

Gyan Chandra Vs. State of U. P.

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Court : Allahabad

Decided On : Dec-10-1999

Reported in : 2000(2)AWC1124; (2000)1UPLBEC813

Judge : P.K. Jain, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4(1) and A, 18, 23, 23(2), 28 and 54; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96 - Order XLI, Rule 33

Appeal No. : First Appeal No. 225 of 1982, Connected with 9 other First Appeals

Appellant : Gyan Chandra

Respondent : State of U. P.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Dhan Prakash, ;R.K. Kakkar, ;S.K. Kakkar and ;M.K. Gupta, Advs.

Judgement :

P. K. Jain, J.

1.In the year 1972-73 the State of Uttar Pradesh acquired 101.7109 acres of land in village Dundhara, Pargana Loni, Tehsil and district Ghaziabad for Industrial Development Corporation for planned development of industries. Notification

under Section 4(1) of the Land Acquisition Act was published on 25.4.1972 and under Section 6 of the Act was published on 6.4.1973. Possession of the land was taken on 1.6.1973. The Special Land Acquisition Officer made its award on 30.11.1976. Market value of the acquired land was fixed at the rate of Rs. 2 per sq. yard. The land owners in addition to the market value were awarded solatium at the rate of 15% per annum and interest at the rate of 6% per annum on the amount of compensation. Besides compensation for the land, compensation for buildings, trees, etc. was also awarded to the land owners. All the land owners in the present appeals felt aggrieved by the award of the special land acquisition officer. They filed applications before the Collector for making reference under Section 18 of the Land Acquisition Act (hereinafter referred to as the Act).

2. In Om Prakash v. State of U . P., First Appeal No. 15 of 1981 arises out of L. A. Reference No. 4 of 1977 in which 2 bigha 3 biswa 10 biswansi land of the appellant was acquired. Smt. Chandra Kanta v. State of U. P., First Appeal No. 16 of 1981 arises out of L. A. Reference No. 6 of 1977 in which 19 biswa land was acquired. Om Prakash and Gyan Chandra v. State of U. P., First Appeal No. 17 of 1981, arises out of L. A. Reference No. 5 of 1977 in which 9 biswa land is involved. Suraj v. State, First Appeal No. 18 of 1981, arises out of L.A. Reference No. 11 of 1977 in which 1 bigha 17 biswa 4 biswansi land was acquired. Mittan Lal v. Stat, First Appeal No. 19 of 1981, arises out of L.A. Reference No. 12 of 1977 in which 1 bigha 1 biswa land is involved. Gyan Chandra v. State of U. P., First Appeal No. 225 of 1999, arises out of L.A. Reference No. 8 of 1977 in which 4 bigha 6 biswa 3 biswansi land is involved. In all the above appeals by separate judgments dated 2.9.1980. The Reference Court/Additional District Judge. Ghaziabad, rejected the reference with costs to the State. Aggrieved by the judgments, the claimants have filed these appeals.

3. In State of U. P. v. M/s. Prem Prakash and others, First Appeal No. 1081 of 1999, arising out of Land Acquisition Reference No. 45 of 1977 total area involved is 10 bigha 9 blswa 10 biswansi. In State of U. P. v. Smt. Saraswati Devi and others. First Appeal No. 627 of 1982. arising out of L.A. Reference No. 190 of 1977 total area involved is 1 bigha and in State of U. P. v. M/s. Shaki Bhatta Udyog. First Appeal No. 655 of 1982, arising out of L.A. Reference No. 7 of 1977

total area involved is 2 bigha 10 biswansi and in First Appeal No. 656 of 1982 arising out of L.A. Reference No. 9 of 1977 the total area involved is 3 bigha 15 biswa 10 biswansi. In these cases also the Special Land Acquisition Officer had awarded compensation at the rate of Rs. 2 per Sq. yard and solatium at the rate of 15% and interest at the rate of 6% per annum besides compensation for building etc. All the 4 references were decided by the reference court by a common judgment dated 18.12.1981. The reference court partly allowed the references and enhanced the amount of compensation for the acquired land at the rate of Rs. 8 per Sq. yard besides enhancing compensation with regard to the existing buildings etc. The State felt aggrieved by the awards made by the reference court and has filed these appeals.

4. Sri M. K. Gupta, learned counsel for the appellants in First Appeal No. 225 of 1982 and First Appeal Nos. 15, 16, 17, 18 and 19 of 1981 (hereinafter called as the First Set of Appeals) and the learned standing counsel for the respondents in First Appeal Nos. 627, 655 and 656 of 1982 and First Appeal No. 1081 of 1999 (hereinafter called as Second Set of Appeals) have been heard at length.

5. In first set of appeals, the submission of Sri M. K. Gupta is that by Notification dated 25.4.1972 land admeasuring 260.9094 acres was acquired by the State of U. P. and even though one award was made by the Special Land Acquisition Officer but there were large number of references under Section 18 of the Act. The Special Land Acquisition Officer had awarded compensation in all the cases at the rate of Rs. 2 per sq. yard on the basis of sale deed dated 28.5.1971 said to have been executed by Ved Prakash and Prem Prakash in favour of U. P. Industrial Corporation whereby 10,460 sq. yard land was sold by the vendor for Rs. 20,812. It is submitted that several references were made under Section 18 of the Act and the reference court dismissed the references as in the Instant case also. It is submitted that a large number of appeals were filed by different claimants. One of such appeal was decided by this Court being Rajendra Kumar v. State of U. P., First Appeal No. 808 of 1984. In that appeal also the reference was dismissed by the reference court and S.L.A.O. had awarded compensation at the rate of Rs. 2 per sq. yard. This Court, however, on reappraisal of the evidence allowed the appeal and awarded compensation at the rate of Rs. 9 per sq. yard and further

awarded interest at the rate of Rs. 9% per annum for a period of one year from the date of possession and at the rate of 16% per annum, thereafter till the enhanced amount of compensation was paid by the respondents. It is also submitted that the decision in First Appeal No. 808 of 1984 so far as the value of the land is concerned, was followed by this Court in First Appeal Nos. 536 and 537 of 1980. It is submitted that S.L.A.O. had held that the land in question had building potentiality but awarded the compensation treating the land involved in these appeals as agricultural land. It is also submitted that the lands involved in the present appeals are almost adjacent to the plots involved in First Appeal No. 808 of 1984 and First Appeal No. 537 of 1980. The learned standing counsel, however, submits that the land involved in these appeals was held by the reference court to have been used for agricultural purposes. There was evidence that the land had pits and, therefore, the compensation awarded by the S.L.A.O. as affirmed by the reference court was adequate. On the question of interest, it is pointed out that the view taken by this Court while deciding First Appeal No. 808 of 1984 was not correct in view of various decisions of the Supreme Court. The interest awarded by the S.L.A.O. as well as by the reference court is in accordance with law. It is also pointed out that the error committed at the time of disposal of First Appeal No. 808 of 1984 has been taken care of while deciding First Appeal Nos. 536 and 537 of 1980.

6. In the second set of appeals, the argument of the learned standing counsel appearing for the appellants is the same as advanced in first set of appeals for the respondents. Sri M. K. Gupta, learned counsel for the respondents has, however, submitted that in First Appeal No. 808 of 1984 and in First Appeal No. 537 of 1980, this Court has awarded compensation at the rate of Rs. 9 per sq. yard. It is further submitted that the lands involved in these appeals had better value for the reasons that admittedly on some part of the lands quarters were constructed, some of which were let out to the labours of industry at the rate of Rs. 15 per month per quarter as rent. Besides this the land in question was being used for commercial purposes and there is specific evidence that the land involved in these cases was either abutting bye-pass road or was very near to it. It is submitted that appeal under Section 54 of the Land Acquisition Act is decided by the High Court as an appeal under Section 96 of the C.P.C. It is next submitted that while fixing

the compensation the reference court has failed to take note of these facts and therefore, the amount of compensation deserves to be enhanced.

7. Before entering into the question of merits of the appeals. It is relevant to mention that the instant appeals have been filed under Section 54 of the Act and are governed by the provisions of Section 96 of the Code of Civil Procedure, 1908 and Order XL1 of the Code. This Court is duty bound to reappraise the entire evidence on record so as to effectively decide the question raised therein. The jurisdiction of this Court is akin to that of the reference court and whatever errors either of facts or law are found in the impugned orders of the Reference Court, the same can be corrected by this Court and the award can be modified. Order XLI of Rule 33 of the C.P.C. provides that the appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. There is, however, restriction of such power of Courts in view of the proviso to Rule 33 of Order XLI which provides that the appellate court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order. Therefore, on reappraisal of the evidence the Court is of the view that even though the respondents have not appealed against the impugned judgment and decree of the reference court, if the material on record warrants, then any order or decree in favour of the party who has not appealed against the Judgment and decree of the reference court may be passed.

FIRST SET OF APPEALS

8. First Appeal No. 225 of 1982 in the application for reference to the Collector the claimants had pleaded that the land is ideally situated being flanked on one by 100 feet wide road and on the other by 300 feet highway with big Industries like public refractories, Rathi Ispat, Rathi Udyog, Rathi Alloys, Rathi Gases, Steel and fasteners and others. It is situate in the heart of the town of Ghaziabad and is of

high value. The applicant had received offers for the purchase of the land at the rate of Rs. 12 per sq. yard and this was the price at which similar land in the locality was being sold and purchased at the time of notification under Section 4 of the Act. The applicant was thus in no case entitled to Rs. 10 per sq. yard compensation for the land in question. In the written statement it was also alleged by the respondents that it is not correct to say that the land in question was flanked by 100 feet wide road and 300 feet wide high way or that any industry was situated nearby or that the land in suit was situated in the hot town of the Ghaziabad city. It was also stated that in fact the land in question was situated on the other side of the main railway line and the land is completely cut off from the town of Ghaziabad. It was being used for agricultural purposes. It had started developing only on account of scheme in question and the compensation awarded by the Land Acquisition Officer was based on the market value of the land at the relevant time. The finding of the reference court in this case is that perusal of the map filed by the claimants shows that the land was situated near Dundehara village and it is also shown near the National highway. The reference court has also observed in its order that the Industries were admittedly about one furlong from the land in question and further that in two references judgments copies of which were filed by the State the references were rejected and the disputed land is near to the land governed by those references. The Court had further held that the State had purchased the land in the proximity of the disputed land at the rate of Rs. 2 per sq. yard and this land was purchased in May, 1971.

9. In First Appeal Nos. 15, 16, 17, 18 and 19 almost similar pleas were taken by the claimants in their applications for references and the respondents in their written statements. The finding of the reference court is also the same as in judgment which is in consideration of First Appeal No. 225 of 1980. In these appeals also the same claim was made by the claimants and the same defence was taken by the respondents. Almost similar evidence was adduced by the parties and the reference court has given the same findings.

10. Rajendra Kumar v. State of U. P., First Appeal No. 808 of 1984 arose out of L.A. Reference No. 32 of 1977. In that case the findings of the reference court were that the lands were agricultural land and has no approach road so this land

could not have been used for any purpose other than agriculture purpose. It was also found by the reference court that there is no high way near the land. Even though during the course of argument learned counsel for the opposite parties admitted that bye-pass road is being constructed near the disputed land and this bye-pass road was not in existence when the Notification under Section 4A(1) was made. On these findings the reference court had held that the compensation at the rate of Rs. 2 per sq. yard is adequate. This Court on reappraisal of evidence had taken the view that on a proper scanning of the entire evidence on record it transpires that such findings stand vitiated by innumerable errors of facts and law both. The Court after scanning the evidence and considering the various decisions of this Court as well as of the Apex Court has recorded the findings that the land in question had building potentiality and was in the vicinity of the Industrial area. The Court had ultimately held that the compensation at the rate of Rs. 9 per sq. yard would be adequate compensation. It has been argued by Sri M. K. Gupta, learned counsel for the appellants during his arguments that a S.L.P. had been filed before Hon'ble Supreme Court against the judgment in First Appeal No. 808 of 1984 which was dismissed. Learned standing counsel though admitted this fact but submitted that a review petition is pending. Copy of the review petition has not been produced before this Court. It is likely that the review petition might have been filed due to fact that in view of the respondents the judgment so far as it relates to the rate of Interest awarded by the Court with the decision of the Apex Court.

10A. The decision in First Appeal No. 808 of 1984 was followed by this Court in First Appeal No. 536 of 1980 decided by Hon'ble S. R. Singh, J., vide judgment and order dated 12.12.1994, in First Appeal No. 536 of 1980 the compensation to the claimants was awarded at the rate of Rs. 8 per sq. yard, on the ground that there was finding of the reference court that this land had no approach road whereas in First Appeal No. 537 of 1980 the compensation awarded was at the rate of Rs. 9 per sq. yard. No. S.L.P. is said to have been filed against this decision. The Court had taken care in awarding the rate of interest which was awarded at the rate of Rs. 6% per annum in view of the decision of the Hon'ble Supreme Court in K. S. Paripurnan v. State of Kerala, (1994) 5 SCC 593, wherein it has been held by the Supreme Court that 'the High Court and the Supreme

Court have powers to give the benefit of the amended Sections 23(2) and 28 retrospectively only in those proceedings where the awards are made by the Collector or the reference court between 30.4.1982 to 24.9.1984.

11. As already pointed out above, the findings of the reference court in First Appeal No. 808 of 1984 werethat the lands involved in that appeal though used for agricultural purposes had building potentiality. In the Instant cases, the findings of the reference court are that the big Industries were situated around one furlong away from the land in question and in some cases even houses were constructed on the contiguous plots. Therefore, the appellants of these appeals are entitled to equal treatment as has been given to the claimants in First Appeal No. 808 of 1984 and First Appeal No. 537 of 1980 so far as the amount of compensation is concerned. Therefore, these appeals are allowed in part with proportionate posts. The appellants are held to be entitled to get compensation to be determined at the rate of Rs. 9 per sq. yard. They are also entitled to Interest on the enhanced amount of compensation, They are also entitled to get solatium at the rate of 15% on the amount of compensation and Interest at the rate of 6% per annum on the amount of compensation from the date on which the possession was taken till the date the amount is paid or deposited in the Court. The amount already paid shall be adjusted.

SECOND SET OF APPEALS

12. These four appeals arise out of the common judgment in Land Acquisition Reference No. 45 of 1977. 100 of 1977, 7 of 1977 and 9 of 1977. In all these cases also the Special Land Officer has awarded compensation at the rate of 2 per sq. yard along with other statutory benefits. The reference court by partly allowing the references enhanced the amount of compensation for acquired land at Rs. 8 per sq. yard besides enhancing compensation with regard to existing building, etc. The State feeling aggrieved by the awards made by the reference court has filed these appeals.

13. Sri S. C. Srivastava, learned standing counsel in support of the appeals has submitted that looking to the situation of the lands, the Land Acquisition Officer had rightly awarded compensation at rate of Rs.2 per sq. yard. That the reference

court has wrongly discarded the evidence of witnesses who have stated that there are deep pits in the land in question. That the reference court has not assigned any reason in awarding compensation at a higher rate and, that value of small pieces of land cannot be taken into consideration for valuation of larger and bigger plots.

14. On the other hand, Sri M. K. Gupta, learned counsel for the respondent submitted that in land acquisition reference cases out of which First Appeal No. 808 of 1984, First Appeal No. 537 of 1980 and First Appeal No. 536 of 1980 arose, the finding of reference court was that the lands were being caused for agricultural purposes. In First Appeal No. 808 of 1984. this Court had found that even though the land was being used for agricultural purposes, it had building potentiality and was having industrial and residential activity near the acquired land and on reappraisal of the evidence this Court had fixed market value of acquired land at the rate of Rs. 9 per sq. yard which was followed in deciding the First Appeal Nos. 536 of 1980 and 537 of 1980. Since in the First Appeal No. 536 of 1980, the finding of the reference court was that the acquired land had no approach road, the compensation awarded was at the rate of Rs. 8 per sq. yard whereas in First Appeal No. 537 of 1980 the compensation was awarded at the rate of Rs. 9 per sq. yard. It is submitted that the lands involved in these appeals were far better situated than the lands involved in above 3 appeals decided by High Court. Referring to the various findings of the reference court, it is submitted that the land involved in these appeals was in some cases abutting National Highway. In other cases, it was abutting bye-pass road and in any case it had approach road at least on 3 sides. It is further submitted that there is specific finding that commercial and residential activities were going on from much before acquisition of the land in these appeals. Submission of Sri Gupta is that the lands involved in these appeals deserve not only equal treatment but also better treatment on the facts and circumstances and the findings arrived at the reference court.

15. At the very outset It may be pointed out that before the Special Land Acquisition Officer, all these claimants had claimed compensation at the rate of Rs. 20 per sq. yard but before reference court they confined their claim to Rs. 10 per sq. yard only. The Special Land Acquisition Officer though observed in the

award that the land in question had building potential, he awarded compensation at the rate of Rs. 2 per sq. yard taking sale deed dated 28.5.1971 executed by claimants Ved Prakash and Prem Prakash for a sum of Rs. 20,812 by which 10406 sq. yard of land was sold. The observations of the Special Land Acquisition Officer in the award dated November 13, 1976 (translated in English) were as follows :

'The area under acquisition is on Howrah-Delhi main double line of the Northern Railway and some of the industries had already been established in its surroundings. This area is adjoining to the industrial areas of Ghaziabad and this area is being acquired for establishing more industrial units. In these circumstances, the disputed land has building potentiality and it is appropriate to award the market value on the special rate of per sq. area.'

16. Sri Srivastava, learned standing counsel has vehemently argued that the exemplar relied upon by the Special Land Acquisition Officer and also by the State before the reference court was rejected on insufficient grounds. This Court while deciding First Appeal No. 808 of 1984 has pointed out various infirmities in the judgments of the reference court and had rejected the sale deed dated 28.5.1971 as an exemplar representing the correct market value of the acquired land of the claimants. The judgment passed by Hon'ble P. P. Gupta. J., in First Appeal No. 808 of 1984 was followed by Hon'ble S. R. Singh. J., while deciding First Appeal Nos. 536 of 1980 and 537 of 1980. As already pointed out above, admittedly S.L.P. filed against the judgment in First Appeal No. 808 of 1984 was dismissed by the Hon'ble Supreme Court. Therefore, it does not lie in the mouth of the State to say that the sale deed dated 28.5.1971 is still the best exemplar.

17. Before the reference court in these appeals also, the State had relied upon the sale deed dated 28.5.1971 executed by claimants Ved Prakash and Prem Prakash. The argument was advanced before the reference court that the award is based mainly on the sale deed of 10406 sq. yard of land executed by Ved Prakash and Prem Prakash claimants in favour of the U. P. State Industrial Corporation. The land appertains to plot Nos. 1300 and 1301-M Village Dundera. That land is adjoined the land in question. Considering the evidence adduced by the parties,

the reference court had observed that :

'Explaining the sale deed Exhibit 8-1 by Ved Prakash by which 10406 sq. yard of land area has been sold to U. P. S. I. D. C. at the rate of Rs. 2 per sq. yard. Ved Prakash stated that land had 9 to 10 feet deep pit because the earth has been taken from the land for making bricks by brick kiln of M/s. Ved Prakash and Prem Prakash and that land was not used by them. U.P.S.I.T.C. Is said to have purchased that land but as they were constructing road linking the G.T. Road and bye-pass and could not have done so without purchasing plot No. 1300 and 1301M. He however, further stated that he sold that land to U.P.S.I.D.C. because by the construction of road his remaining land was also getting connected to the G.T. Road.'

18. In para 17 the reference court had observed that on the other hand, there is evidence of Yogendra Singh D.W. 1 and Ram Dulare, D.W. 2. Yogendra Singh stated that Khasra Plot Nos. 507 and 513 had pits and the land was filled with water in the rainy season.

'D.W. 2 Ram Dulare.....was examined as D.W. 1 has stated that the disputed land has 10 to 12 feet deep pits, and therefore, it was Inferior to the other lands around it and its value did not exceed Rs. 2 per sq. yard. As shown above, there were no pleas in the written statement of the State that there were any pits in the disputed land sufficient to reduce its value. Had it been so the Land Acquisition Officer would have granted lesser compensation for this land and could not have equated it with other lands.....Rani Ashare and Prem Prakash both denied the existence of any pits and there is no reason to disbelieve them. The State has merely examined its clerical staff and no responsible person has been examined. Before taking acquisition proceedings, the land must have been got surveyed and the survey report and the evidence of the surveying officer would have shown the nature of the land, when the possession was taken a report about condition of the property must have been made or there could be a mention in the dakhlanama ; that all these important papers have not been produced. I, therefore, reject the contention that land in question had any pits and was in any way Inferior to the lands lying in its neighbourhood and acquired under the same notification.'

19. Learned standing counsel has, however, referred to the observations of the reference court in para 19 and para 21 and has argued that there was finding of reference court that the disputed land had also pits. The argument of Shri Srivastava is not correct. While referring to the land covered by the sale deed dated 28.5.1971 the reference court observed that Ved Prakash D.W. 3 has explained that they had dug earth from land for making bricks and, therefore, there were 10 to 12 feet deep pits and land was unfit for their use and it was sold to U.P.S.I.D.C. for construction of a road which would increase the value of their land. On the other hand, there is bald statement of Ram Ashare D.W. 1 that the land. Exhibit 1 had pits. No person connected with the purchase of that land has been examined. The sale deed shows that one Sri M. M. Garg, the Executive Engineer of U.P.S.I.D.C. was concerned in the purchase of land. Neither he nor any other officers has been examined. Similarly, the persons who supervised the construction has not been examined to say that the sight was even and had no pits. Admittedly, Ved Prakash and Prem Prakash were running the brick kiln. They must, therefore, have been digging the earth to make bricks. If they did not dig the earth from plot No. 1300 and 1301-M then from where the earth came. The observations of the reference court related to admission of the claimants with regard to plot No. 1300 and 1301-M which they sold through sale deed dated 28.5.1971 and not to the acquired land of the claimants which is involved in the present appeals. The other observations which have been relied upon by the standing counsel are in para No. 21 of the judgment of the reference court and are as follows :

'Another point pressed for the State in service are the 3 Judgments in references about the other lands acquired under the same notification. In these judgments the compensation awarded by the Land Acquisition Officer was upheld as adequate and the references were rejected.'

20. The above observations relied upon by the Standing Counsel are of no avail for the reasons given in the judgment of the reference court itself and for the reason that in earlier first appeals as pointed out above decided by this Court, the sale deed dated 28.5.1971 has not been accepted as proper exemplar for arriving at the market value of the acquired land at the time of the acquisition. Learned

standing counsel has not been able to point out any error in the finding of fact arrived at by the reference court for discarding sale deed dated 28.5.1971 as the best exemplar. Therefore, there is no merit in the first argument of the learned standing counsel.

21. Next submission of learned standing counsel is that large tract of land admeasuring around 200 acres was acquired. The reference court had relied upon sale deeds in respect of smaller parcel of land, which is patent error in the award of the reference court. The reference court has dealt this aspect of the matter at length. It appears that the Special Land Acquisition Officer while awarding compensation for the entire acquired land had observed that the land was being used for agricultural purposes whereas in the instant case, finding of the reference court is that so far as the land of the claimants is concerned, it was being used for residential purposes as well as commercial purposes. There is unrebutted evidence that on plot No. 501, there were 14 pucca quarters which were let out to various tenants who were working as labourers in the industries near the acquired land. They were paying rent at the rate of Rs. 15 per month. On plot Nos. 1230 and 1232, there were another 30 and 90 quarters which were being used for residential purposes by the labourers working in the brick kiln of the claimants. On part of the land brick kilns were there and office building was also there. It was also there that part of plot Nos. 1235 and 1236 were acquired for construction of National Highway. It has also come in the evidence that all the plots involved in the four appeals were almost contiguous to each other. Besides this, there is evidence that Vijay Nagar Colony constructed by the Ghaziabad Development Authority was also half-kilometer away on which existed 500 residential quarters. There is also unrebutted testimony that Abadi of village Dundera was adjacent to the acquired land. These various factors were taken into consideration by the reference court while arriving at the market value of the acquired land. The findings of reference court are recorded in paras 21 and 22 of the judgment which are not shown to be based on no evidence or on misreading of evidence or on inadmissible evidence. The submission which has now been made before this Court was considered by the reference court in para 27 and para 28 of its judgment. In para 27, the reference court has observed as follows :

'On behalf of the State it was contended that large tract of land cannot fetch the same value as smaller plots. This is true. But this does not mean that land, which is capable of being sold in the smaller areas, should be valued at the same rate at which we could find a single buyer for it. In U. P. Government v. H. S. Gupta, AIR 1957 SC 202, the Hon'ble Supreme Court approved a principle of plot-wise valuation of an estate of about 44000 sq. yards situated outside the Municipal area and which was a potential building site. The same method could be applied to the present case and it is unacceptable to evaluate the whole area of 206 acres as a single lot sold in plots of reasonable size, this land was bound to fetch a better price.

As already stated the value of the land cannot be ascertained with precision and some guess work and approximation is permissible. Therefore, looking to the situation of the land its potential value, particularly its potential as regards the acquiring authority the U.P.S.I.D.C. which had its industrial estate in the vicinity and the premium charged by the said authority a year earlier in respect of the lands lying in the vicinity of the land in question and the other material on record. I assess the market value of the land of the claimants on the date of notification 4 (1) i.e., 25.4.1972 at Rs. 8 per sq. yard and I hold that the compensation awarded by the Land Acquisition Officer was adequate and Rs. 8 per sq. yard is adequate compensation for this land.'

Therefore, in the facts and circumstances of the present case the submission of Sri Srivastava, learned standing counsel that the market value of the acquired land has been assessed by the reference court on the basis of the sale deed of smaller piece of land is not correct.

22. On the other hand, Sri Gupta has submitted that the land in question was admittedly being used for commercial and residential purposes and there is ample evidence on the record that the income from the brick kilns was being assessed to Income. His submission is that in these circumstances, the market value of the acquired land was much higher than the land involved in the First Appeal No. 808 of 1984. First Appeal No. 536 of 1980 and First Appeal No. 537 of 1980 which was being used at the relevant time for agricultural purposes. It is further submitted that

even a difference was made by Hon'ble S. R. Singh, J., between the lands Involved in First Appeal No. 536 of 1980 and First Appeal No. 537 of 1980, the land involved in the First Appeal No. 536 of 1980 had no approach road and the claimants were awarded compensation at Rs. 8 per sq. yard whereas in First Appeal No. 537 of 1980 the compensation awarded was at the rate of Rs. 9 per sq. yard. It is submitted that higher compensation should have been awarded so far as the land of the claimants in these appeals is concerned and in any case the compensation cannot be below Rs. 9 per sq. yard.

23. Since in First Appeal No. 808 of 1984 and First Appeal No. 537 of 1980, the compensation for the land acquired has been awarded at the rate of Rs. 9 per sq. yard and the land of the claimants is comparably better situated and was being used for commercial purposes, it would be reasonable that the claimants, though they have not filed any appeal, be given the same treatment which was given to the claimants in First Appeal No. 808 of 1984 and First Appeal No. 537 of 1980. Consequently, it is held that the claimants/respondents in these appeals are entitled to compensation at the rate of Rs. 9 per sq. yard.

24. In view of the foregoing discussions, all the appeals filed by the State of U. P. deserve to be dismissed with costs and in view of the provisions contained under Order XLI, Rule 33, C.P.C., the award passed by the reference court in all the four references deserve to be modified by holding that the respondents/claimants are entitled to compensation at the rate of Rs. 9 per sq. yard.

25. In view of the foregoing discussions, Gyan Chandra v. State of U. P., First Appeal No. 225 of 1982 ; Om Prakash v. State of U. P., First Appeal No. 15 of 1981 ; Smt. Chandra Kanta v. State of U. P., First Appeal No. 16 of 1981 ; Om Prakash and Cyan Chandra v. State of U. P., First Appeal 17 of 1981 ; Suraj v. State of U. P., First Appeal No. 18 of 1981 and Mitthan Lal v. State of U. P.. First Appeal No. 19 of 1981, are allowed with proportionate costs. Appellants shall get compensation for their acquired land at the rate of Rs. 9 per sq. yard. They will also get interest on the enhanced amount of compensation at the rate of 6 per cent per annum and solatium at the rate of 15 per cent on the amount of compensation. The amount already paid shall be adjusted.

State of U. P. v. Smt. Saraswati Devi and Smt. Chandra Kanta. First Appeal No. 627 of 1982 ; State of U. P. v. Shakti Bhatta Udyog and two others. First Appeal No. 655 of 1982 : State of U. P. v. Smt. Saraswati Devi, First Appeal No. 656 of 1982 ; State of U. P. v. Prem Prakash and others. First Appeal No. 1081 of 1999. are dismissed with costs. However, the award passed by the reference court in all these appeals is modified and it is ordered that all the claimants shall get compensation in respect of their respective lands at the rate of Rs. 9 per sq. yard besides other reliefs granted by the reference court. On the amount of compensation calculated at the above rates in each reference an additional sum at the rate of 15 per cent as solatium and interest at the rate of 6 per cent on the amount of compensation from the date on which the possession of the property was taken from them shall also be paid to claimants, The amount already paid shall be adjusted.

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