

Reserved

(1) First Appeal No.910 of 2000
Ghaziabad Development Authority Vs Kashi Ram and others

(2) First Appeal No.911 of 2000
Ghaziabad Development Authority Vs Mam Raj and another

(3) First Appeal No.912 of 2000
Ghaziabad Development Authority Vs Ram Niwas and others

(4) First Appeal No.913 of 2000
Ghaziabad Development Authority Vs Smt.Ramwati and others

(5) First Appeal No.926 of 2000
Ghaziabad Development Authority Vs Kashi Ram and others

(6) First Appeal No.925 of 2000
Ghaziabad Development Authority Vs Smt. Krishna Devi and others

(7) First Appeal No.927 of 2000
Ghaziabad Development Authority Vs Kali Charan and another

(8) First Appeal No.928 of 2000
Ghaziabad Development Authority Vs Smt. Kela and others

(9) First Appeal No.929 of 2000
Ghaziabad Development Authority Vs Kashi Ram and others

(10) First Appeal No.930 of 2000
Ghaziabad Development Authority Vs Prem Raj and another

(11) First Appeal No.931 of 2000
Ghaziabad Development Authority Vs Shri Ajay Kapoor and another

(12) First Appeal No.932 of 2000
Ghaziabad Development Authority Vs Smt. Anjana Kapoor and another

(13) First Appeal No.933 of 2000
Ghaziabad Development Authority Vs Rameshwar Dayal and others

(14) First Appeal No.934 of 2000
Ghaziabad Development Authority Vs Smt. Kailashwati and another

(15) First Appeal No.935 of 2000
Ghaziabad Development Authority Vs Kishan Chand and another

(16) First Appeal No.937 of 2000
Ghaziabad Development Authority Vs Dhan Prakash and others

(17) First Appeal No.745 of 1999
Ghaziabad Development Authority Vs Trilok Chand and others

(18) First Appeal No.797 of 1999
Ghaziabad Development Authority Vs Devendra Singh and others

(19) First Appeal No.761 of 1999
Ghaziabad Development Authority Vs Devi Sahai and others

(20) First Appeal No.762 of 1999
Ghaziabad Development Authority Vs Lal Man and others

(21) First Appeal No.750 of 1999
Ghaziabad Development Authority Vs Ramesh Chand and others

(22) First Appeal No.746 of 1999
Ghaziabad Development Authority Vs Suresh and others

(23) First Appeal No.756 of 1999
Ghaziabad Development Authority Vs Omkar Singh

(24) First Appeal No.789 of 1999
Ghaziabad Development Authority Vs Ami Chand (Dead) and others

(25) First Appeal No.790 of 1999
Ghaziabad Development Authority Vs Surendra Singh and others

(26) First Appeal No.759 of 1999
Ghaziabad Development Authority Vs Devi Sahai and others

(27) First Appeal No.804 of 1999
Ghaziabad Development Authority Vs Omkar Singh and others

(28) First Appeal No.757 of 1999
Ghaziabad Development Authority Vs Devi Sahai and others

(29) First Appeal No.808 of 1999
Ghaziabad Development Authority Vs Pradeep Kumar and others

(30) First Appeal No.788 of 1999
Ghaziabad Development Authority Vs Mani Ram and others

(31) First Appeal No.809 of 1999
Ghaziabad Development Authority Vs Suresh Kumar and others

(32) First Appeal No.791 of 1999
Ghaziabad Development Authority Vs Har Prakash and others

(33) First Appeal No.812 of 1999

Ghaziabad Development Authority Vs Shipattar Singh and others

(34) First Appeal No.794 of 1999
Ghaziabad Development Authority Vs Chand Kiran (dead) by LRs and another

(35) First Appeal No.729 of 1999
Ghaziabad Development Authority Vs Jai Prakash and another

(36) First Appeal No.744 of 1999
Ghaziabad Development Authority Vs Om Prakash and another

(37) First Appeal No.806 of 1999
Ghaziabad Development Authority Vs Mahesh Kumar and others

(38) First Appeal No.810 of 1999
Ghaziabad Development Authority Vs Atar Singh and others

(39) First Appeal No.748 of 1999
Ghaziabad Development Authority Vs Hari Singh and others

(40) First Appeal No.811 of 1999
Ghaziabad Development Authority Vs Sudhir Kumar and others

(41) First Appeal No.793 of 1999
Ghaziabad Development Authority Vs Mangu and others

(42) First Appeal No.755 of 1999
Ghaziabad Development Authority Vs Dhan Prakash and others

(43) First Appeal No.787 of 1999
Ghaziabad Development Authority Vs Basheshwar Dayal and others

(44) First Appeal No.751 of 1999
Ghaziabad Development Authority Vs Harkesh and others

(45) First Appeal No.807 of 1999
Ghaziabad Development Authority Vs Ramesh Chand and others

(46) First Appeal No.805 of 1999
Ghaziabad Development Authority Vs Rajinder Dutt Sharma and others

(47) First Appeal No.796 of 1999
Ghaziabad Development Authority Vs Atar Singh and others

(48) First Appeal No.752 of 1999
Ghaziabad Development Authority Vs Smt. Ganga Devi and another

(49) First Appeal No.550 of 2000

- Ghaziabad Development Authority Vs Fakeer Chand and others
- (50) First Appeal No.802 of 1999
Ghaziabad Development Authority Vs Ravindra Kumar and others
- (51) First Appeal No.758 of 1999
Ghaziabad Development Authority Vs Bhud Prakash and another
- (52) First Appeal No.760 of 1999
Ghaziabad Development Authority Vs Smt.Bakhtawri Devi and another
- (53) First Appeal No.763 of 1999
Ghaziabad Development Authority Vs Rajendra and another
- (54) First Appeal No.795 of 1999
Ghaziabad Development Authority Vs Atbir and others
- (55) First Appeal No.792 of 1999
Ghaziabad Development Authority Vs Atbir and others
- (56) First Appeal No.813 of 1999
Ghaziabad Development Authority Vs Atbir and others
- (57) First Appeal No.747 of 1999
Ghaziabad Development Authority Vs Raj Kumar and others
- (58) First Appeal No.753 of 1999
Ghaziabad Development Authority Vs Sri Chaman Lal and another
- (59) First Appeal No.754 of 1999
Ghaziabad Development Authority Vs Rajendra Dutt Sharma and others
- (60) First Appeal No.749 of 1999
Ghaziabad Development Authority Vs Suresh and others
- (61) First Appeal No.700 of 2002
Kashi Ram and others Vs State of U.P. and others
- (62) First Appeal (D) No.414 of 1999
Atar Singh and others Vs State of U.P. and others
- (63) First Appeal No.815 of 2003
Atbir and others Vs State of U.P. and others
- (64) First Appeal (D) No.428 of 1999
Atbir and others Vs State of U.P. and others
- (65) First Appeal (D) No.449 of 1999
Atbir and others Vs State of U.P. and others
- (66) First Appeal No.864 of 2003

Mangu and others Vs State of U.P. and others

(67) First Appeal No.848 of 2012

Dhan Prakash and others Vs State of U.P. and others

(68) First Appeal No.812 of 2003

Rajendra Dutt Sharma alias

Rajendra Pal and another Vs State of U.P. and others

(69) First Appeal No.816 of 2003

Atar Singh and others Vs State of U.P. and others

(70) First Appeal (D) No.487 of 1999

Suresh and others Vs State of U.P. and others

(71) First Appeal (D) No.452 of 1999

Suresh and others Vs State of U.P. and others

(72) First Appeal (D) No.440 of 1999

Suresh Kumar and others Vs State of U.P. and others

(73) First Appeal No.661 of 2012

Pradeep Kumar and others Vs State of U.P. and others

(74) First Appeal (D) No.445 of 1999

Mani Ram Vs State of U.P. and others

(75) First Appeal (D) No.429 of 1999

Fakir Chand and another Vs State of U.P. and others

(76) First Appeal (D) No.422 of 1999

Sudhir Kumar Tyagi and others Vs State of U.P. and others

(77) First Appeal (D) No.405 of 1999

Vijendra Kumar and another Vs State of U.P. and others

(78) First Appeal (D) No.596 of 1999

Jai Bhagwan and others Vs State of U.P. and others

(79) First Appeal (D) No.417 of 1999

Basheshwar Dayal and another Vs State of U.P. and others

(80) First Appeal No.126 of 2013

Dharam Pal and others Vs State of U.P. and others

(81) First Appeal (D) No.415 of 1999

Ravindra Kumar and others Vs State of U.P. and others

(82) First Appeal (D) No.423 of 1999

Rajendra Dutt Sharma alias

Rajendra Pal and others Vs State of U.P. and others

(83) First Appeal (D) No.421 of 1999

Hari Singh and others Vs State of U.P. and others

(84) First Appeal No.200 of 2009

Buddh Prakash Vs State of U.P. and others

(85) First Appeal No. 786 of 2014
Rajendra Vs State of U.P. and others

(86) First Appeal (D) No.455 of 1999
Charan Lal Vs State of U.P. and others

(87) First Appeal No.681 of 2013
Devi Sahai (dead) and others Vs State of U.P. and others

(88) First Appeal (D) No.486 of 1999
Ishwar and others Vs State of U.P. and others

(89) First Appeal (D) No.485 of 1999
Devendra Singh Vs State of U.P. and others

(90) First Appeal (D) No.483 of 1999
Lakhmi Chand and others Vs State of U.P. and others

(91) First Appeal (D) No.484 of 1999
Trilok Chand and others Vs State of U.P. and others

(92) First Appeal (D) No.439 of 1999
Jai Prakash Vs State of U.P. and others

(93) First Appeal (D) No.444 of 1999
Har Prakash and others Vs State of U.P. and others

(94) First Appeal (D) No.420 of 1999
Harkesh Vs State of U.P. and others

(95) First Appeal (D) No.481 of 1999
Ramesh Chandra and others Vs State of U.P. and others

(96) First Appeal (D) No.571 of 1999
Sipattar Singh (dead) by LRs
and others Vs State of U.P. and others

Hon'ble Rajiv Sharma, J.
Hon'ble Dinesh Gupta, J.

Heard Mr. Mahendra Pratap, learned Counsel for Ghaziabad Development Authority and Mr. D.P. Singh and Mr. Shiv Sagar Singh, learned Counsel for the claimants.

At the outset, it is relevant to mention here that in some of the First Appeals, the appellants/claimants left for heavenly abode and as such, substitution applications were filed on their behalf for bringing on record their legal heirs. There is no objection to these applications. Accordingly, all the substitution applications are allowed, after condoning the delay, if any, in preferring the

substitution applications.

Let them be substituted in place of claimants during the course of the day.

In short, the facts of the case are that the land of the claimants pertaining to the village Makanpur, Pargana Loni, Tehsil Dadri, District Ghaziabad was acquired by the State of U.P. for planned development by the Ghaziabad Development Authority [in short referred to as '**GDA**']. The notification under Section 4 (1) of the Land Acquisition Act was issued on 12.9.1986, which was published in the Gazettee on 28.2.1987, whereas notification under Section 6 (1) of the Act was issued on 24.2.1988. The possession of the land in question was taken by the State Government on 14.6.1988 and 29.6.1988. The Special Land Acquisition Officer (SLAO) pronounced the award on 30.12.1989 and granted compensation at the rate of Rs.50/- per square yard relying on the exemplar of plot No.582, area 5 Bigha executed on 28.9.1987 by one Smt. Amarjeet Kaur in favour of GDA @ Rs.50/- per square yard. The respondents and other persons whose land was acquired had filed objections to the said determination of compensation by the SLAO and the matter was referred to the District Judge under Section 18 of the Land Acquisition Act. The IV Additional District Judge, Ghaziabad and VI Additional District Judge, Ghaziabad [hereinafter referred to as the "**Reference Court**"] passed separate awards dated 19.4.1999 and 31.5.2000, whereby the Reference Court enhanced the amount of compensation from Rs.50/- per Square Yard to Rs.90/- per square yard.

Feeling aggrieved, the GDA has filed the above-captioned first appeals description of which is given from Sl. Nos. 1 to 60. In contrast, Appeals mentioned at Sl. Nos.61 to 96 have been filed by the tenure holders-claimants for enhancement of compensation and lowering the deductions from 33% made towards development cost.

Since the land of all claimants was acquired by the same Notification, facts pertaining to the said Notification apply to all

these respondents. The only difference is in the area of land which was owned by these respondents and has been taken away by the State in acquisition. Therefore, taking general note of the particulars of acquisition and the nature of land, would serve the purpose.

From perusal of the impugned award dated 19.4.1999, it reflects that the Reference Court, on the basis of pleadings, had framed five issues, which are as under :

- “(1) Whether the compensation awarded by S.L.A.O. is inadequate? If so to what amount of compensation are the petitioners entitled?
- (2) Whether the reference is time barred?
- (3) Whether the reference is barred by section 9 of Land Acquisition Act?”
- (4) Whether the reference is barred by principles of estoppel?
- (5) To what amount of compensation, if any, are the petitioners entitled?

While deciding issue No. 1, the Reference Court had recorded specific findings of fact that the present claimants seem to be very unfortunate because the land of the same village was acquired for 'Avas Vikas Parishad' and NOIDA and those farmers got higher rates, while the land of present claimants acquired for GDA got less compensation. Some land of village Makanpur was acquired for NOIDA and partly acquired for Avas Vikas Parishad and the remaining part was acquired for GDA. Therefore, the Reference Court was of the view that the compensation awarded by the SLAO was inadequate and enhanced the compensation from Rs.50/- to Rs.90/- per square yard.

As the appellants have not pressed the issue nos.2 and 3, the Reference Court decided the said issues in favour of the claimants.

As regard issue No.5, the Reference Court, after taking into consideration the totality of the circumstances, came to the conclusion that the claimants are entitled to get solatium @ 30%

on the market rate and 12% per annum additional amount together with interest @ 9% per annum on the enhanced amount of compensation for the first year from the date of taking the possession and thereafter 15% per annum till the date of payment.

The main contention of the GDA is that the claimants accepted the compensation without protest and as such, it was not open for the tenure holders to file Reference under Section 18 of the Act. In this regard, he submits that on some applications, the word 'protest' was written by one different handwriting without signature appended thereto. Since there is an interpolation, it has to be considered that the claimants have accepted the compensation without protest.

Further, he submits that certified copies of sale exemplars, relied by the Collector, were produced before the Reference Court, but the Court concerned rejected the same for want of examination of witness. According to him, it is contrary to law as has been held by the Apex Court in ***P. Rama Reddy v. Special Land Acquisition Officer [1995 (2) SCC 305]***. In this judgment, the Apex Court held that 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.

While determining the compensation, the Reference Court relied on the sale deeds executed by the Tripati Builders in favour of Subhash Chand and Chandra Mohan. As the sale deeds were executed by the builders instead of the farmers, naturally the value of the land is on higher side and as such the same is liable to be set aside.

Next, he contended that in the impugned order dated 19.4.1999, the Reference Court determined the compensation as Rs.90/- per sq. yard, after deducting 33% from Rs.135/-, whereas in the impugned order dated 31.5.2000, the Reference Court fixed the compensation as Rs.90/- per square yard without

any deduction. Since there is variance in determination of compensation, this Court's interference is required in setting aside the impugned order.

Lastly, it has been vehemently contended by the counsel for the GDA that the Reference Court erred in deducting 33% towards development cost overlooking the fact that the large chunk of land was acquired and sufficient land was to be left for internal developments, like road, sewerage, overhead water tank, water lines, parks, etc. According to him, deduction of at least 70% should have been allowed. To substantiate the aforesaid assertion, reliance has been placed upon ***Chandrashekar (D) by LRs and others v. Land Acquisition Officer and another [AIR 2012 SC 446]***. In para 15 of the report, it has been observed by the Apex Court as under:-

“15. The present controversy calls for our determination on the quantum of the deductions to be applied, to the market value assessed on the basis of the exemplar sale transaction, so as to ascertain the fair compensation payable to the land loser. The only factual parameters to be kept in mind are, the factual inferences drawn in the foregoing paragraph. On the issue in hand, we shall endeavor to draw our conclusions from past precedent. In the process of consideration hereinafter, we have referred to all the judgments relied upon by the learned counsel for the appellants, as well as, some recent judgments on the issue concerned:

(i) In ***Brigadier Sahib Singh Kalha & Ors. v. Amritsar Improvement Trust & Ors., (1982) 1 SCC 419***, this Court opined, that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly it was held, that a deduction of 20 percent of the total acquired land should be made for land over which infrastructure has to be raised (space for roads etc.). Apart from the aforesaid, it was also held, that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) need also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20 percent to 33 percent. Commutatively viewed, it was held, that deductions would range between 40 and 53 percent.

(ii) Noticing the determination rendered by this Court in ***Brigadier Sahib Singh Kalha's case (supra)***, this

Court in Administrator General of West Bengal vs. Collector, Varanasi, (1988) 2 SCC 150, upheld deduction of 40 percent (from the acquired land) as had been applied by the High Court.

(iii) In ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona & Anr., (1988) 3 SCC 751***, while referring to the factors which ought to be taken into consideration while determining the market value of acquired land, it was observed, that a smaller plot was within the reach of many, whereas for a larger block of land there was implicit disadvantages. As a matter of illustration it was mentioned, that a large block of land would first have to be developed by preparing its lay out plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate, ranging from 20 percent to 50 percent. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified, that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iv) In ***Land Acquisition Officer Revenue Divisional Officer, Chottor vs. L. Kamamma (Smt.) Dead by LRs. & Ors., (1998) 2 SCC 385***, this Court arrived at the conclusion, that a deduction of 40 percent as developmental cost from the market value determined by the Reference Court would be just and proper for ascertaining the compensation payable to the landowner.

(v) In ***Kasturi and others vs. State of Haryana, (2003) 1 SCC 354***, this court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft and hard, the acquired land may have a hillock or may be low lying or may have deep ditches. Accordingly, it was pointed out, that

expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi's case (supra) it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

(vi) Following the decision rendered by this Court in Brigadier Sahib Singh Kalha's case, this Court in ***Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. vs. Nookala Rajamallu & Ors., (2003) 12 SCC 334***, applied a deduction of 53 percent, to determine the compensation payable to the landowners.

(vii) In ***V. Hanumantha Reddy (Dead) by LRs. vs. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642***, this Court examined the propriety of compensation determined as payable to the land loser by the High Court. The Reference Court had determined the market value of developed land at Rs.78 per sq. yard. The Reference Court then applied a deduction of 1/4th to arrive at Rs.58 per sq. yard as the compensation payable. The High Court however concluded, that compensation at Rs.30 per sq. yard would be appropriate (this would mean a deduction of approximately 37 percent, as against market value of developed land at Rs.78 per sq. yard). This Court having made a reference to Kasturi's case (supra) did not find any infirmity in the order passed by the High Court. In other words, deduction of 37 percent was approved by this Court.

(viii) In para 21 of the judgment in ***Viluben Jhalejar Contractor (Dead) by LRs. vs. State of Gujarat, (2005) 4 SCC 789***, it was held that for development, i.e., preparation of lay out plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers, and on account of other hazards of an entrepreneur, the deduction could range between 20 percent and 50 percent of the total market price of the exemplar land.

(ix) In ***Atma Singh (Dead) through LRs & Ors. vs. State of Haryana and Anr., (2008) 2 SCC 568***, this Court after making a reference to a number of decisions on the point, and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land concluded, that deductions of 20 percent onwards, depending on the facts and circumstances of each case could be made.

(x) In ***Lal Chand vs. Union of India & Anr., (2009) 15 SCC 769***, it was held that to determine the market

value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20 percent to 75 percent of the price of such developed plot(s) could be made.

(xi) In ***Subh Ram & Ors. vs. State of Haryana & Anr., (2010) 1 SCC 444***, this Court opined, that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small 12 developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructural developmental costs (costs for raising infrastructure), i.e., in all 2/3rd (or 67 percent).

(xii) In ***Andhra Pradesh Housing Board vs. K. Manohar Reddy & Ors., (2010) 12 SCC 707***, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20 percent to 75 percent. In the peculiar facts of the case a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(xiii) In ***Special Land Acquisition Officer & Anr. vs. M.K. Rafiq Sahib, (2011) 7 SCC 714***, this Court after having concluded, that the land which was subject matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50 percent, ought to be increased to 60 percent.

According to the GDA, if the aforesaid case laws are applied to the instant case, deduction of 70% would serve the purpose.

In contrast, learned Counsel for the claimants submits that the compensation is totally based on situation of the land and he has drawn our attention towards the replication filed by Trilok Chand and others [paras 3 to 6 of the replication]. Further, he has relied upon the oral statement of Sri Krishna Tyagi (PW1), who has stated that if the land was not acquired, he could have easily sold the land in the year 1987 at the rate of Rs.500/- per square yard in open market. By no stretch of imagination, the valuation of the land acquired can be said to be Rs.135/- per square yard

less 33% equivalent to Rs.90/- per square yard, as held by the Reference Court. Suffice to say that the valuation of the land should have been fixed by the Reference Court something between Rs.135/- per square yard to Rs.500/- per square yard in view of the statement of PW1 Krishna Tyagi.

Next, he contended that the Reference Court has not considered the Exhibit Paper No.37-Ga, the judgment of the Reference Court dated 27.5.1993 passed in L.A.R. No.495 of 1990 in the case of Satish Takural v. State, wherein the Reference Court had determined the value of the land after 20% deduction at the rate of Rs.138/- per. square yard for the land which was acquired on 26.6.1982, whereas in the instant case the land in question was acquired in the year 1987 and the Reference Court determined the value of the land as Rs.90/- per square yard. Therefore, the claimants are entitled for enhancement of compensation.

Before concluding his submissions, he has relied upon the case of ***Mohinder Singh and others versus State of Haryana [(2014) 8 SCC 897]***, wherein the Apex Court held that the deduction of 40% towards development cost as determined by the High Court was unjustified and the deduction of 1/4th of market value made by the Reference Court was appropriate.

Next he has drawn our attention towards the findings of Reference Court, wherein it has been stated that the Hon'ble Court in the case of ***Baburam and others v. State of U.P. reported in A.I.R. 1980 Allahabad 324*** has observed that determining compensation is not an exact science. The question of fair compensation is not algebraic problem which could be solved by abstract formula. There is an element of guess work inherent in most cases involving determination of market value of the acquired land.

As regard the assertion of the GDA's Counsel that the claimants had accepted compensation without protest and as such, the Reference was not maintainable, we would like to mention that while deciding issue No.4, the Court below recorded

a finding of fact that if the claimants have received the amount of compensation under protest then it cannot be said that they are estopped and cannot raise the plea for enhancement of compensation. In other words, if some of the claimants have received their amount without protest, then they cannot be estopped because mere filing of reference amounts to protest.

Before dealing with the controversy involved in the present batch of appeals, it would be apt to refer some of the relevant cases of the Apex Court and this court on the subject, for proper adjudication of the matter.

In ***Special Land Acquisition Officer, Bangalore v. T. Adhinarayan Setty***, AIR 1959 SC 429, it was held that in awarding compensation under the Act, the Court has to ascertain market-value of the land on the date of notification under section 4 (1) of the Act. It was also observed that there are several methods of valuation, such as (1) opinion of experts, (2) the price paid within a reasonable time in bona fide transactions of purchase of the land acquired or the lands adjacent to the lands acquired and possessing similar advantages, and (3) a number of years purchase of the actual or immediately prospective profits of the land acquired.

Hon'ble Supreme Court in the cases of ***M/s Printer House Private Limited Vs .Saiyadan*** reported in [AIR 94 SC 1160], and ***P. Ram Reddy and others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority*** reported in 1995 All India Acquisition and Compensation Cases 184 and ***Atma Singh v. State of Haryana*** : (2008) 2 SCC 568 has discussed the principles on the basis of which the market value has to be determined. It is now settled law that the building potentiality of the acquired land existing on the date of notification under Sub-section (1) of Section 4 of the Land Acquisition Act, is the correct market value of the acquired property, which has to be judged on consideration of various factors and material which are brought on the record and such building potentiality is not only to be judged merely on the basis of its existing value but also after taking into consideration the future advantages.

In 2008 (11) SCC 65 : 2008 (4) Supreme 174 [***State of Haryana Vs. Gurbax Singh (Dead) by Lrs. & anr.*** etc.] it has been considered by the Supreme Court that commercial potentiality of the land is important factor for deciding compensation.

Again in 2009 (4) SCC 402 [***Mummidi Apparao (Dead) through LRs. Vs. Nagarjuna Fertilizers and Chemicals Limited and another***] the Supreme Court has given an emphasis over the location and development all around and its full potential value of developing into housing sites and fast taking up the character. In 2008 (14) SCC 745 (***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another***) the Supreme Court held that primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate as compared to rural areas. In 2009 (4) SCC 719 (***Faridabad Gas Power Project, National Thermal Power Corporation Limited and others Vs. Om Prakash and others***) close vicinity of the planned development area was determined as one of the factor for fixation of higher compensation. Thus, these judgements are supporting the contention of the land losers/tenure holders.

Thus, the relevant factors 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. The learned Court below while determining the rate of

compensation of the acquired land in his impugned order has considered all these relevant factors and also took into consideration the evidence adduced by the parties.

It may be noted that in bunch of First Appeals led by ***First Appeal No.564 of 1997, Khazan and others Vs. State of U.P. and others*** pertaining to adjoining villages of Bhangel Begumpur, Nagla and Geha Tilpatabad of Dadri Tehsil relating to land acquisition was decided by this Court granting compensation at the rate of Rs.297/- per square yard, in terms of decision of this Court rendered in First Appeal No.1056 of 1999, Raghuraj Singh and others vs. State of U.P. and others.

Again this Court while dealing with a ***First Appeal No. 644 of 2012, Amar Singh and another Vs State of U.P. and others*** pertaining to adjacent Village Gejha Tilpatabad, followed the several judgements, passed by this Court including the judgment rendered in the bunch of First Appeals, led by ***First Appeal No. 564 of 1997, Khazan and others v. State of U.P. and others*** and this Court enhanced the compensation to Rs.297/- per square yard.

Similarly, by means of a detailed and well-considered judgment dated 19.5.2010 passed in First Appeal No.1056 of 1999, a Division Bench held that the claimants are entitled to compensation @ Rs.297/- per square yard alongwith other statutory dues. In this case, the acquired land situates in Tehsil Dadri, District Ghaziabad. The enhancement of compensation to Rs.297/- per square yard in respect of the land situates in village Bhangel Begumpur has been followed by another Division Bench in its judgment and order dated 11.10.2012 passed in First Appeal No. 564 of 1997.

The Apex Court in ***Civil Appeal No.6775 of 2013 Harbhajan Kumar and others Vs. Collector, Land Acquisition and another*** while deciding similar Civil Appeal, extended the benefit of enhanced compensation made in previous Civil Appeal of similar nature.

Recently, a Coordinate Bench of this Court, following the

aforesaid judgment, allowed the compensation to the tune of Rs.297/- per square yard vide its judgment and order dated 23.5.2014 passed in First Appeal No.336 of 1998.

We would like to point out that in ***First Appeal No.34 of 2007, Ganeshi Singh and others vs. State of U.P. and others decided on 9.5.2008***, a Division Bench of this Court has held that the land owners of a particular land in a subsequent notification are entitled to at least the same rate of compensation as awarded to similarly placed land owners in an earlier notification when the same has been brought to the notice of the Court.

There is no dispute to the fact that the land in question falls within the territory of Tahsil Dadri and situates near Delhi, close to Hindan River on Mohan Nagar-Delhi Link Road surrounded by industrial area declared by U.P. government – Bharat Electricals, CEL, Dover and other well known units and Delhi-Lucknow National Highway and just 2 kms. away from Delhi border. On one side Vasundhara Residential Scheme developed by Avas Evam Vikas Parishad situates near to the developed Kaushambi Residential Colony. On the other side of the National Highway, the area known as NOIDA situates with all civic amenities on the acquired land.

As regards the potentiality of the land, the Reference Court has observed as under:-

“In the present case, at my hand, it is established by the evidence and may be noticed by the Court that the land situated at very important point from where Delhi boarder is about 2 kms. It is adjacent to link road, which leads from Mohan Nagar to Delhi and other side National High Way leads from Delhi to Lucknow. At some distance there is an Industrial Area having all the facilities. There are the surrounding circumstances on the basis of which it can be guessed that land in question has much potential value for the abadi purpose and it can also be noticed that subsequently the land was being sold at very high rates. The State acquired the land for G.D.A. to facilitate the people, but G.D.A. is not supposed to act in the manner like Property Dealer.”

In the backdrop of the aforesaid facts, it would be highly prejudicial to the interest of the claimants/landloosers to be deprived of such a rate when they are placed in similar circumstances. In our view, such an action would certainly be the arbitrariness and violative of constitutional mandate. Therefore, the claimants are entitled to Rs.**297**/- per square yard in respect of the land acquired by the aforesaid notification.

As regard the deduction, it has been argued by the counsel for GDA that 33% deduction is very low and in view of the decision rendered in **Chandrasekhar's** case (supra) it should be atleast 70%. On the contrary, claimants have argued that deduction @ 33% is highly excessive and wholly unjustified looking to the overall situation of the land and other evidence on record.

In **Chandrasekhar's** case ((supra)) which has been relied upon by the counsel for the GDA the Court took into consideration the two components for deduction. The first component relates to area to be left out for providing basic amenities, like, roads, sewerage, water lines, adjoining pavements, street light, electric sub-stations etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additional development includes provision of civic amenities, like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. The second component is deduction towards expenditure/expenses which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above.

At this juncture, we would like to point out that a Division Bench of this Court in **Ganeshi Singh's** case (supra) has held that there is no legal provision for the deduction from the amount of compensation under the Land Acquisition Act, 1894. Various Courts normally pass such order of deduction on the subjective satisfaction of each case. Therefore, there is no hard and fast rule for making deductions.

It may be noted that learned Counsel for the GDA has failed to point out that before the Reference Court it has brought on

record the indispensable amenities and civic amenities which they would provide on the acquired land. Further, when confronted with the question that whether they have demanded excess deduction, as claimed here, before the Reference Court, the answer was in negative and they failed to point out any material in this regard. Since no such plea has been raised at the initial stage, it is not open for them to raise such a plea before this Court at a belated stage.

The Apex Court in the case of ***Kasturi and others vs. State of Haryana [(2003) 1 SCC 354]*** held that a cut of 20% to the development charges which was lower than the normal 1/3rd was understandable and could be justified. Subsequently, in ***Charan Dass v. H. P. Housing and Urban Development Authority [(2010) 13 SCC 398]***, the Apex Court observed that any deduction made should be made on the situation of the land and the need for development and where the acquired land is in the midst of already developed land with amenities of roads, drainage, electricity, etc. then deduction of 40% would not be justified.

Recently, in ***Mohinder Singh's case (supra)***, the Apex Court held that the deduction of 40% towards development cost as determined by the High Court was unjustified and the deduction of 1/4th of market value made by the Reference Court was appropriate.

It may be added that counsel appearing in First Appeal No.700 of 2002 has filed an application bringing on record the notification dated 7.11.1977 issued by the District Magistrate, Ghaziabad whereby the Khasra Plot acquired has been brought under municipal limits of Ghaziabad. Therefore, there is no doubt that the land in question of the claimants acquired for the Vaishali Scheme of Village Makanpur has already been brought under the limit of Nagar Palika before issuance of notification under the Land Acquisition Act.

In view of the location of land in municipal limits, nature of

soil and other factors, referred to above, we find no force in the submissions made by the counsel for the GDA for enhancing the deduction to the tune of 75% and held that 33% deduction made by the Reference Court is fully justified.

In view of the aforesaid detailed discussions, the appeals filed by the GDA are hereby **dismissed** and the appeals filed by the claimants/landloosers for enhancement of the compensation are **allowed**. The claimants-private respondents shall be entitled for compensation @ Rs.297/- per square yard, as held by us above and they shall be paid the enhanced compensation together with other statutory dues [like solatium, interest etc.], as directed by the Reference Court, within three months from the date of receipt of a certified copy of this order.

So far defective appeals are concerned, any defect/s was/were deficiency of court fees, it is directed that same will be recovered/adjusted in accordance with rules, while preparing final decree by the department.

All the pending applications shall also stand disposed of accordingly.

Parties shall bear their own costs.

Dt.13.11.2014
lakshman/MH