

RANVIR SINGH AND ANR.

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v.

UNION OF INDIA

SEPTEMBER 7, 2005

[ASHOK BHAN AND S.B. SINHA, JJ.]

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Land Acquisition Act, 1894—Sections 4(1), 11 and 18—Land Acquisition Officer awarding different amounts of compensation for lands acquired through different notifications—Enhancement of compensation by Reference Court—High Court further enhancing compensation relying on documents specifying rates of developed land, notifications issued determining circle rates for purpose of stamp duty and a brochure brought out by State Authority for sale of adjacent developed lands and by rejecting the sale deeds on the ground of non-examination of vendors and vendees—Correctness of—Held, on facts and law, High Court was wrong in relying on the documents and rejecting the sale deeds—Hence, remitted back to High Court with directions for determining the market value on the basis of materials on record and other relevant factors.

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Union of India issued four notifications on different dates under section 4(1) of the Land Acquisition Act, 1894 for acquisition of various blocks of land situated in Delhi. Land Acquisition Officer made four Awards granting different rates of compensation for acquisition under different notifications. On reference by the claimants, the Reference Court enhanced the rates of compensation. The High Court has further enhanced the rates of compensation for acquisition under different notifications by relying on documents specifying rates for developed land, notifications issued determining circle rates for purpose of stamp duty and on a brochure brought by State Authority for sale of adjacent developed lands. Appeals were filed before this Court by the claimants and Union of India.

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The Union of India contended that the High Court wrongly awarded high rates of compensation to the claimants by relying upon the documents specifying rates of developed residential and commercial land in different areas of Delhi and a brochure of the State Authority inviting applications for purchase of fully developed lease-hold plots in the adjacent residential

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A scheme; that the notifications issued determining circle rates for fixing the rates of stamp duty cannot form the basis for determining the market value of the acquired lands; and that the sale deeds produced before the Courts below could not be rejected merely on the ground that the same had not been proved by examining the vendors and vendees.

B The claimants contended that the xerox copies of the sale deeds produced before the court were inadmissible in evidence and that the High Court correctly relied upon the brochure issued by the State Authority in the adjacent residential scheme.

C Remitting back the appeals to High Court with directions, the Court

HELD: 1.1. The High Court did not place any reliance upon the sale instances whereupon strong reliance has been placed by the parties solely on the ground that neither the vendors nor the vendees thereof had been examined as witnesses. It has also not placed any reliance upon any other judgment or award filed by the parties. The High Court, while arriving at the said finding, evidently took into consideration the law as it then stood. In view of the latest Constitution Bench decision of this Court in *Cement Corpn. of India Ltd. v. Purva and Ors.*, the High Court was required to consider the deeds of sale in their proper perspective for determining the market values of the acquired land. [41-E-F; 42-H; 43-A]

E *Cement Corpn. of India Ltd. v. Purva and Ors.*, [2004] 270 CB, referred to.

F 1.2. The provisions of the Indian Evidence Act, 1872 postulate that secondary evidence can be led by the parties in the event primary evidence is not available. The claimants did not raise any objection as regard admissibility of the said deeds of sale. The xerox copies of the sale deeds were marked as exhibits without any objection having been taken by the respondents herein. Such an objection cannot, therefore, be taken for the first time before this Court. What would be their evidentiary value may ultimately fall for consideration by the Court but the said deeds cannot be rejected only on the ground that only xerox copies thereof had been brought on records. The onus to prove the market value as obtaining on the date of notification was on the claimants. It was for them to adduce evidence to prove their claims by bringing sufficient and cogent materials on records so as to enable the court to determine the market value of the

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H acquired land as on the date of issuance of notification under Section 4 of

the Land Acquisition Act, 1894. If the claimants themselves filed xerox copies of the deeds of sale or failed to examine any witness to prove the relevant factors for determining the market value of the land acquired with reference to the said sale instances, they cannot now be permitted to resile therefrom and contend that the said documents should be totally ignored. [43-B-F]

1.3. The notifications issued by the Union of India determining circle rates for fixing the rate of stamp duty cannot form the basis for determining the market value of the acquired lands. The market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, the nature of the land plays an important role. The sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. For the purpose of determining the market value, even market conditions prevailing as on the date of notification are relevant. The burden of proof that the acquired land and the land covered by sale transaction bear similar or same potentialities or advantageous features is also on the claimants. Sale price in respect of a small piece of land cannot be the basis for determination of a market value of a large stretch of land. 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.

[43-F-G; 45-H; 46-A-C; 46-E-F]

Krishi Utpadan Samiti, Sahaswan, District Badaun through its Secretary v. Bipin Kumar and Anr., [2004] SCC 283; *Painder Singh and Ors. v. Union of India and Ors.*, [1995] 5 SCC 310; *U.P. Jal Nigam, Lucknow through its Chairman and Anr. v. Kalra Properties (P) Ltd. Lucknow and Ors.*, [1996] 3 SCC 124; *P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors.*, [1995] 2 SCC 305; *Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini (Smt.) and Anr.*, [1995] 1 SCC 717; *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. and Ors.*, [1994] 4 SCC 595; *Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. v. Nookala Rajamallu and Ors.*, [2003] 12 SCC 334; *Basavva (Smt.) and Ors. v. Spl. Land Acquisition Officer and Ors.*, [1996] 9 SCC 640; *Union of India and Anr. v. Ram Phool and Anr.*, [2003] 10 SCC 167; *R.P. Singh v. Union of India and Ors.*, [2005] 6 Scale 80; *Om Prakash*

- A (Dead) by LRs. and Ors. v. Union of India and Anr., [2004] 10 SCC 627; R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Anr., [2003] 8 SCC 752; Dayamathi Bai (Smt.) v. K.M. Sahffi, [2004] 7 SCC 107; Bhim Singh and Ors. v. State of Haryana and Anr., [2003] 10 SCC 529; Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat, [2005] 4 SCC 789; Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Ors., [2002] 10 SCC 570 and Shaji Kuriakose and Anr. v. Indian Oil Corpn. Ltd. and Ors., [2001] 7 SCC 650, referred to.

- C 1.4. The High Court shall proceed to determine the market value of the acquired land upon taking into consideration the materials on record and all other relevant factors necessary for determining the market value of the lands in questions. [46-H; 47-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1428 of 2004.

- D From the Judgment and Order dated 4.9.2001 of the Delhi High Court in R.F.A. No. 198 of 1995.

- E With C.A. Nos. 4117/2003, 1429-1435, 2747-2751, 2947-2957, 3075-3076, 3079, 3083-3094, 3170-3182, 3186-3234, 3359-3369, 3371-3382, 3384-3394, 3396-3402, 3426-3438, 3443-3454, 3463, 4908, 7759-62, 7765-7795 of 2004 and C.A. Nos. 5546-5551, 5553-54, 5557-60, 5562 and 5561 of 2005.

AND

- F Civil Appeal Nos. 5546-5551, 5553-54, 5557-60 and 5562 of 2005 [@ SLP (Civil) Nos.12073, 12075, 16318-20, 19846, 19848, 19851-52, 19854, 5558, 22411 & 23819 of 2004]

AND

Civil Appeal No. 5561 of 2005 @ SLP (Civil) No. 17837 of 2005.

- G R. Mohan, Additional Solicitor General, R.F. Nariman, R. Venkataramani, Uday U. Lalit, V.G. Pragasam, Mrs. Anil Katiyar, R. Nedumaran, Thaman Jayam, M.A. Chinnaswami, V. Krishnamoorthy, Mrs. Anjani Aiyagari, Mrs. Rekha Pandey, M.P.S. Tomar, Mrs. Kiran Bhardwaj, Angand, Sanjay Poddar, D.S. Mahra, Avatar Singh Rawat, Anil Nag, Aditya Sharma, S.N. Singh, K.S. Rana, Mrs. Sunita Sharma, Vishnu B. Saharya,

Viresh B. Saharya, Balraj Dewan, M.S. Panwar, Naresh Kaushik, Mrs. Lalitha Kaushik, Vipin Gogia, Ms. Jaspreet Gogia, Rana Ranjit Singh, Chittaranjan Panda, Sanjay Sharawat, Nitin Bhardwaj, Prakash Shrivastava, S.K. Raut, K.K. Gupta, Annam D.N. Rao, M.P. Shorawala, Ambrish Kumar, Ms. Rachna Srivastava, Bijender Singh, M. Qamaruddin, Mrs. M. Qamaruddin, Ambar Qamaruddin, Rameshwar Prasad Goyal for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted in the special leave petitions.

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

The Union of India issued four notifications on or about 13.2.1981, 20.2.1981, 13.3.1981 and 31.12.1981 under Section 4(1) of the Land Acquisition Act (The Act) for acquisition of various blocks of land situated in village Rithala for construction of supplementary drain, sewage treatment plant, remodelling the Nagloi Drain and planned development of Delhi. In relation to the aforementioned acquisitions, four awards were passed being 4/85-86, 20/82-83, 1/83-84 and 16/85-86. The Land Acquisition Officer in its awards in regard to acquisitions in terms of notifications dated 13.2.1981 and 20.2.1981 sub-divided the acquired lands in two blocks and awarded compensation at the rate of Rs. 3800 per bigha/Rs. 3.77 per sq. yard for block A and Rs. 2600 per bigha/Rs. 2.57 per sq. yard for block B. However, in regard to the acquisition in terms of notification dated 13.3.1981, compensation was awarded at the rate of Rs. 6500 per bigha/Rs. 6.45 per sq. yard whereas as regard the acquisition under notification dated 31.12.1981, compensation was awarded at the rate of Rs. 10837 per bigha/Rs. 10.75 per sq. yard for block A, Rs. 9000 per bigha/Rs. 8.9 per sq. yard for block B and Rs. 7000 per bigha/ Rs. 6.9 per sq. yard for block C respectively. Reference having been made to the Civil Court at the instance of the claimants in terms of Section 18 of the Land Acquisition Act, the Reference Court enhanced the amount of compensation in the following terms:

Date of Notification	Amount of compensation
13.2.1981	Rs. 20000 per bigha/ Rs. 19.85 per sq. yard
20.2.1981	Rs. 10800 per bigha/ Rs. 10 per sq. yard

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13.3.1981 Rs. 10800 per bigha/
Rs. 10 per sq. yard

B

31.12.1981 Rs. 21000 per bigha/
Rs. 20.83 per sq. yard

Being not satisfied, the parties hereto preferred respective appeals in the High Court wherein the High Court awarded the following amounts of compensation:

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Date of Notification	Amount of compensation
13.2.1981	Rs. 67000 per bigha/ Rs. 67 per sq. yard

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20.2.1981	Rs. 67000 per bigha/ Rs. 67 per sq. yard
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13.3.1981	Rs. 67000 per bigha/ Rs. 67 per sq. yard
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31.12.1981 Rs. 73584 per bigha/
Rs. 73 per sq. yard

Before this Court, 179 appeals have been filed by the Union of India and 163 appeals have been filed by the claimants out of which 244 matters were listed before us.

The representative fact of the matter is being noticed from Civil Appeal No. 2747 of 2004.

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In the award being No. 16/85-86, 677 claim applications were filed claiming different amount of compensation. The Land Acquisition Collector in his awards while determining the market value took into consideration several deeds of sale and/ or awards for acquisition of lands in neighbouring villages held :

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“Keeping in view the above facts and taking into account of raising trend in the market value of the land, I assess the fair and reasonable market value of the land which kept in Block A is based on average

price of sale deeds mentioned at sarila No. 5-11 which comes to Rs. 10837 per Bigha. Therefore, I assured the fair and reasonable market value of land in Block "A" @ 10, 340 making the round figure of Rs. 10837 per Bigha, Block "B" @ Rs. 9000 per Bigha and Block "C" @ Rs. 7000 per Bigha and accordingly awarded the same. No compensation is assessed for Gair Mumkin Sarak which consists the total land measuring 42 Bigha 06 Biswas."

He, however, in certain individual cases considered the question relating to grant of further compensation in view of special features therein.

Before the Reference Court the claimants relied upon the following documents:

- (i) Exhibit P-I : copy of judgment dated 1.9.1987 in *Sher Singh v. Union of India* passed by Shri S.R. Goel, Additional District Judge, Delhi in respect of land acquired vide Award No. 20/82-83 (date of notification U/s. 4 dated 20.2.1981). Market value therein was fixed at the rate of Rs. 20,000 per bighas.
- (ii) Exhibit P-II : copy of judgment dated 24.10.1992 in *Udai Chand v. Union of India* passed by Shri H.R. Malhotra, Additional District Judge, Delhi in respect of land acquired vide Award No. 4/85-86 (Notification U/s. 4 dated 13.2.1981) wherein the Market Value was fixed at the rate of Rs. 20,000.
- (iii). Exhibit P-III: copy of sale deed executed on 9.4.1981 in respect of land measuring 1 bigha out of Khasra No. 967 in village Rithala for a total consideration of Rs. 35,000.
- (iv) Exhibit P-IV: copy of sale deed executed on 27.7.1981 for 1 bigha of land out of Khasra No. 1217 situated in village Rithala for a consideration of Rs. 49,000.
- (v) Exhibit P-V: copy of sale deed executed on 3.11.1981 in respect of 7 Biswas of land out of Khasra No. 133 situated in Village Rithala for a consideration of Rs. 24,000.
- (vi) Exhibit P-VI: copy of sale deed executed on 3.11.1981 in respect of 7 Biswas of land out of Khasra No. 133 situated in Village Rithala for a consideration of Rs. 24,000.

A The claimants had also relied upon a circular dated 21.10.1981 as also a judgment delivered by Additional District Judge in LAC No. 557 of 1993 titled *Pat Ram v. Union of India*, wherein the market value of the land acquired was assessed at Rs. 21000 per bigha.

B Union of India, on the other hand, relied upon the following documents which were also marked exhibits before the Reference Court:

C (i) Exhibit R-1: copy of judgment delivered by Additional District Judge in Land Acquisition Collector No. 5/86 titled as *Trilock Chand v. Union of India*, relating to Award No. 1/83-84 wherein market value was fixed at the rate of Rs. 10,800 per bigha as on 13.3.1981.

D (ii) Exhibit R-II: copy of judgment delivered by Additional District Judge, Delhi in Land Acquisition Collector No. 57/83 titled as *Jit Ram and Ors. v. Union of India*, relating to Award No. 20/82-83 of Village Rithala wherein the market value of the land was fixed at the rate of Rs. 10,800 per bigha for all kinds of land.

E (iii) Exhibit R-III: copy of sale deed executed on 28.11.1981 for a piece of land measuring 4 bighas 12 biswas out of Khasra No. 59/15 situated at Village Rithala for a consideration of Rs. 46,000.

(iv). Exhibit R-IV: copy of the sale deed executed on 5.6.1981 for a piece of land 3-12 bigha comprising in Mustalil No. 58 Kila No. 15 situated at Village Rithala for a consideration of Rs. 32,500.

F (v). Exhibit R-V: copy of the sale deed executed on 9.2.1981 for 1 bigha 3 biswas of land being part of Khasra No. 6/17 situated in village Rithala for a consideration of Rs. 10,800.

G (vi). Exhibit R-VI: copy of sale deed whereby about 3 bigha 3 biswas of land falling in Khasra No. 58/14 in village Rithala was sold for a consideration of Rs. 34,000.

(vii). Exhibit R-VII: sale deed executed on 9.2.1981 whereby land measuring 1 bigha 3 biswas part of Khasra No. 6/19 in village Rithala was sold for a sum of Rs. 10,800.

H Out of the aforementioned Exhibits, Exs. R-1, R-III, R-IV, R-V, R-VI

and R-VII pertain to portions of the acquired lands. The High Court, however, in its impugned judgment principally relied upon a brochure issued by the Delhi Development Authority in respect of Rohini as also the circular letters issued by the Union of India fixing value of the land for the purpose of computing the stamp duty under the Indian Stamp Act. A

Mr. R. Mohan, the learned Additional Solicitor General appearing on behalf of the Union of India in assailing the impugned judgment would submit that the High Court committed a manifest error in solely relying upon two documents, viz., Exs. A & B wherein the schedule of rates of developed residential and commercial land in different areas of Delhi were mentioned as also a brochure of Delhi Development Authority inviting applications for purchase of fully developed lease-hold plots in the adjacent residential scheme without taking into consideration the deeds of sale and other judgments which had been relied upon by the parties before the Reference Court. B C

The learned counsel would contend that the circular letters fixing the circle rates is inadmissible in evidence and, thus, the High Court has committed a manifest error in basing its judgment thereupon. Reliance in this behalf has been placed on *Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through its Secretary v. Bipin Kumar and Anr.*, [2004] 2 SCC 283, *Painder Singh and Ors. v. Union of India and Ors.*, [1995] 5 SCC 310, *U.P. Jal Nigam, Lucknow through its Chairman and Anr. v. Kalra Properties (P) Ltd., Lucknow and Ors.*, [1996] 3 SCC 124, *P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors.*, [1995] 2 SCC 305, *Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini (Smt.) and Anr.*, [1995] 1 SCC 717 and *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. and Ors.*, [1994] 4 SCC 595. D E

It was furthermore urged that the sale deeds produced by the parties could not have been brushed aside on the ground that the same had not been proved by examining the vendors and vendees thereof in view of the Constitution Bench decision of this Court in *Cement Corpn. of India Ltd. v. Purva and Ors.*, [2004] 8 SCC 270. It was argued that the most relevant piece of evidence for determining the market value as on the date of acquisition would be the sale deeds and in particular pertaining to portions of the acquired lands which having not been taken into consideration by the High Court, the impugned judgment cannot be sustained. F G

The learned Additional Solicitor General would further contend that H

A such market value has to be assessed not only having regard to the comparable sales method but also having regard to the size of the land, area, other features thereof and several other relevant factors.

B The learned Additional Solicitor General submitted that the deduction at the rate of 53% or more is permissible in law as the same would vary from place to place, area to area and extent of development required to be carried out. Reliance in this behalf has been placed on *Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. v. Nookala Rajamallu and Ors.*, [2003] 12 SCC 334 and *Basavva (Smt.) and Ors. v. Spl. Land Acquisition Officer and Ors.* [1996] 9 SCC 640.

C Our attention was also drawn to a decision of 3-Judge Bench of this Court in *Union of India and Anr. v. Ram Phool and Anr.*, [2003] 10 SCC 167 wherein this Court accepted the amount of compensation as made by the Land Acquisition Collector at the rate of Rs. 12100 per bigha for Block A, Rs. 12000 per bigha for Block B and Rs. 6000 per bigha for Block C and D rejected grant of higher compensation by the Reference Court as also the High Court.

E Mr. R.F. Nariman, Mr. R. Venkataramani and other learned counsel appearing on behalf of the Respondents, on the other hand, would submit that the xerox copies of the deeds of sale produced before the court were not admissible in evidence and in that view of the matter, the High Court acted within its jurisdiction in relying upon the brochure issued by the Delhi Development Authority in respect of the village Rithala which admittedly is adjacent to Rohini which is a fully developed colony. Rohini, it was urged, was developed during the period 1961 and 1981 and in that view of the F matter the notifications under Section 4 of the Land Acquisition Act having been issued on different dates in the year 1981, the price offered for grant of a long term lease by Delhi Development Authority would provide for the best instance for computation of the amount of compensation.

G The learned counsel drew our attention to the fact that if the market value of the acquired land was to be determined on the basis of deeds of sale, various factors relevant therefor including distance of the acquired land from the land sold, the quality of the land, and other features thereof as well as various other factors were required to be proved by adduction of oral evidence which having not been done, the High Court cannot be said to have committed H any error in relying upon the brochure issued by the Delhi Development

Authority.

The learned counsel, however, conceded having regard to the decisions of this Court that the circle rates notified in the circular letters issued by the Union of India for the purpose of fixing the rate of stamp duty would not be admissible in evidence.

Drawing our attention to a recent decision of this Court in *R.P. Singh v. Union of India and Ors.*, since reported in (2005) 6 SCALE 80, Mr. Nariman submitted that having regard to the fact that the market value of the land acquired in village Mangolpur Kalan, Delhi was determined at the rate of Rs. 7000 per bigha in respect of an acquisition made in the year 1961 and, thus, this Court may assess the market value of the lands situate in village Rithala upon considering the increase therein at the rate of 12% per annum.

In support of the cross-objections filed by the Respondents, the learned counsel would submit that deduction at the rate of 60% by the High Court was on a high side as village Rithala was a semi-developed area. Our attention in this regard has been drawn to a recent decision of this Court in *Om Prakash (Dead) By LRs. and Ors. v. Union of India and Anr.*, [2004] 10 SCC 627 wherein the judgment of the High Court awarding compensation at the rate of Rs. 82255 per bigha for acquisition of the land in the year 1983 was not interfered with.

Concededly, the High Court in its impugned judgment did not place any reliance whatsoever upon the sale instances whereupon strong reliance has been placed by the parties solely on the ground that neither the vendors nor the vendees thereof had been examined as witnesses. It has also not placed any reliance upon any other judgment or award filed by the parties. The High Court while arriving at the said finding evidently took into consideration the law as it then stood. The correctness of the decisions wherein the aforementioned view had been taken was doubted and the matter was referred to a larger Bench. A Constitution Bench of this Court in *Cement Corporation of India Ltd.*, (supra), opined:

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

26. In the acquisition proceedings, sale deeds are required to be brought on records for the purpose of determining market value payable to

A the owner of the land when it is sought to be acquired.

B 27. Although by reason of the aforementioned provision the parties
C are free to produce original documents and prove the same in
accordance with the terms of the rules of evidence as envisaged under
the Indian Evidence Act, the L.A. Act provides for an alternative
thereto by inserting the said provision in terms whereof the certified
copies which are otherwise secondary evidence may be brought on
record evidencing a transaction. Such transactions in terms of the
aforementioned provision may be accepted in evidence. Acceptance
of an evidence is not a term of art. It has an etymological meaning.
It envisages exercise of judicial mind to the materials on record.
Acceptance of evidence by a court would be dependent upon the
facts of the case and other relevant factors. A piece of evidence in a
given situation may be accepted by a court of law but in another it
may not be.

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

H In view of the said latest pronouncement of this Court, thus, the High
Court was required to consider the deeds of sale in their proper perspective

for determining the market values of the acquired land.

Contention of Mr. Nariman that the xerox copies of the deeds of sale produced by the parties were not admissible in evidence in terms of Section 51A of the Land Acquisition Act is stated to be rejected. The provisions of the Indian Evidence Act postulate that secondary evidence can be led by the parties in the event primary evidence is not available. In a case of this nature, however, the claimant-respondents may be aware of the transactions. Indisputably, they did not raise any objection as regard admissibility of the said deeds of sale. The xerox copy of the deeds of sale were marked exhibits without any objection having been taken by the Respondents herein. Such an objection cannot, therefore, be taken for the first time before this Court. [See *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr.*, [2003] 8 SCC 752 and *Dayamathi Bai (Smt.) v. K.M. Shaffi*, [2004] 7 SCC 107. What would be their evidentiary value may ultimately fall for consideration by the Court but the said deeds of sale cannot be rejected only on the ground that only xerox copies thereof had been brought on records. The onus to prove the market value as obtaining on the date of notification was on the claimants. It was for them to adduce evidence to prove their claims by bringing sufficient and cogent materials on record so as to enable the court to determine the market value of the acquired land as on the date of issuance of notification under Section 4 of the Land Acquisition Act. If the claimants themselves filed xerox copies of the deeds of sale or failed to examine any witness to prove the relevant factors for determining the market value of the land acquired with reference to the said sale instances, they cannot now be permitted to resile therefrom and contend that the said documents should be totally ignored.

We have noticed hereinbefore the concession of Mr. Nariman as regard inadmissibility of the notification issued by the Union of India determining the circle rates. The notifications issued by the Union of India, therefore, whereupon strong reliance has been placed by the High Court cannot form the basis for determining the market value of the acquired lands. This leaves us with the brochure issued by the Delhi Development Authority. Before, however, we advert to the rival contentions raised by the parties in this behalf, it may be observed that the Delhi Development Authority was not a party before the High Court and an application was filed only before this Court for impleading it as a party. The Delhi Development Authority, thus, got no opportunity to raise any contention as to why the sale brochure should not be considered to be a determinative criterion for the purpose of fixation

A of market value of the lands in question. We may, furthermore, notice that a housing scheme at Rohini was floated by the Delhi Development Authority. The lands at Rohini were agricultural in nature. They were acquired in the year 1961. It became a residential area at the time of issuance of the notification in question issued under Section 4 of the Land Acquisition Act. The approximate population of Rohini was 8,50,000. There were work centres. Major facilities like health, education, social and cultural were thence available. The provisional rates for land in the said brochure were notified as under:

	"Size of plot in sq. mts.	-Category	Rate per sq. mt.
C	26	EWS/JANTA	Rs. 100
	32	LIG	Rs. 125
	48	LIG	Rs. 150
D	60	MIG	Rs. 200
	90	MIG	Rs. 200"

The High Court without having regard to different sizes and different categories of land separately took into consideration the value of 48 sq. mts. of land at the rate of Rs. 150 per sq. mtr. It, keeping in view of the fact that the Delhi Development Authority sought to create lease-hold right whereas upon acquisition of land a free-hold right would be created, multiplied the said figure by two and arrived at a conclusion that the market value of 1 sq. mtr. of land at Rohini would be Rs. 300. The mean figure thereof was taken at Rs. 200 per sq. mts. as wholesale price of free-hold plots in a developed condition. From the said Rs. 200, 60% had been deducted towards costs of development and considering the large extent of land, the retail market price was worked out at Rs. 80 per sq. mtr.

While adopting the said method, in our opinion, the High Court committed manifest errors. The market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is trite, the nature of the land plays an important role.

In *Bhim Singh and Ors. v. State of Haryana and Anr.*, [2003] 10 SCC 529, this Court held:

“10. It was next submitted that the claimants were entitled to higher compensation as the Respondents had in 1989 auctioned plots of land at the rate of Rs. 1725 to Rs. 2510 per square yard. In our view this submission merely needs to be stated to be rejected. What price is fetched after full development cannot be the basis for fixing compensation in respect of land which was agricultural.”

The High Court did not consider any relevant criteria on the basis whereof it could come to the conclusion that the value of the freehold lands would be double of the value of the leasehold lands. The fact that in terms of the brochure the leasehold was to be a perpetual one and the ground rent payable therefor was absolutely nominal being Re.1 per plot per annum for the first five years and thereafter at the rate 2½ of the total amount of the premium, which was to be enhanced only after every 30 years, was a relevant factor which should have been taken into consideration for arriving at a finding in that behalf. It is worth noting that the terms and conditions were set out for sale by the Delhi Development Authority on behalf of the President of India of perpetual lease-hold rights in the residential plots under the Rohini Scheme.

A large amount of money was spent for development of Rohini over a period of 20 years. A large area has been earmarked for schools, hospitals, community halls, etc. Many other advantages were also provided. In law it may be perceived that the scheme floated by the D.D.A. may not be viable and as such the possibility of reduction of the rate at a future date could not be ruled out.

We need not dilate on the relevant criteria for determining the market value as the same are no longer *res integra*. The relevant factors which were to be taken into consideration for determining the market value have recently been stated by this Court in *Viluben Jhalejar Contractor (Dead) By LRs. v. State of Gujarat*, [2005] 4 SCC 789. See also *Basavva*, (supra).

Furthermore, it is well-settled that the sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. [See *Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Ors.*, [2002] 10 SCC 570.]

For the purpose of determining the market value, even market conditions

A prevailing as on the date of notification are relevant. [See *Jasti Rohini*, (supra)]

The burden of proof that the acquired land and the land covered by sale transaction bear similar or same potentialities or advantageous features is also on the claimant. [See *Jawajee Nagnatham*, (supra), *P. Ram Reddy*, (supra) and *Shaji Kuriakose and Anr. v. Indian Oil Corpn. Ltd. and Ors.*, [2001] 7

B SCC 650]

Sale price in respect of a small piece of land, it is well settled, cannot be the basis for determination of a market value of a large stretch of land. In *Ram Phool* (supra), this Court held that an isolated deed of sale showing a very high price cannot be the sale basis for determining the market value. The said decision was rendered in relation to a land situated at village Poothkalan which is adjacent to the lands in question. Even the claimants, it is interesting to note, had exhibited sale deeds in respect of the land situated at village Poothkalan for proving their claim.

C We need not dilate upon the other relevant factors in great details inasmuch as in *Union of India v. Pramod Gupta and Ors.*, [CIVIL APPEAL NOS. 6825-26 OF 2003] disposed of this date, we have considered the same at some length.

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 of 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 criteria.

In any event, the claimants having not examined any witness, it cannot be accepted that the village Rithala was a semi-developed area or it had a great potentiality.

G Keeping in view the facts and circumstances of this case, we are of the opinion that the impugned judgments cannot be sustained and accordingly the same are set aside. The matters are remitted to the High Court for consideration of the matter afresh. The High Court shall proceed to determine

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the market value of the acquired land upon taking into consideration the materials on record and all other relevant factors necessary for determining the market value of the lands in question. A

These appeals are disposed of with the aforementioned directions. However, we would request the High Court to consider the desirability of disposing of the appeals as expeditiously as possible and preferably within a period of six months from the date of communication of this order and receipt of records. No costs. B

B.S.

Disposed of.