KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY A

v.

GOBINDA CHANDRA MAKAL & ANR.

(Civil Appeal No. 5938 of 2007)

SEPTEMBER 2, 2011 B

[R.V. RAVEENDRAN AND MARKANDEY KATJU, JJ.]

Land Acquisition Act, 1894 – s.23 – Acquisition of land falling under Mouza Madurdaha, District 24 Parganas (South) within the limits of Kolkata Municipal Corporation – Three plot C *of lands- plot/dag nos. 62 and 42, admeasuring 1.94 acres and 0.61 acres respectively, and classified as Sali land (agricultural land) and plot no.242, admeasuring 0.22 acres, and classified as beel land (marsh land) – Determination of compensation – Collector made award determining the* D *market value of the acquired lands as Rs.2386 per cottah for sali land (agricultural land) and Rs.1193 per cottah for beel land (marsh land) – Reference Court awarded Rs.1,20,000 per cottah for sali plots (plot nos.62 and 42) and Rs.60,000 per cottah for beel plot (plot no.272) with statutory benefits –* E *High Court affirmed the compensation awarded by the Reference Court – Held: On facts and circumstances, compensation for plot nos.62 and 42 reduced to Rs. 67,000/ - per cottah while compensation in regard to plot no.272 maintained at the rate of Rs. 60,000/- per cottah.* F

Land Acquisition Act, 1894 – s.23 – Acquisition of land – Determination of compensation – Addition towards appreciation in value between the date of exemplar sale and the date of preliminary notification as regards the acquisition in question – Held: Unless the difference is more than one G *year, normally no addition should be made towards appreciation in value, unless there is special evidence to show some specific increase within a short period.*

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A *Land Acquisition Act, 1894 – s.23 – Acquisition of land – Determination of compensation – Addition of percentages for advantageous frontage – Held: Advantage of a better frontage is considered to be a plus factor while assessing the value of two similar properties, particularly in any commercial* B *or residential area, when one has a better frontage than the other – However where the value of large tracts of undeveloped agricultural land situated on the periphery of a city in an area which is yet to be developed is being determined with reference to value of nearby small residential* C *plot, the question of adding any percentage for the advantage of frontage to the acquired lands, does not arise.*

Land Acquisition Act, 1894 – s.23 – Acquisition of land – Determination of compensation – Deductions from value of small developed plots to arrive at the value of acquired D *lands – Deduction for development – Held: The prices fetched for small plots cannot form safe basis for valuation of large tracts of land and cannot be directly adopted in valuation of large tracts of land as the two are not comparable properties – The former reflects the 'retail' price of land and* E *the latter the 'wholesale' price – However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout* F *could with justification be adopted, then in valuing such small laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant – In such a case, necessary deductions for the extent of land required for the formation of roads and other* G *civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price; the profits on the venture etc., are to be made – On facts, the Reference Court after considering* H *the facts found that 33.33% (one-third of the value of the small*

developed plot) should be deducted towards development/ development cost, to arrive at the value of the acquired lands – The High Court did not interfere with the said percentage of deduction – In the circumstances, no reason to alter the percentage of deduction of 33.33%.

Land Acquisition Act, 1894 – ss. 4 & 23 – Acquisition of land – Determination of compensation – Relevant date – Adjustment of advance payment – Held: The relevant date for determination of compensation would be the date of publication of the preliminary notification under s.4(1) of the LA Act –However if in anticipation of acquisition the Land Acquisition Officer had made any payment to the land owner they will be entitled to credit therefor with interest at 15% per annum from the date of payment to date of publication of preliminary notification – Though solatium and additional amount will be calculated on the entire compensation amount, statutory interest payable to land owner will be calculated only after adjusting the advance payment with interest therein towards the compensation amount.

Land Acquisition Act, 1894 – ss.4 and 23 – Acquisition of land – Determination of compensation – Relevant date for determining compensation – The notification under section 4(1) of the LA Act was dated 13.9.2000 – It was published in the gazette dated 13.9.2000 – Thereafter it was published in two newspapers – Lastly, the Collector caused public notice of the substance of such notification to be given at convenient places in the locality on 16.11.2000 – Whether the relevant date for determination of compensation is 13.9.2000 or 16.11.2000 – Held: One of the principles in regard to determination of market value under s.23(1) is that the rise in market value after the publication of the notification under s.4(1) of the Act should not be taken into account for the purpose of determination of market value – If the words 'publication of the notification' in s.23(1) (clause firstly) should be construed as referring to the last of the dates of publication and public notice, and the date of public notice in the locality

is to be considered as the date of publication, the landowners can legitimately claim that the sales which took place till the date of public notice should be taken into account for the purpose of determination of compensation, leading to disastrous results – In s.23(1), the words "the date of publication of the notification under section 4(1)" would refer to the date of publication of the notification in the gazette – Therefore, '13.9.2000' will be the relevant date for the purpose of determination of compensation and not 16.11.2000.

Interpretation of Statutes – Same words having different meanings in different provisions of the same enactment – Permissibility – Held: The same words used in different parts of a statute should normally bear the same meaning – But depending upon the context, the same words used in different places of a statue may also have different meaning – The use of the words 'publication of the notification' in ss.4(1) and 6 on the one hand and in s.23(1) on the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment – The words 'publication of the notification under s.4(1)', are used in s.23(1) for fixing the relevant date for determination of market value – The words "the last of the date of such publication and giving of such public notice being hereinafter referred to as the publication of the date of notification" in section 4(1) and the words 'one year from the date of the publication of the notification" in the first proviso to section 6, refer to the special deeming definition of the said words, for determining the period of one year for issuing the declaration under s.6. which is counted from the date of 'publication of the notification' – The context in which the words are used in ss.4(1) and 6. and the context in which the same words are used in s.23(1) are completely different – Land Acquisition Act, 1894 – ss.4, 6 and 23.

Three plot of lands- plot/dag nos. 62 and 42, admeasuring 1.94 acres and 0.61 acres respectively, and

classified as sali land (agricultural land) and - plot no.242, admeasuring 0.22 acres, and classified as beel land (marsh land), falling under Mouza Madurdaha, District 24 Parganas (South) within the limits of Kolkata Municipal Corporation and belonging to the first respondent along with surrounding lands were requisitioned by the State Government under section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 [WB Requisition Act] on 27.4.1978. The possession of the land was taken by the Collector in pursuance of such requisition. In anticipation of the acquisition, the value of the land was assessed under section 8B of the said Act and 80% of the estimated compensation was paid to the first respondent. On 7.4.1987, the Collector issued a notification under section 4(1a) of the said Act, to acquire the land, but did not make an award under section 7 of the said Act. WB Requisition Act was a temporary Act and remained in force only till 31.3.1997. The Land Acquisition Act 1894 ('LA Act') was amended by West Bengal Act 7 of 1997 (with effect from 2.5.1997) inserting sub-sections (3A) and (3B) in section 9 of LA Act and thereby the acquisition proceedings under the WB Requisition Act were converted into acquisition proceedings under the LA Act. But as no award was made within a period of two years, the said acquisition lapsed under section 11A of LA Act. Therefore, fresh acquisition proceedings were initiated by issue of a notification dated 13.9.2000 under section 4(1) of the LA Act (Gazetted on 13.9.2000 and thereafter published in the newspapers and pubic notice of the substance of notification was notified in the locality on 16.11.2000) followed by a notification dated 27.11.2000 issued under section 6 of the LA Act (gazetted on 28.11.2000).

The Collector made award determining the market value of the acquired lands as Rs.2386 per cottah [1 acre = 60 cottahs] for sali (agricultural) land and Rs.1193 per

A cottah for beel (marsh) land. For this purpose, the Collector took the average of the value disclosed by the sale of small plots bearing Dag Nos. 417 and 455 under deeds dated 15.1.1982, 20.1.1982 and 15.2.1982 and by providing appreciation at the rate of 5% per year from
B 1982 to 2000, arrived at the value of Rs.144,353/- per acre or Rs.2386/- per cottah for sali land and Rs.1193/- per cottah (half of the value of sali land) as the value of beel land. Feeling aggrieved, the first respondent sought reference to civil court claiming enhancement in regard
C to the three lands.

The first respondent examined an expert valuer as RCW-1 and also produced and relied upon sale deeds pertaining to plot nos. 417, 445 and 192 to prove the market value. The Expert Valuer assessed the value of the
D acquired lands with reference to the sale of Sali plot No.192, measuring 1.5 cottah sold under a deed dated 10.3.2000 at a price of Rs.1 lakh per cottah. Being of the view that the acquired plots had a more advantageous position when compared to plot no.192, the valuer made
E several additions to the value disclosed by sale of plot no.192. He thereafter made a cut in the value in view of the larger size of the acquired plots. The valuer assessed the value of plot No.62 at Rs.143,000 per cottah, plot No.42 at Rs.135,000 per cottah and plot No.272 at
F Rs.108,000 per cottah.

The Reference Court found that the valuer had deducted only 15% and 10% from the price of a small developed plot, to determine the market value of plot no.62 and plot no.42. He accepted the submission of
G appellants that having regard to situation and nature of land, to arrive at the value of the acquired lands (large undeveloped lands) from the value of a small developed plot (plot no.192), the deduction should be one-third (that is 33.33%). By making such deduction (instead of 15%
H for plot no.62 and 10% for plot no.42 applied by the

valuer) the Reference Court arrived at the market value as Rs.125,000 per cottah for plot no.62 and Rs.112,000 per cottah for plot No.42. He took the average thereof as Rs.118,000 and by rounding it off fixed the compensation as Rs.120,000/- per cottah for sali plots No.62 and No. 42.

The Reference Court also attempted an alternative method of determining the market value with reference to the four sale-deeds in regard to beel Plots Nos.417 and 445 and held that the valuation of acquired lands with reference to the said sales statistics would be approximately Rs.134,000 per cottah. The Reference Court found that Plot Nos. 417 and 445 were sold in the years 1999 and 2000 under four sale-deeds and assumed the sale price in the year 2000 to be Rs. 80,000/- per cottah. On the ground that the exemplar plot (No.192) did not have ingress and egress, 25% was added to that value to arrive at the value of the acquired lands which had better ingress and egress. Having arrived at a figure of Rs.1 lakh per cottah, the Reference Court applied a cut of 33.3% towards development cost and arrived at the price for beel plots as Rs. 67,000/- per cottah; and as the value of sali plots were double that of beel plots, he doubled the said figure and arrived at the market value of sali plots as Rs.1,34,000/-. In view of the above, he choose to determine the market value of Sali land (plot nos. 62 and 42) as Rs.120,000 per cottah. As the value of beel land was 50% of the value of Sali land, he determined the market value of beel land (plot no.272) as Rs.60,000/-. The Reference Court therefore awarded Rs.120,000 per cottah for Sali plots (plot nos.62 and 42) and Rs.60,000 per cottah for Beel plot (plot no.272) with statutory benefits. The High Court affirmed the compensation awarded by the Reference Court.

The decision of the High Court was challenged in the instant appeals, on the following grounds:

A (i) The first respondent had himself relied upon four sale deeds relating to beel lands that is sale deeds dated 8.1.1999, 8.1.1999 and 29.3.2000 relating to plot no.417 and sale deed dated 25.6.1999 relating to plot no.445 disclosing a price of Rs. 70,000, Rs. 70,000, Rs. 65,396 B and Rs. 80,000 per cottah. Though the plots were described as beel lands in the sale deeds, qualitatively they were the same as sali lands on account of the fact that the area had been developed into residential plots and fell within the municipal corporation limits. Therefore C the market value of the acquired lands ought to have been determined with reference to the price disclosed by the said plots. The Reference Court had wrongly doubled the value worked out with reference to these sale deeds, by applying the thumb rule that the value of sali lands D were twice that of the value of beel lands;

(ii) Even if the sale deed dated 10.3.2000 relating to sali plot no.192 should be the basis for determination of market value, making any additions thereto as per the Expert Valuer's report on account of appreciation of price E during eight months, or on account of frontage advantage or on account of plots facing east, was not warranted. Therefore the additions of 58% to the value of plot no.62, 45% to the value of plot no.42 and 58% to the value of plot no. 272 was liable to be set aside;

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(iii) Having regard to the fact that the acquired lands were large tracts of undeveloped land and their sale price was being determined with reference to value of a small residential plot namely plot no. 192, the cut or G deduction towards development and development cost ought to have been at least 50% instead of 33.33%;

(iv) When possession of the lands were taken in pursuance of the requisition under the WB Requisition Act, 80% of the estimated value of the lands was paid to H the first respondent and the first respondent had

accepted the same. Therefore what should be paid to the first respondent was only the balance of 20% of the compensation as was to be determined. As the first respondent had the benefit of the said advance amount, from the year 1979, the amount paid as advance with appropriate interest thereon, should be adjusted against the compensation.

Partly allowing the appeals, the Court

HELD:

Re : Contention (i) :

1. It is possible that Beel lands when developed into residential plots, by draining, filling and levelling the land, will cease to be Beel in nature. But it is also possible that the plots sold under sale deeds dated 8.1.1999, 25.6.1999 and 29.3.2000 were really Beel plots without any actual development. There is no evidence to show that these plots were drained, filled, levelled and made into plots similar to Sali plots. The sale deeds refer to these plots as Beel plots. There is no dispute that at the relevant point of time the Sali plots were considered to be more valuable than Beel plots. Therefore this Court rejects the contention of the appellant that the value of these Beel plots should be treated on par with the value of Sali plots and that should form the basis for determining the market value of Sali Plot Nos.62 and 42. But the value of these Beel plots can be a clear indicator for determining the value of acquired Beel plot No.272. [Para 11] [398-A-B]

Re : Contention (ii)

2.1. The valuer has added 8% towards appreciation in value during the period of eight months between the date of the exemplar sale (10.3.2000) and the date of preliminary notification (which was taken as 16.11.2000). The date of publication of the said notification is 13.9.2000.

A Only about six months had passed from the date of the exemplar sale deed (10.3.2000), when the preliminary notification regarding the acquisition was issued in the same year namely 2000. (The difference would be eight months even if the date of publication of preliminary
B notification is taken as 16.11.2000). When the relied upon sale transaction and the preliminary notification are in the same year, no provision is made for any appreciation in value. Unless the difference is more than one year, normally no addition should be made towards
C appreciation in value, unless there is special evidence to show some specific increase within a short period. Therefore, the addition of 8% to the price (Rs.100,000/- per cottah) of plot no.192, was unwarranted. [Paras 12, 13] [398-D-H; 399-C]

D 2.2. The Expert valuer has added to the basic value of Rs. 1,00,000/- (relating to plot No.192), 20% for plot no.62 for having a frontage to Anandpur main road, 10% for plot no.42 for having a frontage to a kutcha KMC road, and 20% for plot No.272 for having a frontage to a sixty
E feet wide road, on the ground that these three lands were more advantageously situated when compared to plot No.192 which faces a narrow eight feet common passage. The valuer has made one more addition to the basic value on account of frontage advantage of the acquired plots,
F that is 25%, 20% and 30% respectively for plot nos.62, 42 and 272 for having a frontage on a wider road thereby giving the advantage of a better FAR (floor area ratio) when undertaking construction. Addition of percentages for advantageous frontage, that too twice was
G unwarranted. Advantage of a better frontage is considered to be a plus factor while assessing the value of two similar properties, particularly in any commercial or residential area, when one has a better frontage than the other. However where the value of large tracts of
H undeveloped agricultural land situated on the periphery

of a city in an area which is yet to be developed is being determined with reference to a value of nearby small residential plot, the question of adding any percentage for the advantage of frontage to the acquired lands, does not arise. Therefore, the entire addition for frontage, that is 45%, 30% and 50% respectively for plots 62, 42 and 272, have to be deleted. [Para 14] [399-D-H; 400-A]

2.3. Lastly, the Expert Valuer has added 5% for plot No.62 for the advantage of being an east facing plot and 7% for plot no.42 for the advantage of being an east & east/south facing plots. When a large tract of land is made into several plots, most of the plots will cease to be east facing. Further, addition in value for facing a particular direction cannot be accepted. [Para 15] [400-B-C]

2.4.The addition of 58% for plot nos.62 and 272 and addition of 45% for plot no.42 have to be deleted. The market value of plot nos.62 and 42, should be arrived at by making an appropriate cut from the value derived from sale price of plot No.192, namely Rs. 1 lac per cottah. The market value of plot no.272 should be arrived at by making an appropriate cut from the market value of Rs.71,350/- arrived at with reference to sale of beel lands. [Para 16] [400-D]

ONGC Ltd. vs. Rameshbhai Jivanbhai Patel (2008) 4 SCC 745 – referred to.

Re : Contention (iii)

3.1. The prices fetched for small plots cannot form safe basis for valuation of large tracts of land and cannot be directly adopted in valuation of large tracts of land as the two are not comparable properties – the former reflects the 'retail' price of land and the latter the 'wholesale' price. However, if it is shown that the large

A extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout could with justification be adopted, then in valuing
B such small laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities;
C expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price; the profits on the venture etc., are to be made. From the value of small plots which
D represents what may be called the 'retail' price of land, the 'wholesale' price of land is to be estimated. [Para 17] [400-F-H; 401-A-C]

3.2. By comparing the situational advantage, existing development and amenities available to the acquired
E lands and the exemplar sale transactions relating to small plots, and other relevant circumstances, this Court has made cuts or deductions varying from 20% to 75% from the value of the small developed plots to arrive at the value of acquired lands. [401-H; 402-A]

F 3.3. According to the evidence of the Expert Valuer, plot No.192 the sale price of which has furnished the basis for determination of market value lies at a distance (in a straight line, as the crow flies) of 1272 ft. from plot No.62, a distance of 1750 ft. plot No.42 and a distance of
G 2200 ft. from plot No.272. The water supply lines and electrical lines were already laid in the roads adjoining these plots. The appellants had submitted before the Reference Court and High Court that the cut for development from the market value of plot No.192 should
H be 33.33%. The Reference Court after considering the

facts found that 33.33% (one-third of the value of the small developed plot) should be deducted towards development/development cost, to arrive at the value of the acquired lands. The High Court has not interfered with the said percentage of deduction. In the circumstances, there is no reason to alter the percentage of deduction of 33.33%. [Para 19] [404-D-G]

Administrator General of West Bengal vs. Collector, Varanasi **(1988) 2 SCC 150: 1988 (2) SCR 1025;** *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona* **(1988) 3 SCC 751: 1988 (1) Suppl. SCR 531;** *K. Vasundara Devi vs. Revenue Divisional Officer (LAO)* **(1995) 5 SCC 426: 1995 (2) Suppl. SCR 376;** *Basavva vs. Special Land Acquisition Officer* **(1996) 9 SCC 640: 1996 (3) SCR 500;** *Shaji Kuriakose vs. Indian Oil Corporation Ltd* **(2001) 7 SCC 650: 2001 (1) Suppl. SCR 573;** *Atma Singh Thr. LRs. vs. State of Haryana* **(2008) 2 SCC 568: 2007 (12) SCR 1120;** *Kanta Devi vs. State of Haryana* **(2008) 15 SCC 201: 2008 (10) SCR 367;** *Lal Chand vs. Union of India* **(2009) 15 SCC 769: 2009 (13) SCR 622 – referred to.**

Re : Contention (iv)

4.1. The market value has to be determined with reference to the date of publication of the notification under section 4(1) of LA Act. Though the lands were requisitioned in the year 1978 and possession was taken in pursuance of such requisition in 1978-79 and 80% of estimated value was given as advance under section 8B in pursuance of notification under section 4(1a) of WB Requisition Act, the said acquisition notification was not followed by an award and the acquisition notification was allowed to lapse. What is therefore relevant is the date of notification under section 4(1) of LA Act in pursuance of which the acquisition was completed. The relevant date for determination of compensation would be the date of publication of the preliminary notification under section

A 4(1) of the LA Act. However if in anticipation of acquisition the appellant/the Land Acquisition Officer had made any payment to the land owner they will be entitled to credit therefor with interest at 15% per annum from the date of payment to date of publication of preliminary notification. B In his counter affidavit filed in this Court, first respondent has alleged that the Collector had paid Rs. 55,875/- for plot no.62 and Rs. 17,458/- for plot no.42. The payment is said to be in 1979. Though solatium and additional amount will be calculated on the entire compensation C amount, statutory interest payable to first respondent will be calculated only after adjusting the aforesaid advance payment with interest therein towards the compensation amount. [Para 20] [404-H; 405-A-E]

D Re : Relevant date for determining compensation

4.2. The notification under section 4(1) of the LA Act is dated 13.9.2000. It was published in the gazette dated 13.9.2000. Thereafter it was published in two newspapers. Lastly, the Collector caused public notice of the E substance of such notification to be given at convenient places in the locality on 16.11.2000. The reference court and the High Court have proceeded on the basis that the relevant date for determining the market value is 16.11.2000. The question is whether the relevant date for F determination of compensation is 13.9.2000 or 16.11.2000. [Para 21] [405-G-H; 406-A-B]

4.3. Sub-section (1) of Section 23 of the LA Act provides the compensation to be awarded shall be determined by the Reference Court, based upon the G market value of the acquired land *at the time of publication of the notification under section 4 sub-section (1)*. Section 6 of the LA Act was amended in 1984 providing that no declaration under section 6 in respect of any land covered by a notification under section 4(1) H shall be made after the expiry of one year *from the date*

of publication of the notification under section 4(1). In that context, to avoid any confusion as to what would be the date of publication of the notification under section 4(1), section 4(1) was also amended to clarify the position and it was provided that "*the last of the dates of such publication and giving of such public notice being herein referred to as the date of publication of the notification*". But the words '*publication of the notification under section 4(1)*' occurring in the first clause of section 23(1) have different meaning and connotation from the use of the said words in sections 4(1) and 6 of the LA Act. Prior to the 1984 amendment of section 4, the words "*publication of notification under section 4(1)*" in section 23(1) referred to the date of publication of the notification in the official Gazette. Even after the amendment of section 4(1), the said words in section 23(1) continue to have the same earlier meaning. [Paras 22, 23] [406-C-H; 407-A-B]

4.4. One of the principles in regard to determination of market value under section 23(1) is that the rise in market value after the publication of the notification under section 4(1) of the Act should not be taken into account for the purpose of determination of market value. If the deeming definition of '*publication of the notification*' in the amended section 4(1) is imported as the meaning of the said words in the first clause of section 23(1), it will lead to anomalous results. Owners of the lands which are the subject matter of the notification and neighbouring lands will come to know about the proposed acquisition, on the date of publication in the gazette or in the newspapers. If the giving of public notice of the substance of the notification is delayed by two or three months, there may be several sale transactions in regard to nearby lands in that period, showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself. If the words 'publication

A of the notification' in section 23(1) (clause firstly) should be construed as referring to the last of the dates of publication and public notice, and the date of public notice in the locality is to be considered as the date of publication, the landowners can legitimately claim that
B the sales which took place till the date of public notice should be taken into account for the purpose of determination of compensation, leading to disastrous results. [Para 24] [407-C-F]

C 4.5. The same words used in different parts of a statute should normally bear the same meaning. But depending upon the context, the same words used in different places of a statue may also have different meaning. The use of the words 'publication of the notification' in sections 4(1) and 6 on the one hand and
D in section 23(1) on the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment. The words '*publication of the notification under section 4 sub-section (1)*', are used in section 23(1) for fixing the relevant date
E for determination of market value. The words "the last of the date of such publication and giving of such public notice being hereinafter referred to as the *publication of the date of notification*" in section 4(1) and the words '*one year from the date of the publication of the notification*"
F in the first proviso to section 6, refer to the special deeming definition of the said words, for determining the period of one year for issuing the declaration under section 6, which is counted from the date of 'publication of the notification'. Therefore the context in which the
G words are used in sections 4(1) and 6, and the context in which the same words are used in section 23(1) are completely different. In section 23(1), the words "*the date of publication of the notification under section 4(1)*" would refer to the date of publication of the notification in the
H gazette. Therefore, '13.9.2000' will be the relevant date for

the purpose of determination of compensation and not 16.11.2000. [Para 25] [408-G-H; 409-A-D]

Justice G.P. Singh's Principles of Statutory Interpretation **– 12th Edition – Pages 356-358 – referred to.**

Conclusion

5.1. In regard to plots 62 and 42, by adopting a cut of 33.33% from the price of Rs.100,000/- disclosed with reference to the sale of sali plot no.192, the compensation is determined as Rs.66,667/- rounded off to Rs.67,000/- per cottah. [Para 26] [409-E-F]

5.2. In regard to plot no.272, it is found that beel land has been sold for Rs.70,000/- per cottah on 8.1.1999 and Rs.80,000/- per cottah on 25.6.1999. Rs.90,000/- per cottah is therefore taken as the market value of small developed plots by providing a 12% appreciation per year with reference to the sale price on 25.6.1999. By deducting 33.33% therefrom, the market value of undeveloped plots in 2000 would be Rs.60,000/- per cottah. [Para 27] [409-G]

5.3. In view of the above, the compensation for plot nos.62 and 42 is reduced to Rs. 67,000/- per cottah and while the compensation in regard to plot no.272 is maintained at the rate of Rs. 60,000/- per cottah. The first respondent will be entitled to the statutory benefits, that is, solatium, additional amount and interest in accordance with the provisions of the LA Act. The appellants will be entitled to adjust the advance payment made with interest thereon at 15% PA from the date of such payments to 13.9.2000 towards the compensation payable. [Para 28] [410-A-B]

Case Law Reference:

(2008) 4 SCC 745	**referred to**	**Para 13**

A	**1988 (2) SCR 1025**	**referred to**	**Para 17**
	1988 (1) Suppl. SCR 531	**referred to**	**Para 17**
	(1995) 5 SCC 426	**referred to**	**Para 17**
B	**1995 (2) Suppl. SCR 376**	**referred to**	**Para 18**
	1996 (3) SCR 500	**referred to**	**Para 18**
	2001 (1) Suppl. SCR 573	**referred to**	**Para 18**
	2007 (12) SCR 1120	**referred to**	**Para 18**
C	**2008 (10) SCR 367**	**referred to**	**Para 18**
	2009 (13) SCR 622	**referred to**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. D 5938 of 2007 etc.

From the Judgment & Order dated 18.05.2007 of the High Court at Calcutta in F.A. No. 15 of 2007.

WITH

E C.A. Nos. 1931, 1932, 1933 of 2008 & 6024, 6025 of 2007.

Pradeep Ghosh, Shati Bhushan, Ranjit Kumar, Anindita Gupta, Rajesh Srivastava, Raghavendra Pratap Singh, Dhruv Mehta, Debasis Guin, B.P. Yadav, Sarla Chandra, H.K. Puri, F S.K. Puri, V.M. Chauhan, Priya Puri for the appearing parties.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. These appeals by the Kolkata Metropolitan Development Authority (for short KMDA) and the G State of West Bengal ('State' for short) relate to determination of compensation for acquisition of the following three lands for East Calcutta Area Development Project, falling under Mouza Madurdaha, (JL No.12), District 24 Parganas (South) within the limits of Kolkata Municipal Corporation :

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Dag (Plot) No.	Area in Cottahs/ Chitaks (1 acre=60 cottahs) (1 cottah=16 Chitaks)	Area in Acres	Classification of land
62	117 Cottah	1.94 acres	Sali (Agricultural)
42	37 Cottahs	0.61 acres	Sali (Agricultural)
272	13 Cottahs 5 Chitaks	0.22 acres	Beel (Marsh)

2. The said lands belonging to the first respondent along with surrounding lands were requisitioned by the State Government under section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 [for short 'WB Requisition Act'] on 27.4.1978. The possession of the land was taken by the Collector in pursuance of such requisition, on 8.5.1978, 16.7.1979 and 16.9.1979. In anticipation of the acquisition, the value of the land was assessed under section 8B of the said Act and 80% of the estimated compensation was paid to the first respondent in or about 1979. On 7.4.1987, the Collector issued a notification under section 4(1a) of the said Act, to acquire the land, but did not make an award under section 7 of the said Act. WB Requisition Act was a temporary Act and remained in force only till 31.3.1997. The Land Acquisition Act 1894 ('LA Act' for short) was amended by West Bengal Act 7 of 1997 (with effect from 2.5.1997) inserting sub-sections (3A) and (3B) in section 9 of LA Act whereby it was provided that in regard to lands possession of which had been taken on requisition under the WB Requisition Act, the proceedings initiated under the WB Requisition Act would stand converted to proceedings under LA Act upon issuance of appropriate notice. Such notice was issued on 10.12.1997 and the acquisition proceedings under the WB Requisition Act were converted into acquisition proceedings under the LA Act. But as no award was made within a period of two years, the said acquisition lapsed under section 11A of LA Act. Therefore,

A fresh acquisition proceedings were initiated by issue of a notification dated 13.9.2000 under section 4(1) of the LA Act (Gazetted on 13.9.2000 and thereafter published in the newspapers and pubic notice of the substance of notification was notified in the locality on 16.11.2000) followed by a B notification dated 27.11.2000 issued under section 6 of the LA Act (gazetted on 28.11.2000).

3. The Collector made an award dated 13.12.2001 determining the market value of the acquired lands as Rs. 2386 per cottah for sali land and Rs. 1193 per cottah for beel land. C For this purpose, the Collector took the average of the value disclosed by the sale of small plots bearing Dag Nos. 417, 417 and 455 under deeds dated 15.1.1982, 20.1.1982 and 15.2.1982 and by providing appreciation at the rate of 5% per year from 1982 to 2000, arrived at the value of Rs. 144,353/- D per acre or Rs. 2386/- per cottah for sali land and Rs. 1193/- per cottah (half of the value of sali land) as the value of beel land. Feeling aggrieved, the first respondent sought reference to civil court claiming enhancement in regard to the three lands. The three references were registered as LA Nos.47, 77 and E 78 of 2003.

4. The first respondent examined an expert valuer T.C.Roy as RCW-1 and examined himself as RCW-2. The report of the expert with its annexures was marked as Ex. 1 and Ex. 1/A and F the map of Mouza Madurdaha was produced as Ex.2. The first respondent produced and relied upon the following five sale deeds (Ex.7 to 11) to prove the market value :

Date of sale	Plot Number	Extent	Price per cottah	Nature of land
G 8.1.1999	417	5 cottah	Rs. 70000	Beel
8.1.1999	417	5 cottah	Rs. 70000	Beel
29.3.2000	417	3 cottah 1 chitak	Rs. 65,396	Beel
25.6.1999	445	3 cottah 5 sq. ft.	Rs. 80,000	Beel
H 10.3.2000	192	1.5 cottah	Rs. 100,000	Sali

On behalf of the State Government represented by the Collector, the award was marked as Ex.A, two sale deeds of the year 1988 relied upon by the Collector for determining the market value were marked as Ex.B and B/1, the determination of land value by the Collector as Ex.C, calculation-sheet for payment of 80% *ad hoc* compensation as Ex.D and an area map as Ex.E. KMDA did not lead any evidence.

5. The Expert Valuer assessed the value of the acquired lands with reference to the sale of Sali plot No.192 Mouza Madurdaha, Ward No.108, Kolkata Corporation, measuring 1.5 cottah sold under a deed dated 10.3.2000 at a price of Rs.1 lakh per cottah. The access to that plot was through a eight feet wide passage. According to the valuer, plot no.62 was by the side of Anandpur main road of a width of 20 to 25 feet and Plot No.42 adjoined a kutcha road of a width of about 20 feet. Being of the view that the acquired plots had a more advantageous position when compared to plot no.192, the valuer made several additions to the value disclosed by sale of plot no.192. He thereafter made a cut in the value in view of the larger size of the acquired plots. The valuer gave a valuation report dated 20.6.2002 assessing the value of plot No.62 at 143,000 per cottah, plot No.42 at Rs. 135,000 per cottah and plot No.272 at Rs. 108,000 per cottah. The abstract of the method of calculation adopted by the valuer is as under :

Description	Plot No.62	Plot No.42	Plot No.272
Base rate (Re : Plot No. 192 under deed dated 10.3.2000)	Rs.100,000 per cottah	Rs.100,000 per cottah	Rs.100,000 per cottah
Add for appreciation in market value during a period of 8 months (between 10.3.2000 and 16.11.2000) at the rate of 12% per annum	+8%	+8%	+8%
Add for advantage of frontage towards a road	+20%	+10%	+20%

(as against common passage frontage of plot no.192)			
Add for FAR advantage on account of frontage to a road	+25%	+20%	+30%
Add for advantage of facing East	+5%	+7%	-
Deduction on account of development cost (small size to big size)	-15%	-10%	-50%
Net addition to be made	+43% (58%-15%)	+35% (45%-35%)	+8% (58%-50%)
Value of plots	Rs.143,000 per cottah	Rs.135,000 per cottah	Rs.108,000 per cottah

6. The Reference Court on considering the evidence was of the view that the valuation by the expert valuer should be accepted subject to one modification. The Reference Court found that the valuer had deducted only 15% and 10% from the price of a small developed plot, to determine the market value of plot no.62 and plot no.42. He accepted the submission of appellants that having regard to situation and nature of land, to arrive at the value of the acquired lands (large undeveloped lands) from the value of a small developed plot (plot no.192), the deduction should be one-third (that is 33.33%). By making such deduction (instead of 15% for plot no.62 and 10% for plot no.42 applied by the valuer) the Reference Court arrived at the market value as Rs. 125,000 per cottah for plot no.62 and Rs. 112,000 per cottah for plot No.42. He took the average thereof as Rs. 118,000 and by rounding it off fixed the compensation as Rs. 120,000/- per cottah for sali plots No.62 and No. 42.

7. The Reference Court also attempted an alternative method of determining the market value with reference to the four sale-deeds in regard to beel Plots Nos.417 and 445 and held that the valuation of acquired lands with reference to the

said sales statistics would be approximately Rs.134,000 per cottah. The Reference Court found that Plot Nos. 417 and 445 were sold in the years 1999 and 2000 under four sale-deeds and assumed the sale price in the year 2000 to be Rs. 80,000/- per cottah. On the ground that the exemplar plot (No.192) did not have ingress and egress, 25% was added to that value to arrive at the value of the acquired lands which had better ingress and egress. Having arrived at a figure of Rs.1 lakh per cottah, the Reference Court applied a cut of 33.3% towards development cost and arrived at the price for beel plots as Rs. 67,000/- per cottah; and as the value of sali plots were double that of beel plots, he doubled the said figure and arrived at the market value of sali plots as Rs. 1,34,000/-.

8. In view of the above, he choose to determine the market value of Sali land (plot nos. 62 and 42) as Rs. 120,000 per cottah. As the value of beel land was 50% of the value of Sali land, he determined the market value of beel land (plot no.272) as Rs. 60,000/-. The Reference Court therefore made an award dated 11.10.2004 awarding Rs. 120,000 per cottah for Sali plots (plot nos.62 and 42) and Rs. 60,000 per cottah for Beel plot (plot no.272) with statutory benefits. Feeling aggrieved, KMDC as well as State of West Bengal have filed appeals. The Calcutta High Court dismissed the appeals by judgment dated 18.5.2007 thereby affirming the compensation awarded by the Reference Court.

9. KMDC and the State of West Bengal have challenged the said decision of the High Court in these appeals by special leave, raising the following four contentions:

(i) The first respondent had himself relied upon the four sale deeds relating to beel lands that is sale deeds dated 8.1.1999, 8.1.1999 and 29.3.2000 relating to plot no.417 and sale deed dated 25.6.1999 relating to plot no.445 disclosing a price of Rs. 70,000, Rs. 70,000, Rs. 65,396 and Rs. 80,000 per cottah. Though the plots were described as beel lands in the sale deeds, qualitatively

they were the same as sali lands on account of the fact that the area had been developed into residential plots and fell within the municipal corporation limits. Therefore the market value of the acquired lands ought to have been determined with reference to the price disclosed by the said plots. The Reference Court had wrongly doubled the value worked out with reference to these sale deeds, by applying the thumb rule that the value of sali lands were twice that of the value of beel lands.

(ii) Even if the sale deed dated 10.3.2000 relating to sali plot no.192 should be the basis for determination of market value, making any additions thereto as per the Expert Valuer's report on account of appreciation of price during eight months, or on account of frontage advantage or on account of plots facing east, was not warranted. Therefore the additions of 58% to the value of plot no.62, 45% to the value of plot no.42 and 58% to the value of plot no. 272 was liable to be set aside.

(iii) Having regard to the fact that the acquired lands were large tracts of undeveloped land and their sale price was being determined with reference to value of a small residential plot namely plot no. 192, the cut or deduction towards development and development cost ought to have been at least 50% instead of 33.33%.

(iv) When possession of the lands were taken in pursuance of the requisition under the WB Requisition Act, 80% of the estimated value of the lands was paid to the first respondent and the first respondent had accepted the same. Therefore what should be paid to the first respondent was only the balance of 20% of the compensation as was to be determined. As the first respondent had the benefit of the said advance amount, from the year 1979, the amount paid as advance with appropriate interest thereon, should be adjusted against the compensation.

Re : Contention (i) :

10. The appellants submitted that the first respondent had produced and relied upon four sale deeds relating to Beel lands, and they ought to have been the basis for determination of compensation for the acquired lands. These sale deeds disclosed that three portions of Plot No.417 measuring 5 cottah, 5 cottah and 3 cottah 1 chitak were sold under sale deeds dated 8.1.1999, 8.1.1999 and 29.3.2000. The price per cottah under the first two sale deeds is Rs. 70,000/- per cottah and under the third sale deed is about Rs. 65,400/- per cottah. The fourth sale deed dated 25.6.1999 relates to sale of 3 cottah and 5 sq.ft. in plot No.445 which discloses the price paid as Rs. 80,000 per cottah. The average of the four sales would be about Rs. 71,350 per cottah. According to the appellant though these plots were described as Beel lands because they were originally classified as 'Beel', they were no longer Beel, but were developed and sold as residential plots, and situated in the limits of Ward No.108 of Kolkata Municipal Corporation. Therefore, they were no different from the plots laid down in Sali lands. Consequently, it was submitted that the value of these residential plots should be treated on par with the plots laid in Sali lands and their value could not be considered as half of the value of Sali lands. The appellants contend that though the Reference Court considered these sale deeds, it erroneously doubled the value disclosed by these plots to arrive at the value of Sali plots merely because they were described as Beel lands. According to the appellant, once the Beel lands are developed into residential plots by drawing, filling and levelling, the value of Sali plots and Beel plots are the same. Therefore, it is contended that on the basis of these sale deeds, the prevailing value of residential plots in the area ought to have been taken as Rs. 71,350 per cottah and by deducting one-third (33.33%) therefrom towards development, the value of the acquired lands irrespective of whether they are Sali or Beel, should be fixed as Rs. 47,570 per cottah.

A 11. We have carefully considered the said contention. It is possible that Beel lands when developed into residential plots, by draining, filling and levelling the land, will cease to be Beel in nature. But it is also possible that the plots sold under sale deeds dated 8.1.1999, 25.6.1999 and 29.3.2000 were really B Beel plots without any actual development. There is no evidence to show that these plots were drained, filled, levelled and made into plots similar to Sali plots. The sale deeds refer to these plots as Beel plots. There is no dispute that at the relevant point of time the Sali plots were considered to be more valuable than C Beel plots. Therefore we reject the contention of the appellant that the value of these Beel plots should be treated on par with the value of Sali plots and that should form the basis for determining the market value of Sali Plot Nos.62 and 42. But the value of these Beel plots can be a clear indicator for D determining the value of acquired Beel plot No.272.

Re : Contention (ii)

12. The Reference Court and the High Court have not disapproved or rejected the various additions made by the E Expert Valuer for 'advantages' possessed by plot nos.62, 42 and 272. We will consider each of these 'advantages' separately.

13. The valuer has added 8% towards appreciation in value during the period of eight months between the date of the F exemplar sale (10.3.2000) and the date of preliminary notification (which was taken as 16.11.2000). The date of publication of the said notification is 13.9.2000. Only about six months had passed from the date of the exemplar sale deed (10.3.2000), when the preliminary notification regarding the G acquisition was issued in the same year namely 2000. (The difference would be eight months even if the date of publication of preliminary notification is taken as 16.11.2000). When the relied upon sale transaction and the preliminary notification are in the same year, no provision is made for any appreciation in

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value. This Court in *ONGC Ltd. vs. Rameshbhai Jivanbhai Patel* – (2008) 4 SCC 745 observed :

> "However, for the purpose of calculation, we have to exclude the year of the relied-upon transaction, which is the base year. If the year of relied-upon transaction is 1987, the increase is applied not from 1987 itself, but only from the next year which is 1988."

Therefore, unless the difference is more than one year, normally no addition should be made towards appreciation in value, unless there is special evidence to show some specific increase within a short period. Therefore, the addition of 8% to the price (Rs.100,000/- per cottah) of plot no.192, was unwarranted.

14. The Expert valuer has added to the basic value of Rs. 1,00,000/- (relating to plot No.192), 20% for plot no.62 for having a frontage to Anandpur main road, 10% for plot no.42 for having a frontage to a kutcha KMC road, and 20% for plot No.272 for having a frontage to a sixty feet wide road, on the ground that these three lands were more advantageously situated when compared to plot No.192 which faces a narrow eight feet common passage. The valuer has made one more addition to the basic value on account of frontage advantage of the acquired plots, that is 25%, 20% and 30% respectively for plot nos.62, 42 and 272 for having a frontage on a wider road thereby giving the advantage of a better FAR (floor area ratio) when undertaking construction. Addition of percentages for advantageous frontage, that too twice was unwarranted. Advantage of a better frontage is considered to be a plus factor while assessing the value of two similar properties, particularly in any commercial or residential area, when one has a better frontage than the other. However where the value of large tracts of undeveloped agricultural land situated on the periphery of a city in an area which is yet to be developed is being determined with reference to a value of nearby small residential plot, the

A question of adding any percentage for the advantage of frontage to the acquired lands, does not arise. Therefore, the entire addition for frontage, that is 45%, 30% and 50% respectively for plots 62, 42 and 272, have to be deleted.

15. Lastly, the Expert Valuer has added 5% for plot No.62 B for the advantage of being an east facing plot and 7% for plot no.42 for the advantage of being an east & east/south facing plots. When a large tract of land is made into several plots, most of the plots will cease to be east facing. Further, addition in value for facing a particular direction cannot be accepted.

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16. Therefore, the addition of 58% for plot nos.62 and 272 and addition of 45% for plot no.42 have to be deleted. The market value of plot nos.62 and 42, should be arrived at by making an appropriate cut from the value derived from sale D price of plot No.192, namely Rs. 1 lac per cottah. The market value of plot no.272 should be arrived at by making an appropriate cut from the market value of Rs.71,350/- arrived at with reference to sale of beel lands.

E **Re : Contention (iii)**

17. In *Administrator General of West Bengal vs. Collector, Varanasi* – (1988) 2 SCC 150, this Court has explained the principle for valuing large extent of undeveloped urban land with reference to the price fetched by a small developed plot. This F Court explained that prices fetched for small plots cannot form safe basis for valuation of large tracts of land and cannot be directly adopted in valuation of large tracts of land as the two are not comparable properties – the former reflects the 'retail' price of land and the latter the 'wholesale' price. However, if it G is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout could with justification be adopted, then in valuing such small

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laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price; the profits on the venture etc., are to be made. From the value of small plots which represents what may be called the 'retail' price of land, the 'wholesale' price of land is to be estimated. In *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona* – (1988) 3 SCC 751, this Court gave the following illustration to arrive at the value of large undeveloped land from the value of a small developed plot :

> "A building plot of land say 500 to 1000 sq.yds cannot be compared with a large tract or block of land of say 10,000 sq.yds or more. Firstly, while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards."

18. By comparing the situational advantage, existing development and amenities available to the acquired lands and the exemplar sale transactions relating to small plots, and other

A relevant circumstances, this Court has made cuts or deductions varying from 20% to 75% from the value of the small developed plots to arrive at the value of acquired lands. [See : *K. Vasundara Devi vs. Revenue Divisional Officer (LAO)* – (1995) 5 SCC 426; *Basavva vs. Special Land Acquisition* B *Officer* – (1996) 9 SCC 640; *Shaji Kuriakose vs. Indian Oil Corporation Ltd* – (2001) 7 SCC 650; *Atma Singh Thr. LRs. vs. State of Haryana* – (2008) 2 SCC 568 and *Kanta Devi vs. State of Haryana* – (2008) 15 SCC 201], and and *Lal Chand vs. Union of India* – (2009) 15 SCC 769]. In *Lal Chand*, this C Court gave the following guidelines as to what should be the deduction for development :

> "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 D 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 lay out in which the exemplar plots are situated.
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> 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 F 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, play grounds and civic amenities (community facilities) etc.
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> The Development Authority will also incur considerable G 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 waterlines, electricity lines and developing parks and civil amenities, which would be
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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.

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 un-authorized lay outs, usually no land will be set apart for parks, play grounds 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.

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

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).

Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed lay out, to arrive at the cost of undeveloped land, will be for more than the deduction with reference to the price of a small plot in an unauthorized private lay out or an industrial layout. .....

Some of the layouts formed by statutory Development

A Authorities may have large areas earmarked for water/ sewage treatment plants, water tanks, electrical sub-stations 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
B 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%."

19. In this case, the evidence shows that plot nos.62 and 42 are sali (agricultural) lands, and the plot no.272 is a beel
C (marshy) land. Their extents are 1.94 acres, 0.61 acres and 0.22 acres respectively. Plot No.62 faces a twenty feet wide metalled road. Plot No.42 faces a twenty feet katcha road. Plot No.272 faces a 60 feet road. All are situated within the limits of Ward No.108 of Kolkata Municipal limits and had potential
D for being developed into residential plots. They were acquired for East Calcutta Area Development Project. According to the evidence of the Expert Valuer, plot No.192 the sale price of which has furnished the basis for determination of market value lies at a distance (in a straight line, as the crow flies) of 1272
E ft. from plot No.62, a distance of 1750 ft. plot No.42 and a distance of 2200 ft. from plot No.272. The water supply lines and electrical lines were already laid in the roads adjoining these plots. The appellants had submitted before the Reference Court and High Court that the cut for development from the
F market value of plot No.192 should be 33.33%. The Reference Court after considering the facts found that 33.33% (one-third of the value of the small developed plot) should be deducted towards development/development cost, to arrive at the value of the acquired lands. The High Court has not interfered with
G the said percentage of deduction. In the circumstances, we find no reason to alter the percentage of deduction of 33.33%.

Re : Contention (iv)

20. The market value has to be determined with reference

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to the date of publication of the notification under section 4(1) of LA Act. Though the lands were requisitioned in the year 1978 and possession was taken in pursuance of such requisition in 1978-79 and 80% of estimated value was given as advance under section 8B in pursuance of notification under section 4(1a) of WB Requisition Act, the said acquisition notification was not followed by an award and the acquisition notification was allowed to lapse. What is therefore relevant is the date of notification under section 4(1) of LA Act in pursuance of which the acquisition was completed.

Therefore, the relevant date for determination of compensation would be the date of publication of the preliminary notification under section 4(1) of the LA Act. However in anticipation of acquisition the appellant/the Land Acquisition Officer had made any payment to the land owner they will be entitled to credit therefor with interest at 15% per annum from the date of payment to date of publication of preliminary notification. In his counter affidavit filed in this Court, first respondent has alleged that the Collector had paid Rs. 55,875/- for plot no.62 and Rs. 17,458/- for plot no.42. The payment is said to be in 1979. Though solatium and additional amount will be calculated on the entire compensation amount, statutory interest payable to first respondent will be calculated only after adjusting the aforesaid advance payment with interest therein towards the compensation amount.

Re : Relevant date for determining compensation

21. The notification under section 4(1) of the Act is dated 13.9.2000. It was published in the gazette dated 13.9.2000. Thereafter it was published in two newspapers. Lastly, the Collector caused public notice of the substance of such notification to be given at convenient places in the locality on 16.11.2000. The reference court and the High Court have proceeded on the basis that the relevant date for determining the market value is 16.11.2000. They have also relied upon the expert valuer's report which assessed the market value as on

16.11.2000. We have noticed above that the Expert Valuer determined the market value with reference to a sale deed dated 10.3.2000, by adding 8% as the increase in prices for the period of eight months between 10.3.2000 and 16.11.2000 (at the rate of 1% per month). The question is whether the relevant date for determination of compensation is 13.9.2000 or 16.11.2000.

22. Sub-section (1) of Section 23 provides the compensation to be awarded shall be determined by the Reference Court, based upon the market value of the acquired land *at the time of publication of the notification under section 4 sub-section (1)*. The first respondent contends that the '*date of publication of notification under section 4(1)*' is statutorily defined in section 4(1) (that is the last of the dates, out of the dates of publication of the notification in the official gazette, publication of the notification in two daily newspapers circulating in that locality of which at least one shall be in regional language, and public notice of the substance of such notification being given at convenient places in the locality), and therefore the said words refer to 16.11.2000 as the date of publication of notification under section 4(1) of the LA Act.

23. Section 6 was amended in 1984 providing that no declaration under section 6 in respect of any land covered by a notification under section 4(1) shall be made after the expiry of one year *from the date of publication of the notification under section 4(1).* In that context, to avoid any confusion as to what would be the date of publication of the notification under section 4(1), section 4(1) was also amended to clarify the position and it was provided that "*the last of the dates of such publication and giving of such public notice being herein referred to as the date of publication of the notification*". But the words '*publication of the notification under section 4(1)*' occurring in the first clause of section 23(1) have different meaning and connotation from the use of the said words in sections 4(1) and 6 of the LA Act. Prior to the 1984 amendment of section 4, the

words *"publication of notification under section 4(1)"* in section 23(1) referred to the date of publication of the notification in the official Gazette. Even after the amendment of section 4(1), the said words in section 23(1) continue to have the same earlier meaning. We may briefly indicate the reasons for our said conclusion.

24. One of the principles in regard to determination of market value under section 23(1) is that the rise in market value after the publication of the notification under section 4(1) of the Act should not be taken into account for the purpose of determination of market value. If the deeming definition of *'publication of the notification'* in the amended section 4(1) is imported as the meaning of the said words in the first clause of section 23(1), it will lead to anomalous results. Owners of the lands which are the subject matter of the notification and neighbouring lands will come to know about the proposed acquisition, on the date of publication in the gazette or in the newspapers. If the giving of public notice of the substance of the notification is delayed by two or three months, there may be several sale transactions in regard to nearby lands in that period, showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself. If the words 'publication of the notification' in section 23(1) (clause firstly) should be construed as referring to the last of the dates of publication and public notice, and the date of public notice in the locality is to be considered as the date of publication, the landowners can legitimately claim that the sales which took place till the date of public notice should be taken into account for the purpose of determination of compensation, leading to disastrous results. Let us give two illustrations :

Illustration A : The market value of the acquired land on 13.9.2000 is Rs.1,00,000 per acre. A notification under section 4(1) is published in the gazette on 13.9.2000 and in two newspapers on 14.9.2000. But the public notice in the locality is given only two months later on 16.11.2000.

A As the land owners in the area come to know about the proposed acquisition and consequential expectations of development in the area, developers and speculators enter the arena and start buying neighbouring lands leading to steep increase in prices. Consequently several sales takes B place in October 2000 at rates ranging from Rs.1.5 lakhs to Rs.2 lakhs per acre. If 16.11.2000 should be taken as the date of publication of the notification under section 4(1), the land owners can legitimately contend that the sale deeds executed in October 2000, being prior to the 'date C of publication of the preliminary notification' should be taken note of for the purpose of determining the compensation. That would result in compensation being determined between Rs.1,50,000 to Rs.2 lakhs per acre even though the market rate as on 13.9.2000 which is the date of publication of the notification was only Rs.1,00,000. D

Illustration B : When large tracts of lands are acquired and the preliminary notification dated 13.9.2000 is published in the Gazette on 13.9.2000 and in the newspapers on 14.9.2000, but public notice of the E substance is delayed by more than two months and is given on 16.11.2000, there will be ample time for unscrupulous land owners of acquired lands to create evidence of higher market value by managing nominal sale/s in regard to some neighbouring land which is not F the subject of acquisition at a price of Rs.2,00,000/- as against the market price of Rs.1,00,000/- and thereby cause a huge loss to the state.

25. The same words used in different parts of a statute should normally bear the same meaning. But depending upon G the context, the same words used in different places of a statue may also have different meaning. [See: *Justice G.P. Singh's Principles of Statutory Interpretation* – 12th Edition – Pages 356-358]. The use of the words 'publication of the notification' in sections 4(1) and 6 on the one hand and in section 23(1) on H

the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment. The words '*publication of the notification under section 4 sub-section (1)*, are used in section 23(1) for fixing the relevant date for determination of market value. The words "the last of the date of such publication and giving of such public notice being hereinafter referred to as the *publication of the date of notification*" in section 4(1) and the words '*one year from the date of the publication of the notification*" in the first proviso to section 6, refer to the special deeming definition of the said words, for determining the period of one year for issuing the declaration under section 6, which is counted from the date of 'publication of the notification'. Therefore the context in which the words are used in sections 4(1) and 6, and the context in which the same words are used in section 23(1) are completely different. In section 23(1), the words "*the date of publication of the notification under section 4(1)*" would refer to the date of publication of the notification in the gazette. Therefore, '13.9.2000' will be the relevant date for the purpose of determination of compensation and not 16.11.2000.

Conclusion

26. In regard to plots 62 and 42, by adopting a cut of 33.33% from the price of Rs.100,000/- disclosed with reference to the sale of sali plot no.192, we determine the compensation as Rs.66,667/- rounded off to Rs.67,000/- per cottah.

27. In regard to plot no.272, we find that beel land has been sold for Rs.70,000/- per cottah on 8.1.1999 and Rs.80,000/- per cottah on 25.6.1999. We may therefore, take Rs.90,000/- per cottah as the market value of small developed plots by providing a 12% appreciation per year with reference to the sale price on 25.6.1999. By deducting 33.33% therefrom, the market value of undeveloped plots in 2000 would be Rs.60,000/- per cottah.

28. In view of the above, we allow these appeals in part and reduce the compensation to Rs. 67,000/- per cottah for plot nos.62 and 42 and maintain the compensation at the rate of Rs. 60,000/- per cottah in regard to plot no.272. The first respondent will be entitled to the statutory benefits, that is, solatium, additional amount and interest in accordance with the provisions of the LA Act. The appellants will be entitled to adjust the advance payment made with interest thereon at 15% PA from the date of such payments to 13.9.2000 towards the compensation payable. Parties to bear their respective costs.

B.B.B Appeals partly allowed.