

Kamla Devi Vs. Border Security Force, Jodhpur and ors.

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Court : Rajasthan

Decided On : Apr-14-1987

Reported in : AIR1988Raj205; 1988(1)WLN730

Judge : Jasraj Chopra, J.

Acts : Rajasthan Land Acquisition Act, 1953 - Sections 3, 4 and 23; Rajasthan Land Acquisition (Amendment) Act, 1984

Appeal No. : Civil First Appeal Nos. 124 of 1974 and 31 of 1977

Appellant : Kamla Devi

Respondent : Border Security Force, Jodhpur and ors.

Advocate for Pet/Ap. : N.N. Joshi, Adv.; J.P. Joshi, Adv.

Judgement :

Jasraj Chopra, J.

1. These two appeals : one by the claimant Smt. Kamala Devi and other filed by the Border Security Force, Jodhpur arise out of the judgment of the learned Civil Judge, Jodhpur dated 24-4-1974 in a reference made to him under Section 18 of the Rajasthan Land Acquisition Act ('the Act' herein).

2. The facts necessary to be noticed for the disposal of this reference briefly stated are: that the Border Security Force, Jodhpur (for short the B. S. F.) required some land at Jodhpur for the establishment of its unit and Staff Training College. The Government of Rajasthan issued a notification under Section 4 of the Act on 9-9-1970 and ultimately a notice was served on the claimant Smt. Kamla Devi, owner of the land on 5-10-1970 issued by the Land Acquisition Officer. The land is situated just near the Balsamand. It is measuring about 38 bighas and 15 biswas comprising of Khasras Nos. 1514, 1514/1, 1599 and 1600/1. This land was purchased by Smt. Kamla Devi from one Johrimal Parakh on 13-6-1968 by a registered sale deed for a sum of Rs. 31,000/-. Smt. Kamla Devi filed her claim before the Land Acquisition Officer. Shri Johrimal also filed the claim and his compensation was separately assessed. However, the Land Acquisition Officer awarded a compensation of Rs. 51,630/- to the claimant Smt. Kamla Devi vide his award dated 23-7-71. He awarded a sum of Rs. 40,300/- as the cost of the land as well as of the well Rs. 4030/- as 10% solatium Rs. 2700/- as the cost of manure and Rs. 4600/- as the cost of machine and fittings. Aggrieved against this award, the claimant Smt. Kamla Devi filed an application under Section 18 of the Act for making reference to the competent court. On the basis of this application, a reference was made by the learned Land Acquisition Officer vide his order dated 11-1-1972 to the Court of learned Civil Judge, Jodhpur. When the reference came up before the learned Civil Judge, the State of Rajasthan also filed cross-objections. The contention of the claimant Smt. Kamla Devi has been that this land has a potentiality of buildings site and, therefore, compensation should have been awarded at the rate of Re. 1/- per sq. yard ($2' \times 2' = 1$ yard). According to the petitioner, the measurement of the land is 1,68,795 sq. yards and, therefore, a sum of Rs. 1,68,795/- should have been awarded to her as compensation for the value of the land. She has claimed Rs. 50,748/- as the cost and improvements made on the well. A sum of Rs. 11,907/- has been claimed for slagging, iron ladder Girders Chain Kuppi etc. She has claimed Rs. 7,388/- for the structures (Houses and out houses), Rs. 4,944/- for water Haudies and Reservior, Rs. 18,999/- for irrigation channels, Rs. 858/- for approach road and Rs. 53bA stone slabs and stone walls etc. Thus, in all, a sum of Rs. 1,10,784 has been claimed against the cost of structures. Thus, she has claimed Rs. 1,68,795/- as the value

of the land + Rs. 1,10,784/- as the cost of structure = Rs. 2,79,579, She has claimed a sum of Rs. 27,957/- as 10% solatium on this amount. Thus, in all, she has claimed a sum of Rs. 3,07,536. Out of this amount, she had deducted Rs. 44,330/-, which have already been allowed to her by the Land Acquisition Officer and, therefore, in the application that has been made under Section 18 of the Act for making a reference, she has staked her claim for a sum of Rs. 2,63,206/- Along with the petition, she has filed Schedule-A which has been prepared by the Executive Engineer. The State of Rajasthan also filed cross-examinations (cross-objections?), in which, it was pleaded that Smt. Kamla Devi is only a Khatedar tenant of the land and the State is its land-holder and, therefore, the amount of compensation should have been apportioned between the State and the Claimant Smt. Kamla Devi. It was objected by the petitioner (Claimant) Smt. Kamla Devi that this claim made by the State is time barred and does not fall within the scope of reference.

3. On the basis of these pleadings of the parties, the following issues were framed :

1. Whether the amount awarded by the Land Acquisition Officer does not represent in law a fair and just compensation for the land acquired?
2. Whether in determining a fair and just compensation the land should be treated as a building site? If so, to what rate the petitioner is entitled to as compensation?
3. Should the land acquired be valued at the rates mentioned in paras 10, 11 and 12 of the reference petition? and is the petitioner entitled to a sum of Rs. 1,68,795/- plus solatium as value of the land?
4. Is the petitioner entitled to a higher rate on the grounds mentioned in paras 13 and 14 of the reference petition?
5. If the land is treated as agricultural land then whether the land should be valued at the rate mentioned in paras 15 and 16 of the reference petition?
6. Is the estimate of Rs. 76,739/- prepared by the Department (B. S. F.) and filed before the L.A.O. not binding on the non-petitioners?

7. Whether the L. A. O. was justified in refusing to award compensation for structures as per the estimate submitted by the Department?
8. Whether the petitioner is entitled to a sum of Rs. 1,10,784/- as the value of the structures etc. as detailed in para 17 of the reference petition?
9. Is the petitioner entitled to the costs of the acquisition proceedings?
10. Whether the petitioner cannot be awarded compensations for the additional items taken from her? ;
11. Whether the Land Acquisition Officer did not make proper enquiry in accordance with law? If so, what would be its effect?
12. To what relief, the petitioner is entitled.

Additional issues :

1. Whether the compensation claimed by the applicant is liable to be appropriated in between the State and the Claimant, if yes, what ratio?
2. Whether the cross-objection of the State is time barred and does not fall within the scope of the reference?

In support of these issues, the claimant, petitioner has examined P. W. 1 Narsingh, P. W. 2 Vidhya Sagar, P. W. 3 Magraj, P. W. 4 Jitendra Singh, P. W. 5 Sohanlal and P. W. 6 Raghuveer Singh, from the side of the non-petitioners, D. W. 1 Satya Prakash, D. W. 2 Bhagwati Prasad and D. W. 3 Manak Mal were examined but his statement could not be completed and, therefore, that statement could not be considered.

4. After hearing the parties, the learned lower court decided the reference vide its order dated 24-4-1974. It held that issues Nos. 1, 6, 7 and 11 were not pressed and so, they were deleted with the consent of both the parties vide proceedings dated 13-2-1974. Regarding additional issues Nos. 1 and 2 which were framed on the cross-objections filed by the State, learned counsel appearing for the State pleaded no instructions and no evidence has been led about these two issues and

consequently, they have been decided against the State of Rajasthan. The learned Civil Judge, while deciding issues Nos. 2, 3 and 4 has held that only the market value of the land in question is to be taken into account and not its potential value and consequently, issues Nos. 2, 3 and 4 were decided against the claimant-petitioner. Issue No. 10 related to 7 items. The learned Civil Judge did not consider these items and no award was given about these 7 items and they have not been made the subject-matter of the reference and hence, issue No. 10 was also decided against the claimant-petitioner. While deciding issue No. 5, the learned lower court has held that because of the value of the land (illegible) on the basis of the three factors : (a) opinion of experts; (b) price paid within a reasonable time in bona fide transaction in purchase of the land acquired or the lands adjacent to the land acquired and possessing similar advantages : and (a) a number of years of purchase of actual and immediately prospective profits of the land acquired. It has further held that regarding first and third methods, no evidence has been produced. Of course, the learned lower court has wrongly observed it because the petitioner (claimant) has produced P. W. 2 Vidhya Sagar, Executive Engineer to prove Ex. A. 6 the estimates prepared by him regarding the cost of the land and other items. The learned lower court has further held that the witnesses do not throw any light regarding the question as to what should be the market value of this land, therefore, it has held that on the basis of this evidence, it cannot be held that the market value of the land in question at the relevant time was Rs. 4356/- per bigha. Regarding issue No. 8, the learned lower court has held that it is an admitted case of the non-petitioners that no compensation has been assessed in the Award given by the Land Acquisition Officer regarding construction made on the land. It, however, came to the conclusion that although the B. S. F. has admitted that these constructions costed about Rs. 76,739/- but it refused to award any compensation for the 7 items left out amounting to Rs. 5,046/- and out of the balance of Rs. 71,693/-, it has deducted the amount of Rs. 45,119/- which has been claimed as compensation for the well and, therefore, it has held that the claimantpetitioner is entitled to a sum of Rs. 26,574/-as the costs of the constructions as against the amount of Rs. 1,10,784/-. While deciding issue No. 9, it has held that when the award of the Collector is not upheld, the cost of the reference proceedings have to be borne by the Collector and consequently, it has

decided issue No. 9 in favour of the claimant-petitioner, While deciding issue No. 12 it has allowed 10% solatium to the petitioner on a sum of Rs. 26,574/- and it has further allowed her 4% interest on this amount under Sections 28, and 30 of the Act from the date of possession, till the payment is made. The costs have been imposed on the BSF.

5. Dissatisfied with this Award of the learned Civil Judge made on reference by the L.A.O., this D.B. Civil First Appeal No. 124 of 1974 has been filed by the claimant-petitioner Smt. Kamla Devi and D.B. Civil, First Appeal No. 31 of 1977 has been filed by the Border Security Force, Jodhpur.

6. The claimant-petitioner has claimed that the learned Civil Judge has erred in not awarding her the entire amount of compensation claimed by her and she has further claimed that she is also entitled to the compensation for the 7 left out items. It was contended that the learned lower Court has grossly erred in holding that the potential value of the land cannot be taken into consideration It has been asserted that it was obligatory on the part of the learned lower-Court to have considered the potential value of the land in awarding the compensation. It has been further asserted that the learned lower Court has erred in not allowing the full amount as cost of structures and improvement in spite of the fact that it was admitted by the B.S.F. The claimant-petitioner has, therefore, contended that the entire claim should have been decreed along with solatium and interest admissible to her under the Rules.

7. In the cross-appeal, the BSF has alleged that the learned lower Court has erred in awarding a sum of Rs. 26,574/- over and above the amount awarded to the petitioner by the Land Acquisition Officer. It has also contested the award regarding grant of solatium, interest and the cost of the acquisition proceedings.

7A. As both these appeals arise out of the same judgment. I propose to decide them together by a common judgment.

7B. I have heard Mr. K. N. Joshi, learned counsel for the claimant-petitioner and Mr. J. P. Joshi learned counsel for U.O.I.

8. Mr. J. P. Joshi, learned counsel for U.O.I. has candidly conceded that he does not press his cross-appeal meaning thereby that he does not contest the award of the learned Civil Judge dated 24-4-1974. He has further admitted that he does not contest the award of 10% solatium and 4% interest on this amount from the date of taking of the possession of the land by the Land Acquisition Officer till the payment is made. He has also not contested the award of the learned lower Court imposing cost on the BSF.

9. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has also candidly conceded that his only contest in this case is regarding the value of the land. He does not contest the estimates admitted by the BSF regarding the items mentioned in its letter Ex. A.6. Of course, in this letter, 7 items claimed by the petitioner have not been included. He has submitted that he will press for the award of compensation regarding only those 7 left out items. He has further submitted that the learned lower Court was not justified in deducting the amount of Rs. 45,119/- from those estimates pertaining to the expenses incurred by the claimant-petitioner and on digging and boring of the well and left out amount of Rs. 45,119/- as well and, therefore, this Court should award that compensation to the petitioner for the improvement made on the well. It has also been contended by Mr. K. N. Joshi, learned counsel for the claimant-petitioner that as the value of the land has increased tremendously the petitioner should be awarded compensation at the rate of Re. 1/- per sq. yard. He has also submitted that it has come in evidence that when the well was purchased by the claimant-petitioner in the year 1968, it was only 50 feet deep as stated by P.W. 1 Shri Narsingh Kachhvah and after that boring was done and some other improvements have been made and, therefore, he does not object if the amount assessed by the BSF regarding the improvements made on the well be awarded to the petitioner. In view of this statement, I have no hesitation in accepting the contention of the petitioner that she is entitled to this amount on account of the improvements made by her on the well. P. W. 1 Narsingh has categorically stated that when this land was purchased, the well was only 50 feet deep. The petitioner then sought the assistance of the Ground Water Department for boring the well. It was bored to the extent of 125 ft. and then after boring the well, certain amount was spent in the improvements made thereon. When the water came out, the internal construction of the well was

undertaken to make the bored portion pucca and some amount was also spent on this work. The internal construction was also made with a view to instal the pumping set and so, if Rs. 45,119/- have been spent in improving the well, the petitioner is very much entitled to get that amount, which is based on the estimates prepared by the Executive Engineer, C.P.W.D. on behalf of the B.S.F. itself. Thus, in my view, the learned lower Court has erred in disallowing this amount to the petitioner. It is true that the Land Acquisition Officer has granted compensation to the petitioner regarding the cost of the well and the land but it has not taken into consideration the improvements made on the well separately. The amount spent on the improvements of the well have been admitted by the B.S.F. vide its letter Ex.A. 6.

10. Now, I next take up the 7 items which are alleged to have been left out as per the petitioner Smt. Kamla Devi. Mention of those 7 items have been made in the letter written by the Land Acquisition Officer to the D. I.G., BSF. This letter has been marked Ex. A.4 and has been proved by D. W. 2 Bhagwati Prasad, the Land Acquisition Officer has written to the DIG. BSF. that the following items were found permanently fastened to the well and the reservior etc. for which award has not been given as they were not mentioned in the sale deed, dated 13-6-68. They were fixed by the owner after purchase of the well and are necessary for the water supply and distribution and if the department wants to retain all the above items, requisition for the same be sent at an early date. Those 7 items are as under : --

1. Electric Pumping set 10 H.P.

2. G.I. pipes

3. Girders

4. Iron Ladder

5. Venich

6. Electric Security

7. Sluce Valve

It is alleged that these items have not been included either in the award that has been given by the Land Acquisition Officer or in the reference order made by the learned Civil Judge. Regarding these 7 items, the petitioner staked her claim as under :

1.

Electric Pumping set

2750/-

2.

G. I. Pipes 694

896 716767 3073/-

3.

Girders

3432/-

4.

Iron Ladder

300/-

5.

Venich

7550/-

6.

Electric Security

4807/-

7.

Sluce Value

907-

Total

17675/-

I have gone through the Award of the Land Acquisition Officer as also the letter Ex. A. 6 written by the Executive Engineer, C.P.W.D., Jodhpur to the D.I.G. BSF, Jodhpur, I have also perused the letter of reference and the petition filed by the petitioner under Section 18 of the Land Acquisition Act. In para 7 of the reference order dated 11-1-72, the Land Acquisition Officer has mentioned that the charge of the property was taken on 18-8-71. He has sent the charge list along with the reference order and has stated that certain additional items were found on the site, which were not detailed in the sale deed. The departmental representative desired to retain all those additional items. Yet the requisition for those additional items has not been received. This is what has been contained in Ex.A.4 dated 19-8-1971, the letter written by the Land Acquisition Officer to the D.I.G., BSF, Jodhpur wherein he has stated that these items were found permanently fastened to the well and reservion etc. and they have been fixed by the owner after purchase of the well and they are necessary for the water supply and distribution and, therefore, if the department wanted to retain all the above-mentioned items, requisition for the same may be sent at an early date. It is unfortunate that the department has not bothered to send any requisition. However, even if the Officer-in-charge of the BSF has failed to send any requisition, it does not mean that it is not obliged to pay or compensate the petitioner for what it has received. When the BSF Officers have taken possession of these items and they have expressed their willingness to retain those items then it was the duty of the Land Acquisition Officer to have made a reference to the learned Civil Judge about fixing the value of these items and also to award compensation on those items. In Para 7 of the reference order, the Land Acquisition Officer has clearly made a mention about this fact and thus, there is no dispute about the retention of these items by the non-petitioner and, therefore, an

order ought to have been passed by the learned Civil Judge about these items. In these circumstances, I am definitely of the view that the learned lower Court has erred in holding that these items have not been made a part of the reference order and so, no compensation can be awarded about them. Para 7 of the reference order clearly mentions that these items have been taken into possession by the Department and the Departmental representative desired to retain all these items and as such, it was the duty of the Land Acquisition Officer to have given an award about them and it was the duty of the learned Civil Judge to have passed an order about these items.

11. Having said that, now let us see whether any compensation has actually been awarded for these items. The award made by the learned Land Acquisition Officer on 23-7-71 makes a mention of a sum of Rs. 4600/- awarded to the petitioner as cost of the machine and fittings. The Executive Engineer, CPWD has also included at item No. 11 Misc. items like G.I. Pipes, R. S. Joist etc. and has assessed the value of hose items to Rs. 5,046/-. It is true that the learned Civil Judge did not allow this amount to the petitioner on account of the fact that these items have not been made part of the reference order. I have already observed that the petitioner has been allowed compensation for these items. Thus, in all the petitioner is entitled to get Rs. 4600/- + 5046/- = 9646/- for all these 7 items. The cost of the pumping set has been claimed to be Rs. 2750/- and the Land Acquisition Officer himself has assessed the cost of the machine and fittings as Rs. 4600/-. P.W. 1 Shri Narsingh Kachhvah has stated that he has maintained the account of the amount spent by him on the improvements made by him on these Misc. items. If he has done so, he should have produced the accounts. P.W. 2 Vidhya Sagar, Executive Engineer has made the assessment of these items on the basis of the market value. He has not given any details about it in his statement as to from where he has enquired and whether he took any quotations from any place and, therefore, his statement cannot be taken as furnishing any dependable guideline. These improvements have been made on the well in the year 1968. i.e. prior to the acquisition of the land and so, the actual amount spent would have furnished a very good guideline to assess the compensation which could be awarded about the costs incurred by the petitioner on them. As said earlier, the petitioner has claimed Rs. 17,675/- for all these items but he has led no credible evidence to

prove that he has spent this amount on these items. When he has failed to do so, I am left with no option but to award him compensation of these items on the basis of the assessment made by the learned Land Acquisition Officer as also on the basis of the assessment prepared by the Executive Engineer, CPWD, I, therefore, hold that the claimant-petitioner has already been awarded a compensation of Rs. 4600/- regarding machinery and certain fittings and he should be awarded a sum of Rs. 5046/- in respect of misc. expenses incurred by him. This disposes of second contention of the learned counsel for the petitioner.

12. Now, I come to the main point of controversy i.e. the value of the land. The Land Acquisition Officer has assessed the value of the land and well at Rs. 40,300/- and has added 10% solatium amounting to Rs. 4030/-. Thus, he has awarded a sum of Rs. 44,330/-. The learned Civil Judge has maintained this compensation and he has further awarded a sum of Rs. 26,574/- as the cost of the structures on the basis of the admission made by the learned Land Acquisition Officer that he did not award any compensation for the improvements made by the petitioner after he has purchased the land. The learned Civil Judge has held that compensation of the land should be awarded on the basis of the prevalent market rate without taking into consideration the potential value of the land as a building site. Mr. K. N. Joshi, learned counsel appearing for the claimant-petitioner has hotly contested this observation of the learned Civil Judge. According to him, it is the bounden duty of the courts to take into consideration the potential value of the land as a building site. It is true that the compensation of the land has to be determined on the basis of the market value prevalent about such land, at the time, the notification under Section 4(1) of the Act is issued but in doing so, prospective value of the land as a building site, its situation, certain natural advantages, its contiguity to the main road and other similar factors have to be taken into consideration. Simply because the land has been recorded as an agricultural land and has been used or developed by the petitioner for being used as an agricultural land, it does not mean that its potential value as a building site shall not be taken into consideration. In this respect, my attention was invited to a number of authorities of their Lordships of the Supreme Court as also the other High Courts.

13. In Revenue Divisional Officer v. A.N. Damodara Mudaliar, AIR 1978 Mad 201, the Madras High Court has observed as under :

'Where the lands are surrounded on the west, south, and east by public streets and on the north by a railway station and very near to these lands are colonies which had already developed, the proximity of such a residential locality to the acquired lands, gives a different status and classification altogether and a mere reliance on the public records for purposes of appreciating the use which the lands can be put to, ought not to be always encouraged Potential inhered in the land should also provide a guide for evaluation is more or less accepted.'

Their Lordships of the Supreme Court in Adusumilli Gopalkrishna v. Spl. Dy. Collector (Land Acquisition). AIR 1980 SC 1870 have held as under : --

'An assessment of the compensation payable for land acquired must take into account several factors, including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired and so on.'

14. It has been observed by the Allahabad High Court in State of U.P. v. Widow of Late Janki Das, AIR 1966 All 273 as under :

'The fact that the land which has been acquired was entered in the revenue papers as agricultural land and was being used as such, will not mean that it could not be treated as a potential building site.'

'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, but also by reference to the uses to which it is reasonably capable of being put in the future, and it is possibilities of the land and not its realized possibilities that must be taken into consideration.'

15. It was further observed on the basis of the fact of that case that there could be no doubt that considering the situation of the land which was acquired and other relevant facts it could be regarded as a potential building site. In para 23 of the

judgment, it was made clear that in the case of an agricultural land situated in municipal area, adjoining residential area, acquired under the U.P. Land Acquisition (Rehabilitation of Refugees) Act the compensation to be awarded must be that which the lessor could reasonably expect for the land in question, which could be treated as a potential building site. Reliance was also placed on a decision of the Orissa High Court in *State v. Bunda Oram*. AIR 1978 Orissa 74, wherein it has been observed as under :

'The market value of the property at the time of acquisition for purposes of determining the compensation payable under the above act is its then value in its actual condition with all its existing advantages including the realised possibilities plus, in cases where there is possible enhancement of its value in future considering the peculiar location and uses the property may potentially be put to such additional value. It is therefore not correct to say that in all cases the value of the property in its existing condition and realised possibilities includes enhancement in value in future. The land in the vicinity of areas growing in importance and value as a result of the development of Rourkela Steel Plant held entitled to an addition on the basis of its potentiality to appreciate in value. There was also evidence about the Government selling nearby lands at Rs. 95,000/- per acre. In the circumstances the additional allowance of 25% for potential value over and above the market value determined at Rs. 200/- per decimal and 15% of statutory compensation was held to be proper.'

16. In *Radheyshyam v. State*, AIR 1981 Punj and Har 57, it has been held that in fixing the market value of the land, initially the notification issued under Section 4(1) of the Act should be considered. A similar observation was made in *Spl. Dy. Collector, L.A., U.D. Authority v. K. Ramayyamma*, AIR 1985 Andh Pra 118 and it was observed that the market value of the land acquired has to be determined as on the date of the notification issued under Section 4(1),

17. A Division Bench of the Patna High Court has observed in *Jute & Gunny Brokers Pvt. Ltd. v. State*, AIR 1980 Pat 225 :

'that it is true that Section 24 forbids, inter alia, taking into consideration any increase in the value of the land acquired likely to accrue from the use to which it

will be put when acquired. But it is well established 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, namely the date of notification under Section 4 but also by reference to the uses to which it is reasonably capable of being put in the future subject of course to the limitations provided in Section 24. Thus where the area locating the acquired lands had been fast developing and a large number of houses had sprung up in that area in the past, some before acquisition and some thereafter, even on culturable lands, it would be fair and reasonable to keep the developing potentiality of the lands in view while considering the market value.'

Their Lordships of the Supreme Court in *Peep Chand v. State of U.P.*, AIR 1980 SC 633 have held :

'The market value of the land had to be fixed as prevailing on the date of the notification Under Section 4 of the Land Acquisition Act.'

My attention was also drawn to a decision of their Lordships of the Supreme Court in *Collector, Raigarh v. Harisingh Thakur*, AIR 1979 SC 472, wherein it was observed per majority :

'The question as to whether a land has potential value as a building site or not is primarily one of fact depending upon several factors, such as its condition and situation the use to which it is put or is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension whether the nearby town is developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighbourhood thereof.'

In *Collector, Raigarh's* case (*supra*), certain agricultural lands in suburb of a growing town were acquired for Railways and the compensation was enhanced on account of the potentiality of the land as a building site.

18. The upshot of the entire discussion of these authorities is that in considering the market value of the land at the time of the notification issued under Section 4(1) of the Act, not only the market value of the land prevalent on the date of the notification on the basis of the uses to which the land is presently put has to be taken into consideration but the potentiality of the land as a building site or its possible use as a commercial or industrial site has also to be taken into consideration in assessing the amount of compensation. Thus, the learned Civil Judge was wrong in holding that the potentiality of the land has not to be taken into consideration in assessing the market value of the land at the time when the notification was issued. The learned lower court has mentioned in its order three methods of valuation to be adopted in ascertaining the market-value of the land on the date of the notification under Section 4(1) which are (i) opinion of experts; (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. The learned lower court has held that no evidence has been led about items Nos. 1 and 3. These three methods have been propounded by their Lordships of the Supreme Court in *Tribeni Devi v. Collector of Ranchi* (1972) 1 SCC 480 : (AIR 1972 SC 1417). Even in this ruling, their Lordships have observed that the land acquired has to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act but its potential value also must be taken into account. It was further observed that the sale deeds of the land situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market-value. This, however, is not the only method, and in doing so, the court has observed that a similar area such as the one in the instant case of them (sic) in road would certainly fetch a higher price compared to a larger undeveloped area, even though it may have a frontage on the main road. It was also observed that when only a portion of land is acquired and a large portion of it is left out there would be diminution on the value of the land that is left out for which some compensation has to be allowed. So far as the case in hand is concerned, it is a case of acquisition of the entire property and not of a portion of it and, therefore, the later observations of their Lordships of the Supreme Court have no evidence

(relevance ?) to the facts of the present case. However, the observations of their Lordships that the sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have furnish a rough and ready method of computing the market value hold good in the present case and can furnish a very effective guideline. A somewhat similar view has also been expressed by a Division Bench of the Madras High Court in *Binny Ltd. v. Land Acquisition Officer*, AIR 1978 Mad 302, wherein it has been laid down that for the purpose of assessment of compensation when sales of land in the neighbourhood and nearer to the acquired land are available then it will be an empty exercise to seek for more hypothesis and material and rely upon the data provided for sales of plots far away from acquired lands. The nearer the acquired land the better for purpose of comparison. Unfortunately, in this case, no sale deed of a comparable nearby land has been produced.

19. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has submitted that if the land acquired is situated within the municipal limits of the town, even if its character is that of an agricultural land, in determining the market value of such land, its potential value as the building site has to be taken into consideration and in this respect, he has drawn my attention to a decision of their Lordships of the Supreme Court in *Deep Chand v. State of U.P.*, AIR 1980 SC 633. My attention was also drawn to a decision of the Allahabad High Court in *State of UP. v. Widow of Late Janki Das*, AIR 1966 All 273, wherein it was observed that where the land, which was entered as agricultural land in revenue papers but was within municipal area of City of Meerut in close proximity of the localities where residential houses and factories had been constructed was being acquired under the U.P. Land Acquisition (Rehabilitation of Refugees) Act, it is true that the value of the land has to be calculated on the basis of its market value but in doing so, the fact that the land acquired could be treated as a potential building site cannot be lost sight of.

20. On the strength of these authorities. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has argued that he has examined certain witnesses who have produced their sale deeds and have furnished a good ground for assessing the value of this land. In this respect, he referred to the statement of P.W. 3 Magraj whose 20 bighas of land situated behind Masooria was sold for a sum of Rs.

12,000/- vide sale deed Ex.P.W. 3/1. This Ex.P.W. 3/1 is dated 18-1-68. This land was, of course, Barani. The land of the claimant-petitioner Smt. Kamla Devi is situated at a distance of about 6 miles from this land and that land was sold for construction of the houses. He has also sold one more piece of land measuring 19 bighas and 15 biswas on 30-1-68 for a sum of Rs. 7,000/- and this land was also sold for the establishment of the housing colony. I am afraid, the evidence of this witness furnishes no guideline. Firstly the sale deeds are dated 18-1-68 and 30-1-1968 whereas the claimant-petitioner has purchased her own land on 13-6-68. Thus the sale of the land in question is after these two sales. Moreover, these two lands are situated beyond Masooria Masooria in situated on western side of the town of Jodhpur whereas the land of the claimant-petitioner is situated in north-west side of Jodhpur town. Thus, those two sale deeds cannot furnish any guideline in assessment of the market value. Moreover, Ex.P.W. 3/2 relates to a piece of land measuring 49 bighas and 15 biswas which was sold only for a sum of Rs. 7,000/-. If that price is taken as the basis for assessment of the market value then the award given by the learned Land Acquisition Officer itself deserves to be reduced and thus, I agree with the learned lower Court that the evidence of P.W. 3 Magraj cannot be taken into consideration in deciding the market value of the land in question.

21. P.W. 4 Jitendra Singh has sold 17 biswas of his land situated on Jodhpur-Mandore Road, which was an irrigated land to one Devilal on 29-10-1971, for a sum of Rs. 10,000/- for construction of a house. The evidence of this witness of course relates to a piece of land situated on the same road on which the land of the claimant-petitioner is situated and it is in the same ward in which the land of the petitioner is situated i. e. Ward No. 3 but it cannot furnish any guideline because firstly it is a very small piece of land and secondly, it has been sold for the purpose of construction of a house and, therefore, the value that has been obtained for this smaller piece of land can hardly furnish any guideline. In this respect, I place reliance on a decision of their Lordships of the Supreme Court in Collector of Lakhimpur v. B.C. Dutta, AIR 1971 SC 2015, wherein it was observed that in determining compensation, the value fetched for small plot of land cannot be applied to lands covering a very large extent. The large area of land cannot possibly fetch a price at the same rate at which small plots are sold. The same

view has been expressed by their Lordships of the Supreme Court in *Prithviraj v. State of M.P.*, AIR 1977 SC 15607, wherein it has been held that the price paid for small plots of land cannot provide a safe guide or criterion for determining compensation for a large area.

22. In this respect, reliance was also placed on a decision of their Lordships of the Supreme Court in *Padma Uppal v. State of Punjab*, AIR 1977 SC 580 wherein it was held that value fetched for small plots cannot be applied to lands covering a large area.

Thus, the evidence of P. W. 4 Jitendra Singh, as also the sale deed proved by him, cannot furnish any guideline. The lands which are situated in Masooriya are far away from Balsamand area. Moreover, they are two different localities and have different advantages and, therefore, comparison is not possible. In this respect, reliance is placed on *SpL Dy. Collector, L.A., U.D. Authority v. K. Ramayamma*, AIR 1985 Andh Pra 118, wherein a Division Bench of the Andhra Pradesh High Court has held that the sale price of the lands situated far away and in development locality cannot be adopted as a basis for assessing the market value of the acquired land. The value of the lands in the neighbourhood of the acquired land can be taken into account.

23. It was, however, argued by Mr. K. N. Joshi, learned counsel for the claimant-petitioner that if the nearby lands have not been sold then the lands sold in the nearby villages can be taken into consideration and they can afford a good guide. In this respect, he placed reliance on a Division Bench decision of the Delhi High Court in *Anar Singh v. Union of India*, AIR 1985 Delhi 298, wherein it was observed that if no sale transaction in the concerned village evidencing the market value of land in question is forthcoming, then the transaction of adjoining village can be a good guide in the assessment to be made regarding the value of the land. I very respectfully disagree with this observation of the Delhi High Court. It has been the consistent view of the various High Courts as also of the Supreme Court that while fixing the value of the land, the lands sold in the vicinity with similar facilities and advantages have to be taken into consideration in assessing the market value and not on the basis of the sale of the lands which are situated

far away in different villages.

24. In this case, only one sale deed has been produced which is situated in the same ward and nearby this land but it is a smaller piece of land measuring about 17 biswas and so that cannot furnish a good guideline in assessing the compensation and so, the learned lower Court was right in discarding the evidence of P.W. 4 Jitendra Singh in this respect.

25. P.W. 5 Sohanlal has been produced to prove the sale deed Ex.P.W. 5/1 dated 22-7-1971. This relates to 12 bighas of land in village Gewa Tehsil, Jodhpur. This land was sold for a sum of Rs. 17,400/-. Although Sohanlal has stated that his land is Barani and the land of the claimant-petitioner Smt. Kamla Devi is better than his own land but he has stated that his land is situated at a distance of 5 to 6 miles from the petitioner's land and he has sold his land for construction of houses. This sale deed is of 22-7-71 whereas the land of the claimant-petitioner was acquired in the year 1970. Mr. K. N. Joshi, learned counsel for U.O. I. has drawn my attention to a decision of the Patna High Court in H. N. Singh v. State, AIR 1974 Pat 224 wherein it was held that the sale deeds more than year old on the date of Section 4(1) notification are irrelevant. Similarly sales of land even two months after the notification cannot be considered of much value and sales more than six months after the notification should be ignored. In arriving at this decision, reliance was placed on AIR 1933 Bom 361. In the case in hand, notification was issued on 9-9-1970 and it was received by the petitioner on 5-10-1970 and, therefore, the sale deed which was executed on 22-7-1971 cannot be taken into consideration for assessing the market value of the land and, therefore, the learned lower Court was right in holding that the evidence that has been produced to prove different sale deeds is of no consequence in arriving at a decision in this case and it has rightly rejected that evidence.

26. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has submitted that although generally speaking market value of the land acquired under the Act is based on a consideration of the sale prices of lands adjacent and having similar advantages, in the absence of such data it is valued by capitalising by a number of years of purchase the annual income it is expected to yield or by the reinstatement

value which is assessed according to the cost of acquiring an equally convenient land or premises and where its value is not ascertainable with reference to the price willing purchaser would buy for, an estimate judged by an objective standard has to be made. Reliance in this connection was placed on *State v. Dunda Oram*, AIR 1978 Orissa 74. In this case, the evidence led about the assessment of the market value on the basis of the land which has been sold in the close vicinity has rightly been disbelieved and discarded by the learned lower Court because it furnishes no effective guideline.

27. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has next submitted that he has produced the evidence of P.W. 2 Vidhya Sagar, who is an Executive Engineer and he has prepared the estimates about the value of the land. The testimony of P.W. 2 Vidhya Sagar has been discussed in detail by the learned lower Court and it has discarded his testimony on the ground that firstly he has prepared the estimates sometime basing them on the P.W.D. rates with 25% escalation and sometime he has prepared those estimates on the basis of the Standing Order No. 160 of some items. He has prepared the estimate on the basis of market rates without disclosing as to whether he has obtained quotations about the market rates or obtained the price of these items from their authorised Dealers. He has neither given any reasoning nor offered any clarification for estimating the compensation of different items by adopting these three different methods. Secondly, according to the learned lower Court, he has escalated the value of certain items over and above their scheduled rates and that escalation is not uniform as it ranges from 25% to 80% and on certain items, addition has been made on the cost calculated by him. He has given no reasons why he did not adopt any uniform pattern in calculating the escalation charges. Lastly, as per the learned lower Court, he is a remunerated witness and as such he has a definite bias towards the petitioner. I have also gone through this evidence and I feel that the reasoning adopted by the learned lower Court in discarding his evidence appears to be just and proper.

28. It was further argued by Mr. K. N. Joshi, learned counsel for the petitioner that the Land Acquisition Officer himself has given an award about a Chahi piece of land situated nearby this area and in giving this award, he has assessed the value

of the Chahi land as three times that of the Barani land.

29. A Division Bench of the Karnataka High Court in *H. Narayaniah v. Land Acquisition Officer* (AIR 1981 Kant 26) has observed :

' Where certain lands were acquired in two stages and the Land Acquisition Officer had admitted that land in II stage was adjacent to land in I stage, and the Land Acquisition Officer had himself taken into consideration the award made by him in I stage, while fixing market value for II stage, the award made in I stage was relevant and, therefore, it could be admitted in evidence, for determination of market value in II stage.'

Mr. K. N. Joshi, learned counsel for the claimant-petitioner has submitted that the petitioner has produced P.W. 6 Raghu-veersingh, whose land situated in the same ward was acquired in the year 1968 by the Land Acquisition Officer and an award was given in his favour which has been marked Ex. P.W. 6/1. According to him, his land is situated at a distance of 4 furlongs from the land of the petitioner and according to him, both these lands are similarly situated and are of the same quality. On both these lands, there exist wells for irrigation and the land of the petitioner is in a way better because it is situated nearby the Abadi land and it is situated just adjacent to the Balsamand Road and in east of it, there is Soorsagar Road. According to him, his land and the land of the petitioner are similarly situated lands, not only adjacent but to each other possessed of almost similar advantages and facilities. The award given in favour of P.W. 6 Raghuveer Singh is dated 23-6-1969. It pertained to 30 bighas of Barani land and 27 bighas and 11 biswas of Chahi land. Thus, this piece of land which was acquired by the Land Acquisition Officer was also a big plot and not a very small plot. The Land Acquisition Officer who has given the Award in the case in hand is the very same person who has given Award in Raghuveersingh's case (P.W. 6). D.W. 2 Bhagwati Prasad has admitted in his testimony before the Court that the value of the Chahi land is three times that of the Barani land. The notification regarding this land under Section 4(1) of the Act was issued on 20-4-1968 whereas notification under Section 4(1) of the Act in regard to the petitioner's land was issued on 9-9-1970 i.e. almost two years and five months after it. In this Award (Ex.P.W. 6/1), the Land

Acquisition Officer has assessed the value of the Barani Land @ Rs. 468/- per bigha and he has assessed the value of the Chahi land @Rs. 1404/- per bigha and has awarded compensation according to that rate. In this case, 38 bighas and 15 biswas of land belonging to the claimant-petitioner Smt. Kamla Devi was acquired. It was incumbent upon the learned Land Acquisition Officer to have assessed the land of the petitioner at such rate on which he has assessed the land of Raghuveer Singh. This land was a Chahi land. While making the award the Land Acquisition Officer has assessed the compensation of the Chahi land belonging to Raghuveersingh at the rate of Rs. 1404/- per bigha. It is true that when Smt. Kamla Devi purchased this land, a well was existing on this land but it was not working. The land was almost Barani. The well was only 50ft. deep and so, the petitioner has spent thousands of rupees on boring of this well P.W.1 Narsingh has stated that to make the land irrigated he has constructed water channels and has installed pumping set. He has further stated that on this land, vegetable and other crops were grown and it was giving a net profit of Rs. 15 to 20 thousands per year. It has not been disputed by the Land Acquisition Officer or by anybody appearing on behalf of the BSF that this land was not irrigated and hence, I entirely agree with Mr. K. N. Joshi, learned counsel for the petitioner that in awarding compensation his own award and the valuation of the land fixed by him regarding Chahi land in making such awards. When 38 bighas and 15 biswas are multiplied by Rs. 1404/- per bigha then the value of the land comes to Rs. 54,405/- . The land is situated in the municipal town and two sides of it is surrounded by BSF Units and Abadi and on the other two sides, there is Balsamand Garden. This land is situated on the main road going from Jodhpur to Mandore. In these circumstances, it will be proper to allow an increase of 25% on this amount looking to the potential value of the land as a building site. Of course, we cannot take into consideration the fact as to for what use it will be put by the BSF but this fact can certainly be taken into consideration that the land is situated in the Abadi area and it has the potentiality as a building site and so, 25% additional allowance as given in Orissa case quoted supra AIR 1978 Orissa 74, State v. Dunda Oram is called for and appears to be highly just and proper in facts and circumstances of this case. 25% of Rs. 54405/- (the value of the land) comes to Rs. 13,601.25p. and when we add Rs. 54405/- + Rs. 13,601.25p. it makes the value of the land to be

Rs. 68,006.25p. The BSF has calculated the value of the improvements made on the well. It has not calculated the value of the cost of the well as it was existing on the date of the purchase. P.W. 1 Narsingh has stated that when he purchased the land, 50ft. deep well was existing but there was no water in it. The Land Acquisition Officer has calculated the value of the Barani land at the rate of Rs. 468/- per bigha in Raghuveersingh's case. When 38 bighas and 15 biswas are multiplied by Rs. 468/- it comes to Rs. 18,135/-. If that amount is deducted from Rs. 31,000/- then the cost of the well comes to Rs. 12,865/-. When Rs. 12,865/- are added in Rs. 68,006 and 25 P. it comes to Rs. 80,871 and 25 P. To this amount, a sum of Rs. 76,739/- (as per Ex.A/6) should be added as the value of the structures and the improvements made on the well as also on the land by the petitioner after the purchase of the land, that makes this amount to be Rs. 1,57,610.25p. The Land Acquisition Officer has awarded compensation of Rs. 51,630/- to the claimant-petitioner. Giving a deduction of Rs. 51,630/- from Rs. 1,57,610.25p, the petitioner is entitled to a sum of Rs. 1,05,980.25p. as the additional compensation on account of the value of the land and the value of the structures and improvements that have been raised or installed by the petitioner on this land. The learned Civil Judge has already awarded an additional compensation of Rs. 26,574/- to the claimant-petitioner. I have already taken into consideration that amount while adding a sum of Rs. 76,739/- as the value of the structures and improvements made on the well as well as on the land.

30. Mr. K. N. Joshi, learned counsel for the claimant-petitioner has submitted that the petitioner is entitled to 30% solatium as per the amended Section 23 of the Land Acquisition Act, which is also applicable in Rajasthan. In this respect, he has referred to two circulars of the Government of Rajasthan one issued by the Rajasthan State Agricultural Marketing Board, Jaipur and the other issued by the Govt. of Rajasthan in Revenue Department (Group-IV) bearing No. P-9(10) Home 7/85 Jaipur dated 25-2-1986 wherein it has been stated that the amended provisions of the Central Land Acquisition Act has become applicable in the State of Rajasthan. Even without any notification, such provision becomes applicable to the State of Rajasthan in pursuance of the provisions of Article 254 of the Constitution. In this respect, reliance is placed on Mohd. Sheriff v. State (AIR 1986 Ker 67) wherein it has been held that the provisions of Sections 23 and 28 of the

Central Act override the provisions of the Kerala Land Acquisition Act in view of Article 254(2) of the Constitution. Their Lordships of the Supreme Court took the view that the amended provisions of Sections 23(2) and 28 of the Central Land Acquisition Act have a limited retrospective operation to the awards passed between 30-4-82 to 24-9-82 and, therefore, it was contended by Mr. J. P. Joshi, learned counsel for U.O.I. that the award which was made in the year 1971 and the reference was decided in the year 1974, these amended provisions have no application. It may be stated here that this decision of their Lordships of the Supreme Court in *L. Kamalrajammanniavar v. Spl. Land Acquisition Officer* (AIR 1985 SC 576) has been overruled by their Lordships of the Supreme Court in *Bhagsingh v. Union Territory of Chandigarh* (AIR 1985 SC 1576) wherein it has been held that the amended provisions of Sections 23(2) and 28 of the Act are applicable to all proceedings relating to compensation pending on the date of commencement of the Amending Act i.e. 30-4-1982 or filed subsequent to that date whether before the Collector or before the Court i.e. Supreme Court or High Court. Thus, even if the Award was given on 23-7-1971 and its reference has been decided by the learned Civil Judge on 24-4-1974, these amended provisions will be applicable to these proceedings as the appeal was pending before this court on 30-4-1982 and, therefore, according to Section 23(2) of the Act, the petitioner is entitled to 30% solatium on the value of the land which has been assessed by me, Section 3 of the Act defines the 'land' as under :

'The expression 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.'

The petitioner is, therefore, entitled to get solatium on the value of the land as well as of the well and any permanent structures raised on the well inclusive of water channels farm houses and plate farm etc. (Sic) he is not entitled to receive solatium on the value of the pumping set and other electrical fittings which are not permanently fastened to the land. I have valued compensation to be awarded to the petitioner in the sum of Rs. 1,57,610.25p. and from this amount Rs. 2700/- awarded to the petitioner as compensation for manure, Rs. 4600/- as the cost of machinery and fittings and Rs. 5046/- pertaining to the misc. items should be deducted and that amount comes to Rs. 1,45,264.25p. Thus, the petitioner is

entitled to get 30% solatium on this amount of Rs. 1,45,264.25p. which comes to Rs. 48,421.41p. When we add this amount of Rs. 48,421.41p. to the amount of Rs. 1,05,980.25p. this makes the sum payable now to the petitioner as compensation to Rs. 1,54,401.66p. The petitioner is entitled to 9% interest on this amount from the date the land was taken into possession by the non-petitioner i.e. 18-8-1971 till the payment is made.

31. In the result, D.B. Civil First Appeal No. 124 of 1974 filed by the claimant-petitioner Smt. Kamla Devi is allowed in part and the amount of compensation now payable to the claimant-petitioner Smt. Kamla Devi is raised from Rs. 26574/- to Rs. 1,54,501.66p. by the non-petitioners. The petitioner is further made entitled to recover interest @9% on this amount from 18-8-1971 till the payment is made. It is hereby ordered that the cost of this appeal shall be paid by the non-petitioners (respondents) to the petitioner Smt. Kamla Devi.

32. The D.B. First Appeal No. 31 of 1977 filed by the Border Security Force, Jodhpur is hereby dismissed with costs.