

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6230-6251 OF 2002

SATISH AND ORS.

Appellant (s)

VERSUS

STATE OF U.P. & ANR.

Respondent(s)

WITH

CIVIL APPEAL NO. 6300 OF 2002

[TEJPAL (DEAD) BY LRS. AND ORS. V. NATIONAL CAPITAL POWER PROJECT &
ANR.]

CIVIL APPEAL NOS. 6253-6299 OF 2002

[NATIONAL THERMAL POWER COPRN. V. ABHAY RAM (DEAD) THROUGH LRS. &
ORS.]

CIVIL APPEAL NOS. 6301-6321 OF 2002

[RAJVIR SINGH AND ORS. V. N.C.P.P./N.T.P.C. LTD.]

Date: 16/07/2009 These Appeals were called on for pronouncement
of judgment today.

For Appearing parties

Ms. Binu Tamta, Adv.

Mr.Ashok K. Srivastava, Adv.

Ms. Geetanjali Mohan, Adv.

Mr. Parmanand Gaur, Adv.

Mr. Kamendra Mishra, Adv.

Mr. Gunnam Venkateswara Rao ,Adv.

Mr. Bina Gupta, Adv.

Mr. Naresh K. Sharma, Adv.

Hon'ble Mr. Justice S.B. Sinha pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Cyriac Joseph. C.A. Nos. 6230-6251, 6300, 6301-6321 of 2002 are, thus, allowed with costs and C.A. Nos. 6253-6299 of 2002 are dismissed as not pressed for. Counsel's fee assessed at Rs. 50,000/- in each case payable by National Thermal Power Corporation.

National Thermal Power Corporation had given an undertaking before the High Court. The said amount has not yet been paid. the amount of compensation even as determined by the High court has not been paid. It is, thus, expedient that the amount of compensation would

be paid to the land owners as expeditiously as possible.

(KALYANI GUPTA)
SR. P.A.

(PUSHAP LATA
BHARDWAJ)
COURT MASTER

(SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE.)
REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.6230-6251 OF 2002

Satish & Ors.

... Appellants

Versus

State of U.P. & Ors.

... Respondents

WITH

Civil Appeal Nos.6300, 6301-6321, and 6253-6299 of 2002

JUDGMENT

S.B. Sinha, J.

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

2. National Thermal Power Corporation Ltd. is a Public Sector Undertaking and is engaged, inter alia, in generation of electricity. With an intention to set up a thermal power plant at

Sarna, Murad Nagar, District Ghaziabad in the State of Uttar Pradesh and nearby villages, a requisition was sent to the

Collector of the District for the purpose of acquisition of some

lands belonging to the appellant herein. Pursuant to or in

furtherance of the said requisition and having regard to the fact

that setting up of a thermal power plant was to be treated to be a

public purpose within the meaning of provisions of the Land

Acquisition Act, 1894 (hereinafter called and referred to for the

sake of brevity as 'the Act'), the State of Uttar Pradesh (the

State) on or about 6.9.1984 issued a notification in terms of

Section 4 thereof.

3. The lands in question are situated in villages Sarna, Khurrampur, Sultanpur, Jalalpur and Mohiuddinpur. Herein, we are concerned with the lands situated in village Sarna only. The said notification was published in the official Gazette on 8.9.1984. Keeping in view the fact that generation of electricity was of urgent and imminent need, a notification under Section 6 read with Section 17(1) and 17(4) of the Act was also issued by the State on 26.9.1984. The said notification was published in the Gazette published by the State of Uttar Pradesh on 29.9.1984.

4. Notices were issued to the claimants for settlement of their claims in terms of Section 9 of the Act on 27.10.1984. 80% of the amount of compensation, as provided for under Section 17(3A) of the Act, as determined, was also paid to the appellants by way of advance.

Possession of the said lands in question was taken on 16.11.1984.

The Collector made an award on or about 24.9.1986.

The lands in question were classified in two categories, namely, 'Dakar Doyat Khaki' and 'Dakar Doyat Aabi' purported to be having regard to the nature thereof as also the extent of fertility.

Before the Collector, a large number of sale deeds in respect of the lands situated in the said village and/or neighbouring village were produced. A large number of sale deeds were kept outside the purview of consideration by the Land Acquisition Collector for the purpose of making the award on the premise that the consideration therefor had been paid in terms of square yards of land and, thus, the rate would be on higher side.

5. The Collector took into consideration 29 deeds of sale in respect of the areas which were within the Murad Nagar Municipality on the premise that they were more useful and the rate being on the higher side, the same should also be kept out

of consideration.

He took into consideration only five deeds of sale being No.34, 254, 480, 629 and 635. Out of the said five sale deeds, three deeds of sale being No.480, 629 and 635 were again kept outside the purview of consideration having regard to the distance factor as also the fact that the lands under the said deeds were situated on the other side of the village. So far as sale deed No.34 is concerned, the Collector was of the opinion that the amount of consideration stated therein was deliberately kept low to avoid stamp duty.

6. He took into consideration a deed of sale which was executed on 27.7.1982, i.e., two years prior to the issuance of notification under Section 4 of the Act being sale deed No.254 in respect of Khasra No.1354 and 1355.

7. Yet again, on the premise that the lands were very close to the area of municipality and it was sold at a very low rate, the same also had not been taken into consideration. The only deed of sale which was, thus, considered for the purpose of determination of the amount of compensation was sale deed No.423. It was executed on 2.6.1983. The land transferred by reason thereof admeasured 1 Biswas, 9 Biswansi and 15 Kachhwansi pertaining to Khasra No.1054 and 1064. The amount of consideration for the said lands was shown as Rs.13,500/-, wrongly stated in the award as Rs.1,35,000/-.

Inter alia, on the premise that the deed of sale was executed in respect of a piece of land which was situated outside the municipal area, the market value therefor was calculated at Rs.1,81,512.60 per bigha, the circle rate wherefor was to be Rs.9.62 p. Although it was held that the lands under the said deed were similar to the acquired lands but according to the Collector, the circle rate should be determined for 'Dakar Doyat Khaki lands at Rs.3.19p. and for 'Dakar Doyat Aabi' lands at Rs.4.37 p., the amount of compensation on the said basis was determined as Rs.60,189.72 p. per bigha for the former category and Rs.82,454.20 p. per bigha for the latter.

The amount of compensation for the land in question was determined at Rs.64,59,429.63 p. on that basis.

Over and above the said amount of compensation, other sums as were admissible in law were also granted which is in the following term :

"1.	Amount of Compensation	Rs.64,59,429.63
2.	House, tree etc. Rs.	21,005.00
3.	30% Solatium Rs.	19,44,130.39
4.	12% additional from 8.9.84 i.e. from the date of notification till the date of possession i.e. on 16.11.84 Rs.	1,46,531.69
5.	Amount of Interest	Rs. 4,10,740.06
	Total	: Rs.89,81,836.77"

8. Appellants filed applications before the Collector for reference to the District Judge in terms of Section 18 of the Act.

Reference Cases were considered by the Reference Court in two bunches, i.e., (1) Baljit's Bunch; and (2) Kanti's Bunch.

9. In the first group consisting of 22 cases, compensation at the rate of Rs.115/- per square yards was awarded as market value of the acquired land irrespective of quality of land recorded in the revenue record. In the second group of references consisting of 25 cases, however, the amount of compensation was determined at the rate of Rs.155/- per square yard.

10. In the first award upon consideration of the oral evidence adduced by the parties, it was opined :

"Thus, from this statement it is clear that village Sarna and town Murad Nagar are not distinguishable."

It was furthermore held that in view of the fact that Muradnagar is situated on one side of the road and village Sarna is situated on the other, the administrative distinction that whereas village Sarna was administratively being controlled by Gaon Sabha and Muradnagar was being administratively controlled by Nagar Palika (Municipalty) was held to be not a relevant factor.

With regard to the categorization of land, it was held :

"Keeping this situation in mind, the belting system even on the basis of quality of land will be relevant. In Indra Singh & Ors. V. Union of India [JT 1993 SC page 653], D.B. Belting system under these circumstances has been proper. But in the present case there is no such evidence from the

side of the State or NTPC that some land is likely to be used as commercial complex on the best quality."

The learned Judge, having regard to the Khasra records and maps opined that Sarna-Muradnagar is a composite name written on all the revenue papers and, thus, the acquired land must be treated to be an adjoining land covered by the sale deed dated 31.5.1983 in terms whereof the market rate was worked out to be Rs.155/- per square yard. For determining the amount of compensation, however, although, the reference court referred to a decision of this Court in Hindustan Oil Mills Ltd. v. Special Deputy Collector (Land Acquisition) [AIR 1990 SC 731] stating that the value of the land doubles in five years but opined that increase at the rate of 10% per year only should be allowed. The rate, therefore, according to the learned Judge, could be calculated at the rate of Rs.170/- per square yard. However, having regard to the fact that the said sale deed related to a small area, a deduction of 30% was made therefrom in terms whereof the amount of compensation came to Rs.119/- per square yard. It is on that basis that the compensation at the rate of Rs.115/- per square yard was arrived at.

11. In the second reference, however, the learned Judge placed reliance on a sale deed dated 3.9.1984 involving 50 square yards of land which was sold for a consideration of Rs.10,327/-. The said deed of sale was executed on the basis of an agreement of sale entered into by and between the parties in the year 1981. 10% increase was added thereto so as to hold that the market value of the land was Rs.228/- per square yard. However, therefrom 30% was deducted keeping in view that the area was small as a result whereof the calculation of the market value was determined at Rs.160/- per square yard and on that basis, according to the learned Judge, compensation at the rate of Rs.155/- per square yard would be sufficient.

12. Aggrieved by and dissatisfied with the said judgment, only NTPC preferred appeals before the High Court. The landholders did not. The High Court, however, opined that the

Collector rightly placed reliance on the deed of sale dated 2.6.1983 as the other sale deeds were executed in respect of the lands which were measured in terms of square yards only. It was held that if an increase of 10% per year is added to the rate at which the land was sold, the net rate shall be Rs.63.92 per square yard, i.e., Rs.64 per square yard (in the round figure).

13. Appellants are, thus, before us.

14. We may place on record that although the NTPC had also preferred appeals, its contention only is that the compensation payable should have been calculated at the rate of Rs.60 per square yard. However, the said appeals were not pressed before us.

15. Mr. Ranjeet Kumar, learned senior counsel appearing in CA Nos.6230-6321 of 2002 and Mr. Kailash Vasdev, learned senior counsel appearing on behalf of the appellant in CA Nos.6301-6321 of 2002 would contend :

(1) The High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that even the sale deed dated 2.6.1983 was in respect of 1 Bigha, 9 biswansi and 15 Kachhwansi of land which would come to Rs.331/- per square yard and there is no reason as to why the sale deed in respect of 190 square yards of land could not have been taken into consideration as both the said deeds involved transfer of small portions of land.

(2) The amount of compensation must be determined on the concept of a value which a free seller would receive from a free buyer and in that view of the matter as some of the land owners have small holdings, there was absolutely no reason as to why both the deeds of sale could not have been taken into consideration for the purpose of arriving at a correct amount of compensation.

(3) The fact that the High Court itself granted compensation in respect of the lands on square yards basis, it could not have upheld the awards of the Collector as it had rejected the said method.

(4) The High Court could not have refused to consider the

deed of sale only relying on or on the basis of the decision of this Court in A.P. State Road Transport Corporation, Hyderabad, represented by Managing Director v. P. Venkaiah & Ors. [(1997) 10 SCC 128] as the said judgment was overruled by this Court in Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah [(2001) 3 SCC 530] which view was reiterated in Cement Corporation of India Ltd. v. Purya & Ors. [(2004) 8 SCC 270]. Refusal on the part of the courts below to consider the deeds of sale produced before the Collector and consequentially before the High Court cannot be held to be correct in view of Section 51A of the Land Acquisition Act and Section 90A of the Indian Evidence Act as amended by the State of Uttar Pradesh.

(5) The directives issued by the State of Uttar Pradesh that the sale deed involving the highest consideration should be taken into consideration having not been followed by the Collector, he must be held to be guilty of administrative discipline. The sale deed of the year 1983 having admittedly been executed in terms of an agreement for sale executed in the year 1981, the amount of consideration should have been enhanced keeping in view the development of land which was expected in three years and not one year.

16. Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the respondent, on the other hand, supported the judgment of the High Court contending:

(1) the High Court has rightly relied upon the sale deed dated 3.5.1984 in view of the fact that the consideration mentioned therein took into consideration all relevant criterias including its building potentiality as has been held by this Court in Rao Narain Singh (Dead) by LRs. V. Union of India [(1993) 3 SCC 60].

(2) The Reference Court having committed a serious error in relying upon the deeds of sale which had been rejected by the Collector as no reason in support thereof was assigned, the High Court has rightly placed reliance on the said deed of sale,

particularly, where some amount of guess work in fixing the quantum of compensation is legally permissible as has been held by this Court in Viluben Jhalejar Contractor (Dead) by LRs. V. State of Gujarat [(2005) 4 SCC 789].

(3) The land under acquisition being within the administrative jurisdiction of Gaon Sabha, the same could not have been considered to be similarly situated as the lands within a municipal area for the purpose of arriving at the market value of the acquired lands.

(4) The administrative circular issued by the State of Uttar Pradesh would be applicable only when the reliance is placed on a sale deed which is comparable with the lands under acquisition and not otherwise.

(5) The judgment of the reference court must be held to be suffering from a legal infirmity as in two different awards, two different yardsticks for calculating the amount of compensation, namely, Rs.115/- per square yard and Rs.155/- per square yard respectively had been taken in two different bunch of cases.

17. At the outset, it must be noticed that the learned Reference Judge as also the High Court refused to take into consideration a large number of deeds of sale relying on or on the basis of a decision of this Court in P. Venkaiah (supra).

Section 51A of the Land Acquisition Act construction of which fell for consideration before this Court therein reads as under :

"51A. Acceptance of certified copy as evidence.
--In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

This Court in P. Venkaiah (supra) opined that in absence of any evidence adduced on behalf of the claimants that the amount of consideration mentioned in respect of deeds of sale are correct either by examining the vendor or the vendee, the documents per se cannot be relied upon.

The said ratio was reiterated by this Court in State of Bihar v. Madheshwar Prasad [(1996) 6 SCC 197] and A.P. State Road Transport Corporation, Hyderabad, represented by Managing Director v. P. Venkaiah & Ors. [(1997) 10 SCC 128].

Correctness of the aforementioned proposition of law, however, was doubted.

A different view was taken in Land Acquisition Officer & Mandal v. V. Narsaiah [(2001) 3 SCC 530]. Noticing the conflict between two three Judge Benches' decision of this Court, the matter was referred to a Constitution Bench.

18. A Constitution Bench of this Court in Cement Corporation of India v. Purya & Ors. [(2004) 8 SCC 270] opined that by reason of the insertion of Section 51A, the Parliament merely enabled a party to get over the problem, namely calling for the original from the vendor or the vendee and proving the same and, thus, the decision of this Court in Special Deputy Collector & Anr. v. Kurra Sambasiva Rao & Ors. [(1997) 6 SCC 41] was held to be not laying down the correct proposition of law, holding :

"18. From the above, it is seen that till the judgment of the three Judge Bench in Narasaiah's case (supra), the consensus of judicial opinion was that Section 51A was enacted for the limited purpose of enabling a party to produce certified copy of a registered sale transaction in evidence only and for proving the contents of the said document the parties had to lead oral evidence as contemplated in the Evidence Act.

19. A careful perusal of the judgment in Kurra Sambasiva Rao's case and other cases which fall in line with the said view discloses that they proceeded on the basis that prior to the insertion of Section 51A in the LA Act, the Evidence Act did not permit the production of a certified copy of the registered sale transaction in evidence. Therefore, by the insertion of Section 51A the legislature merely enabled a party to get over that problem. Thereafter, according to the said judgments, the party concerned had to prove the contents of the document by adducing oral evidence separately to prove the contents of the document.

20. The above view of the Court in Kurra Sambasiva Rao's case, in our opinion, is not the correct position in law. Even prior to the insertion of Section 51A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in the judgment in Narasaiah's case wherein the court relying on Sections 64 and 65(f) of the Evidence Act read

with Section 57(5) of the Registration Act held that production of a certified copy of a registered sale document in evidence was permissible in law even prior to insertion of Section 51A in the LA Act. We are in agreement with the said view expressed by this Court in Narasaiah's case."

The Constitution Bench, thus, laid down the law that for praying a certified copy of a registered deed of sale, the vendor and vendee thereof need not be examined.

19. In the aforementioned backdrop, the Court opined that Section 51A of the Act seeks to make an exception to proof of document through primary and secondary evidence stating that 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. It was held :

"35. A registered document in terms of Section 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf."

20. The Constitution Bench held that a presumption as to the genuineness of the contents of the document has to be raised and, thus, reliance can be placed thereon unless it is rebutted by other evidence.

Apart from Section 51A of the Act, we may notice that State of Uttar Pradesh, inter alia, has inserted Section 90A in the Evidence Act which reads as under :

"90A.(1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a Court of justice, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of defence or is relied upon in the plaint or written statement."

21. This legal position, thus, being neither in doubt nor dispute, all the deeds of sale which have been brought on record subject to the applicability thereof, therefore, in our opinion should have been taken into consideration.

The 'State' in acquiring land of another State or a private person exercises its power of Eminent Domain which envisages that expropriation of one's property is permissible if it is in public interest and a reasonable amount of compensation as provided for in a statute is paid to the owner thereof. Keeping in view the aforementioned principle in mind, the provisions of Section 23 of the Land Acquisition Act laying down the factors enumerated therein must be taken into consideration. The first factor which the Parliament mandates to be relevant therefor is the market value of the land at the date of publication of the notification under Section 4 sub-section (1). Market value of a land would, inter alia, mean a free seller of a land would transfer his right in the property to a free buyer. It is only for the aforementioned purposes, deeds of sale or other transfers made in respect of similar types of land in the surrounding areas assume significance.

22. For determination of the amount of compensation in terms of Section 23 of the Act, the methods of valuation which can be adopted for ascertaining market value are - (1) opinion of experts; (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) number of years purchase of the actual or immediately prospective profits of the lands acquired.

23. While adopting the second method, the transactions which are relevant, thus, are required to be taken into consideration. The Collector, the Reference Judge or the High Court without assigning appropriate reasons would not be entitled to discard one deed of sale and rely upon the other. It must be done on some legal principle, rationality and cogent reasons.

24. Some other factors which are relevant for determination of the amount of compensation are - the nature and quality of land, whether irrigated or unirrigated, facilities for irrigation, presence of fruit bearing trees, location of the land, closeness to any road or highway, evenness of the land, existence of any building or structure and a host of other factors bearing on the valuation of the land.

25. The claimant made a claim of Rs.160/- per square yard in one bunch of cases and Rs.200/- per square yards in the other bunch. Before the learned District Judge, the first bunch of cases, as many as 22 deeds of sale were taken into consideration. The question is as to whether the acquired land had any building potentiality. Upon consideration of various deeds of sale including the one dated 31.5.1983 involving 192½ square yards, it was opined that the valuation thereof would be Rs.155/- per square yard. For arriving at the aforementioned figure, the learned Reference Judge took into consideration a circular letter issued by the State of Uttar Pradesh itself directing that the Land Acquisition Officers "that the highest sale deed should be made as the basis for determination of the market value". Reliance was also placed on a decision of this Court in Hindustan Oil Mills Ltd. & Anr. v. Special Deputy Collector (Land Acquisition) [AIR 1990 SC 731] wherein it has been held that the value of the land doubles in five years to opine that the increase of 20% per year is a normal phenomenon. However, the Land Acquisition Judge give only 10% increase per year for the aforementioned purpose.

26. However, in the second bunch of cases while taking into consideration 25 deeds of sale, the learned Land Acquisition Judge took into consideration the deed of sale dated 3.9.1984 involving 50 yards of land wherefor the amount of compensation fixed was Rs.10,327/-, i.e., Rs.206.50 p. per square yard. The Court, however, notice that in respect of the said sale deed an agreement was entered into by and between the parties in the year 1981 and not in 1983 as noticed by the

High Court at 10% increase per year for a period of three years, the learned Reference Judge held that the flat rate would come to Rs.128 per square yard. From the said amount, however, 30% was deducted as the lands in question were agricultural lands and on that bases the market value at the rate of Rs.55/- per square yard was found to be sufficient. The High Court relied upon a deed of sale dated 27.7.1983 involving Khasra No.1354 and 1355 rejected the deed of sale deed 27.7.1982. Relying on a deed of sale dated 2.6.1983 in terms whereof 1 Biswas 9 Biswasin and 15 Kachhwansi land pertaining to Khasra No.1054 and 1064 was sold for a sum of Rs.1,35,000/-, the Land Acquisition Collector opined that the market value of the land would come to Rs.1,81,512.60 p. per bigha, i.e., at the rate of 9.62 p. circle rate. It was held:

"Now only sale deed No.423 remained. This sale deed is executed on 2.6.83. From this 1 Biswa, 9, Biswasi, 15 Kachwasi land of Khasra No.1054 and 1064 was sale for 135000. This sale deed is outside the area of municipality and it is sell in bigha, biswa and biswasi which comes to 1,81,512.60 paise per bigha at the rate of 9.62 paise circle. This sale deed is similar to the acquired land. But the circle rate of this land is suitable to amend according to the circle rate of the acquired land which is suitable and justified to select this. The acquired land is of two types i.e. Dakar Dayam Khakhi whose circle rate is 3.19 paise and dakan doyam Awi whose circle rate is 4.37 paise. On the basis of selected sale deed at the rate of Rs.3.19 circle rate it comes to 60,189.72 and at the rate of Rs.4.37 it comes to 82,454.26 which is right and justified. The compensation of the acquired and estimated to 64,59,429.63 which is payable to the land owner."

27. The High Court, however, while rejecting all the other deeds of sale opined that reliance should be placed on the deed of sale dated 2.6.1983 in terms whereof the value of the land was determined at Rs.58.11 p. per square yard. Opining, however, that the Special Land Acquisition Officer was not justified in reducing the compensation on the basis of fertility of the soil and the circle rate, the High Court upon adding 10% increase to the said road held that the net rate would come to Rs.63.92 p. per square yard, i.e., Rs.64/- per square yard.

28. It was furthermore held that the building potentiality

would not be a relevant factor for calculating the market value of the land. Building potentiality of land, in our opinion, is a relevant factor. National Thermal Power Corporation intended to set up an industry. For the said purpose, they have built up a large number of offices quarters.

29. Submission of Mr. Dwivedi that market value of the land should not have been determined on square yard basis may not be entirely correct. Some of the landholders have very small holdings. Even the High Court, as noticed hereinbefore, determined the valuation on that basis only. As noticed hereinbefore, most of the deeds of sale are in respect of small holdings. Even the deed of sale dated 2.6.1983 involves land measuring 1 Biswas, 9 Biswasin and 15 Kachhwansi. One Biswa is equal to 151.25 square yards; one Biswasi is equal to 7.5625 square yards; and one Kachwasi is equal to 0.378 square yards. Calculating in terms of square yards, it is about 224.98 square yards. The Reference Judge relied upon a deed of sale which involved transfer of 190 square yards. If the 1983 deed of sale is to be taken into consideration, there is no reason as to why the deed of sale dated 2.6.1983 whereupon the learned Reference Judge placed reliance was kept out of consideration. As indicated hereinbefore, the High Court has without any valid and adequate reason refused to take into consideration a large number of deeds of sale which were relevant for the purpose of arriving at the amount of compensation upon taking into consideration the market value of the land.

30. Mr. Dwivedi places strong reliance upon a decision of this Court in Rao Narain Singh (Dead) By Lrs. v. Union of India [(1993) 3 SCC 63] wherein it was held :

"Building potentiality of the acquired land, claimed to be possessed by the acquired land, can assume no significance in the instant case as 'the comparable sales method' of valuation of land is resorted to by the High Court. Such method is resorted to, as the acquired land was found to be comparable in its essential features with land(s) respecting which evidence of certain sale deed(s), was produced. Hence, the contention of the learned counsel for the appellant raised to establish

that the acquired land had building potentiality at the time of its acquisition, need not engage our consideration."

31. No legal principle has been laid down therein. This Court had not declared the law that building potentiality is an irrelevant consideration. This case has some special features. The acquired lands although pertain to the administrative jurisdiction of Gaon Sabha, enough evidence had been placed on record to show that the entire area is commonly known as Murad pura area. On the one side of the road is Gaon Sabha and on the other side of the road is the municipality. We assume that that make some difference but then the difference is not such which would lead us to a conclusion that the said factor should not be taken into consideration at all.

32. Reliance has also been placed by Mr. Dwivedi on a decision of this Court in Viluben Jhalenjar Contractor (Dead) by LRs. v. State of Gujarat [(2005) 4 SCC 789]. In that case, the lands in question were acquired only because they would remain submerged under water and, thus, would not have any potential value. It is only in the aforementioned context this Court opined that the purpose for which the lands were acquired would be a relevant consideration. In that case, the area was not developed at all. No facility like internal roads, drainage, etc. was available. There may not be any quarrel with the proposition that circulars of the State Government that highest sale deed should be taken into consideration for determination of the fair market value of the land by itself may not be decisive insofar as the doctrine of compatibility by reason thereof would be given a complete go by. But when comparable exemplars are brought on record, the one carrying the highest market value amongst them may be followed. We, therefore, are of the opinion that the determination of market value at the rate of Rs.115/- per square yard as arrived at by the High Court cannot be held to be on a higher side.

33. We, however, are of the opinion that there was no reason for the learned Reference Judge to determine the market value of the land in the other bunch of cases at the rate of Rs.155/- per square yard. The market value of the land of both the bunch of cases is determined at Rs.115/- per square yard.

34. Civil Appeal Nos.6230-6251, 6300, 6301-6321 of 2002 are, thus, allowed with costs and Civil Appeal Nos. 6253-6299 of 2002 are dismissed as not pressed for. Counsel's fee assessed at Rs.50,000/- in each case payable by National Thermal Power Corporation.

35. Before parting, however, we may notice that National Thermal Power Corporation had given an undertaking before the High Court. The said amount has not yet been paid. The amount of compensation even as determined by the High Court has not been paid. It is, thus, expedient that the amount of compensation would be paid to the land owners as expeditiously as possible.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

New Delhi;
July 16, 2009