

Ramdhar Vs. Union of India

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Court : Delhi

Decided On : Aug-17-1978

Reported in : ILR1979Delhi545

Judge : T.P.S. Chawla and; A.B. Rohatgi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 18; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27

Appeal No. : Regular First Appeal No. 13D of 1966

Appellant : Ramdhar

Respondent : Union of India

Advocate for Pet/Ap. : D.R. Dhamija and; R.K. Mehra, Advs

Judgement :

T.P.S. Chawla, J.

(1) The main judgment in this case will be delivered by Mr. Justice Avadh Behari. I agree with the conclusion that he has reached, and, in general with the reasons which he has given. But, on the question of relevancy of various types of evidence for proving the market value of acquired land, I am not entirely ad idem with him. therefore, I must state my own understanding of the legal position. Mr. Justice Avadh Behari has reviewed the case law and no purpose will be served by going

over the same ground. So, I will refer only to those few cases which I think call for comment, leaving it to be understood that as regards the others I agree or disagree with them according to whether they conform with my view or not.

(2) For determining the amount of compensation to be awarded for land acquired under the [Land Acquisition Act, 1894](#), the first thing that section 23(1) requires the court to take into consideration is 'the market value of the land at the date of the publication of the notification under section 4, sub-section (1)'. It is settled by the substantive law that market value must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. There are numerous cases in support of that proposition. The question with which we are confronted is, what is the kind of evidence relevant for determining that notional price

(3) I would start with a more basic question what do we mean by value The best answer that I can find is in Wigmore on Evidence 'When the condto of others indicating the nature of a salable article consists in offering this or that sum of money, it creates the phenomena of value, so-called. For evidential purposes, Sale-Value is nothing more than the nature or quality of the article as measured by the money which others show themselves willing to lay out in purchasing it. Their offers of money not merely indicate the value ; they are the value; i.e. since value is merely a standard or measure in figures, those sums taken in net potential result are that standard.'

(4) The vital proposition which emerges from this passage is that value is created by offers to buy. It does not depend on whether an article is actually sold or not. Of course, if the offer does blossom into a' sale its probative force is considerably enhanced, because thereby the value comes to be agreed upon by two persons who are otherwise in a state of opposition, and does not merely represent the view of one. Relating this to the subject in hand, in the inference follows that previous offers for, or sales of, the acquired land are relevant for determining its market value.

(5) But, more often than not, such evidence in respect of the very land acquired is not available; or, if it is, it turns out to be too remote in time. So, one is compelled

to look for other indications of market value. Immediately the thought arises, can one take into account the value of other lands for this purpose The law of evidence gives a qualified answer, limited by its concept of remoteness. Again, I quote from Wigmore. At page 504 of the same value he says ' . . .the value or sale price of the other property is relevant only when the property is substantially similar in conditions'. The rational basis for this rule is expounded on page 419 as follows :

'THElogical assumption is that by a common cause or causes uniform effects have been produced over a given area, which is thenceforth related to the evidential place as a homogeneous whole to its parts. In practical application, therefore, the requirement is that the two places should be so related that in experience they probably form parts of a homogeneous area including them both ; and in such case the condition or quality of the one place is relevant to show the condition or quality of the other.'

(6) In the United States of America a few courts have apparently taken the view that such evidence is 'irrelevant, improper, and dangerous'. However, on page 505 of the same volume, Wigmore answers their argument and says

'...that since value is a money estimate of a marketable article possessing certain definable qualities, the value of other marketable articles possessing substantially similar qualities is strongly evidential and is so treated in commercial life ; all the argument and protestation conceivable cannot alter the fact that the commercial world perceives and acts on this relevancy.'

On the same page he closes with the observation : 'Except in a few jurisdictions, this class of evidence is received '.

(7) English Law adopts the same approach. Cripps on Compulsory Acquisition of Land (11th edition) says at page 690 ;

'THEprices paid for comparable property in the neighborhood are the usual evidence as to the market value. In addition to the prices paid for similar land a bona fide offer for the land taken should be taken into consideration as evidence of the market value of the land ;.'

The first sentence of this passage occurs verbatim in volume 8 of Halst Airy's Laws of England (4th edition) at page 211. For authority, both these books rely on Vyricheria Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam , where Lord Romar said : In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by 'the market value' in section 23.'

(8) Now, what is the position under the Indian Evidence Act. 1872? Section 5 makes it clear that only those facts are relevant which fall within one of the succeeding sections of that Act. To my mind the provision directly and properly applicable to the category of facts under consideration, is that part of section 9 which declares to be relevant facts 'which support or rebut an inference suggested by a fact in issue or relevant fact'. In a proceeding to determine the compensation payable under the Land Acquisition Act, the fact in issue is the value of the acquired land. Recalling Wigmore's theory of a 'homogeneous area', it follows, that the values of similar lands in the vicinity of the acquired land will 'support or rebut' assertions as to its value by either party to the proceeding. thereforee, the values of other lands in the neighborhood are relevant under section 9.

(9) The next step is merely a development of this conclusion. Since the value of comparable land in the neighborhood is relevant, evidence may be given of any fact from which that value can be deduced. It may be evidence of an offer, and agreement to sell or sale. These are the usual indicia' of value. But, the categories of such facts cannot be restricted or enumerated once and for all- Any fact capable of indicating the value is relevant.

(10) Here, I must pause, to emphasise some well-known, yet ensnaring distinctions. The mode of proof and credibility are matters entirely different to relevancy. They must be kept strictly separate. It may be that a fact, though relevant, is not proved because the mode of proof is defective or the evidence is not credible. That only means that. the fact has not been proved; not that it has ceased to be relevant. The relationship of relevancy, if it exists, is indestructible. Of course, the inferential value of a relevant fact, that is, its probative force, will

depend on all the circumstances and individual opinion. The point I wish to make is, that in discussions about relevancy it is presupposed that the fact under consideration is proved or provable. It is important not to be diverted by collateral arguments as to credibility or the mode of proof. Presently, we are concerned with relevancy, and relevancy alone.

(11) An award made by a Collector under the Land Acquisition Act is of the nature of an offer. The 'person interested' is free to reject it and demand a reference to the court under section 18. Its character of an offer is not weakened by the circumstance that it is made in obedience to a statute. That very statute expects the Collector to make the award on the basis of market value. A private person intending to purchase the land would offer the same, and, perhaps, less. In principle, there seems to be no real difference between the two species of offers as denoting value. therefore, an award made by the Collector in respect of land similar to the acquired land should be as much relevant as any other offer, and, for the same reasons. under the same section of the Evidence Act. How much reliance should be placed on it is a different matter, depending on so many factors. with which I am not at the moment concerned. But relevant it is, whatever be its worth. Naturally, if the award has been accepted without protest, its evidential value is enhanced.

(12) On a reference under section 18 of the Land Acquisition Act, a judgment delivered by the court, whether originally or on appeal, supersedes the award of the Collector. If, as I have tried to show, the award of the Collector is relevant, the judgment which replaces it must be equally relevant. The section of the Evidence Act applicable, should be the same. Further, unlike an award, which a claimant is at liberty to spurn, the judgment of the court is binding on both parties. To that extent the judgment resembles a sale resulting from private negotiations. By analogy, it should be relevant in the same way as a sale for proving the value of the land- Seen in this perspective, also, the judgment will be relevant under the very same provision of the Evidence Act.

(13) It is beyond dispute that, for the purpose we are considering, a judgment is not declared relevant by sections 40, 41 or 42 of the Evidence Act. But, section 43

then follows on to explain that a judgment may yet be relevant if 'the existence of such judgment is a fact in issue, or is relevant under some other provision of this Act'. This section, itself, makes no addition to the relevancy of judgments. It merely elucidates, *ex abundanti cautela*, that the relevancy of judgments under the other provisions of the Evidence Act is preserved nonetheless. So, it is not accurate to speak, as some of the cases do, of a judgment being 'relevant' under section 43. Actually, it will have to be relevant under some other section. It is always admissible if it is a 'fact in issue'. It is also admissible when its 'existence' is relevant under some other specific provision : for example, section 9 of the Evidence Act.

(14) The word 'existence' in section 43 should not be interpreted too narrowly. From the context in which that very word is used a little earlier in section 40, it seems obvious that it does, at least, permit perusal of the judgment preventing the 'Court from taking cognisance of a suit or holding a trial'. Otherwise, how is the court even to know whether the earlier judgment relates to the same matter or not. Hence, when a judgment determining the market value of comparable land is relevant under section 9 of the Evidence Act, the court may read the reasons with the object of ascertaining the weight to be given to the conclusion whilst determining the value of the acquired land. Just as in the case of a sale deed the court examines its terms and the surrounding circumstances to assess its evidential value, likewise it may look at the reasons in a judgment produced in evidence for achieving the same purpose : see *Shivlal Keshavlal Shah v. Addl. Spl. Land Acquisition Officer* (1968) 9 Guj L.R. 752 .

(15) It follows from all that I have said that, in my view, every kind of evidence which establishes the value of similar land in the neighborhood is relevant, for determining the market value of the acquired land, on one and the same principle. This result is perfectly understandable if one remembers that the relevant fact is always the same, namely, the value of the similar land. Whatever be the kind of evidence, whether an offer, an agreement to sell, a sale, an award by a Collector or a judgment of the court, the object is to prove that value. Consequently, all such evidence must be relevant under the same section of the Evidence Act. For the reasons I have already stated, in my opinion, the value is relevant under section 9.

(16) Now, if that conclusion is valid, section 11 of the Evidence Act cannot possibly apply. Granted, that it is a wide section, based on the general theory of probability, and overlaps some of the other sections. Presumably, for that very reason, it is made residuary by the opening words, and applies only to 'Facts not otherwise relevant'. It would, thus, be incongruous to say that a fact is relevant both under section 9 and section 11. Besides, when a fact is found relevant under some other section, where is the need to resort to section 11

(17) The only other section of the Evidence Act which calls for notice is section 13. Two kinds of facts are declared relevant by that section : 'transactions' and 'particular instances', provided, of course, they are of the kinds described in sub-clauses (a) and (b) respectively. There has been much debate in the cases whether a judgment can at all be regarded as a 'transaction' or a 'particular instance'. It is not necessary on the present occasion to enlarge on that problem. I will assume that a judgment is either one or the other, and can qualify for admission under that section. However, as it indicates right at the beginning, the controlling postulate of the section is that there is a question 'as to the existence of any right or custom'. If no such question arises in a case, obviously nothing can be relevant under that section. Conversely, before the section can be invoked, that condition must be fulfilled.

(18) In a proceeding concerned with determining the compensation payable for land acquired under the Land Acquisition Act, no question 'as to the existence of any right' can conceivably arise. The right to compensation is given by the statute, and can never be disputed. The dispute is only about the quantum of compensation. Such a dispute, far from raising any question as to the 'existence of any right', proceeds on the footing that there is a right, and only its money value is in issue. In that situation, the possibility of any fact, albeit a judgment, becoming relevant under section 13 simply cannot arise.

(19) The main case on which counsel for the Union of India based his objection as to relevancy was *Special Land Acquisition Officer, Bombay v. Lakhamshi Ghelabhai* Air 1960 Bom 78 . Insofar as Shelat, J held in that case that judgments, determining the compensation payable for similar land in the neighborhood, are

not relevant under sections 11 and 13 of the Evidence Act for ascertaining the market value of the acquired land, I would agree with him. But, I would hasten to add that I do not subscribe to his reason- As regards section 13, he said, a judgment 'is neither a transaction nor an instance'. I prefer to rest my conclusion on the reason I have already stated. He excluded a judgment from the ambit of section 11 'as it is not a fact but a mere opinion as to the existence or otherwise of a fact'. From that observation I must most respectfully but firmly dissent. The Evidence Act itself envisages in section 43 that a judgment may be a 'fact in issue' or relevant under 'some other provision' of that Act. That presumes that a judgment can be treated as a fact. And, the definition of 'Fact' in section 3 includes 'any thing..... capable of being perceived by the senses', which a judgment certainly is.

(20) Elsewhere, in his judgment, after pointing out that an award by a Collector is 'a mere offer', Shelat, J., says 'an offer is at best! opinion evidence', and, therefore, not admissible 'unless the person making the offer gives evidence about it. Here, again, I must respectfully demur. The distinction between fact and opinion is extremely fine. Wigmore criticises it as a 'useless refinement of logic' : see Volume 7 page 26. However, be record-:, in the same volume at page 50, that In all jurisdictions testimony to the value of a specific piece of property is now received, as not obnoxious to the Opinion rule'. An offer, may be the outward manifestation of an opinion : yet, it is a fact which 'creates the phenomena of value'. Dealing with borderline cases between fact and opinion. Cross in his book on Evidence (3rd ed.) says at page 360, that witnesses are permitted to state their opinion 'with regard to matters not calling for special knowledge whenever it would be virtually impossible for them to separate. their inferences from the facts on which those inferences are based'. An offer, I should have thought was. at least, such a case.

(21) Of course, I do not agree with the final result at which Shelat, J arrived. He excluded from evidence the judgment in an earlier case respecting similar land. I would have come to the opposite conclusion because of section 9. Since his attention was not drawn to that section, for he nowhere mentions it, his judgment must be held to have been delivered per incuriam.

(22) Even a cursory reading of the judgment of the Full Bench in *Collector, Land Acquisition v. Bhadia* (1972) 2 S LJ. 196 , reveals that the whole judgment was obiter. The case was referred to a Full Bench because of a difference of opinion between two judges of a Division Bench on the question whether awards and judgments, relating to similar lands, were relevant under section 13 for proving the market value of the acquired land. When the case came before the Full Bench, on interrogation by the court, counsel for the appellant 'after deliberating for some time frankly stated that he could not question the relevancy of the earlier awards'. The judgment then comments that this 'concession' was 'not unjustified'. All that follows thereafter is intended to explain why the court considered the appellant's 'concession not to be unjustified'.

(23) In the brief discussion which ensues it is said that

'.....If an instance of sale is relevant, then it is difficult to rule out as irrelevant an instance in which the Court has judicially determined the market 'value of similar land compulsorily acquired. Such an instance seems to us to furnish a fairly good guide in determining the market value of similar land in the locality.'

With that I would entirely agree. It accords with what I have said earlier.

(24) In the next sentence of the judgment, however, it is said : 'Both sections 11 and 13 of the Indian Evidence Act would seem to cover such a case'. It will be noticed that this conclusion is not couched in definitive language. That is not surprising, for obviously no proper argument was addressed to the court as the point had been conceded. The attention of the court was not drawn to the opening words either of section 11 or section 13, nor their effect analysed. The remainder, of the judgment is devoted merely to distinguishing *Laldiarnsi Ghelabhai's* case. It is significant that one of the grounds on which that case was distinguished was 'the concession made by , appellant'. And, it is recorded that apart from citing that case, counsel for the appellant 'addressed no independent arguments'. Not only is the whole judgment obiter, it was also delivered per incuriam. Again, section 9 of the Evidence Act was not noticed.

(25) In *Kompalli Nageswara Rao and others v. Special Deputy Collector, Land Acquisition, Bapatia*, : AIR 1959 AP52 , the two judges constituting the Division Bench expressed divergent views. I partly agree and disagree with both. Umamaheswaram, J., held that judgments 'determining compensation under the provisions of the Land Acquisition Act in respect of neighbouring lands are admissible under the provisions of sections 9, 11 and 13 of the Evidence Act'. So far as section 9 is concerned his reasons are more or less the same as mine, and, hence, I agree. But, as regard sections 11 and 13, his attention was not directed to the pre-requisite condition which the opening words of each impose.

(26) On the other hand, Krishna Rao, J., held that section 13 was inapplicable for precisely the same reason that I have given. He made no reference to section 11 at all. Though he accepted that awards were relevant under section 9 he held that judgments were not, because 'adjudication of the market value is made by the Court under the Act, only where the price offered by the Government is not accepted by the owners and the parties are therefore unwilling buyers and sellers'. I agree with the answer of Umamaheswaram, J., that, in consonance with sections 23 and 24 of the Land Acquisition Act, 'it must be assumed that the Court fixed the price which a willing purchaser is willing to pay to a willing seller as a result' of a friendly negotiation'. In any case, the point taken by Krishna Rao, J., respecting judgments, pertains, not to relevancy under the Evidence Act, but the concept of market value according to the substantive law.

(27) Subject to what I have said, I concur with the judgment which will now be delivered by Mr. Justice Avadh Behari.

(28) Avadh Behari Rohatgi, J. The facts: The appellant Rama Dhar owned field No. 579/1-2/1 admeasuring 35 bighas 16 bids was in the estate of Wazirpur. The respondent Union of India acquired his land for the 'Planned Development of Delhi'. A notification dated October 26, 1961, was issued under section 4 of the Land Acquisition Act (the Act). On November 6, 1962, the collector made the award. He awarded Rs. 2500 per bigha to the appellant. It is not in dispute that the appellant's land was Bagh Nehari which means 'irrigated by a canal'.

(29) The appellant did not accept the award. He made a reference petition under section 18 of the Act to the civil court. The additional district judge dismissed the reference petition on September 6, 1965. He held that the appellant was not entitled to any enhancement. In his view it was a case of 'over-valuation' because the Collector had awarded to the appellant more than what he was entitled to. Now there is an appeal to this court against the order of the additional district judge refusing to enhance the compensation awarded by the Collector.

(30) A few more facts may be stated to understand the case. The appellant purchased the land from Mehboob Baksh, a Mohammadan, by sale deed dated April 19, 1957. He paid Rs. 10,740 to the vendor. The price came to Rs. 300 per bigha. This low price seems to have greatly influenced the decision of the additional district judge. He formed the opinion that as the appellant had purchased the land at the 'paltry rate' of Rs. 300 per bigha he was not entitled to any increase over what the Collector had awarded him. He did not view this purchase with indulgent eyes. He said that 'having regard to the very low price at which the claimant was able to purchase' the land in 1957 he was not entitled to any increase in compensation. He dismissed the claim, as I have said.

(31) The appellant did not produce in evidence his sale deed dated April 9, 1957. He closed his evidence on March 16, 1964. The price that he had paid for the land in 1957 was of no consideration when the land was acquired in 1961. Presumably this is what he thought. After the appellant had closed his evidence, respondent's counsel made a prayer to the court that the appellant be ordered to produce his title deeds in court. The judge acceded to this request. On August 14, 1964, he directed the appellant to produce the sale deed. The appellant produced the sale deed in court on September 26, 1964. Evidently, this sale deed was used by the judge in deciding the reference against the appellant. He based his decision on the following four considerations :

1. That the appellant had paid a low price for the land purchased by him in 1957;
2. That the land in question was never an evacuee properly ;

3. That the Land Reforms Act, 1954, applies to the land in question and, therefore, the user of the land was restricted to agricultural and allied purposes under section 22 of the Delhi Land Reforms Act, and

4. That the appellant's land has no potential value as a building site.

(32) In a key passage the judge said :

'It was urged by the learned counsel for the claimant that while by virtue of the provisions of the Section 22 of the Delhi Land Reforms Act the user of the land covered by award No. 1329, copy Ex. R-4 and award No. 1289 copy Ex. A-1 was restricted to agricultural and allied purposes, the Delhi Land Reforms Act was not applicable to field No. 579, part whereof is claimed by the claimant because the same was evacuee property and had vested in the Government. There is no substance in this contention for the shares of Mahboob Baksh in field No. 579 which the claimant purchased was never an evacuee property and it never vested in the Government with the result that the Delhi Land Reforms Act equally applied thereto. In fact the gardens of Iqbal Singh and Manjit Singh had vested in the Custodian and were exempt from the operation of the Delhi Land Reforms Act so that they had a potential value as a building site as well. In this context also the market price of the claimant's acquired garden, which had no potential value as building site, should be considerably less than Rs. 3200 per bigha'.

(33) I cannot subscribe to this line of reasoning. The bare fact that the claimant obtained the property cheap, would not entitle the Government to compulsorily purchase it at a price below the market value. It is true that the price which was paid by the owner shortly before the notification is a valuable piece of evidence to help the court in ascertaining the market value. But a claimant can always show the circumstances in which he was able to buy at a low price. A claimant may prove by evidence of sales that the land is worth considerably more than what he had paid for it or that since the purchase there has been a rise in the general level of prices of land. Application under Order 41 rule 27, Code of Civil Procedure .

(34) Before us the appellant complained that he was never given an opportunity to explain why he was able to purchase the land at a low price and what were the

circumstances in which he purchased. He made an application (C.M.562 of 1967) under Order 41 rule 27, Code of Civil Procedure for adducing additional evidence. To his application he has annexed four judgments of courts, a copy of the jamabandi, order of the Competent Officer dated March 2, 1962, order of the Central Government dated January 11, 1958 and his sale deed. The object of this application is two-fold; firstly to produce certain judgments of the Court which were made in respect of comparable lands after the additional district judge had decided the reference petition; secondly, to show that Mehboob Baksh had once been declared an evacuee and the land in question had not been restored to him by the Central Government on April 9, 1957, when the appellant purchased it from him. I shall return to the judgments later. At this stage I propose to deal with the second aspect of the application.

(35) The appellant has produced a copy of the order dated January 11, 1958, made under section 16 of the Administration of Evacuee Property Act, 1950. From this order it appears that the land in question was once an evacuee property and it was restored to Mehboob Baksh on January 11, 1958. therefore, it cannot be doubted that on April 9, 1957, when Mehboob Baksh sold the land to the appellant the property had not been restored to him. This explains why Mehboob Baksh sold the land to the appellant so cheap. No one knew at that time whether the Central Government would restore the property to Mehboob Baksh and whether he would regain its lost ownership. Mehboob Baksh's title to the property was not free from doubt. But the appellant was prepared to buy a property of doubtful worth. He was willing to risk his money in a transaction of litigious nature. Hence the low price.

(36) Jamabandi of 1950-51 filed by the appellant shows that Mehboob Baksh's share in the land was limited to 1/3rd which was sold to the appellant and 2/3rd share belonged to his two brothers of which the Central Government continued to be the owner.

(37) Another important consequence of the order of restoration of evacuee property made under section 16 of the Administration of Evacuee Property Act is that the Delhi Land Reforms Act did not apply to the land in question. Before an order of restoration under section 16 can be made (1) the property has to be 'an

evacuee property which has vested in the Custodian to which the applicant would have been entitled if this Act were not in force'. (2) that the evacuee property is property of the applicant; and (3) that in the opinion of the Central Government it is just and proper that the evacuee property should be restored to him. This is clear from a plain reading of section 16 of the Administration of Evacuee Property Act.

(38) Now if the property vested in the Custodian and remained so vested until January 11, 1958 when the restoration order was made in favor of Mehboob Baksh, it must necessarily follow that the Delhi Land Reforms Act which came into force in 1954 did not apply to the land in question. Delhi Land Reforms Act does not apply to areas included in any estate owned by the Central Government [see section 2(b)]. If on the date of its commencement the Delhi Land Reforms Act did not apply to the land in question the said Act could not have applied to it at any time later. The result is that the land in question is not subject to the restrictions imposed by section 22 of the Delhi Land Reforms Act. therefore, the land can also be used as a building site. It has a potential value for building purposes. That this is the inevitable conclusion also appears from the reasoning of the judge himself. He thought that the land of Manjit Singh was exempt from the operation of the Delhi Land Reforms Act as the said land had once vested in the Custodian who had sold it to Iqbal Singh and Manjit Singh. If the land of Iqbal Singh and Manjit Singh has potential value as a building site as is admitted by the judge himself why should the appellant's land not have potential value as a building site I cannot understand.

(39) The appellant's prayer is that he should be allowed to bring these facts on the record of the case. There is no good reason why this prayer should be declined. The appellant was called upon to produce his sale deed after he had completed his evidence. If the court was going to use the appellant's sale deed against him an opportunity in fairness and justice ought to have been granted to the appellant to produce all that he has produced before us. The real truth is that he was never invited to state his case before the judge.

(40) It is also the complaint of the appellant that though the respondent in their reply dated May 20, 1963, took the plea that the Delhi Land Reforms Act applies to

the land in question and, therefore, it has no potential value as a building site the said plea was never put in issue. The only issue that was framed and decided was this :

'TO what enhancement and compensation, if any the claimant is entitled ?'

(41) The respondent did not claim a specific issue on the question whether the Land Reforms Act applies to the land in question and to what effect'. The result was that the appellant was taken by surprise. There was miscarriage of justice. The appellant lost his claim for enhancement of compensation before the additional district judge.

(42) In my opinion, the application under Order 41 rule 27, Code of Civil Procedure ought to be allowed for two reasons. Firstly, under rule 27 of Order 41 the appellate court is given the power to require any document to be produced to enable it to pronounce judgment or for any other substantial cause. The appellant's complaint that he was prejudiced by the unfair procedure adopted in the court below makes it a 'substantial cause'. The factor of low price coloured the views of the judge. It distorted his reasoning. It clouded his vision. The result was failure of justice. The appellant asks us to right the wrong. I think we are duty bound to give him an opportunity.

(43) Secondly, the four judgments of the courts, to which I shall return later, were all pronounced after the decision of this case by the court below. therefore, that evidence could not have been produced by the appellant at the time when the order was passed by the additional district judge. This is also a ground under rule 27(l)aa (inserted by Act 104 of 1976 in the Code). In fact we allowed the application and admitted additional evidence on February 14, 1978 in the course of the hearing. Now I have given my reasons for the order we made. We also gave opportunity to the respondent to produce such evidence as desired to rebut the effect of the additional evidence. inspire of two opportunities the respondent adduced no evidence in this court.

(44) Counsel for the respondent opposed the application on the ground that all this evidence which is now sought to be produced by the appellant ought to have been

produced by him in the court below. He referred us to Arjan Singh v. Kartar Singh, : [1951]2SCR258 . I do not think that authority compels us not to admit additional evidence in the circumstances such as we have in this case. In land acquisition cases additional evidence has been allowed: See Mehtar v. Collector Durg, : AIR 1975 MP46 .Nature of evidence and its relevancy

(45) On the hearing of this appeal an elaborate argument was addressed in support of a contention that the only evidence that is admissible in the land acquisition case can be evidence of sales strictly proved before the court and subjected to cross-examination by the acquiring authority. Counsel for the respondent contended that awards of collector and judgments of courts given in other cases are inadmissible in evidence for the simple reason that it is unjust that a man should be affected, and still more be bound by proceedings in which he could not make defense, cross-examine or appeal. We were referred to the decision of Shelat J. of the Bombay High Court (as he then was) in Special Land Acquisition Officer Bombay v. Lakhamsi Ghelabhai Air 1960 Bom 78. Basing himself on this ruling counsel argued that the judgments not inter-parties do not fall under sections 40 to 43 or under sections 9, 11 or 13 of the Evidence Act. Similarly, collector's award, he submitted, being a mere offer, cannot become evidence in other cases in which different parties and different properties are concerned.

(46) Section 23 of the Act says that compensation has to be calculated on the basis of the market value prevalent on the date of the publication of the notification under section 4(1) of the Act. How is the market price then to be determined This is the question that arises for decision. The time-honoured test of the market value at a particular date is the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition and all its existing advantages and its potential possibilities when laid out in its most advantageous manner excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. What is required is an estimate of the price which would have been agreed upon in a voluntary bargain between a vendor and purchaser each willing to trade, but neither of whom was so anxious to do so that he would overlook ordinary business considerations. It must

not be forgotten that it is the value of the land to the owner that has to be ascertained and that the willing seller and purchaser is a useful and conventional method of arriving at the value to the owner in being deprived of his right to retain the property. This is the principle embodied in section 23 of the Act, the Act itself is based on the principle that acquisition has to be on just terms.

(47) There are various methods of determining the market value. In this appeal we are not directly concerned with them. The main question which we have been called upon to decide is about the admissibility of certain types of evidence which an expropriated owner may like to tender in support of his claim that he is entitled to the market value of the land. I propose to consider the type of evidence that is admissible in such cases under the following heads : (1) OFFER:

(48) If a person who has made an offer himself gives evidence, such evidence is relevant in that it is evidence that in his opinion that land was of a certain value. The evidence that the owner refused an offer so made amounts to this only that in his opinion his land was worth more than the figure of value named or that the offer was for some other reason such that he was not willing to accept : See *Government of Bombay v. Merwanji Muncherji* : (1908)10BOMLR907 The offer must not be an offer as of an irresponsible broker as was commented upon in the case of *Government of Bombay v. Merwanji Muncherji* (supra). The offer must be genuine and bona fide. It must be a firm offer supported by the testimony of reliable witnesses or documentary evidence: See *Pribhu Diyal v. Secy. of State* Air 1931 Lah 364 ;

(49) *Raghubans Narain v. Government of U.P.* Air 1967 Sc 465 is an instance where the offer of a willing prospective purchaser was relied upon by the district judge in arriving at the market value of the land in dispute. Disagreeing with him the High Court rejected the evidence of offer of a witness Zaidi by name. The Supreme Court reversing the High Court held that the District Judge was right in accepting the evidence of Zaidi and treating his offer as one of a willing prospective purchaser. It is true that the evidence of an offer cannot be equated in importance with the evidence of proper specimen sales of properties in the neighborhood. (2) Agreement To Sell :

(50) It has also been held that an agreement to sell is a relevant matter and can be used in relation to fixing the value of the acquired land : See Governor General in Council v. Ghasiuddin (1929) 30 PLr 212. (3) COLLECTOR'S AWARDS:

(51) What is the legal character of an award made by the Collector under section 12 of the Act

(52) The Lahore -High Court in Pribhu Diyal's case held that the awards can be taken as safe guides in the matter of determination of compensation. The Land Acquisition Officer is an agent of the Government. After holding an enquiry as prescribed by the Act the collector makes his decision in respect of the amount of compensation which should be paid to the person interested in the property acquired. It is in law an offer or tender of compensation determined by the collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken ; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer section 18 of the Act gives him a statutory right of having the question determined by the court, and it is the amount of compensation which the court may determine that would bind both the owner and the collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. What follows from it is this. The Government is bound by the collector's proceedings but the person interested is not concluded by his finding of the value of the land or the compensation to be awarded. In fact section 12 of the Act makes it explicit by enacting that the award of the collector 'shall, except as hereinafter provided, be final and conclusive evidence as between the Collector and the persons interested,... of thevalue of the land'. This shows that the tender once made is binding on the Government and the Government cannot require that the value fixed by its own officers acting on its behalf should be open to question at its own instance before the civil court: See Ezra v. Secy. of State 32 Cal 605 and Raja Harish Chandra v. Deputy Land Acquisition Officer, : [1962]1SCR676 .

(53) Such being the nature of an award the next question is : how far can an award be given in evidence The Collector's award being in the nature of an offer of

compensation made on behalf of the Government binds the Government, but not the claimant, for he can seek a reference, to the court from the award under section 18. It would, therefore, follow that an award which has not been accepted by the owner or the person interested cannot be relied upon by the Government as evidence of market value of the land in a different land acquisition proceeding for the simple reason that the award contains an unaccepted offer of compensation made on behalf of the Government. So long as the award is not accepted by the owner or the person interested or so long as it is not upheld by a court in a reference proceeding, it cannot be said that the offer contained in the award is an offer of the market value of the acquired land. But a claimant in a different proceeding can well rely on the unaccepted award as evidence of the market value and if the land be similar to the land in respect of which award relied upon was made the Government will be precluded from saying that the offer contained in the award does not represent the market value of the land: *Madan Ch. Ghose v. State of W.B.* 76 C.W.N. 584 and *Smt. Pratima Ghosh v. The State of W.B.* 77 C.W.N. 295 .

(54) It would, therefore, appear that the collector's award is no ordinary offer. It is an offer backed by the statute. We may call it a statutory offer. Unlike an ordinary offer it cannot be withdrawn by the Government or shown to be erroneous. The collector's award is relevant and is in the nature of an admission with regard to the value of the land on behalf of the State, If the land involved in the award is comparable land in the reasonable proximity of the acquired land, the rates found in the award would be a reliable material to afford a basis to work upon for determining the compensation on a later date. The awards cannot be dismissed as inadmissible for the purpose of determination of the compensation : *State of Madras v. A. M. Nanjan*, : [1976]3SCR356 . Judgments Of Courts Not Interparties :

(55) It has been held by numerous authorities that a judgment not interparties and relating to other lands in the vicinity is admissible as evidence as an instance from which the market value of the land in question can be deduced or inferred. In the *Secretary of State for India v. India General Steam Navigation and Railway Company Ltd.* 36 Cal 967, certain judgments of the High Court in other

proceedings were relied on by the claimant. It was argued on behalf of the appellant before the Judicial Committee that these judgments were not evidence of the value of the land in dispute. The Board after stating in their judgment that the High Court in a very careful judgment had reviewed the earlier awards dismissed the appeal holding that no question of principle was involved in it. This ruling shows that previous decisions in land acquisition cases are relevant in a subsequent case where the market value of the lands in the same neighborhood is in issue: See *Secy. of State v. Amulya Charan* : AIR1927 Cal874 and *Madan Mohan v. Secy. of State* : AIR1925 Cal481 (19). The Calcutta High Court has held that in assessing the market value of a piece of land the price paid in other transactions relating to land in the neighborhood is admissible in evidence. The same view was reaffirmed by that court in *H. K. Mallick v. State of West Bengal* 79 C.W.N. 378 .

(56) In matters relating to land acquisition a judgment of a court in regard to similar lands or properties would be a relevant piece of evidence. What is the probative value of the judgment is for a court of fact to determine market value is essentially a question of fact- The judgment is relevant but what weight is to be attached to it is another question depending on the facts and circumstances of each case. The process of determination of market value from the very nature of things has to be by inference. But the judicial determination of the market value of similar land, in the neighborhood of the acquired land, which has also been compulsorily acquired furnishes a good guide in determining the market price of the acquired land in question. It is an admissible and relevant piece of evidence. *Special Land Acquisition Officer v. Lakhamshi Ghelabhai* dissented :

(57) The decision of Shelat, J. in *Special Land Acquisition Officer v. Lakhamshi Ghelabhai* Air 1960 Bom. 78 had cast serious doubts on the question of relevancy and admissibility of such judgments but it has now been settled authoritatively by the Supreme Court in the case of *Khaja Fizuddin v. State of Andhra Pradesh*, Civil Appeal No. 176 of 1962 decided on April 10, 1963(21) that,

'under section 23(1) of the Act, in determining the amount of compensation, the court shall take into consideration the market value of the land at the date of

publication of the notification under Section 4(1) thereof. Decided cases have laid down that the said market rate must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. For ascertaining the market rate the court can rely upon such transactions which would afford a guide to fix the price. Price paid for a land acquired within a reasonable time from the date of acquisition of the land in question would certainly be the best piece of evidence. Price paid for a land possessing advantages similar to those of the land acquired in or about the time of notification will also supply the data for assessment of compensation.'

(58) And again:

'.....For ascertaining the market rate the court can rely upon such transactions which would afford a guide to fix the price. Price paid for a land acquired within a reasonable time from the date and acquisition of the land in question would certainly be the best piece of evidence..... If a sale deed of a land comparable in time and quality with the land acquired can be of evidentiary value ; equally clearly the awards of a Court of comparable dates in respect of such lands will also be of valuable assistance in assessing the market value, for by the award the Court fixes the market value of such a land having regard to the same principles which should guide a Court in fixing the value of the land acquired. If at all, such an award would be better evidence, as it would have the merit of an objective ascertainment of the market value on the basis of relevant evidence. The Judicial Committee in Secretary of State v. I.G.S.N.R. Co. gave its approval to the reliance placed by the High Court on earlier awards in ascertaining compensation payable to the land acquired. It is also true that just like sales of comparable lands, the awards to be of any use must also relate to comparable lands, that is to. say, the awards should be in respect of lands similarly situated as the land acquired and in respect of period in and about the same time as of the notification issued in respect of the land acquired.'

(59) In Padma Uppal v. State of Punjab, : [1977]1SCR329 the Supreme Court has followed the earlier decision in Khaja Fizuddin v. State of A.P. In Chintamani v. Collector, Cuttak, : AIR1976 Ori76 judgments were held to be good guide and

admissible evidence. In *Additional Special Land Acquisition Officer v. P. Anantha Bhat* Air 1972 Mys 313 it was ruled that judgment of a court in regard to similar lands would be a relevant piece of evidence.

(60) It is true that no two pieces of land can be precisely similar in all their circumstances and conditions ; there must always be difference though of varying degrees and no hard and fast rule can be laid down as to the allowances to be made for such differences. What legitimate deductions should be made and what proper discount should be allowed is for a court of fact to decide. Exact valuation is a practical impossibility. The approximate market value is all that can be aimed at.

(61) Shelat, J. in *Lakhamsi Ghelabhai*, supra said that 'a judgment not interparties in land acquisition reference and relating to other land is not admissible in evidence either as an instance or one from which the market value of the land in question can be deducted or inferred'. To quote him further :

'SUCHa judgment cannot obviously fall under Sections 40 to 43 or under Section 11 or Section 13 of the Evidence Act.'

(62) I do not. agree. In view of the pronouncement of the Supreme Court the decision of Shelat J. is clearly wrong. In *Ambalal Mansukhram Joshi v. Addl. Special Land Acquisition Officer* and another Air 1968 Guj. 5 his decision was followed. But in a large number of decisions his view has been severely criticised. In *Collector Vilaspur v. Lachman*, . Om Prakash J.C. dissented from *Lakhamsi Ghelabhai* and took an opposite view. In *Collector, Land Acquisition v. Bhadia* 1972 S L J 196 the judgment of Shelat J. was not followed by a full bench of this court. A division bench of the Calcutta Kigh Court in *H. K. Mallick v. State of West Bengal*, supra has expressly dissented from the Bombay decision. A division bench of the Gujarat High Court in *Shivial v. Addl. Spl. Land Acquisition Officer* (1968) 9 G L R 752 subjected the decision of Shelat J. to a thorough examination and came to the conclusion that it does not lay down good law. Like the Calcutta judges they preferred to follow *Madan Moban v. Secy. of State*, *Secy. of State v. Amlya Charan* and *Secretary of State for India v. I.G.S.N.R. Company Ltd.* (supra). A division bench of Gauhati High Court in *Kacharigaon Tea Co. v. Collector*,

Darrang Air 1975 Gau 78 has held that the Bombay decision does not lay down correct law. The legal basis:

(63) It is true that judges have dissented from the view taken by Shelat J. in Lakharnsi Ghelabhai but in no decisions do we find a full discussion of the provisions of the Evidence Act under which judgments of courts, not interparties and relating to other lands, are relevant in different land acquisition proceedings. On this point, with the exception of Nageswara Rao v. Spl. Deputy Collector, : AIR 1959 AP52 and Collector Bilaspur v. Lachman Air 1965 Mp 18 and Collector v. Bhadia 1972 S L J 196, the law books are destitute of authority.

(64) The relevant sections of the Evidence Act are sections 9, 11, 13 and 43. Is evidence of comparable sales and judgments not interparties in compensation cases admissible under these sections or any of them This is the question.

(65) In Nageswara Rao Umamaheshwaram J. was of the view that judgments of civil courts determining compensation under the provisions of the Land Acquisition Act in respect of neighbouring lands are admissible under sections 9, 11 and 13 of the Evidence Act while the other learned judge', Krishna Rao, J took the view that the prices that have been obtained from willing buyers of similar lands are relevant under section 9 of the Evidence Act as facts which support or rebut an inference suggested by the issue raised as to what a willing buyer would have paid for the lands acquired. He held that a judgment in a land acquisition case is not relevant under section 13 of the Evidence Act. 'It would, in my opinion, be straining the language of the section too much to say that such dispute raises a question as to the existence of a right in the Government to the lands acquired', Krishna Rao J. said.

(66) A full bench of this court in Collector v. Bhadia, supra held that under both sections 11 and 13 of the Evidence Act the earlier awards are admissible in evidence in a later proceeding. It was said :

'If an instance of sale is relevant, then it is difficult to rule out as irrelevant an instance in which the court has judicially determined the market value of similar land compulsorily acquired.'

(67) At first I doubted whether section 13 would apply at all to such a case. On further reflection it seems to me that a judgment not interparties is an 'instance' in which the right was claimed or exercised and disputed within the meaning of section 13(b). The word 'right' used in the section would cover all kinds of rights both private and public, corporeal or incorporeal. 'The right of fishery' mentioned in the illustration is a right which may be either public or private, according to circumstances.

(68) The right claimed in the land acquisition case is a right to compensation at a particular price on the basis of market value of the land acquired. If the Government exercises the right under the Land Acquisition Act so does the expropriated owner. His right is right to just compensation the equivalent in price.

(69) The Privy Council in *Dinomoni Chowdhrani v. Brojo Mohini Chowdhram* 29 Cal. 187 held that orders under section 145, Code of Criminal Procedure were admissible upon general principles and under section 13. In delivering judgment Lord Lindley observed that the words of section 13 were very wide. The Privy Council decision in *Dinomoni* case in which section 13 was expressly mentioned as one of the sections under which orders under section 145, Code of Criminal Procedure were relevant, changed the current of decisions on the point and shook the authority of many of the earlier cases. The Judicial Committee had undoubtedly applied its mind to the language of section 13, as one of the sections under which the judgment was relevant. In *Collector Gorakhpur v. Ram Sunder* Lord Blansburgh referred to *Dinomoni's* case as an 'express authority for the position that on 'general principles and under S. 13' orders made under S. 145, Criminal Procedure Code . are admissible for the purpose mentioned in the Board's judgment'. The dissenting view of Mitter J. in *Gujju Lal v. Fateh Lal* 6 Cal. 185 is to be preferred to the view of Garth CJ. Mitter J. held that a judgment though not interparties may be received in evidence either under section 11 or 13 of the Evidence Act. *Gujju Lal v. Fateh Lal* has been considerably modified by *Ram Ranjan v. Ram Narain* 22 I.A. 60. The position, therefore, is that although at one time it was held that a judgment not interparties could not be admitted in 'evidence under any circumstances, the tendency in recent years is to admit such judgments under certain circumstances and for limited purposes under section 43

read with sections 11 and 13 of the Evidence Act (See Hem Chandra v. Puma Chandra : AIR1934 Cal788 and Field's Law of Evidence (1964) 9th ed. p. 542).

(70) Section 13 has been the subject of many conflicting decisions. Our full bench has decided that under sections 11 and 13 evidence is admissible. The full bench has relied on two decisions of the Supreme Court for their view: Srinivas Krishna Rao v. Narayan Devji. : [1955]1SCR1 and Sital Das v. Sant Ram, : AIR 1954 SC606 . I will not dwell on this matter further, bound as I am by the full bench. I will content myself by saying that after hearing elaborate arguments I have come to the conclusion not only that the full bench decision ought not to be disturbed, but that it is right.

(71) Prior to our full bench Om Prakash Jc in Collector Bilaspur v. Lachman, supra had taken the same view. Relying on the Privy Council decision in Dinomoni's case and the two Supreme Court decisions in Srinivas and Sital Das, supra he came to the conclusion that judgments not interparties are admissible under the provisions of section 43 read with sections 11 and 13 of the Evidence Act. Om Prakash Jc dissented from Lakharnsi Ghalebhai.

(72) One section of which promiscuous use has been made is section 11 of the Evidence Act. Under section 11 a transaction (for example a sale) regarding another piece of land in the neighborhood is relevant for showing (1) that the price obtained in that transaction is inconsistent with any assumed market value for the land under acquisition; or (2) that the transaction by itself or in connection with other facts makes the assumed value of the land under acquisition highly probable. Sales of neighbouring lands would thus always be relevant, but their probative value would obviously depend on several factors. for example, whether the price obtained in such a sale represented the proper market value of the property and how far the property is comparable with the property under acquisition. Likewise the date of sale is also important for the material time for the market-value of the land under acquisition is the date of notification under section 4(1) and the interval between that date and the date of transaction would be an important element for consideration.

(73) Umamaheshwaram J. in the case of Nageswara Rao (supra) thought that evidence was also admissible under sec. 9 of the Evidence Act. 'Facts which support or rebut an inference suggested by a fact in issue or relevant fact' are themselves relevant under sec. 9. This part of section 9 is merely a paraphrase of section 11 which says that facts which make the existence of fact in issue or relevant fact highly probable or improbable are relevant and is founded on the same principle as that section [See Monir Law of Evidence (5th ed Vol. I p. 74-75] and Field Law of Evidence Vol: I (9th ed. p. 600). Sir James Stephen, the framer of the section, said that he had designedly left some degree of latitude in the working of section 11 on account of variety of matters to which it might apply. Sections 9 and 11 are instances in the Act of sections overlapping each other. Stephen himself says : 'These sections (S. 6-11) are designedly worded very widely and in such a way to overlap each other. Facts relevant under sec. 11 would in most cases be relevant under other sections.' (Stephen- Introduction p. 72). One may, therefore, as well call s. 9 into aid.

(74) In 'a search for pigeonholes of relevancy' in State of Kerala v. Maramma, : AIR1969 Ker265 (DB) Raman Nayar J. said that evidence of price paid for other properties was relevant under s. 9 or 11 of the Evidence Act. Krishna Iyer J. was of opinion that under s. 11 which 'casts the net wide enough' evidence was admissible. He thought 'perhaps even s. 13 may have to be given broader sweep lest really good evidence is eschewed.'

(75) The judgments and sales, it would, therefore appear, are admissible under sections 11 and 13 of the Evidence Act. In assessing the market value of land, the price paid in other transactions under the Land Acquisition Act are relevant in subsequent cases where the market value of lands in the same neighborhood is in issue. Such an instance would furnish a safe and reliable basis for determining the market value of the similar land in the locality. This view was taken by the Calcutta High Court in Madan v. Secy. of State and the Privy Council in Secy. of State v. I.G.S.N.R. Co., supra. If judgments are admissible the market value of the appellant's land can be determined with their assistance after making allowance for any difference 'in quality and situation. Their relevancy is governed by section 43 of the Evidence Act which declares such judgments to be irrelevant unless their

existence .is a fact in issue or is relevant under some other provision of the Act.

(76) To sum up. This view of Shelat J. in Lakharnsi Ghelabhai has found few subscribers. Differing from him judges have held that evidence of sales and judgments not interparties is admissible under sections 9, 11, 13 and 43 of the Evidence Act. These are the pigeonholes of relevancy. This is the result of an overview of the entire case law on the subject. The question of weight to be attached to such evidence when admitted is another matter. What value is to be placed upon a certain piece of evidence is for the Court to assess. But we must not confuse the admissibility of evidence with its weight.

(77) Faced with the ruling of Shelat J. in Lakharnsi Ghelabhai on which counsel heavily relied, I was compelled to follow the fortunes of that case over these eighteen years. I have. thereforee, taken a longer detour than is usual with an appeal of this kind. In the end I. will say, to use the words of Lord Buckmaster, : 'Few cases have lived so dangerously and lived so long' (Donghue v. Stevenson 1932

(78) Now exemplar sales. The best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of genuine sales effected about the time of notification of acquisition either in respect of the land or any portion thereof or the evidence of sales of similar lands in the vicinity having similar facilities.

(79) In the method of arriving at a valuation of land by reference to prices realised by the sales of neighbouring lands it is plain that seldom evidence of former sales can be obtained which can be precisely parallel in all its circumstances to the sale of a particular land in question. Difference, small or great, in various conditions are bound to arise and what proper allowance should be made for these differences is not a matter which can be reduced to any cut and dried formula. At the same time the instances produced must relate to lands which on the whole have the same conditions of quality and situation as the acquired land. Enhancement of compensation:

(80) Having cleared the ground I came to the main question in appeal : Is the appellant entitled to increase in compensation I : think yes. In the court below as before us, the appellant relied upon an award No. 1289(A-1) in which the land was acquired in the village Sadhora Kalan and notification under s. was made on November 13, 1959. In that case the collector awarded 4500 per bigha for Bag Nehari land. In that case the land was acquired for a cooperative house building society. The Collector in his award observed that the land in Sandhora Kalan has a potential value for building purposes as it was situated near Shakti Nagar, a highly developed colony, on one side and Bharat Nagar on the other. On behalf of the respondent two judgments of the Additional District Judge in respect of the land of Iqbal Singh and Manjit Singh situated in the estate of Wazirpur were produced in which section 4 notification was made on October 26, 1961, as in this case, and the court awarded Rs. 3200.00 per bigha (R-5 and R-6). The respondent also produced collector's award No. 1329 in respect of the land acquired in village Wanrpur in which notification under section 4 was made on November 13, 1959. In that award the collector had awarded Rs. 3200.00 per bigha for Bag Nehari land. (See R-4). It appears to me that on the evidence produced by the respondent itself the appellant was in no case entitled to be awarded less than Rs. 3200.00 per bigha for his land. For the same kind of land in Wazirpur the collector had awarded Rs. 3200.00 per bigha and the court had in two other cases enhanced compensation to Rs. 3200.00 per bigha.

(81) But the matter does not rest here. The appellant has claimed 6000 per bigha in the appeal. For this he relied on four judgments which he has now produced before us by way of additional evidence. To these I now return. The first document is the judgment of Shri G.R. Luthra, Additional District Judge dated February 3, 1969 made on a reference from award No. 1329 (R-4) produced in the trial court by the respondent. The Additional District Judge raised the compensation from Rs. 3200/- to Rs. 5600.00 . The second document is a judgment of Shri Hans Raj, Additional District Judge dated December 6, 1966, in which he awarded Rs. 6235.00 per bigha for land in the estate of Wazirpur. The third document now produced is a decision dated February 4, 1975, of Shri O. N. Vohra, Additional District Judge Delhi in which he awarded Rs. 4600.00 for the land in Wazirpur. The last judgment is again of Shri G. R. Luthra. Additional District Judge, dated

October 6, 1969 whereby he enhanced compensation to Rs. 4600.00 for Wazirpur. In all these cases we find that section 4 notification was issued on November 13, 1959. The land in all these cases was situated in the revenue estate of Wazilpur. The appellant's land is in no way inferior to these lands. From the point of view of situation appellant's land abuts on a broad kuchha road having a width of 175 feet. Counsel for the respondent admitted this in the court below and it is apparent from the akshajra (field map) (R-3). It has a wide frontage. It is nearly the railway line. On the other side of the unmetalled road there is the village of Sadhora Kalan where there is wide spread building activity. The appellant's land is near the extension of Sawan Park, a colony which has sprung up in the vicinity. Topography of the land suggests that its proximity to Sadhora Kalan is a factor of no mean importance. In Sadhora Kalan the land was acquired for a Harijan Cooperative Building Society by the Government in 1959. Shakti Nagar touches Sadhora Kalan at one end and Bharat Nagar on the other. That the estate of Wazirpur adjoins the estate of Sadhora Kalan is a fact of overriding importance in this case. It is no doubt true that the land of Sadhora Kalan is superior to that of Wazirpur. In respect of Wazirpur, land acquisition judges have awarded compensation from Rs. 4600.00 to Rs. 6235.00 depending on the situation of the land. We have seen in the field map that the appellant's land is situated at no great distance from the lands which were the subject-matter of those awards and of which compensation was raised up to Rs. 6235.00 per bigha. Potentiality :

(82) Counsel for the respondent laid a good deal of stress that there is no evidence of building activity in village Wazirpur and, therefore, appellant's land has no potential value as a building site. He argued that the appellant's land should be valued as agricultural land. I cannot accept this submission. I have already held that the appellant's land is not subject to the restrictive provisions of the Land Reforms Act and there is no bar to its being built upon.

(83) Under the Land Acquisition Act it is necessary to inquire what is the market value of the property not according to its present disposition but having regard to its future potentialities. The principles governing the determination of compensation by taking into account the future possibilities are succinctly set out in the judgment of the Privy Council in *Naravana Gajapatiraju v. Revenue*

Divisional Officer Vizagapatnam. . Lord Romer said :

'In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by 'the market value' in S. 23. But some times it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining 'its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that 'particular 'position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put. at the time at which its value has to be determined [that time under the Indian Act being the date of the notification under Section 4(1)], but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one.'

(84) In ascertaining the value of the land the possibilities to its being used for building purposes would have to be taken into account, but it is equally true that the land must not be valued as it had already been built upon. This is the effect of the principle embodied in section 24(5) of the Act which is expressed by saying that it is the possibilities of the land and not its realised possibilities that must be taken into consideration. The value of the potentiality must be ascertained by the judge on such materials as are available to him and 'without indulging in feats of imagination'. An owner of land is entitled to the value to himself of the property in its actual condition at the time of expropriation with all its then existing advantages and with all its future possibilities excluding only any advantages due to the carrying out of the scheme for the purposes for which the property is being acquired : See *Atmaram Bhagwant Ghodgay v. Collector of Nagpur* Air 1929 Pc 92.

(85) Dealing with the doctrine of potential value the Supreme Court in *N. B. Jeejabhoy v. District Collector Thana*. Civil Appeals Nos. 313 to 315 of 1963(38),

D.00 August 30, 1965 (SC) said :

'A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value but the objective factor, namely, whether the said potentiality can be (turned to account within a reasonably near future.....The question, therefore, turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered : whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put on lands purchased for building 'purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution.'

(86) Admittedly, Sandhora Kalan has a potential value as a building site. So has the appellant's land. Delhi is expanding in all directions. Potentiality means 'future possibilities' : See *Atmaram Bhagwant Ghodgay* (supra). In 1961 it was not difficult to prophesy that the appellant's land will also be put to building use in no distant future. Conclusion :

(87) The appellant's counsel stated before us that he would be satisfied if he is awarded compensation at Rs. 4500 per bigha and would ask for no more. On an appraisal of the evidence I think the claim as now restricted is not extravagant. I would award Rs. 4500 per bigha.

(88) For these reasons I would allow the appeal and award to the appellant compensation at the rate of Rs. 4.50 per sq. yard for the land which was acquired plus 15 per cent of the market value as solatium and interest at 6 per cent per annum on the amount of compensation hereby awarded in excess of that awarded by the collector from the date on which he took possession of the land till the date of payment into court less the sums already paid to the appellant. The appellant will be entitled to the proportionate costs of this appeal.

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