acquired land is part and parcel of larger scheme of development. It is also the contention of the appellants that the land has great potential including residential potential, which itself is required to be considered as one of the basic ingredients. In support of his arguments, the counsel has relied upon the judgment of the Supreme Court in the case of **P. Rama Reddy & Another Vs. Land Acquisition Officer** 1995 (2) SCC 305 where the Supreme Court after elaborate discussion had framed 8 questions. The relevant two questions being question Nos. 1 and 4 reads as under :-

(1)Whether the building potentiality of a land acquired under the LA Act requires to be taken into consideration in determining its market value,

and if so, how has that to be done?

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

The Supreme Court answered the aforesaid questions as follows :-

> "12. Hence, whether the acquired land has building potentiality or not while has to be decided upon reference to the material to be placed on record or made available by the parties concerned, the market value of the acquired land with building potentiality, is also required to be determined with reference to the material to be placed on record or made available in that regard by the parties concerned and not solely on surmises, conjectures or pure guess.
>
> 17.....Then the market value of the acquired land has to be determined with reference to the value fetched by sale of small plots by making allowances for various factors, such as loss of land required out of the acquired land to be used for roads, drains, parks, the expenditure involved in forming the layout, waiting involved in sale of plots and several other factors which will necessarily reduce the wholesale price of the acquired land. Thus, how far the value fetched by sale of small extents of lands could form the basis for determining the market value of the acquired land has to inevitably depend upon the allowances to be made for factors which distinguish the acquired land from the plots of land sold and the sale value of which is relied upon as the basis for determining the market value of the acquired land."

While answering the question as afore-noticed, the Supreme Court observed that the relevant date envisaged under Section 4(1) of the Act for determining potential is the date of notification despite whether the

land was agricultural, horticultural or was even barren or waste land on that date if had the possibility of being used immediately or in near future as the land for putting up the residential, commercial, industrial or othr building purpose, would be regarded as land having building potentiality. Potential has to be fixed on the basis of the evidence. Prices fetched by sale of building plots, which may become available in an undeveloped layout of building plots situated in the vicinity of the acquired land with building potentiality would certainly have effect on the potential of the acquired land.

The claimants also claim that the smaller plots in the same vicinity can be made the basis for fixation of rate for larger area acquired and there is no prohibition in law. The Court is required to fix reasonable and fair market value in terms of Section 23 of the Act and for this purpose they have placed reliance on the judgment of the Supreme Court in the case of **Ravinder Narain & Another Vs. Union of India** (2003) 4 SCC 481.

The potential of the land as on the date of acquisition is a relevant factor and in some cases could form major basis for considering the claim of the claimants. The development charges would be deducted only for

compensation being granted for a developed land and the Court has to take into consideration the future potential on account of its location. In this regard, reliance has been placed upon the judgment of the Supreme Court in the case of **Hasanali Walimchand (dead) by Lrs. Vs. State of Maharashtra** (1998) 2 SCC 388 where the Court held as under:-

"6. The High Court has noticed in the impugned judgment and order that the "location" of the land indicates that it has building potential but fell into an error in ignoring that factor by observing :

"There is no record of any income being received by any of the landowners. These lands must, therefore, be valued as agricultural land with no potentiality whatsoever in the foreseeable future."

7. We are unable to find any justification for such observation and finding. The above finding of the High Court is contradictory to the earlier finding based on the location of th land. It is no doubt correct that the reference court was influenced by sale transactions in respect of developed land and it failed to make any deduction for development of land while enhancing the compensation, but the High Court fell into error in ignoring the future potential of the land in question and instead resting its finding as realized potential only. The evidence on the record clearly establishes that the acquired land did have future potential on account of its location. It is not denied that the area around the city of Ahmednagar is fast developing and the land in question was located only at a short distance of about one and a half miles from Ahmednagar town."

The Learned counsel appearing for the respondents on the other hand with equal vehemence argued that the rates in the developed area cannot be compared to the agricultural land even if the acquired land is located adjacent to such developed land. In this regard, reference has

been made to the case of **Bhim Singh(supra),** as referred even in the order of the Supreme Court remitting the cases to this court as well as in the case of **Satpal and Others Vs. Union of India** AIR 1997 SC 3882 . It is also an argument on behalf of the respondent that the sale deeds tendered in evidence by the claimants are inadmissible in evidence and in fact should be termed as notorious sale deeds as per the judgment of the Supreme Court in the case of **K. Posayya & Others Vs. Special Tehsildar**, (1995) 5 SCC 233 If at all for the sake of arguments and in alternative his submission is that if sale deeds are taken to be admissible and are looked into by the Court then they cannot be said to be of any potential for buildings or other purposes. It was an agricultural land and it should be paid in terms of agricultural land alone. According to the counsel, the valuation of agricultural land differ from that land used for house sites and the smaller plots are not a useful guide for determining price of a larger track of land and in all such cases for determining the value of agricultural land, deduction should be made in respect of development expenses etc. at varied rates. He also contends that the high potential of the acquired land cannot per se entitle it to be claimed as developed land and the deduction to the extent of even 1/3rd should be

made. In support of this contention, reliance was placed upon the judgments of the Supreme Court in the case of **Land Acquisition Officer, Kammarapally Vilage, Nizamabad District, A.P. Vs. Nookala Rajamallu and Others** (2003) 12 SCC 334 and **V. Hanumantha Reddy (dead) by Lrs. Vs. Land Acquisition Officer & Mandal R. Officer** (2003) 12 SCC 642.

Having noticed the various judgments of the Supreme Court in regard to criteria and principles, which would control the fixation of market value of the land on the date of acquisition now we may revert to the facts of the present case. The appellants have heavily relied upon Exh. X i.e. Brochure and their contention is that the market value of the land should be assessed on that basis after making such deduction as may be reasonable in consonance with the various judgments of the Supreme Court.

We have discussed in great detail that Exh. X and Exh.X-1 even read in conjunction with Resolution dated 24th December, 1980 are relevant factors for determining the potential, location and as a guiding factor to the value of the surrounding land to the acquired land. This by itself cannot be treated to be a determinative factor for awarding

compensation to the claimants. In fact for varied reasons, we would decline to fix compensation on the basis of this brochure. Firstly, the claimants have failed to lead any supporting evidence in that behalf. No witness has come and stated that the acquired land is identically situated and has the same facilities like the land covered under Exh.X. Further there is no direct evidence of comparable lands and/or the land having identical potential to the land covered under the scheme. Onus of this kind was certainly upon the claimants and they have failed to discharge their onus in this regard. Secondly, the valuation fixed by this Court on the basis of Exh.X in its earlier judgment dated 4th September, 2001 has already been set aside by the Supreme Court with specific observation that the High Court had fallen in error in fixing the market value of the land on the basis of Exh.X. Thirdly, in various cases the Supreme Court has already stated the law that compensation of an undeveloped land cannot be decided on the sole basis of the rates relatable to the developed land, particularly when other evidence is available on record.

Besides the fact that Exh. X cannot be taken to be a determinative evidence for fixing the market value of the land but it is certainly a relevant piece of evidence which the Court would have to look into while determining the controversy between the parties from the point of view of

potential, location and effect of prevalent price of developed land surrounding the acquired land. With these observations, we would reject the plea of the claimants that compensation should be determined exclusively on the basis of Exh. X.

The sale instances of the acquired land are best piece of evidence, which would be considered by the Court. In the present case, we have sale deeds, which have been produced by the claimants as well as the respondents on the record of various cases and particularly in LAC No.367/93, LAC No. 9/88, LAC No. 50/83, LAC No. 15/86 and LAC No. 62/83.

PW-1 Jai Bhagwan was in fact one of the claimants, who stepped into the witness box in LAC No.50/83 (RFA No.889/87). This witness had stated that he had brought the original sale deed executed by the seller in his favour. The sale was in respect of 1 bigha of land forming part of Kh. No.1147 Village Rithala on 4-11/4/1980. The sale deed was exhibited as Ext. PW1/1. In his cross-examination he stated that there was no other land in Village Rithala except 1 bigha, which he had purchased. The learned Reference Court vide its judgment dated 1st September, 1987 on the basis of this evidence, awarded a compensation for the acquisition of land vide notification dated 20th February, 1981

@Rs.20,000/- per bigha with all other benefits. This judgment of the reference Court was subsequently followed by other Reference Courts and while following the same, same compensation for the earlier two notifications was awarded while for the notification relating to December, 1981, the compensation was enhanced to Rs.21,000/- per bigha. These orders were passed by the Reference Court on 1st August, 1994 in LAC No. 557/93 titled as **Patram Vs. Union of India** and on 24th October, 1992 in LAC No. 290/90 titled as **Udey Chand Vs. Union of India**. However, in the case of **Trilok Chand Vs. Union of India**, LAC 5/86, the learned Reference Court differed from its own view and held that compensation payable to the claimants should be Rs.10,800/- per bigha as granted by the Collector. However, in all these references, the judgment of the Reference Court in Patram case appears to be most elaborate wherein the claimants had filed 13 documents, which were the sale deeds and judgments and were exhibited as Exh. A-1 to A-13 while the respondents had filed the sale deeds and judgments, which were exhibited as Exh.R-1 to R-7. After considering the entire evidence on record, the reference Court held as under:-

> "However, I am not inconfirmity with the findings given in these two judgments rather the earlier judgment

passed by Shri S.R.Goel, A.D.J. Ex.A4 and A5 and also that of Sh. Padam Singh, A.D.J. Ex.A6 and also passed by Sh.H.R.Malhotra, A.D.J. as Ex.A9 whereby the market value of the land of Village Rithala was fixed @ Rs.20,000/- per bigha seems to be a better guideline for me to be adopted having the date of notification Feb. 1981. Even otherwise, the few sale transactions which are the highest which have been relied upon by the Petitioner, though which are not the representative sale price of the land in dispute; after applying the various factors which were laid down by the Hon'ble Supreme Court in the case which was discussed earlier (AIR 1988 SC-162) if 40 to 50% deduction is made on account of development expenses etc. in that case also, the fair market rate of the acquired land of village Rithala during Feb. 1981 would arrive at around Rs.20,000/- per bigha.

Relying upon the judgment of Sh.S.R.Goel, A.D.J. Sh.H.R.Malhotra, A.D.J. and Shri Padam Singh A.D.J.Ex.A4, A5, A6 and A9 since market value of Village Rithala during the month of Feb.1981 was fixed at Rs.20,000/- per bigha and in this case the award No.16/85-86 since the date of notification U/s 4 of the Act was 31.12.81 as such, I find force in the arguments of the Ld. Counsel for petitioner that a reasonable increase has to be given for arriving at the market value of the land of Village Rithala during that period. The Ld. Counsel for the petitioner has relied upon a judgment of our own High Court Richhpal and another Vs. UOI RFA No.289/1990 judgment dated 8.4.87 wherein our own Hon'ble High Court was of the view that keeping in view the continuously rising trend of the prices of land in Delhi which has never reversed, an increase of Rs.1000/- per bigha per year represents the very minimum conceivable rate of increase in the price of land in Delhi.

Keeping in view the discussion made above, I am of the considered view that the fair market price of he land in dispute of Village Rithala at the time of notification U/s 4

of the Act dated 31.12.81 should be Rs.21000/- per bigha and accordingly, the market value of land of Village Rithala for the land acquired vide Award No.16/85-86 is fixed @ Rs.21000/- per bigha. This fair market value of the land of Village Rithala has been fixed without any differentiation being made as to the category of land into A,B, and C etc. which was made by the L.A.C. In his award. Keeping in view the observation made by the Hon'ble Supreme Court in the case finding citation in AIR 1982 Supreme Court page-940 and also in view of various other judgments of our own High Court whereby the categorisation of land for fixing the market value of the land was disapproved. Keeping in view the fact that the land was acquired for the same purposes. The reference is that connection can also be made to the judgment of Hon'ble Supreme Court Nand Ram and Another Vs. State of Haryana Civil appeal No.3147 of 1988 dt. September 6th 1988 wherein it was held:

> *" The State cannot refuse to pay in respect of land acquired under the same notification compensation at the reasonable market value reflected in the compensation awarded to the land owners whose similarly situated lands had been acquired under the same notification for the same purpose by the notification of the same date."*

In view of the discussion made above, the petitioner is entitled to receive the compensation for his acquired land at the rate of Rs.21000/- per bigha irrespective of the categorization made by the L.A.C. for his all acquired land and this issue is decided accordingly.

The Supreme Court in its judgment in the case of <u>*Ranvir Singh &*</u>

*Anr. vs. Union of India 123 (2005) Delhi Law Times 252 (SC)* while remitting these appeals to this court had specifically observed and in fact. which is one of the reasons for remanding the cases, that the court had not considered the sale instances brought in evidence by the parties on record and had entirely relied its findings on Ex.X. The Court in order to determine the fair market value of the land have to take the sale instances as basic evidence to resolve this issue. The various judgments of the Reference Court, which were brought on record are exhibited as Exs.A4 to A9 and Ex.R1 and R2. Most of them have already been referred by us and even findings have been reproduced above. But all these awards are subject matter of various appeals before this court, as such they can hardly be treated as judicial instances which would be admissible and would provide the required guidance to the court for determining the market value of the acquired land. Coming to the sale deeds produced by the claimants, they are exhibits A1 to A3 and exhibits A10 to A13. As far as Exs. A2 to A13 are concerned, they would not fall within the ambit of zone of consideration of evidence by the court as they are post-notification in reference to the first three notifications issued. Of course, Ex.A2 to A11 and Ex.A13 are prior to the last notification dated 31.12.1981. Ex. A10 to A12 relate to the sale of only 7 biswas of land in

Village Rithala between 3.11.1981 to 1.12.1981. These are two small pieces of land sold vide these sale deeds and they are reflecting a very high price. These sale deeds, thus, cannot be treated as bonafide sale deeds for such determination. In the case of *Ranvir Singh (supra),* the Supreme Court specifically observed that small pieces of land particularly isolated sale deed showing very high prices would not be a just and fair basis for determining the market value of the land, even if it relates to adjacent lands. Even on the basis of the sale deeds produced by the petitioners these exhibits do reflect a very high price within a very short time. While Ex.A1 relates to April 1981, the other exhibits relate to September to November 1981, but the price difference is approximately Rs.35,000/- to more than Rs.72,000/- per bigha. No evidence has been produced by the claimants for showing this high increase in the land prices within such a short period. In these circumstances and also keeping in mind the fact that there is other evidence available on record, we hold that Exs.A2, A3, A10 to A13 are liable to be ignored by the court for the above reasons. Ex.A1 is a reliable piece of evidence. This sale deed was executed on 9.4.1981 wherein one bigha of land was sold for a sum of Rs. 35,000/-. This sale deed is nearly 7 months prior to the issuance of the last notification vide which large acquisition was made i.e. Notification

dated 31.12.1981 in relation to acquisition of 5947 bighas and 18 biswa. It may also be stated that vide Ex.A2, one bigha of land in different khasra number in the Village Rithala itself was again sold on 15.9.1981 for a sum of Rs. 35,000/-. This shows the genuineness of this transaction. Both these sale deeds, in terms of the judgment of the Constitutional Bench of the Supreme Court are admissible in evidence. Their evidential value could also not be ignored as 1 bigha of land is not sale of such a small piece of land and also does not show such high price that in terms of the judgment of the Supreme Court in the case of *Ranvir Singh* (supra), the sale deed should be ignored from the zone of consideration. It is a document admissible as well as relevant for the purposes of determining the market value of the land.

The sale consideration referred to in Exh.A-2, in contradistinction to the price of Exh. A-2 to A-3 and Exh. A-10 to Exh.A-11 is apparently reasonable and cannot be called to be so exorbitant or high price, which would create a doubt to the genuineness of Exh.A-2. In terms of Exh.X and Exh.X-1 read in conjunction with the resolution dated 24th December, 1980, the area had developed. Surrounding land including the land from the revenue estate of Village Rithala, which was acquired in the

year 1961 had been completely developed and applications were invited by the DDA for allotment of plots/flats. This all over development wherein even the acquired land was a part of larger development scheme i.e. "Rohini Residential Scheme" was bound to result in rise of land prices of the unacquired lands. This is truly reflected vide Exh.PW1/1, the sale deed executed on 4-11/4/1980. In comparison to Exh.A-2, the difference and increase in price is approximately Rs.16,000/- per Bigha. Such rise in prices of the land would be expected as by the year 1981 particularly towards the end of the year, the area was being rapidly acquired and the value of the land surrounded by developed land and including all the area the user of which was declared to be residential under the Master Plan/Zonal Plan itself was found to having increased by reasonable proportion. Between Exh.A-2 to Exh.A-10 the difference of price within a short time is tremendously high inasmuch as the land was being sold for nearly Rs.35,000/- per bigha while by that time i.e. in February or March, 1981, three notifications had already been issued, of course not for acquisition of a very larger tract of land.

Learned counsel appearing for the respondents very fairly conceded that Exh.PW1/1 satisfies all the ingredients for admissibility of a sale deed as well as its relevancy and evidential value for fixing the market value of

the land in question. The location, potential and comparability was fully stated by PW-1 in his statement. Thus, it will be safe for the Court to rely upon Exh.A-2 and Exh.PW1/1 for the purpose of determining the fair market value of the land in question. Both these exhibits have been relied upon by the claimants and respondent have no objection to Exh.PW1/1. In our opinion both these documents do not reflect unreasonableness or a very high price of such a small piece of land, which would justify its exclusion from zone of consideration by the Court. On the contrary they would form material and comparable pieces of evidence for determining the fair market value of the acquired land.

The concept of market value of the acquired land has to be determined on the basis of willing vendor and vendee, who are aware of the market value of the land. Potentiality of the land is a relevant consideration and the respondents cannot in fact in law dispel of arguments of the appellants merely on the ground of lack of evidence particularly when the respondents themselves led no evidence or led the evidence, which is otherwise inadmissible or inconsequential in law. The onus to prove the fair market value of the acquired land is primarily upon the claimants but once they discharge their onus by oral or documentary evidence then onus shifts to the respondents. If the respondents are

questioning the genuineness of registered sale deed and intend to call it a sham or a notorious sale deed then it is obligatory upon them to at least place primary evidence on record. None has stepped in the witness box on behalf of the respondent in hundreds' of cases even to say that the sale deed executed by the appellants are sham, they have been executed only to boost the market value, it is collusive act and even in regard to potential and location of the land, this onus to some extent is little heavier on the respondents in the facts of the case and particularly in face of Exh.X and X-1, which have always been on the record of the Court. It is the contention of the appellants that these records were even before the Trial Court though not exhibited at the appropriate stage. The determination before the Reference Court would have a normal consequence of placing onus on parties and primary onus being on the claimants. The Govt. has best evidence in its power and possession i.e. the sale deeds executed in that area, the development plans, the policy of the Govt. in that regard considering the valuation of the land. The concept of onus on parties is equally applicable to the proceedings before the Reference Court. The Supreme Court in the case of **Land Acquisition Officer & Mandal Revenue Officer Vs. V.** Narasaiah (2001) 3 SCC 530 held as under :-

"13 . If the position regarding admissibility of the contents of a document which is a certified copy falling within the purview of Section 57(5) of the Registration Act was as adumbrated above, even before the introduction of Section 51-A in the LA Act, could there be any legislative object in incorporating the said new provision through Act 68 of 1984? It must be remembered that the State has the burden to prove the market value of the lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the State officials it was a burden to trace out the persons connected with such transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51-A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence.

14. The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.

(emphasis supplied)"

The land acquisition is result of state eminant domain. It is a compulsive acquisition and thus it necessarily places an obligation upon

the State to pay the owners of the land, whose lands are taken away by the State, a reasonable and fair market value of the land at the time of acquisition. In the case of **Ravinder Narain (supra)**, (2003) 4 SCC 481, the Supreme Court while making a balance of compulsive deprivation of property and avoidance of undue enrichment held as under :-

> "In the case of Suresh Kumar v. Town Improvement Trust, Bhopal in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded, neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4 (1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into

> consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality."

The Court also accepted the principle that there has to be some guess work in determination of compensation payable to the claimants.

Now we may discuss the evidence produced by the respondents. The respondents have only produced Exh.R-3 to R-7, the sale instances, in support of their case and no other oral or documentary evidence was produced by the respondents. Except R-5 and R-7, all other sale deeds are post notifications and reflect the value, which is even lesser to the value given by the Collector. Thus, these exhibits are not of any material consequences and are bound to be ignored by the Court. As far as Exh. R-5 and R-7 are concerned, they are sale deeds of February, 1981 wherein one Bigha and 3 Biswa of land was sold @Rs.10,800/-. The Collector had awarded compensation@Rs.10,800/- per Bigha for 1981 notifications and as such these sale deeds are really of no help to the respondents in face of provisions of Section 25 of the Act. The cases of the appellants

may be are the cases of lack of material and very cogent evidence in support of their claim but certainly they are not the cases of no evidence. There is documentary evidence as well statement of the witnesses. Exh.A-2 and Exh.PW1/1 can be made the basis for final determination of the land price payable to the claimants. The sale deeds reflect an increasing trend in the prices of the land and even if the increase seems to be on the little higher side, it is just and reasonable to draw mean or average of such sale deed. Application of this principle has been approved by the Supreme Court in various cases. We have already indicated that we do not consider it proper to fix the market value of the land in question on the basis of Exh. X and would prefer to rely upon the sale deeds, which are comparable instances, are relatable to the acquired land and/or the land which is immediately adjacent to the acquired land. In view of Exh. X, Exh.X-1 and resolution dated 24th December, 1980, the potential, location and its being part of larger residential scheme, can hardly be disputed. In our opinion, it will be most appropriate to rely upon Exh.PW1/1 and Exh.A-2 and determine the market value of the acquired land on mean and average of these two exhibits, which in fact are the only relevant and comparable pieces of evidence on record of the

file. Reference can be made to the case of **Smt. Bindu Garg Vs. State of Haryana** 1992 (2) Vol. 122 Punjab Law Reports 794 where application of such principle was approved by the Court and various judgments in that regard were analysed usefully. The following conclusion of the Court could be referred to at this stage :-

> "25. I would consider that the application of principle of averages adopted by the learned Additional District Judge is in consonance with the settled principles of law. It has been repeatedly held that determination of fair market value of the acquired land on the date of notification under Section 4 should be computed on the principle of averages. Reference can be made to the following observations of the judgment of this Court in the case of Union of India v. Dr. Balbir Singh, (1999-2) 122 P.L.R. 613:-
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> > "The petitioners have produced number of sale instances on record, but main reliance has been placed on Ex.P. 20, P.23, P.50 and P.65. These sales are instances of small pieces of land varying from 242 square yards to above 302 square yards. As already discussed above,they are relevant piece of evidence to be considered by the court while determining the amount of compensation. It is a settled principle of law that the claimants would be entitled to take benefit of the sale-deeds proved on record by them, which are otherwise admissible and relevant. The highest value indicated indifferent sale-deeds would certainly be a relevant factor to be considered by the Court. In Ex. P.20 which relates to the period 1982, much prior to the acquisition, land measuring 242 square yards was sold at the rate of Rs.7,80,000/- per acre. Ex. P.50 which relates to June, 1989, immediately prior to the acquisition of the land, has indicated a value of Rs.7,20,000/- per acre. The law

of average would be fairly applicable in such circumstances because the value of the land even as per sale deeds above mentioned have been fluctuating towards decease by a considerable margin during the periods for which the sale-deeds have been produced. In the case of Khushi Ram and another v. The State of Haryana, 1988 L.A.C.C. 653, it was considered by Division Bench of this Court to apply the principle of average to reach at a fair conclusion."

"....The principle that the highest value of the land emerging from the sale instances should be fixed as the market value of the acquired land, was rejected by the Hon'ble Supreme Court in the case of Gulzara Singh and others etc. v. State of Punjab and others, 1993 L.A.C.C. 612. In this very judgment the Hon'ble Court further held that the belting system would again be not appropriate methods of computation and it must be better basedon the principle of average price. It could be relevant at this stage to refer to the following observations of the Hon'ble Apex Court :-

"That highest value should be fixed cannot be accepted in view of the consistent later later view of this Court. In Collector of Lakhimpur's case (supra) this Court accepted the principles of average, but however, rejected the small extent of the lands and enhancement based on the average at Rs.15,000/- per Bigha was reduced to Rs.10,000/- per Bigha. In Smt. Kaushalya Devi's case (supra), this Court noted that large extentof land in the developed Aurangabad town was acquired from medical College, accepted the principle of average worked out by the reference court, varying between Rs.2.25 to Rs.5.00 per square yard and this Court ultimately fixed the market value at the rate of Rs.1.50 per square yards. In Administrator General of West Bengal's case (supra) this court upheld rejection of the small plots of lands and accepted two sale-deeds of large extent working out the average rate at Rs.500/- per

> Decimal and ultimately reference court fixed the market value at the rate of Rs.200/- per Decimal. It is, therefore, clear that the court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and offer comparable base to determine market value. Thereafter the average price has to be worked out. It would be seen that this Court has taken consistent view of working out average and further deduction have been made in fixing just and fair market value when large chunk of the land was acquired. We respectfully agree and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence."
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> While enunciating this principle the Hon'ble Supreme Court quoted with approval the case of The Collector of Lakhimpur v. Bhuban Chandra Dutta, A.I.R. 1971 Supreme Court 2015....."

The determination of the market value of the acquired land, thus, can appropriately be calculated on the above basis. Under Ex.PW1/1, the land was sold @Rs.19,000/- per bigha on 4-11/4/80 while the land in the same village was sold @Rs.35,000/- per bigha on 8th April, 1991. On average, the compensation payable to the claimants would come to Rs.27,000/- per bigha for the notification issued on 31st December, 1981. The claimants, whose land was acquired under notifications dated 13.2.1981, 20.2.1981 and 13.3.1981 obviously cannot get the same compensation as the value of the land has shown increasing trends as per the documents placed by the parties on record, particularly Exh.A-2, A-10

and A-11 as well as Exh. X. Thus, these claimants are entitled to Rs.25,000/- per bigha. If we take the judgment of the Supreme Court in the case of **K. Posayya** (supra) as the base for grant to the claimants an increase on annual basis for the intervening period i.e. 1961 to 1981, they would be entitled to higher compensation than what has been awarded by us in this judgment. However, in the face of the sale deeds on record, we do not wish to compute and grant compensation to the claimants @12% compounding increase on the valuation fixed by the Supreme Court at Rs.7,000/- in the case of Laik Ram (Dead) by Lrs. & Ors. etc.etc. Vs. Union of India (CA No 7168-7171/2002 & other connected matters decided on 8th December, 2005), as awarding compensation by giving an annual increase on percentage is not a universal principle, which can be applied irrespective of the facts and circumstances of the case. On the contrary, the courts have cautioned more than often that this is not a very safe principle which should be applied by the Courts. Further, that this principle can appropriately be invoked only and preferably when there is hardly any evidence before the Court to determine such issue of compensation on merits or otherwise. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Mehtab Singh and others etc. v. State of Haryana,** AIR 1995 SC 667.

This is an appeal (LA App No. 9/2006) ,which has also been listed

before us in relation to notification of Village Rithala where the land was acquired vide Notification dated 24th October, 1961. We need not discuss the merit or otherwise of this appeal as this is squarely covered by the judgment of the Supreme Court in the case of **Laik Ram** (supra) wherein the Supreme Court has affirmed grant of compensation payable to the claimants @Rs.7000/- per bigha and the Regular First Appeals as mentioned in the judgment of the Supreme Court have attained finality.

In view of the afore-referred detailed discussion, we partially allow these appeals of the appellants and hold that the claimants would be entitled to enhanced compensation as afore-referred and would also be entitled to interest, solatium as well as benefit of Section 23(1-A) of the Act in accordance with law.

The appeals are accordingly allowed to the limited extent aforenoticed. The claimants would also be entitled to proportionate costs.

( SWATANTER KUMAR )
JUDGE

( S.L. BHAYANA )
JUDGE

APRIL 26, 2006
SK/VK