

SUPREME COURT OF INDIA

Dy. Collector, Land Acq., Gujarat

Vs.

Madhubai Gobarbhai

C.A.No.204 of 2000

(S.B. Sinha and Cyriac Joseph JJ.)

29.07.2009

JUDGMENT

S.B. SINHA, J.

These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The State of Gujarat issued diverse notifications for acquisition of a huge tract of lands for construction of a dam over a river known as 'Thebi'. The lands sought to be acquired were spread over in three villages, namely, Amreli, Baxipur and Giriya. Whereas villages Amreli and Baxipur are situated on the western side of river and within the municipal limit of the town of Amerli; village Giriya is on the eastern bank thereof and outside the municipal limit of the said town Amreli.

Amreli is the headquarters of the District Amreli. It is a well developed town. A National Highway known as Amreli - Chittal Road passes through the town of Amreli.

The residents of the town enjoy the facilities of transportation, hospitals, schools, colleges, telephone, etc. It is, however, admitted that the entire development has taken place on the eastern bank of the river and not on the western bank. The villages situate on the western bank, however, admittedly are wholly undeveloped. The lands under acquisition are agricultural lands. The land upon acquisition were to be submerged under water.

The Land Acquisition Officer made three different awards for three different villages.

For agricultural lands situate in village Baxipur, which are the subject matters of judgment and order dated 23.02.1998 passed in F.A. No. 3119/1997 and F.A. No. 3120/1997 and judgment and order dated 4.5.1999 passed in F.A. Nos. 6184-6203/1995 and other connected appeals, compensation was awarded at the rate of Rs.75/- per square meter. Out of 350 land owners, however, only 156 land

owners filed applications for reference before the Collector in terms of Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as, the said Act). The Reference Court awarded compensation calculating the market value thereof at the rate of Rs. 75/- per square meter in respect of lands situate in Baxipur village (western side of river Thebi), Giriya village (eastern side of river Thebi) and Amreli village (western side of river Thebi). So far as the lands situate within the Amreli town, which is within the municipal area and situate on the eastern side of the river comprising of residential and commercial area which was developed since 1984, are concerned; the Land Acquisition Officer awarded compensation at the rate of Rs.50/- per square meter in respect of agricultural lands, but the Reference Court and the High Court awarded compensation at the rate of Rs.160/- per square meter of land. For the same area in respect of non- agricultural lands, the Land Acquisition Officer awarded compensation at the rate of Rs.150/- per square meter whereas the Reference Court as also the High Court awarded compensation at the rate of Rs.240/- per square meter.

So far as acquisition of lands which are subject matter of C.A. No. 325-331/2000, situated in village Giriya are concerned; whereas the Land Acquisition Officer awarded compensation at the rate of Rs.12/- per square meter in respect of agricultural lands and Rs. 50/- per square meter in respect of non-agricultural lands, the Reference Court awarded compensation for both categories of land at the rate of Rs.400/- per square meter, the High Court, however, while upholding the said amount of compensation in respect of non-agricultural lands reduced the amount of compensation to Rs.300/- per square meter for agricultural lands.

Aggrieved by and dissatisfied with the aforementioned judgments, the State of Gujarat is before us. An appeal has also been filed by some of the claimants owning non-agricultural lands and raised constructions for use of the same as godown.

We may deal with the relevant facts and submissions made before us in each group separately.

GROUP - I

With a view to appreciate the rival contentions of the parties, we may notice heretobelow the number of matters and the other relevant facts for our purpose which are involved in Group -I wherein compensation has been awarded at the rate of Rs.75/- per square meter Group No. Total C.A. No. F.A. No. Notificatio Date of matters n Section 4 Judgment dated

1 1 204/2000 3119/1997 5.6.1993 23.2.1998 2 1 213/2000 3120/997 17.9.1992 23.2.1998 3 20 221-240/2000 6184- 15.3.1990 4.5.1999 6203/1995 2 241-242/2000 5289- 15.3.1990 4.5.1999 5290/1996 7 243-249/2000 269- 15.3.1990 4.5.1999 275/1997 11 250-260/2000 910- 15.3.1990 4.5.1999 920/1996 34 261-294/2000 1017- 15.3.1990 4.5.1999 1050/1996 7 295-301/2000 7-13/1997 20.9.1990 4.5.1999 2 302-303/2000 2358- 15.3.1990 4.5.1999 2359/1997 15 304-318/2000 1880- 10.12.1992 4.5.1999 1894/1997 6 319-324/2000 2061- 10.12.1992 4.5.1999 2066/1997 4 1 4090/2000 2546/1997 15.3.1990 4.5.1999 5 1 4091/2000 1166/1997 8.8.1990 4.5.1999 We may, at the outset, also notice that the Reference Court and High Court refused to take into consideration a large number of deeds of sale (Exh. 86 to 100) produced by the State inter alia relying on or on the basis of the decision of this Court in P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors (1995) 2 SCC 305, the same were not admissible in evidence. As for the purpose of proving the same, neither the vendor nor the vendee in respect of the said deeds of sale had been examined. An application for adduction of additional

evidence filed before us has been allowed. Mr. S.N. Shelati, learned Senior Counsel appearing on behalf of the State would submit:

(i) The Reference Court and the High Court committed a serious error in not exhibiting true copies of the Sale Deed (Exhs. 86 to 100) in view of the decision of this Court in P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors. (1995) 2 SCC 305 having been overruled in Land Acquisition Officer and Mandal Revenue Officer v. V.V. Narasaiah [(2001) 3 SCC 530] and ors. [(2004) 8 SCC 270]. Cement Corporation has also been followed by this Court in Ranvir Singh v. Union of India (2005) 12 SCC 59. (ii) The Reference Court and the High Court awarded a grossly high value towards compensation of the acquired lands by misapplying the principle of valuation and adopting a wrong method of valuation and thus, committed a manifest error. (iii) While making the award, the Reference Court as also the High Court failed to take into consideration the fact that the lands of village Baxipur being situated on western bank of river Thebi far from village Amreli as also the fact that geographic condition of the eastern bank of river Thebi is absolutely different vis-à-vis the lands situated on the western bank. Whereas the lands situated on the eastern bank are mostly converted into non-agricultural lands; the lands situated on the western bank of river Thebi are only agricultural lands and in that view of the matter it is impermissible in law to compare the lands situated on the western bank of the river with those on the eastern bank particularly when even no residential premises have been constructed thereon. The lands situated on the western bank of the river Thebi having not been converted into non-agriculture land and there being hardly any scope for any development and furthermore in view of the purpose for which acquisition has been made, namely, submergence of the land under water, the Reference Court as also the High Court must be held to have committed a serious error in comparing the lands with agricultural lands situated on the western bank with the non-agricultural lands situated on the eastern bank of the river Thebi.

(iv) The Land Acquisition Officer having considered the comparable sales of agricultural lands both on the western bank and eastern bank as also sale of non-agricultural lands and having awarded compensation at the rate of Rs.350/- per Are for Jirayat and Rs.500/- per Are for irrigated lands and, thus, having considered all relevant factors, the same should not have been interfered with by the Reference Court as well as by the High Court.

(v) There being no reliable evidence of comparable instances or to show the actual yield from the land and, thus, the land holders having not been able to discharge the burden of proof, the amount of compensation awarded by the Land Acquisition Officer should be held to have been fair and adequate in view of the decisions of this Court in Special Land Acquisition Officer vs. Sidappa Tumari [1995 Supp. (2) SC 168 (Para 22)]. (vi) The Reference Court and consequently the High Court without any material on record awarded compensation at the rate of Rs.75/- per square meter in respect of agricultural lands which admittedly are situated in an undeveloped area and, thus, committed a serious error of law.

(vii) The Reference Court ought not to have disregarded the distance between the Amreli - Chittal Road and the village in question which is 1.5 kilometers to 2 kilometers and, thus, committed a serious error in relying upon the sale instances being Exhs.35 to 40 which were in respect of the lands adjacent to Amreli - Chittal Road for the purpose of holding that the amount of compensation awarded by the Land Acquisition Officer was unjustified.

(viii) Ignoring the distance of 1.5 to 2 kilometers (holding it to be of not much consequence by the

High Court) for the purpose of ascertaining the true market value of the land situated in an undeveloped area was wholly erroneous particularly in view of the fact that the witnesses examined on behalf of the respondents categorically stated that there was no likelihood that the said area would be developed in future. (ix) The High Court furthermore should not have failed to take into consideration the evidence of Jerambhai Devsinhbhai (Exh. 12) who had categorically admitted that except Oil Mills there was no other industry in village Amreli and there was neither any State High Way passing through the said village nor there was any railway connection. Even witness Bhagvandas had admitted that between the dam and Pratappura area there were no residential houses. Similarly witness Bharatbhai K.Mehta had admitted that he had purchased the land for his own purpose, namely professional and residential purpose. (x) The Reference Court as also the High Court should not have relied upon the valuation report proved by Bhikhabhai Rami who in no uncertain terms had admitted that he had not seen any document in respect of surrounding lands and furthermore had not taken into consideration the deeds of sale mentioned in the award and moreover there was neither any road facility available nor any residential house could be traced out and there was no possibility of any industrial development also on the western side of the river.

(xi) The Reference Court as also the High Court committed a serious error insofar as they failed to take into consideration that the land owners failed to discharge their burden to show that the land in question had any potentiality of development. Mr. R.P. Bhatt learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit: i. As upon perusal of the award made by the Land Acquisition Officer itself it would be evident that the entire area is a developed one and the land owners were progressive farmers, no infirmity can be said to have been committed in comparing non-agricultural lands with agricultural lands particularly when in respect of the lands situated in one area he had granted compensation at the rate of Rs.50/- per square meter, there was absolutely no reason as to why the award at the rate of Rs.3.50 per square meter for non-irrigated lands and Rs.5/- per square meter for the irrigated lands should be awarded. ii. For determining a just and fair amount of compensation, no sole decisive factor existed and each case was required to be considered on its own merit. However, when such determination can be made upon applying more than one factor, the appellate court should not have interfered therewith even if another view was possible. iii. Location of a land although material keeping in view the fact that for all intent and purpose all the three villages are part of one town, only because a part of the acquired land is situated at a distance of 1.5 to 2 kilometers, the sale instances in respect of developed area can be applied subject of course to such deduction as is applicable in respect thereof.

Notifications for acquisition of different parcels of land were issued on diverse dates.

Indisputably the purpose of acquisition was construction of a dam over river Thebi. The lands acquired are situated in three villages. Nature of lands acquired was both agricultural and non-agricultural. Some are situated in the urban area which were well developed and some were not completely developed and mainly agricultural lands. The lands at Baxipur which are non-agricultural lands and situate on the Western bank of river Thebi, indisputably were agricultural lands. The purpose for their acquisition was that the said lands would be submerged in water.

It is also not in dispute that various parts of the village Giriya and Amreli are within the municipal limits while only a portion of the lands situate in village Baxipur is within the municipal limit. The parties hereto in support of their respective cases relied upon a large number of documents including deeds of sale. A large number of witnesses including some experts were examined in the matters. We have noticed hereinbefore the reasonings of the Land Acquisition Collector; the Reference Judge

as also the High Court for arriving at their respective opinions.

The learned Reference Judge, however, rejected the deeds of sale produced by the acquiring authority inter alia on the premise that to prove the same neither, vendor or the vendee thereof had been examined. For the said purpose, it relied upon a decision of this Court in *P. Ram Reddi v. Land Acquisition Officer*, (Supra). The said decision of this Court, however, has since been reversed inter alia by a Three Judge Bench of this Court in *Land Acquisition Officer Mandal Revenue Officer v. V. Narasaiah*, [(2001) 3 SCC 530]. Later, a Constitution Bench of this Court in *Cement Corporation of India Ltd. etc. etc. v. Purya and others etc. etc.*, [(2004) 8 SCC 270], while interpreting Section 51-A of the Act opined that the said provision seeks to make an exception in regard to proving of sale deeds stating :-

25. Section 51-A of the Land Acquisition Act seeks to make an exception to the aforementioned rule.

26. In the acquisition proceedings, sale deeds are required to be brought on record for the purpose of determining market value payable to the owner of the land when it is sought to be acquired.

27. Although by reason of the aforementioned provision the parties are free to produce original documents and prove the same in accordance with the terms of the rules of evidence as envisaged under the Indian Evidence Act, the LA Act provides for an alternative thereto by inserting the said provision in terms whereof the certified copies which are otherwise secondary evidence may be brought on record evidencing a transaction. Such transactions in terms of the aforementioned provision may be accepted in evidence.

Acceptance of an evidence is not a term of art. It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a court would be dependent upon the facts of the case and other relevant factors. A piece of evidence in a given situation may be accepted by a court of law but in another it may not be.

28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term acceptance of evidence relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word may. A discretion, therefore, has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors.

(See also *Ranvir Singh and another v. Union of India*, [(2005) 12 SCC 59].

In view of the aforementioned Constitution Bench decision we allowed an application filed by the

appellant for placing additional documents on record by our order dated 23.10.2008. We, therefore, are required to take into consideration the said transactions as well. The core question which arises for our consideration is what principles should be applied for determining the market value of the land. It is now a well settled principle of law that the determination of the market value of the land acquired, indisputably would depend upon a large number of factors, nature and quality of the lands is one of them. The norms which are required to be applied for determination of the market value of the agricultural land and homestead land may be different. In given cases location of land and in particular, closeness thereof from any road or high- way would play an important role for determination of the market value wherefor belting system may in appropriate cases have to be resorted to. The position of the land, particularly in rainy season, existence of any building etc. also plays an important role. A host of other factors including development in and around the acquired land and/or the potentiality of the development will have a bearing on determination of the value of the land. Determination of the market value of the land may also depend upon the facts and circumstances of each case, amongst them, however, would be the price of land, amount of consideration mentioned in a deed of sale executed in respect of similarly situated land near about the date of issuance of Notification under Section 4(1) of the Act ; in the absence of any such exemplars the market value can be determined on yield basis or in case of an orchard on the basis of number of fruit bearing trees. It is also well settled that for price determination purposes, the courts would be well advised to consider the positive and negative factors, as has been laid down by this Court in *Viluben Jhalejar Contractor vs. State of Gujarat* [(2005) 4 SCC 789], namely :-

Positive factors Negative factors (i) Smallness of size (i) Largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth (iv) Nearness to developed area (iv) lower level requiring the depressed portion to be filled up (v) regular shape (v) Remoteness from developed locality (vi) Level vis-`-vis land under (vi) Some special disadvantageous acquisition factors which would deter a purchaser (vii) Special value for an owner of an adjoining property to whom it may have some very special advantage. The Reference Judge as also the High Court had proceeded to determine the market value inter alia relying upon or on the basis of some deeds of sale ; valuation report; the circular letter issued by the Collector in regard to premium payable on conversion of land etc. The Reference Court and the High Court while ignoring the deeds of sale whereupon reliance was placed by the State, for the reasons stated hereinbefore, principally relied upon a few deeds of sale. We shall take notice of some of them, namely, Exhibits 35, 36, 37, 38, 39 and 40. It will also be beneficial to consider some of the documents upon which the State relied upon, they are Exhibits 86, 90 , 91 and 96. Criticisms advanced on behalf of the State in respect of the deeds of sale whereupon the claimants relied are as under. i. Exhibit 35 pertain to a non agricultural resident plot ; construction thereon is only upto plinth level ; it is situated in a municipal area ; it a very small plot and that is why it was not comparable.

ii. Exhibit 36 and 37 pertain to a non agricultural residential plots of land. They are situated by the side of the highway and in the municipal area.

iii. Exhibit 38 relates to a non agricultural residential plot, comes under earthen dams area. It is outside the municipal area. iv. Exhibits 39 and 40 relate to non-agricultural residential plots of land. They touch Amreli-Chittal-Rajkot Highway and are in municipal area. v. Bharatbhai, PW-7, purchaser of the land under Exhibit 40, stated that the purchase of the plot by him was for a special purpose, namely - i.e. for professional and residential purposes. The Land Acquisition Officer in his Award noticed the position and place of the land sought to be acquired in the following words:-

Details of land to be acquired. The lands of survey number 1007 to 1046 as shown at Sr. No.1 to 28 of the statement of award are cultivable land situated on west of Thebi river far away from Amreli, near the limits of Baxipur. These land as shown in statement Jirayat dry and Jirayat irrigated, which is black and fertile giving 2 crops on monsoon and winter.

The land proposed to be acquired is of old and new sharat. Amreli town is the head quarter of Amreli District, is a railway station, S.T. Buses are ravaging throughout the year. The population of Amreli is near about 1,10,000 which consist mainly of Patel, Bania, Brahmins, Weavers etc who are progressive farmers. There are industries of oil mills, land weaving etc.

In the said Award, summary of sales of agricultural lands was prepared, which read:-

Summary of considerable sales of agricultural lands
Sales of western bank Sale of eastern bank
Survey Acres Date of Price of Survey Acres Date of Price of No. sale 1 are No. Sale 1 are
21/5/85 785-25 37/37/2 6.20 6/6/85 307-69 1063 2.38 13/12/85 381-00 29 0.24 23/7/87 1041-66
949 2.28 15/4/87 426.00 33/AB 1.11 2/3/89 3882.35 1063 1.13 3/2/89 754-71 33/AB 1.10 3/3/89
3880.00
Looking to these sales of agricultural lands Rs.350/- for Jirayat and Rs.5000/- for irrigated lands for 1 Are are seems to be reasonable for the lands of Western bank of river Thebi. Looking of these sales and the rise in price of land Rs.2000/- and Rs.3000/- for lands for 1 Are are seems to be reasonable but the geographical condition of eastern bank is quite different as most of the land are converted into non- agricultural lands and is either populated or nearly populated area, is situated on Amreli, Chittal State highway. Looking to all these factors it is not possible to compare the land of western bank with land of eastern bank. No lands are converted into non-agriculture and then is no habitation in the western bank of river Thebi. Whilst there are many non-agriculture land and habitation increases day by day. More over many lands of eastern bank are converted into non-agriculture, which were proposed to be acquired. Hence it seems necessary to discuss about sales of non-agricultural plotting too as the land of eastern bank are situated on Amreli, Chittal, Rajkot Highway and nearer to these and a statement of sales of non-agricultural lands has been taken from the Kasba Talati Amreli which is appending as statement number K-2 Discussions of these sales are narrated here below.

Our attention was further drawn to the fact that admittedly there was no development on the western side of the river. Our attention has further been drawn to the evidence of PW-1, Jerambhai, who is one of the claimants. He admitted that in the village form, which he had produced, it has not been shown that two crops are grown and that he did not maintain any account or balance sheet of the receipt of the crop grown. He furthermore accepted that there was no railway connecting the village with any big city. It was also admitted that not any State highway passes through Amreli and except oil mills, there were no other industries. The claimants examined one of the experts, namely Bhikhubhai as PW-9, who admitted that he had examined deeds of sale pertaining to residential land only and not pertaining to agricultural lands. He furthermore admitted that the Land Acquisition Officer had taken into consideration figures of five years' sale transactions in his Award. In his deposition he stated:-

(4) I know that Amreli is backward for Industrial purpose and as per my say Industrial Development has been started. It is true that on the western side of river nothing is there. Moreover for the purpose of going towards west side, no road facility is available. As per my say acquired land is residential purpose land. I have enquired from the town planning office. It is true that in this area no residential houses traced out. In the year 1972, in Amereli town planning has been endorsed and this

fact I know very well. The facts stated in column no.9 in Exh. 78, which is mentioned considering sale transaction.

On behalf of the State one Ramniklal was examined as DW-1. He was a Deputy Executive Engineer (Thebi Irrigation). He has not only deposed that the acquired land is situated outside the Amreli Municipality but according to him they are situated at a distance of about 1 = km. - 2 km. from Amreli-Chittal road. Whereas the residential area, according to him, was on the eastern side, on the western side of the river Tebi there was no residence. He further stated that no State highway is passing through Amreli and also that railway is not connected with big city. Shri Kaushik who was examined on behalf of the State as DW-2 and had been serving the State as a Deputy District Development Officer, in his deposition admitted:-

I have awarded compensation at the rate of Rs.150/- per sq. mt. for Agriculture land and which is likely to be developed. The compensation awarded at the rate of Rs.50/- per sq. mt. has been awarded fully and compensation at the rate of Rs.150/- per sq. mt. has been calculated after deducting price of road (way) in the case of not taking possession road, then in such cases, I have awarded compensation at the rate of Rs.1/- which is token and deduction of road was being deducted in such case where possession of road has been handed over. Generally for the purpose of converting land into not-agriculture purpose, the claimant has to left (sic for leave) 40 to 43% land. It appears that the High Court had mixed up the Awards made in respect of the lands situated on the Eastern side of the River with that of the Western Side.

We may now notice the deeds of sale whereupon the State had relied upon.

Ext. 86 is in respect of a deed of sale relating to Survey No.991 which is adjacent to Survey No.103-A in terms whereof only 0.77 per sq. meter of land was determined as the market value. It was also placed on record that the vendor Lalubhai Keshavbhai is one of the claimants before us. However, it appears from Ext. 90 which is a deed of sale dated 7 th January, 1987 relate to the land which is adjacent to Survey No.999 K from a perusal whereof it appears that the market value was Rs.1.85 per sq. mt. The subject matter of the said deed of sale is the land situated near nana Ankadira village road near to the acquired land at the western side of the river. Ext. 96 is the deed of sale dated 22nd June, 1989, appertaining to Survey No. 1043 P; from a perusal whereof it would appear that the market value of the land was Rs. 2.08 per sq. meter. Ext. 98 is the deed of sale dated 21st April, 1990 which is in respect of Jiyarat land situated on the eastern side of the river adjoining Amreli municipal area. The market value of the same comes to Rs.8.41 per sq. met. Ext. 99 is a deed of sale dated 27 th September, 1990 appertaining to Survey No.1047/1 and adjacent to Survey No.1031 1046 is Bagayat land, which is stated to be situated near the acquired land on the western side of the river and down stream of earthen dam, the market value of which was Rs.2.50 per sq. met. . The High Court, however, proceeded on the basis that although the acquired lands were situated on one side of the river, in view of the fact that entire acquired land was to be submerged, no justification can be made in regard to the nature of the land. The High Court held (in our opinion wrongly) that distance of a few kilo meters from the Amreli town would not matter.

The High Court furthermore opined that the lands in village Baxipur were also fertile and thus no discrimination can be made. For the said purpose the High Court relied upon the Awards made in the earlier case exhibited as Exhibits 68 and 73 in terms whereof compensation @ Rs.75/- per sq. meter was paid.

The variation in the price of the land within a few years is a matter of great significance. It is true that no single factor would be decisive for the purpose of arriving at the market value of the land. But in a case of this nature a holistic view is required to be taken. It is, in our opinion, wholly improper to forget the distinction between the agricultural land and the non agricultural land. Even in the same area, value of the agricultural land and the non-agricultural land may be considerably different. For the said purpose, existence of the road ; railway station ; airport; schools ; colleges ; hospitals etc. play an important role. It is not a case where the developed area and the undeveloped area or for that matter non agricultural and agricultural lands are merely divided by a road. It is also not a case where the entire area is known and treated to be one and the same, although a part of it may be governed by the Panchyat and the other part comes within a municipal area. It stands admitted that the acquired lands for all intent and purport is divided into two parts. The eastern part and only a small part of the western side is within the municipal area and the other, consisting of agricultural lands, is outside the municipal area. It furthermore stands admitted that the town has developed only on eastern side of the river and agricultural lands are situated on the western side in which there is even no residential house.

In a case of this nature, indisputably different criterion and norms are required to be adopted for determination of the market value. Before us learned counsel for the parties have relied upon a large number of decisions. We may notice some of them This Court in *Union of India v. Pramod Gupta*, [(2005) 12 SCC 1], on the question of determination of market value opined :- 24. While determining the amount of compensation payable in respect of the lands acquired by the State, the market value therefor indisputably has to be ascertained. There exist different modes therefor.

25. The best method, as is well known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidences admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighbouring villages. Such a judgment and award, in the absence of any other evidence like the deed of sale, report of the expert and other relevant evidence would have only evidentiary value.

26. Therefore, the contention that as the Union of India was a party to the said awards would not by itself be a ground to invoke the principles of *res judicata* and/or *estoppel*. Despite such awards it may be open to the Union of India to question the entitlement of the respondent claimants to the amount of compensation and/or the statutory limitations in respect thereof. It would also be open to it to raise other contentions relying on or on the basis of other materials brought on record. It was also open to the appellant to contend that the lands under acquisition are not similar to the lands in respect whereof judgments have been delivered. The area of the land, the nature thereof, advantages and disadvantages occurring therein amongst others would be relevant factors for determining the actual market value of the property although such judgments/awards, if duly brought on record, as stated hereinbefore, would be admissible in evidence.

It was further opined :-

36. Yet again in *Ras Behari Mandal v. Raja Jagadish Chandra Deo Dhaubal Deb* the Patna High Court reiterated the presumption that the lessor retains all the rights in mines and quarries. It also noticed the decision of the House of Lords in *Great Western Rly. Co. v. Carpalla United China Clay Co. Ltd.* wherein a grant reserving minerals was held to exclude a deposit of china clay despite the fact that the same was found near the surface. It was also held that:-

8. In *V. Hanumantha Reddy v. Land Acquisition Officer Mandal R. Officer* the law is stated in the following terms: (SCC p. 645, para 5)

It is now a well-established principle of law that the land abutting the national highway will fetch far more higher price than the land lying interior. This Court further opined :-

84. It is also trite to state that the market value of agricultural land is lower than that of the land suitable for commercial purposes. (See *Om Prakash v. Union of India*.)

It was further opined :-

87. The courts will also have to take into consideration the enormity of the financial implication of enhancement in view of the size of the land acquired for a particular project.. In *Ranvir Singh v. Union of India*, [(2005) 12 SCC 59], this Court opined as under :-

22. Concededly, the High Court in its impugned judgment did not place any reliance whatsoever upon the sale instances whereupon strong reliance has been placed by the parties solely on the ground that neither the vendors nor the vendees thereof had been examined as witnesses. It has also not placed any reliance upon any other judgment or award filed by the parties. The High Court while arriving at the said finding evidently took into consideration the law as it then stood. The correctness of the decisions wherein the aforementioned view had been taken was doubted and the matter was referred to a larger Bench. Referring to *Cement Corporation (supra)*, it was opined that the High Court was required to consider the deeds of sale in their proper perspective for determining the market value of the acquired land. In *Karimbanakkal Sulaiman (Dead) by L.Rs. v. Special Tahsildar for K.A.K.P.I.P.*, [(2004) 13 SCC 643], this Court held: These factors have been taken into consideration by the High Court in fixing the land value. Moreover, the land acquired was agricultural land and it was acquired for the purpose of an irrigation project. There is nothing on record to show that the land had any commercial value or future potentialities. We do not think that the land value fixed is too low to be interfered with by this Court. In *Viluben Jhalejar Contractor v. State of Gujarat*, [(2005) 4 SCC 789], this Court opined that :-

24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In *Basavva v. Spl. Land Acquisition Officer* deduction to the extent of 65% was made towards development charges.

In *Basant Kumar v. Union of India*, [(1996) 11 SCC 542], this Court has opined that even if the entire land is of one village all the persons cannot be given same compensation, stating:-

...It has been firmly settled law by beadroll of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the armchair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and to the same extent. This test should always be kept in view and answered affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to sway, he outsteps his domain of judicial decision and lands in misconduct amenable to disciplinary law...

It has categorically been held that ordinarily the entire village should not be treated as one unit as 'even in the same village, no two lands command the same market value' as potentially, the fact that land abutting a National Highway or road would command a higher market value vis-à-vis the land situated at a location which is not so situated. Potential development and/or likelihood of development are also the factors which have been considered to be relevant by this Court in *Kanwar Singh v. Union of India*, [(1998) 8 SCC 136] observing:- 8. So far as the first argument that the appellants ought to have been given the same rate of compensation which was given to the claimants of the adjoining village is concerned, the amount of compensation for the land acquired depends on the market value of land on the date immediately before the notification under Section 4 of the Act or when same land is acquired and offer of compensation is made through an award. Whether such an offer of compensation represents the market value of the land on the date of notification under Section 4 of the Act, has to be determined on the basis of evidence produced before the Court. The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification under Section 4 of the Act. This could only be done by the claimants by adducing evidence to the effect that on the relevant date, the market value of the land in question was such at which the vendor and the vendee (buyer and seller) were willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transactions on the date or preceding the date of notification issued under Section 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land to be assessed in terms of those transactions. Sale instances showing the price fetched for similar land with similar advantages under bona fide transaction of sale at or near about the issue of notification under Section 4 of the Act is well recognized to be the appropriate evidence for determining the market value of the acquired land. It was opined that the amount of compensation should not be awarded based on the market value of the land determined for a neighbouring village. In *State of Maharashtra v. Basantibai Mohanlal Khetan*, [(1986) 2 SCC 516] referring to capitalization method for determining the value of the land, it was opined:

...In order to appreciate this ground of objection, it is necessary to examine whether the classification of the land under the Act into the land in municipal area and the land in rural area for purposes of determining the amount payable on acquisition is bad. It is not denied that the land in municipal area commands various advantages which are not available in the case of land in rural areas.

Situation of the land and particularly the area in which it is situated is indisputably a relevant factor. We, however, do not mean to suggest that only because the land is situated within the jurisdiction of a Gram Panchayat by itself would go to show that the value of the lands sought to be acquired cannot under any circumstance be compared with the land situate within the jurisdiction of municipality. There may be a case where the lands situated on one side of the road was within the Gaon Sabha and the other side within the municipality. It is also not a case where the area is known as one and the same area although divided by a road and are under different jurisdictions. {See also *Satish Ors. vs. State of U.P.* Ors. [(2009) 9 SCALE 632] and Ors. [(2009) 9 SCALE 591]}

It is furthermore beyond any doubt or dispute that building potentiality of the land acquired would also be a relevant consideration. However, the purpose for which the land is sought to be acquired would also assume some significance.

It is on the aforementioned factual backdrop and legal principles governing grant of compensation,

the market value of the lands situate within Group-1 is required to be determined. The lands are purely agricultural lands. There were no buildings; there was no residential use; there was no factory. No development had taken place nor was any development expected in immediate future. The lands were acquired only for the purpose of submergence. It had thus even no building potentiality.

We, therefore, are of the opinion that in view of the materials brought on record, the valuation of the land should be determined at Rs.50/- (Rupees Fifty only) per square meter.

GROUP- II

This batch of appeals (7 in all) relate to the claimants' lands adjoining villages Giriya, Baxipura and limits of Amreli town and the same are directed against the common judgment and order dt. 4.5.1999 passed in First Appeal Nos. 989/98 to 995/98 arises out main Land Reference Case No. 1/96 with consolidated Land Reference Cases Nos. 1/96 and 82/95 to 87/95 (7 in all) main Land Reference Case being No. 1/96. In these cases, the Notification under Section 4 was published in the daily news paper on 29.11.92 and 30.11.92, the same was notified in the Gazette on 10.12.92 and was affixed at the concerned places on 14.12.92 followed by Notification under S. 6 published on 18.2.93 in the Gazette and in the news paper on 20.2.93 and the same was affixed at the concerned places on 24.2.93. In Survey No. 89 of Village Giriya, lands of 153 land holders were acquired. The Special Land Acquisition Officer published the Award on 23.2.95 awarding compensation at the rate of Rs. 12/- per sq. mtr. (Rs. 1200/- per Are) for Bagayat land and Rs. 8/- per sq. mtr. (Rs. 800/- per Are) for Jirayat land and Rs.50/- per sq. mtr. for non-agricultural land. Out of that 153 claimants, 132 claimants have not filed any reference under Section 18 of the Act and accepted the award of Rs.50/- per sq. mtr. awarded by the Land Acquisition Officer. Being aggrieved by and dissatisfied with the said Award, some of the claimants applied for reference of their cases in terms of Section 18 of the Act stating that they are entitled to compensation at the rate of Rs. 1000/per sq. mtr. References thereto were made by the District Collector.

The Reference Court decided all these references by its common order dt. 9.1.98 awarding compensation at the rate of Rs. 400/- per sq.mt. with other benefits. The amount of compensation in respect of agricultural lands was reduced to Rs.300/- per square meter by the High Court while making a distinction between the agricultural lands and non-agricultural lands. Indisputably, there are 18 cases pending before the Reference Court. In case of neighbouring non-agriculture Survey No. 82 of village Giriya there were 23 claimants, 5 of them had not prayed for reference under Section 18 of the Act. Reference Court awarded Rs.75/- per sq. mtr. to 18 claimants and they accepted the same.

In these cases the lands of the claimants are situated adjoining the villages Giriya, Baxipura and limits of Amreli town. Their lands have also been acquired for the 'THEBI IRRIGATION PROJECT'. On behalf of the claimants 7 witnesses were examined and the Department had examined 3 witnesses. The claimants' witness No. 1 Gunvantbhai Vallabhbai has stated that the land bearing S. No. 90/1 is situated on the eastern side of Amreli Rajkot road and land S. No. 89 is also on the same direction touching the land of S. No. 90/1. According to this witness, land bearing S. No. 91 is situated on the western side of the road touching the road side. The lands of S. No. 90/1 and 91 are situated on the east and west side of the said Amreli- Rajkot Highway respectively and land S. No. 89 is also on the eastern side touching the land of S.No. 91. The Reference Court referred to the Map (Exh. 39) and noted that the land bearing S. No. 44 touches on its southern side

the land bearing S. No. 91 which is on the western side of the road and land bearing S. No. 39 touches S. No. 43 being on the same direction. The land of S. No. 39 pertains to 'Surya Garden' Hotel and for which the District Collector has ordered to pay premium @ Rs. 300/- per square meter for conversion thereof for use as non-agricultural purposes from agricultural purposes. All these three Survey Numbers are in the one line and on the western side of the Highway. According to the Geographical situation, on the other side of the road i.e. to say the eastern side of the road, the land bearing S. No. 51 is just opposite the land of S. No. 39 and on the eastern side the land earmarked for building an Aerodrome being S. No. 51; while S. No. 44 touches the border of the Aerodrome land S. No. 51 going towards northern side of S. No. 44. The land of S. No. 91 is adjacent to it and at the same time on the western side of S. No. 44 is S. No. 50 and S. No. 49 and the border of land of S. No. 50 touches the land of S. No. 89 to some extent. Thus, the lands bearing S. No. 39 and 51 ('Surya Garden Hotel) and lands of Aerodrome are situated respectively on the opposite side of the Road. S. No. 43 touches the border of the acquired land of S. No. 91. On the western side of S. No. 43, there are lands of S. Nos. 41 and 42 and the land of S. No. 38 touches the southern side of S. No. 41. Thus the Geographical situation of all these Survey Numbers show that these lands are around the acquired land.

P.W. No. 1 Gunvantbhai Vallabhbai deposed in regard to the particulars of the same Survey Numbers around the acquired land. He has stated that the award for the land bearing S. No. 43 is at the rate of Rs. 275/- per sq.mt.. S. No. 43 touches the border of the said Amreli-Rajkot road, which is also clear from the Map Exh. 39. The land bearing S. No. 40 is, however, on the interior side of the road for which the amount of compensation awarded is at the rate of Rs. 70/- per sq.mt. According to this witness, some other lands bearing S. Nos. 41, 43/5, 40/4, 43/2 and 43/4 were also acquired and for these lands the Land Acquisition officer had awarded compensation at the rate of Rs. 150/- per sq. mt. This witness furthermore stated that the land of S. No. 39 touches the road and just opposite to the land of the Aerodrome, where the Surya Garden Hotel is situated and for this land the Town Planning Department had also assessed the value at the rate of Rs. 217/- vide letter dt. 16.10.92. He also stated that the land of S. No. 39 is a new tenure land and to convert this land for Non Agriculture purposes the Collector, Amreli fixed the premium of Rs. 300/- per sq. mtr. by a Circular letter dated 27.11.1992, marked as Exh. 46. According to him, even in cases of some other S. No. viz. S. No. 56, which is only 300 mts. away from the acquired land by a Registered Sale Deed No. 900 dt. 11.5.92, land was sold out at the rate of Rs. 690/- per sq. mtr. and that lands being S. Nos. 34 and 40/9, which are about 200 meters from the land in question i.e. plot Nos. 10, 17, 18, 60 and 6 were also sold out at a high price. The order of the Reference Court was challenged by the appellants before the High Court mainly on the following grounds:- (a) The Reference Court ought to have believed the deposition of D.W. No. 1 examined at Exh. 69, who had passed the award Exh. 38 because he had taken into consideration sale instances for 5 years and because he had passed the Award Exh. 38 looking to the market value as per the sale instances of village Giryia in the list of the 5 years sale instances at Exh. 35;

(b) That the Reference Court had erred in holding that S. Nos. 90/1 and 91 are likely to be converted into non agricultural lands;

(c) It was argued with reference to the deposition of D.W. No. 2 at Exh. 71 that as per the copy of the sale deed Exh. 72 the said land admeasuring 1000 sq.mts. was sold for Rs. 18500/- on 2.11.88, that means at the rate of Rs. 18.5 per sq. mt. and this price at which the land was purchased by the claimants should be considered to be the best evidence and that this should form the acid test for the purpose of determining the rate at which the compensation should be awarded. In regard to

geographical situation of the lands and whether the lands are in developed area or in the vicinity of the developed area, the High Court opined:-

13.15 We have considered the entire evidence in this case in its entirety and have also gone through the analysis of the evidence, as has been made by the Reference Court. It is clearly borne out that the lands acquired in these cases are of S. No. 91 (in Land Reference Case Nos. 82/95, 83/95 and 84/95), S. No. 89 (in Land Reference Cases Nos. 85/95, 86/95 and 87/95) and S. No. 90/1 (in Land Reference Case No. 1/96). So far as the geographical situation of these lands and as to whether these lands are in developed area or in the vicinity of the developed area is concerned, we find that the evidence, which has come from both the sides, is not at much variance inasmuch as the lands are on the eastern or western side of the Amreli-Rajkot Highway and also as per the Map Exh. 39. The lands of various S. Nos. , to which the reference has been made herein-above, are all situated in a developed area and the same are around the acquired land. If the lands of various S. Nos. around the acquired land are developed, there is no reason to say that the acquired lands are not comparable with the lands of various S. Nos. such as S. Nos. 38, 39, 40, 41, 42, 43, 44, 49, 50, 51 and 56. The situation of 'Surya Garden Hotel' in S. No. 39 and the existence of godowns for Scoters and residential premises between the acquired lands of the claimants and the 'Surya Garden Hotel' is also established. Similarly the situation of the Cement Factory between the lands of S. Nos. 39 and 91 is also made out. The deposition with regard to the municipality pavilion, land of Aerodrome, houses etc. on the eastern side of the road alongwith residential houses also cannot be disbelieved. Thus in absence of any effective and specific cross- examination with regard to the development of the area in question, it cannot be disbelieved that the lands around the acquired lands are developed area. In the judgment itself at page 20 the Reference Court has recorded as under:-

There is no cross-examination with respect to the development of area and therefore there is nothing to disbelieve the say of the witness that the area nearby acquired lands are not developed. It appears that the word not before the word 'developed is a mistake typographical or otherwise and on that basis no argument could be built up to say that the lands nearby the acquired lands are not developed.

13.16 The depositions with regard to the acquired lands that it has wells, pacca houses and the trees, the details of which have been mentioned hereinabove, has remained untrammled in the cross-examination of P.W.No. 1. All these details do add to the quality of the acquired land for the purpose of fixing the rate at which the compensation is to be given. The case that lands of S. No. 89, which have been acquired, are non agricultural lands and the acquired lands of S. Nos. 90/1 and 91 are likely to be converted as non agricultural land has also remained intact. Even D.W. No. 1, who has been claimed as a star witness on behalf of the Department by the appellants, has admitted that lands of S. Nos. 90/1 and 91 are likely to be converted into non agricultural lands. The lands of both these S. Nos. 90 and 90/1 are also surrounded by non agricultural lands and are in posh locality near Amreli township. Even if a land is not a non agricultural land, if the same is surrounded by non agricultural lands and the same is likely to be converted into non agricultural land as per the say of the Land Acquisition Officer himself, it is certainly an important and relevant factor for the purpose of fixing the rate at which the compensation is to be awarded at par or with close proximity with the rate in respect of non agricultural land. D.W. No. 2, who was examined by the Department, has also admitted that going further towards Amreli town, there are godowns, show room of Bajaj Scooter, Jalaram Commercial Complex, Meghnath commercial Centre, and Surya Garden Hotel etc. He has also admitted that area around this land are most developed and posh area of Amreli City and further that the lands of S. Nos. 90 and 91 are situated near the above S. No. 43. D.W. No. 3, who

was examined at Exh. 73 by the Department, had sold out the land bearing S. No. 35 - a part of Village Giriya on 2.10.90 to one Vithalbai Bhanjibhai. This witness in the cross-examination has admitted that lands of S. No. 89, 90 and 91 of the claimants are situated near Amreli-Rajkot road and that it is surrounded by the residential houses, godowns etc. This witness has also stated that it is adjacent to posh area and this area is a developed one.

In regard to the determination of the amount of compensation by the Reference Court, the High Court inter alia opining that the rate at which the compensation was granted by the Land Acquisition Officer i.e. at the rate of Rs. 12/- per sq.mt. for Bagayat land Rs. 8/- per sq.mt. for Jarayat land Rs. 50/- per sq. mt. for non agricultural land is wholly inadequate and upon discussing the materials brought on record in respect of some of the acquired lands vis-à-vis the locations of lands for which deeds of sale have been executed held as under:

While the claimants shall be entitled to compensation to be paid at the rate of Rs. 400/- per sq.mt. as decided by the Reference Court in case of lands of S. No. 89 (in Land Reference Cases Nos. 85/95, 86/95 and 87/95) i.e. non agricultural lands, the concerned claimants shall only be entitled to the compensation at the rate of Rs. 300/- per sq.mt. instead of Rs. 400/- per sq.mt. as ordered by the Reference Court with regard to the land of S. No. 90/1 (in Land Reference Case No. 1/96) and that of S. No. 91 (in Land Reference Cases Nos. 82/95, 83/95 and 84/95), which are likely to be converted to non agricultural lands.

Mr. Shelati would submit:

i. That the Reference Court as also the High Court committed a serious error insofar as they failed to take into consideration that the deeds of sale whereupon reliance has been placed by the claimants although parts of Survey Nos. 34 and 40/9 being Plot Nos. 17 and 18 were sold at the rate of Rs. 129/- per square meter by reason of a deed of sale dated 28.7.1988, were in respect of a residential plot and a small piece of land, it being situated within Amreli city and within the municipal limit; being situated in a highly developed area, the same was not comparable with the lands in question, namely, Survey Nos. 89, 90/1 and 91 which are situated at a distance of 1.5 kilometers therefrom.

ii. Although from index it would appear that by reason of a deed of sale dated 16.1.1991, One Navnitbhai Kakubhai Ganatra who was a claimant in C.A. No. 244/ 2000 sold the land to one Shri Chunilal Ranchhodbhai Parmar in respect of part of plot No. 17 appertaining Survey Nos. 34 and 40/9 involving 138 square meters area of land for a sum of Rs.55,200/-, i.e., at the rate of Rs.400/- per square meter, but the same could not have been relied upon on the self same grounds. The deed of sale dated 16.1.1991 executed by Navnitbhai Kakubhai Ganatra being one of the claimants being in C.A. No.244/2000 in favour of Shri Ashokbhai Nathabhai Parmar in respect of only 143 square meters of land in Plot No. 17 for a sum of Rs.57,200/- , i.e., at the rate of Rs.400/- per square meter could not have been relied upon for the self same reasons.

iii. No reliance could have been placed on the deeds of sale dated 28.12.1992 and 11.5.1992 concerning Survey Nos. 34 and 40/9 being Plot No. 6 and Survey No. 56/57 comprising area of 328 square meter and 59.42 square meter respectively which were sold for a sum of Rs.2,30,000/-, i.e., at the rate of Rs.701.21 per square meter and Rs.40,000/-, i.e., at the rate of Rs.673.17 per square meter respectively. No reliance could also have been placed thereupon for the added reasons that the said deeds of sale were executed subsequent to the date of notification.

iv. No reliance could have also been placed on the deeds of sale dated 27.10.1988 and 18.1.1991 in respect of Survey No. 36/1 being Plot No. 8 and Survey No. 34 and 40/9 being Plot No. 10 comprising area of 592.5 sq. meter and 361 sq. meter respectively which were sold for a sum of Rs 83, 500, i.e., at the rate of Rs 140.92 per sq meter and Rs 150000, i.e., at the rate of Rs 415. 51 per sq meter respectively.

v. No reliance furthermore could have been placed on the deed of sale dated 27.2.1989 and 28.5.1990 in respect of Survey Nos. 89 being Plot No. 26 and 39 and Survey No. 82 being Plot No. 12 comprising area of 240 sq meter and 484 sq meter respectively which was sold for a sum of Rs 4400, that is, at the rate of Rs18.33 per sq meter and Rs 12000 respectively, that is, at the rate of Rs. 28.4 per sq meter; the price variation being apparent on the face of the said deeds of sale; the fair market value should have been determined on the basis of the said deeds of sale dated 27.2.1989, 28.5.1990 and 23.10.1990 by adding the market value at the rate of 5% per year which should be a fair market value. Market value of the agricultural lands by no standard could have been compared with the market value of the non-agricultural lands.

Mr. Manish Singhvi, learned counsel appearing on behalf of the respondents, on the other hand, urged:

i. The lands in question being situated by the side of Amreli- Rajkot Highway which is a developed area and being on the eastern side of river 'Thebi', this Court may not interfere with the impugned judgment.

ii. The concurrent findings of fact having been arrived at by the Reference Court as also the High Court, the impugned judgment is unassailable particularly in view of the fact that the deeds of sale in respect of the same area are available. iii. The nature of the lands although were agriculture but they being situated within a developed area and having great potentiality of being converted into a non-agricultural land, the guiding principle for determining the market value thereof, namely, that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential probability, should be and has rightly been followed.

iv. The deeds of sale relied upon by the State being dated 2.11.1988, 27.2.1989, 4.4.1989 and 20.4.1989 could not have been relied upon inasmuch as admittedly they were grossly undervalued and the Collector had issued notices upon them. The Collector himself having fixed the prices of the land at Rs.125/- per square meter, the State should not be permitted to raise any contention contrary thereto or inconsistent therewith. The said deeds of sale, in any event, having been executed four years prior to issuance of the Notification under Section 4(1) of the Land Acquisition Act should not be relied upon. v. The findings of fact arrived at by the learned Reference court as also the High court relying on or on the basis of Exhibits 30, 51 and 53 showing the value of the land to be Rs.400/-, Rs.701/- and Rs.673 per square meter, no case has been made out for interference with the impugned judgment.

vi. Even the deed of sale dated 27.10.1988 (Exhibit 55) shows the value of the land as Rs.140/- per square meter and the other deeds of sale which were marked as Exhibits 57, 58 and 60 having been executed on 18.1.1991, 11.10.1991 and 05.01.1991 i.e. being two years prior to the issuance of a notification and the consideration thereof being calculated at the rate of Rs.415/, Rs.425/- and Rs.292/- per square meter, the impugned judgment should not be interfered with.

vii. D.W.3- Nandlal Trikamjibhai examined on behalf of the State in his deposition having clearly stated that the lands which were the subject matter of Exhibit 74 were situated only four kilometers away from the acquired land of the claimants and, thus, the amount of consideration should not be treated to be a sale instance for the purpose of determining the value of the acquired land being survey Nos. 89, 90/1 and 91, which were surrounded by residential houses, godowns, etc. and also very near to the posh area of the town.

viii. The Collector himself having fixed the conversion rate from agricultural land to non-agricultural land at Rs.300/- per square meter, it would wholly be incorrect to contend that the same did not offer any indicia in regard to the value of the land for the enhancement of right in property from agricultural to non- agricultural land.

Indisputably, the agricultural lands adjoin Chittal Road whereas the non-agricultural lands are not.

The Reference Court while passing its award, inter alia, opined: Now a days, nobody would allow to keep a wooden cabin in one square meter area in one's land on rental basis for Rs.8/- to Rs.12/- per sq. mtr. while in these Land Reference Cases, the Land Acquisition Officer has acquired whole lands permanently from the land owners/claimants by paying compensation of Rs.8/- and Rs.12/- per sq. mtr.

It was furthermore opined:

During this period, one cup tea cost is minimum Rs.3/- and that too in the road side cabin. In our opinion, the said observations were wholly irrelevant as it is now well settled that the Reference Court should sit in the arm chair of a willing and prudent purchaser and put a question to himself as to whether he would offer the same price sought to be awarded for the said land. We may notice that a portion of land bearing Survey No. 89 was converted into non- agricultural use and the sale transaction of a portion thereof would show that 1000 sq. mtr. of land were purchased for Rs.18,000/- by a deed of sale executed on 2.8.1988 in terms whereof the value of the land came to Rs.18/- per sq. mtr. We will advert to the question as to whether the same ought not to be relied upon as the land under the said deed of sale not only was converted into non-agricultural land but even developed as well and all other activities were being carried out by dividing the same into plot a little later. It is admitted that subsequently an agreement of sale was entered into in respect of those plots of land wherefor the market value was fixed at Rs.300/- per sq. mtr. It, however, appears that no agreement for sale was produced before the Reference Court. It was urged that the said purported agreement for sale would not be relevant for Survey Nos. 90/1 and 91 as the same were agricultural lands.

We may furthermore place on record the evidence of Deputy Collector, Mr. Mansuri wherein he stated, Disputed lands are situated at a distance of 4 Kms. away from the residential area of Amreli. According to the said witness he, having considered the four instances of sale which had taken place in village Giriya, had made his award. The Reference Court as also the High Court, however, proceeded on the premise that as the Collector of the District himself determined the market value of Survey No. 39 in terms whereof a sum of Rs.300/- per sq. mtr. by way of premium (which is said to have been reduced at a later stage to Rs.100/- per sq. mtr.) was fixed.

Was it wholly irrelevant is the question. A part of Survey No. 89 was non-agricultural in nature but

indisputably Survey Nos. 90/1 and 91 were agricultural lands. The value of agricultural lands could not have been compared with the value of non- agricultural lands; only because some witnesses contended that there was a potentiality of the said lands becoming developed. We may, for the purpose of determination of the market value of the lands in question, notice certain sale transactions. By reason of a deed of sale dated 28.7.1988 (Exhibit 48) Survey Nos. 34 and 40/9 (Plot No. 17 18) admeasuring an area of 739.21 sq. mtr. was sold for a consideration of Rs.96,000/- at the rate of Rs.129/- per sq. mtr. It is, however, admitted that the land in question consists of residential plots and is a small piece of land within the municipal limit of Amreli city, being situate at a distance of about 1.5 kms. from the acquired land. The deed of sale dated 16.1.1991 (Exhibit 30) shows that 143 sq. mtr. of land in Plot No. 17 was sold for a sum of Rs.57,200/-, that is, at the rate of Rs.400/- per sq. mtr. It is said to be not only a residential plot, but also a small piece of land situate in village Amreli city in a highly developed area; the acquired land being about 1.5 kms. away therefrom.

Two deeds of sale subsequent to the date of notification had also been brought on record being Exhibits 51 and 53 in respect of Survey Nos. 34, 40/9 and 56/57 at the rate of Rs.701.21 per sq. mtr. and Rs.673.17 per sq. mtr. respectively. The lands in question are said to be 2 kms. away from the acquired land. A deed of sale dated 27.10.1988 (Exhibit 55), however, show that plot No. 8 to Survey No. 36/1 admeasuring 592.50 sq. mt. was sold at a price of Rs.83,500/-, i.e., at the rate of Rs.140.92 per square meter. The said land is said to be situated in a fully developed residential area of Amreli City and is about 2 kms. away from the acquired agricultural land of Survey No. 90/1, 90/2 and 91 of Village Giriya. By reason of another deed of sale dated 18.1.1991, 361.00 sq. mtr. of land in Survey Nos. 34 40/9 Plot No. 10 was sold for a sum of Rs. 1,50,000/-, i.e., Rs.415.51 per sq. mtr. Two other deeds of sale being Exhibits 58 and 60 being dated 11.10.1991 and 5.1.1991 which were in respect of Survey Nos. 34, 40/9 Plot No. 60 Survey No. 41 Plot No. 14 was sold at the rate of Rs. 425.69 per sq. mtr. and Rs.292.30 per sq. mtr. for a sum of Rs.85,000/- and Rs.38,000/- respectively. We may also notice the deeds of sale whereupon reliance has been placed by the State, the details whereof are as under:

S. Sale Vendor Vendee Revenue Area Sale Rate/ Type No. Deed Survey Deed Sq. of No. No. Amount mt. Land Date (Rs.) (Rs.)

1. 258 P.O.A. of Tulsidas S.No.89 240 4400/- 18- Non 27.2.89 Shambhu Ambalal Plot No. Sq. 33 Agri Vallabh Lathigara 26 39 mt. Kabariya
2. 469 P.O.A. of Chandreshkumar S.No. 89 480 8800/- 18- Non 4.4.89 Shambhu Mansukhlal Plot No. Sq. 33 Agri. Vallabh Zinzuvadiya 35, 36, mt. Kabariya 45 46 Siddik Habib Nagani
3. 582 Jayeshkumar Chandrikaben S.No.89 300.6 7000/- 23- Non 20.4.89 Durlabhji Jashvantray Plot 2 Sq. 28 Agri. Mavani, Kothiya No.1 mt. Amreli
4. 886 P.O.A. of Hiteshkumar S.No.89 538 9500/- 17- Non 3.6.89 Shambhu Hiralal Plot No. Sq. 66 Agri Vallabh Zinzuvadiya 89, 58, mt. Kabariya, Shri Siddikbhai Habibbhai Nagani
5. 955 Mrs. Dalsukh Hiraji 23/2 1-61- 22500/- 1-39 Agri. 20.6.89 Diwaliben Jogani Plot 88 Ha. Babubhai Rokad
6. 1066 P.O.A. of Revatiben S. No.82 484 12000/- 24- Non 28.5.90 Ismail Haribhai Solanki Plot

No. Sq. 79 Agri. Jusabbhai 12 mt. Motiwala etc. 6 Persons Ikkal

7. 1212 Ismail Karshan Damji S.No.82 704 20000/- 28- Non 15.6.90 Jusabbhai Pithadiya Plot No. Sq. 40 Agri Motiwala 56 Mt. etc.

8. 715 Asagarali Labhuben 22/2, 1-53- 191510/- 8-05 Agri. 13.4.92 Inayatali Kanaji Khanesa 23/1 P 78 Saiyad 0-83- 97 2-37-75 Ha.

9. 1348 Shambhu Pankajbhai S.No.89, 1016 18500/- 18- Non 3.11.88 Vallabh Mansukhbhai 10 Plots Sq. 20 Agri Kabariya Zinzuvadiya Plot No. Mt. 178 to 187

10. 2235 Bhanabhai Bhanabhai 35/P 3-67- 14000/- 00- Agri. 23.10.90 Naranbhai Naranbhai 04 38 Limbasiya Limbasiya (Ha) P.O.A. of Vithalbhai Shivilal Bhanjibhai Bhanjibhai Limbasiya Limbasiya The price variation and the market value shown is the two different categories of the land relied upon by the claimants and the State in the aforementioned chart is significant. The price variation between agricultural land and non-agricultural land almost during the same period also is of some significance.

It is furthermore of some interest to note that within a short period of time, the price of the land had shot up and that too immediately after the process of acquisition of land had started. It is furthermore important to note that there existed a significant price variation even in regard to the lands situated on Survey No. 89. which appears to be a very big plot. There cannot be any doubt or dispute whatsoever that different potentiality of land in different villages and even in different parts of the same village would be existing. It was therefore not proper for the High Court to treat all types of lands situated even in different villages as pertaining to a comparable category . This Court in certain case even has deprecated the practice of awarding compensation on the basis of an award made in a neighbouring land.

In Kanwar Singh ors. vs. Union of India [(1998) 8 SCC 136] If we go by the compensation awarded to claimants of adjoining village it would not lead to the correct assessment of market value of the land acquired in the village Rangpuri. For example village 'A' adjoins village 'B', village B adjoins village 'C, village 'C adjoins village 'D', so on and so form and in that process the entire Delhi would be covered. [see also Basant Kumar (supra)]

It is, however, also true that the court is bound to take into consideration the potentiality of the land.

In N.B. Jeejabhoy v. The District Collector Thana C. A. Nos. 313 to 315 of 1965 decided on August 30, 1965, this Court held: 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 up 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.

In *Raghubans Narain Singh v. The Uttar Pradesh Government Through Collector of Bijnor* [1967 (1) SCR 489], this Court held: Market value on the basis of which compensation is payable under s. 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with 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.

{See also *Mahabir Prasad Santuka and Ors. v. Collector, Cuttack and Ors* [(1987) 1 SCC 587]}

So far as deeds of sale pertaining to the years 1988 and 1989 are concerned, the same were executed more than three years prior to the date of acquisition. However, in respect of the deeds of sale pertaining to Survey No. 89, in view of the under-valuation of the lands sold, the Collector fixed the same at the rate of Rs.125/- per sq. mtr. Furthermore, the Collector himself has fixed the premium of Rs.300/- per sq. mtr. for conversion from agricultural land to non-agricultural land. Although the same by itself would not be a safe criterion for determining the market value, we are of the opinion that both of them may form the basis for arriving at a reasonable conclusion.

For the aforementioned purpose, this Court must keep in mind that the distance of the lands sought to be acquired apart from other factors from the Highway also plays an important role. Evidence has been brought on record to show that some lands, which are the subject matter of the sale deeds on which reliance has been placed by the claimants, are situated at a distance of 1.5 to 4 kms from the Highway. In that view of the matter, it would, in our opinion, be safe to arrive at the market value as on the date of acquisition for the non-agricultural lands at Rs.250/- per sq. mtr. So far as the agricultural lands are concerned, even if they had the potentiality of being converted into a non-agricultural lands as on the date of notification, they were agricultural lands albeit in a developed area. The valuation thereof may be determined at 50% of the developed land, that is, at Rs. 125/- per sq. mtr. GROUP-III In this batch of cases, notification under Section 4 of the Act was issued in the daily newspaper on 2.2.1990 and was published in the Gazette on 15.3.1990. They were said to have been affixed at or near the lands in question on 1.8.1990. On the lands under acquisition, indisputably godowns were also constructed. A declaration under Section 6 of the Act was issued on 18.6.1991 and published in the Official Gazette on 11.7.1991. The details of the cases falling in Group-III are as under: Group No. Total C.A. No. F.A. No. Notification Date of matters n Section 4 Judgment dated 7 8 205-212/2000 410- 15.3.1990 4.5.1999 417/1998 8 6 214-219/2000 2073-15.3.1990 4.5.1999 2078/1998 An award was made by the Land Acquisition Collector on 23.7.1993. Respondents herein being aggrieved by and dissatisfied with the quantum of compensation made in the said awards filed applications for reference before the Collector to the District Court, Amreli claiming a sum of Rs.500/- per square meter for agricultural lands and Rs.600/- to Rs.750/- for non- agricultural lands as also additional amount of compensation, the details thereof are as under:

F.A. No.	Survey	Type of Area	Comp.	Comp.	Comp.	Comp.	No.	Land in awarded	claimed	decreed																																												
Decreed	Sqm.	by in by by	Guj.	L.A.O.	Lower	Lower	High	Rs.	sqm	Court Court Court Sq./sqm.																																												
Rs.Sqm	Rs.Sqm	1	2	3	4	5	6	7	8	410/98	44/1	Agri	57445	50	500	160	160	411/98	43/5A-1	Agri.	21																																	
Godown	412/98	43/5A-1	Non-	541	150	500	240	240	Agri.	413/98	38/2	Agri	4992	150	500	160	160	414/98	40/4A	Non-	4994	150	600	240	240	Agri	415/98	43/2	Non-	9407	150	500	240	240	Agri	416/98	43/2	Non-	236	150	500	240	240	Agri	417/98	43/3	Non-	632	150	500	240	240	Agri	2073/98

42/1p Agri 32104 50 600 160 160 43/1p 2074/98 43/2 Non- 5407 150 600 240 240 Agri 2075/98 38/1 Agri 13717 50 600 160 160 59 2076/98 43/5A-1 Non- 307 150 600 240 240 Agri. 2077/98 43/5A-1 Non- 216 150 600 240 240 Agri. 2078/98 43/5A-1 Non- 216 150 600 240 240 Agri. One Mahendrakumar Nathalal Adatiya said to be the power of attorney holder of the claimants deposed twice before the Reference Judge. His depositions was marked as Exhibit 20 and Exhibit 31. In his deposition, he inter alia stated that the lands under acquisition are on Amreli-Rajkot Highway known as Chaital Road. In the said town, there is a Railway Station, Civil Hospital, S.T. Depot, Airdrome, Colleges, and market yard, etc. According to him, there was a possibility of further development. The said lands were on the eastern side of the river and the area in question had further been developing. According to the said witness, moreover apart from a large number of houses constructed by various societies; there is an Eye Hospital, High School and other Hospitals situated near the lands in question. It was furthermore stated that on the other side of the land in question, one Survey No 43/5 was converted into non-agricultural tenancy and in the years 1983-1984, commercial complexes were constructed for conversion from agricultural land to non-agricultural land. The Collector fixed premium at the rate of Rs.300/- per square meter in respect of lands which was adjoining Survey No. 43/5 and Survey No.44. According to him, the prevailing market rate at the relevant time was Rs.600/- to 800/- per square meter.

Apart from the claimants, some tenants of the godowns examined themselves being witness No.3 and witness No.4. Several other witnesses including an expert Jivanbhai Pragjibhai Savliya (Witness No.7) was also examined.

On behalf of the State, Shri Kaushik Maganlal (D.W.1) Deputy Collector who passed the award was examined. One Balubhai V. Savliya (D.W.2), a vendor proved a deed of sale which was marked as Exhibit 83, whereby and whereunder he had sold 5 bighas of land in 1985 for a consideration of Rs.10,000/-. The State furthermore examined one Nandlal Trikambhai (D.W.3). He had purchased some land near the dam site at a price of Rs.150/- per square meter.

The High Court on the basis of the materials brought on record awarded compensation at the rate of Rs.160/- to Rs.240/- per square meter. So far as the value of the godowns are concerned, the yearly rent was found to be Rs.1,04,000/- whereas the Reference Court applied the multiplier of 20, the High Court by reason of its impugned judgment has applied the multiplier of 10.

Both parties have preferred appeals thereagainst. Separate appeals have been preferred by the parties hereto before this Court also.

Mr. Shelati, the learned Senior Counsel appearing on behalf of the appellant, would submit:

i. That the Reference Court wrongly proceeded on the premise that all acquired lands are situated by the side of Amreli - Rajkot Highway despite the fact that Exhibit 39 (map) clearly shows that Survey Nos. 43/5A-1, 38/2, 40/4A did not abut it .

ii. The market rate fixed by the Collector at Rs.300/- per square meter for converting agricultural land to non- agricultural land in respect of Survey No. 39 could not have been taken into consideration for the purpose of determining the market value of the land as by reason thereof the restrictions imposed in a covenant had been removed by enlarging the ambit of the property right over the land.

iii. No reliance could have been placed on the deeds of sale dated 20.9.1990, 16.1.1991 and 16.1.1991 in respect of Survey Nos. 34 and 40/9 comprising of an area of 240 square meter, 143 square meter and 143 square meter respectively and sold for a sum of Rs.1,20,000/-, i.e., at the rate of Rs.487.80 per square meter, a sum of Rs.57,200/-, i.e., at the rate of Rs.400/- per square meter and Rs. 55,000/-, i.e., at the rate of Rs.400/- per square meter respectively as the sale instances being Exhibit 58, 60 and 61 were not comparable, as (1) the lands under sale were small pieces of land; (2) they were situated in highly developed area of Amreli City;

(3) they were within the territorial limit of municipality; (4) the lands were situated 1.5 to 2.5 kilometers away from the acquired lands; and

(5) the deeds of sale having been executed after the issuance of notification, no reliance could have been placed thereupon.

iv. The deeds of sale dated 21.5.1985 and 26.10.1988 in respect of Survey No. 991 measuring 1-30-51 square meter and 323 .12 square meter respectively which were sold for a sum of Rs 10,000, i.e., at the rate of Rs 0.77 per square meter and Rs 45,000, i.e., at the rate of Rs.139.26 per square meter respectively is demonstrative of the fact that there is a huge disparity. v. Godowns having been constructed for the purpose of avoiding payment of octroi duty itself goes to show that the value of the land within the municipal area would be higher.

vi. The evidence of Dr. Bharat Kantilal Mehta who had purchased the lands having stated that he had purchased the lands for professional and residential purpose and having taken a firm decision to purchase the land only in that area and, thus, the same being of some personal value to him could not be a comparable instance. vii. The potentiality of the land in a municipal area must be held to be higher than the potentiality of the land in a rural area and, thus, the Reference Court as also the High Court committed a serious error in relying upon the sale instances which were in respect of the lands situate within the municipal area.

viii. The High Court and the Reference Court committed a serious error insofar as they failed to take into consideration that the sale instances whereupon reliance had been placed by the State, viz. Exhibit 83 and Exhibit 85, namely, the deeds of sale dated 21.5.1985 and 26.10.1988 wherefrom it would appear that whereas in the year 1985 the market value was Rs.0.77 per Are, in the year 1988 the rate was Rs.139.26 ps. per Are. Both the deeds of sale involving small plots of land and being situated at a distance of 0.75 kilometer from the acquired land and, thus, should have been taken into consideration. ix. As it was categorically stated by Mahendrakumar, the power of attorney holder, we could not earn such type of rental income if the godowns were situated within the municipality area because the godowns were being constructed outside the octroi naka, and similarly H.N. Chandarana having stated that the godowns being situated outside octroi naka, he had hired the same to save octroi duty; and the godowns having been constructed to evade payment of levy of octroi, it did not reflect the true market value thereof.

x. In any event, the cost of the construction of the godowns should have been considered for determining the market value. Provision for expenses incurred like taxes, labour charges, maintenance of the godown and salary payable to the watchman having not been taken into consideration while determining the actual rental income derived by the claimants, the impugned judgment should be suitably modified.

xi. In any view of the matter, once the market value was determined on the basis of the income thereof, no separate compensation could have been granted towards the value of the land.

Mr. Sunil Kr. Gupta and Mr. Dinesh Dwivedi, learned Senior Counsel appearing on behalf of the claimants - respondents, on the other hand, urged:

i. The last publication of notification having been made on 1.8.1990, the deeds of sale which were executed in September 1990 and a few months thereafter had rightly been relied upon by the courts below being contemporaneous documents. ii. Market value of the land in terms of Section 23 of the Land Acquisition Act being required to be determined as on date of issuance of the notification, the same would connote nearness and not a date prior to issuance of the notification. iii. The lands acquired being situated on the eastern side of the river and just outside the Amreli town, the Reference Court as also the High Court committed a serious error in deducting 50% from the market value of the land situated in a municipal area. iv. The map on which reliance has been placed by the State of Gujarat would itself show that the area in question is a highly developed one and the same were situated near the Aerodrome, School, Hotel, a large number of housing societies, and in that view of the matter, there was absolutely no reason as to why the sale instances whereupon reliance has been placed by the claimants should not have been considered to be the determinative factor for fixation of the amount of compensation.

v. Godowns having been constructed on non-agricultural lands and for the purpose of proving the rental income therefrom not only Mahendrakumar was examined in two reference cases as P.W. 1 and P.W.3 but also two tenants, namely, Harshad Nathalal Chanarana (P.W.3) and Paresh Dinkarbhai Davda (P.W. 4) who proved the advantages of such godowns, there was no reason as to why the multiplier of ten should have been used although ordinarily a multiplier of 25 is applied. vi. The value of the godowns was required to be determined keeping in view the loss of earning therefrom in terms of the 'fourthly' appended to Section 23 of the Act. vii. P.W. 6 - Navnitbhai Kakubhai Ganatra, who was the vendor in respect of Exhibits 60 and 61, relating to Survey Nos. 34 and 40/9 having been proved, the sale deed which was executed within a period of six months from the date of publication of the notification under Section 4(1) of the Act, there was no reason as to why the same could not have formed the basis for determining the market value.

viii. Even Jivanbhai Pragjibhai Savliya (P.W. 7) has proved the assessment report and map to show that Survey No. 43/5A was adjacent to the godown. The lands under acquisition being small plots, the contention of the State of Gujarat that the deeds of sale being Exhibits 58, 60 and 61 could not have been relied upon must be held to be incorrect.

ix. The Reference Court as also the High Court having arrived at a categorical finding that most of the contemporaneous sale- deeds relied upon by the respondents were in the vicinity of the acquired lands, there is no reason as to why a different view should be taken by this Court.

Notification for acquisition of the said lands was issued on 15.3.1990. The lands under acquisition appertain to Survey Nos. 44/1, 43/5A-1, 38/2, 40/4A, 43/2, 43/3, 42/1p, 43/1p, 38/1, 38/2. Whereas Survey Nos. 44/1, 38/2, 42/1p, 43/1p and 38/1 are agricultural lands; other Survey Nos. including Survey No. 43/5A-1 are non-agricultural lands. On a part of Survey No. 43/5A-1, 21 godowns have been constructed wherefor separate amount of compensation has been awarded. The claimants in support of their claim had relied upon the deeds of sale dated 20.9.1990 marked as Exhibit 58. The deeds of sale which were executed on behalf of the State are dated 21.5.1985 and 26.10.1988. . The

Reference Court as also the High Court determined the amount of compensation at the rate of Rs.240/- per square meter for non-agricultural lands and deducted one-third therefrom, i.e., Rs.160/- towards compensation for agricultural lands. In arriving at the said figure, the Reference Court proceeded on the basis that the market value of the land situated in the municipal area was Rs.485/- per square meter at the time of acquisition, and, thus, the lands in question being outside the municipal area, the market value thereof should be deducted by 50%, i.e., Rs.240/- per square meter. As indicated hereinbefore, for determining the value of agricultural land further one-third has been deducted.

We may place on record that even before the High Court, the claimants had preferred cross objections, which were rejected on the premise that requisite amount of court fee had not been paid. In *Administrator General of West Bengal v. Collector, Varanasi* [AIR 1988 SC 943], this Court held:

The determination of market-value of a piece land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market-value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event, viz, the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual; and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available. In *State of Punjab and Anr. vs. Hans Raj (Dead) by Lrs. Sohan Singh and Ors.*, this Court held:

As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should not have, ordinarily recourse to such method. It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value.

Keeping in view the ratio laid down in the aforementioned decisions as also the materials placed on record, we are of the opinion that the amount of compensation for the lands acquired in this matter arrived at by the High Court, that is, Rs.240/- per sq. mtr. for non-agricultural land and Rs.160/- sq. mtr for agricultural land does not warrant any interference on our part. The High Court, in this regard, has adopted the correct approach particularly in view of the fact that the lands in question are not only situated within a developed area but being situated near Aerodrome, Schools, Hospitals, etc. the market value thereof could not have been determined at a lesser rate. Now we shall deal with the question of the amount payable for acquisition of 21 godowns and the land on which they stand in Survey No. 43/5A-1. Out of the total area of 4250 mtrs of land, 2972 sq. mtrs. is agricultural land and 1278 sq. mtrs. is non-agricultural land on which the godowns have been constructed. Commercial complexes were constructed on it in the year 1984.

Respondents have constructed 6 big godowns and 15 small godowns. The amount of rent of the godowns has been brought on record. Respondents have claimed compensation under various Heads, namely, price of the land, loss suffered due to recovery of rent for 2 years of godowns, loss for construction for deep-well, watchman quarter, etc. One of the principal questions, as indicated hereinbefore, raised on behalf of the State is that the valuation of the land cannot be determined indirectly twice over, one on the basis of the value of the land and the other on the basis of the rental income. Matter would, however, be different where only there is a construction on a land which is used for residential or other purposes.

In *Ratan Kumar Tandon Ors. vs. State of U.P.* [(1997) 2 SCC 161], this Court held:

It is well-settled law that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods but not both. If the building is assessed, it is settled law that the measure of assessment be based on either the rent received from the property with suitable multiplier or the value of the building is the proper method of valuation.

We are in agreement with the view that for extent of land on which the godowns stand, separate compensation need not be paid when compensation with respect to rental income is being paid for the godowns. The High Court by reason of the impugned judgment has granted compensation *inter alia* applying the multiplier of 10 over the annual income. The approach of the High Court is correct. In *Airports Authority of India v. Satyagopal Roy and Ors.* [(2002)3SCC527], it was held that:

8. It is settled law that in evaluating the market value of the acquired property, namely, land and building or the land with fruit-bearing trees standing thereon, value of both is to be determined not as separate units but as one unit. Therefore, it would be open to the Land Acquisition Officer or the Court either to assess the land with all its advantages and fix the market value thereof on the basis of comparable sale instances. In case where comparable sale instances are not available and where there is reliable and acceptable evidence on record of the annual income, market value could be assessed and determined on the basis of net annual income multiplied by appropriate multiplier for its capitalization.

In *Assistant Commissioner-cum-Land Acquisition Officer, Bellary vs. S.T. Pompanna Setty* [(2005) 9 SCC 662], this Court has held: 15. From the above cases, it is clear that normally in the cases where compensation is awarded on yield basis, multiplier of 10 is considered proper and appropriate. In the case on hand, multiplier of 15 has been applied which is on the higher side....

It was an agricultural land. {See also *Addl. Special Land Acquisition Officer vs. Yamanappa Basalingappa Chalwadi* [(1994) 3 SCC 323]}

In *State of Kerala vs. P.P. Hassan Koya* [AIR 1968 SC 1201], the method which was generally resorted to in determining the value of the land with buildings especially those used for business purposes, was the method of capitalization of return actually received or which might reasonably be received from the land and the buildings. Whereas the Reference Judge had multiplied the annual income by 35 times, the High Court had reduced it to 33 $\frac{1}{3}$ times. The view of the High Court was upheld. In *Special Land Acquisition Officer, Kalinadai (Hydro-Electric) Project, Dandali, Uttra Kannada District v. Vasant Gundu Bale* [1995 Supp (4) SCC 649] it was held that:

2. Sri Veerappa, the learned Counsel for the State, has contended that the High Court committed grave error of law in recording a finding that lands were possessed of potential value for building purposes. We find no force in the contention. It is seen that when 7,800 lineaments were constructed in the project area, it would be clear that a township had come into existence. It is an admitted fact that the land under acquisition is about the township. It is also an admitted fact that in Ext. A-12 sanction was obtained on September 13, 1973 for conversion of agricultural lands into urban lands of the layout and sale of plots which could not take place due to the fact that mud was dumped on this land.

Consequently, the sanction came to be cancelled by the Assistant Commissioner. Be that as it may, the High Court on the basis of the rental value had determined compensation at the rate of Rs. 1200 per acre applying the multiplier of 15 and arrived at the net income at Rs. 18,000 per acre. It is now settled law that the uniform rate of multiplier of 10 is being applied for the lands acquired even in the State of Karnataka. Even acceding the multiplier of 12 as held by this Court in *Special Land Acquisition Officer, Davangree v. P. Veerabhadarappa and Ors.* (1984) 2 SCC 120, the claimant cannot get more than Rs. 14,000 per acre.

Hence, keeping in view the ratio of the above mentioned decisions and the facts of the present case, we modify the decision of the High Court to the extent of excluding the payment of separate amount of compensation for the 1278 sq. mtrs. of non-agricultural land in which the 21 Godowns have been constructed would be calculated on the rental value. In other words, whereas the market value of the land would be determined at Rs.240/- per square feet, the lands on which the godowns have been constructed, the amount of compensation shall be calculated at the rental value thereof by following the method adopted by the High Court. For the said purpose, the matter is remitted to the Land Acquisition Officer.

These appeals are disposed of with the aforementioned observations and directions. In the facts and circumstances of the case, there shall be no order as to costs.