IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).1564-1565 OF 2016

BABIBAI BABU PATIL ..APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA AND & ORS. ..RESPONDENT(S)

WITH

C.A. No. 1599/2016, C.A. No. 1598/2016, C.A. No. 1597/2016, C.A. No. 1600/2016,C.A. No. 1581-1582/2016,C.A. No. 1587-1588/2016, C.A. No. 1593-1594/2016,C.A. No. 1567-1568/2016,C.A. No. 1585-1586/2016,C.A. No. 1595-1596/2016, C.A. No. 1591-1592/2016, C.A. No. 1589-1590/2016 C.A. No. 1583-1584/2016, C.A. No. 1610-1618/2016.

O R D E R

1. Heard learned counsel for the parties.

2. The question agitated in the appeals is to enhance the compensation awarded by the High Court. The High Court has awarded compensation at the rate of Rs.500/- per sq. mtr. and Rs.400/- per square meter for the village Padaghe. It was submitted that the High Court has not considered the evidence which had been placed on record with respect to the value of

the property, and various other awards passed with respect to adjoining villages. It was submitted that the land owners were entitled for compensation in village Padaghe at the rate of Rs.1725/- per sq. mtr.

3. We have perused the award of the village Rodpali. The State has questioned its correctness. It appears, that the same is required to be considered by the High Court, as the award cannot be said to be binding; and whether necessary deductions for development and smallness etc. have made while determination of amount was made in the said award, has also to be considered by the High Court. The appropriate deduction is required to be made particularly when, in the case of village Rodpali, two transactions pertaining to commercial/ industrial purposes had been relied upon; one of which was with respect to grant of land on lease for 60 years, and other was for a weigh bridge. It was also required to be considered as to whether the value of those plots could have been taken into consideration only after appropriate deductions. Apart from that, the other evidence that has been adduced in the instant case was also required to be considered by the High Court for awarding appropriate compensation. Suffice it to observe, that value of commercial plots cannot provide for a safe criteria for determination of compensation, that too without adequate deduction. This Court has considered various decisions regarding the deductions to be made for development and also for smallness. In *Major General Kapil Mehra & Ors. vs. Union of India & Anr.* [(2015) 2 SCC 262] this Court has laid down that :

"33. In *Haryana State Agricultural Market Board* v. *Krishan Kumar*, (2011) 15 SCC 297 it was held as under: (SCC p. 299, para 10)

> **"*10*. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of levelling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."**

34. Consistent view taken by this Court is that one-third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area.

35. Reiterating the rule of one-third deduction towards development, in *Sabhia Mohammed Yusuf Abdul Hamid Mulla* v. *Land Acquisition Officer*, (2012) 7 SC 595 this Court in para 19 held as under: (SCC pp. 606-07)

"*19*. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In *Kasturi* v. *State of Haryana* (2003) 1 SCC 354 the Court held: (SCC pp. 359-60, para 7)

> **'*7*. … It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So**

the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character or a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. *However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose*.'

The rule of 1/3rd deduction was reiterated in *Tejumal Bhojwani* v. *State of U.P.*, (2003) 10 SCC 525, *V. Hanumantha Reddy* v. *Land Acquisition Officer*, (2003) 12 SCC 642, *H.P. Housing Board* v. *Bharat S. Negi* (2004) 2 SCC and *Kiran Tandon* v. *Allahabad Development Authority*."

(emphasis in original)

36. While determining the market value of the acquired land, normally one-third deduction i.e. 33 1/3% towards development charges is allowed. One-third deduction towards development was allowed in *Tehsildar (LA)* v. *A. Mangala Gowri*, (1991) 4 SCC 218 *Gulzara Singh* v. *State of Punjab*, (1993) 4 SCC 245, *Santosh Kumari* v. *State of Haryana*, (1996) 10 SCC 631, *Revenue Divl. Officer and LAO* v. *Sk. Azam. Saheb*, (2009) 4 SCC 395, *A.P. Housing Board* v. *K. Manohar Reddy*, (2010) 12 SCC 707, *Ashrafi* v. *State of Haryana,* (2013) 5 SCC 527, and *Kashmir Singh* v. *State of Haryana* (2014) 2 SCC 165.

37. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in *Haryana State Agricultural Market Board* v. *Krishan Kumar* (2011) 15 SCC 297, *Director, Land Acquisition* v. *Malla Atchinaidu* (2006) 12 SCC 87, *Mummidi Apparao* v. *Nagarjuna Fertilizers & Chemicals Ltd.* (2009) 4 SCC 402 and *Lal Chand* v. *Union of India* (2009)15 SCC 769.

38. In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in *Basavva* v. *Land Acquisition Officer* (1996) 9 SCC 640, this Court upheld the deduction of 65%. In *Kanta Devi* v. *State of Haryana* (2008) 15 SCC 201, deduction of 60% towards development charges was held to be legal. This Court in *Subh Ram* v. *State of Haryana*, held that deduction of 67% amount was not improper. Similarly, in *Chandrashekar* v. *Land Acquisition Officer* (2012) 1 SCC 390, deduction of 70% was upheld.

39. We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewerage

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40. Rule of one-third deduction towards development appears to be the general rule. But so far as the Delhi Development Authority is concerned, or similar statutory authorities, where well-planned layouts are put in place, larger land area may be utilised for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this Court in *Lal Chand* v. *Union of India* (2009) 15 SCC 769 and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under: (SCC pp. 779-80)

> **"*13*. The percentage of 'deduction for development' to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.**

***14*. The 'deduction for development' consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.**

***15*. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civic amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the 'deduction for development' and can account for as much as 75% of the cost of the developed plot.**

***16*. On the other hand, if the residential plot is in an unauthorised private residential layout, the percentage of 'deduction for development' may be far less. This is because in an unauthorised layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorised layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.**

***17*. The 'deduction for development' with reference to prices of plots in authorised private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.**

***18*. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may**

range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

***19*. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (*Note*: The percentages mentioned above are tentative standards and subject to proof to the contrary.)**

***20*. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.**

***21*. Even among the layouts formed by DDA, the percentage of land utilised for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout—whether it is residential, residential-cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.**

***22*. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the 'deduction for development' factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%."**

***Lal Chand case* deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilised for laying down of roads, drains, etc. Further deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, underground drainage, laying down water lines, electricity lines was made.**

4. In the case of *Manoj Kumar etc. etc. vs. State of Haryana & Ors. etc.etc.* decided on 13.09.2017 we have considered relevance of awards etc. This Court observed:

> **"15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.**
>
> **16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in 14 awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.**
>
> **17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.**

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient 15 evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property.

19. To rely upon judgment/award in case it does not form part of evidence recorded by reference court, an application under Order 41 Rule 27 is to be filed to adduce evidence and if it is allowed opposite party has to be given opportunity to lead evidence in rebuttal. The award/judgment cannot be taken into consideration while hearing arguments unless they form part of evidence in the case. A three-Judge Bench of this Court has considered the value of previous award and sale exemplar in the *Land Acquisition Officer, City Improvement Trust Board vs. H. Narayanaiah & Ors.* (1976) 4 SCC 9, judgment of the Court was accepted as relevant evidence under Order 41 Rule 27 by the High Court. Though, appeal was pending against it. This Court held that there could be no *res judicata*. In such cases, as the previous judgment was not inter-parties. The opposite party was not given opportunity by the High Court to show that land was different. The decision of High Court was held to be against the provisions of the Evidence Act, which regulate admissibility of all evidence including judgments. Such judgments are in personam. This Court has observed:

> **"26. It is apparent that Section 43 enacts that judgments other than those falling under Sections 40 to 42 are irrelevant unless they fall under some other provision of the Evidence Act; and, even if they do fall under any such other provision, all that is relevant, under Section 43 of the Evidence Act, is "the existence" of such judgment, order, or decree provided it "is a fact in issue, or is relevant under some other provision of this Act". An obvious instance of such other provision is a judgment falling under Section 13 of the Evidence Act. The illustration to Section 13 of the Evidence Act indicates the kind of facts on which the existence of judgments may be relevant.**
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> **27. In *Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai* AIR 1960 Bom 78, Shelat, J. held that judgments not**

inter partes, relating to land acquired are not admissible merely because the land dealt with in the judgment was situated near the land of which the value is to be determined. It was held there that such judgments would fall neither under Section 11 nor under Section 13 of the Evidence Act. Questions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. ***The existence of a judgment would not prove the value of some piece of land not dealt with at all in the judgment admitted in evidence. Even slight differences in situation can, sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such judgments altogether from evidence even when good grounds are made out for their admission. In Khaja Fizuddin v. State of Andhra Pradesh (C.A. No. 176 of 1962, decided on April 10, 1963), a Bench of three Judges of this Court held such judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.***

28. The Karnataka High Court had, however, not complied with provisions of Order 41 Rule 27 of the CPC which require that an appellate court should be satisfied that the additional evidence is required to enable it either to pronounce judgment or for any other substantial cause. It had recorded no reasons to show that it had considered the requirements of Rule 27 Order 41 of the CPC We are of opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. ***And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.***

29. The result is that we allow these appeals and set aside the judgment and order of the Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under Section 16 of the Bangalore Act. It will also decide the question, ***after affording parties opportunities to lead necessary evidence, whether the judgment, sought to be offered as additional evidence, could be admitted.***

(Emphasis supplied).”

This Court has clearly laid down that such judgment/award cannot be received in evidence and considered without giving an op-

portunity of rebuttal to opposite parties by adducing evidence. At the stage of appeal if award/ judgment has to be read in evidence an application has to be filed under Order 41 Rule 27 of the Act to take additional evidence on record and if allowed, opportunity to lead evidence in rebuttal has to be allowed.

20. In *Printers House Pvt. Ltd. vs. Mst. Saiyadan (dead) by L.Rs. & Ors.* (1994) 2 SCC 133, A three-Judge Bench of this Court had considered the value of previous awards and sale exemplar to be similar. It observed:

> **"16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the 'price basis' for determination of the market value of the acquired land or the price fetched by the nearest or closest of the comparable sales should alone form the 'price basis' for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. *When several sale-deeds or previous awards are produced in court as evidence of comparable sales, court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefor.***
>
> **17. If the sale is found to be a genuine one or the award is an accepted one, and the *sale or award pertains to land which was sold or acquired at about the time of publication of preliminary notification under the Act in respect of the acquired land,* the market value of which has to be determined, *the court has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award.* This process involves the marking by court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence 19 of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale or the market value determined for the land in the award could be taken by the court as the 'price basis' for determining the market value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the**

comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason that such 'price basis' may vary largely depending even on comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind, cannot be correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their acquired land, which are five in number, are not similar, in that, their location, size, shape vary greatly. One plot of land of one claimant and another plot of another claimant appear to be of one type. Another plot of land of one of them appears to be of a different type. Yet another plot of the second of them appears to be different. Insofar as third claimant's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of the claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their lands. The position cannot be different if the comparable sales or awards when relate to different lands. *Therefore, when there are several comparable sales or awards pertaining to 20 different lands, what is required of the court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration."*

(emphasis supplied)

21. In *Karan Singh & Ors. vs. Union of India* (1997) 8 SCC 186, this Court held that evidence has to be adduced to show similarity of the land in question to the one covered by previous award/judgment. This Court observed:

"8. Learned counsel for the appellants then urged that the High Court erroneously discarded Ext. A-11 which was an award in respect of a land at Village Jhilmil Tahirpur on the ground that it was not a previous judgment of the Court. The land comprised in the award was acquired under notification issued under Section 4 of the Act on 27-7-1981. By the said award, the Court awarded compensation @ Rs 625 per sq. yd. It has earlier been seen that in the present case the notification issued under Section 4 of the Act was earlier in point of time

than the notification issued for acquisition of land comprised in Ext. A-11. There is no quarrel with the proposition that *judgments of courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied upon as a good piece of evidence for determining the market value of the land acquired under certain circumstances*. One of the circumstances being that such an award or judgment of the court of law must be a previous judgment. In the case of *Pal Singh v. Union Territory of Chandigarh* (1992) 4 SCC 400, it was observed thus: (SCC pp. 402-03, para 5)

> **"But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a *previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land.*"**

Following this decision, we hold that it is only the *previous judgment of a court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing* that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land."

(emphasis supplied)

22. In *Ranvir Singh & Anr. v. Union of India* (2005) 12 SCC 59, this Court considered value of previous judgment/award and held that it is only piece of evidence. There cannot be fixed criteria for determining compensation at any fixed rate, observing that:

> **"36. *Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate.* We, therefore, are unable to accept the contention of Mr. Nariman that as in one case we have fixed the valuation at Rs 7000 per bigha wherein the lands were acquired in the year 1961, applying the rule of escalation the market rate should be determined by calculating the increase in the prices at the rate of 12% per annum. We do not find any justifiable reason to base our decision only on the said criterion."**

(emphasis supplied)

23. A three-Judge Bench in *Special Land Acquisition Officer, Mysore Urban Development Authority v. Sakamma* (2010) 14 SCC 503 has observed in absence of evidence as to comparable land, award/judgment in another case cannot be accepted. This Court held:

> **"8. There is no evidence to show that the acquired lands at Keragalli and Maragowdanahalli are comparable lands with similar market value. The distance, the extent of development and the facilities available in the two villages make it clear that the award made by the Reference Court with reference to an acquisition in Maragowdanahalli Village cannot be the basis for determining the market value for the lands at Keragalli.**
>
> **9. We are of the view that the Reference Court and the High Court committed a serious error in relying upon the judgment (Ext. P-2) relating to Maragowdanahalli, to determine the market value of lands at Keragalli. If Ext. P-2 is excluded, we find that there is no evidence to determine the market value, as the only other document relied upon by the landowners was a sale transaction of 2007 which being nearly one decade after the acquisition, is not of any assistance. We also find that no evidence has been let in by the appellant in regard to the market value though the award of the Land Acquisition Officer refers to sale transactions during 1997-1998 showing a value of Rs 2,50,000 per acre in Keragalli. But those sale deeds were not produced.**
>
> **10. We are also told that the reference cases in regard to several other lands under the same acquisition are still pending before the Reference Court and some cases are pending in the High Court. In the absence of any acceptable evidence, it is not possible for us to determine the market value. It would appear that sale transactions relating to 1996-1998 for lands near to acquired lands are available but not 23 produced. maybe. We cannot obviously rely upon them as they are produced for the first time in this Court and the landowners did not have an opportunity to have their say in regard to such transactions by letting evidence. Interests of justice, therefore, requires that the matter should the."**

24. Basic principle before following award/judgment or comparative sales is that land should be comparable in nature and quality as laid down in *State of Madhya Pradesh vs. Kanshi Ram* (2014) 100

SCC 506 and *Hirabai & Ors. vs. Land Acquisition Officer-cum-Assistant Commission* (2010) 10 SCC 492 and in close proximity of time to preliminary notification under section 4 of the Act. In the instant case, we hold that the High Court could not have followed the judgment in a blind manner as done without due consideration of various aspects.

25. The High Court has observed that the decision in *Swaran Singh's* case has been affirmed by the judgment of the Supreme Court. As a matter of fact, the special leave petition was dismissed. The dismissal of the special leave petition without assigning of reason cannot be treated as a binding precedent of this Court. The High Court treated as if this Court has decided the matter on merits and has approved the decision of the High Court. Even if that be so, the Courts are bound to take into consideration the various aspects as discussed in each and every case before relying upon and following the award or judgment in other cases relating to determination of the compensation as there is no res judicata in such cases. In each case, some change in the factual scenario is bound to be there such as quality of the land, category, time gap and largeness and smallness, deduction to be made. There are various factors which have to be taken into consideration only then, decision has to be rendered."

5. In view of the aforesaid discussion, let the High Court decide the appeals afresh. The impugned judgment is set aside, and the cases are remitted to the High Court, High Court also to decide afresh on the amendment application, considering the decision in *Ambya Kalya Mhatre (Dead) Through Lrs. & Ors. v. State of Maharashtra,* (2011) 9 SCC 325.

6. In the cases arising out of Section 28A, the High Court is also required to consider the limited scope of reference under the provisions of Section 28A of the Land Acquisition Act, 1894. The provisions of Section 28A are for reopening the cases in particular exigencies which has to be considered. Let a fresh decision be rendered in the matters.

7. The parties are free to file application under Order 41 Rule 27, if so desired.

8. The High Court shall make an endeavour to decide the matters as expeditiously as possible.

.....J.
[ARUN MISHRA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
OCTOBER 31, 2017

ITEM NO.8 COURT NO.10 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1564-1565/2016

BABIBAI BABU PATIL Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA AND & ORS. Respondent(s)

WITH
C.A. No. 1599/2016 (III)
C.A. No. 1598/2016 (III)
C.A. No. 1597/2016 (III)
C.A. No. 1600/2016 (III)
C.A. No. 1581-1582/2016 (III)
C.A. No. 1587-1588/2016 (III)
C.A. No. 1593-1594/2016 (III)
C.A. No. 1567-1568/2016 (III)
C.A. No. 1585-1586/2016 (III)
C.A. No. 1595-1596/2016 (III)
C.A. No. 1591-1592/2016 (III)
C.A. No. 1589-1590/2016 (III)
C.A. No. 1583-1584/2016 (III)
C.A. No. 1610-1618/2016 (III)

Date : 31-10-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Ankur Chawla, Adv.
Mr. S. Pathak, Adv.
Mr. Aamir Khan, Adv.
Mr. A. Choudary, Adv.
Mr. Sangram Singh, Adv.
Mr. Rajendra M. Deshmukh, Adv.
Mr. Shriram S. Kulkarni, Adv.
Mr. Rahul Pratap, AOR

Mr.Subrat Birla, Adv.

Mr. S. C. Birla, AOR

Mr. Sudhanshu S. Choudhari, AOR

For Respondent(s) **Mr. Nishant Ramakantrao Katneshwarkar, AOR**
Ms. Deepa Kulkarni, Adv.
Ms. Survarna, Adv.
Mr. Arpit Rai, Adv.

Ms. Asha Gopalan Nair, AOR

Mr. Sudhanshu S. Choudhari, AOR
Ms. Surabhi Gule;ria, Adv.
Mr. Rahul Thakur, Adv.

UPON hearing the counsel the Court made the following

O R D E R

In view of the aforesaid discussion, let the High Court decide the appeals afresh. The impugned judgment is set aside, and the cases are remitted to the High Court, High Court also to decide afresh on the amendment application, considering the decision in *Ambya Kalya Mhatre (Dead) Through Lrs. & Ors. v. State of Maharashtra,* (2011) 9 SCC 325.

In the cases arising out of Section 28A, the High Court is also required to consider the limited scope of reference under the provisions of Section 28A of the Land Acquisition Act, 1894. The provisions of Section 28A are for reopening the cases in particular exigencies which has to be considered. Let a fresh decision be rendered in the matters.

The parties are free to file application under Order 41 Rule 27, if so desired.

The High Court shall make an endeavour to decide the matters as expeditiously as possible.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI THAKUR) **(JAGDISH CHANDER)**
COURT MASTER (SH) **COURT MASTER**
(Signed order is placed on the file)