

taken into consideration all the relevant factors while appointing respondent No.4 as Lambardar.

6. Consequently, finding no merit in this writ petition, same is hereby dismissed.

Petition dismissed.

SUPREME COURT OF INDIA

Before: Dr. AR. Lakshmanan & Altamas Kabir, JJ.

Civil Appeal No. 1136 of 2007 (Arising Out of SLP (C) Nos. 16533-16534 of 2005) Decided on 02.03.2007

Nelson Fernandes and Others

Appellants

Versus

Special Land Acquisition Officer, South Goa & Others

Respondents

WITH

CIVIL APPEAL NO.1137 OF 2007 (Arising Out of SLP (C) Nos. 16503-16504 OF 2005)

A. Land Acquisition Act, 1894 (1 of 1894), Section 18, 23 – Acquisition of land -- Market value – Valuer's report -- Future prospect of the development of the land should be considered – Injury that the person is likely to sustain due to loss of his future earnings from the said land as well as assessment of damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession is also required to be considered – Government approved Valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

In our opinion, the High Court has adopted a rough and ready method for making deductions which is impermissible in law. We have already noticed the valuers report. No reason whatsoever was given by the Reference Court or by the High Court as to why the report of the valuer and her evidence cannot be relied on. In our opinion, the compensation awarded by the High Court had no basis whatsoever and was not supported by cogent reasons and that it did not consider the future prospect of the development of the land in question. The High Court also did not assess the injury that the appellant is likely to sustain due to loss of his future earnings from the said land and also did not assess the damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession. The Division Bench of the High Court has miserably erred in passing the order impugned thereby reducing the rate of compensation from Rs. 192/- to Rs. 38/- and in utter mis-reading of the evidence on record and acted in a flagrant error of law and facts. In our view, the orders passed by the

Division Bench resulted in manifest injustice being caused to the appellants. The High Court also erred in passing the order by holding that the opinion of the government approved valuer was not based on any opinion method of valuation but solely on the basis of facilities available to the land. In our view, the High Court ought to have appreciated that the government approved valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

(Para 27)

B. Land Acquisition Act, 1894 (1 of 1894), Section 18, 23 – Acquisition of land -- Market value – Deduction for development charges -- Acquisition is for laying a railway line – Deduction of development charges thereof would not arise -- In view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, compensation can reasonably be fixed with deduction of 20% alongwith all other statutory benefits such as solatium, interest etc.

(Para 29)

Cases referred:

1. Prithvi Raj Taneja (dead) by LRs v. State of Madhya Pradesh and Anr., 1977 (1) SCC 684.
2. Printer House Pvt. Ltd. v. Mst. Saiyadan (deceased) by LRs and Others, 1994 (2) SCC 133.
3. Viluben Jhalejar Contractor (D) by Lrs. v. State of Gujarat, 2005(1) L.A.R. 611 = JT 2005(4) SC 282.
4. Basavva (Smt.) and Ors. v. Spl. LAO and Ors., JT 1996 5 SC 580.
5. Hasanali Khanbhai & Sons & Ors. v. State of Gujarat, 1995(2) SCC 422.
6. L.A.O. v. Nookala Rajamallu, 2003(10) Scale 307.

JUDGMENT

DR. AR. LAKSHMANAN, J. – Leave granted.

CIVIL APPEAL NO. 1136 OF 2007

Arising Out of SLP (C) NOS. 16533-16534 of 2005

2. The above appeal was filed against the final judgment and order dated 01.03.2005 passed by the Division Bench of the Bombay High Court at Goa in First Appeal Nos. 66 of 2002 and 75 of 2002 arising out of Land Acquisition Case No. 58 of 1996 wherein the Division Bench rejected the claim of compensation of the appellants for acquisition of the land

belonging to them of Rs.750/- per sq. metre and reduced the rate of compensation from Rs.192/- per sq. metre as awarded by the District Judge to Rs.38/- per sq. metre after re-appraising the evidence and substituting their own finding of facts in place of the findings of the District Judge.

3. In the above case, notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the 'Act' for short) was published by the Special Land Acquisition Officer South Goa for acquisition of land for construction of new BG line for the Konkan Railways. The notification was published in the local dailies on 5th and 6th August, 1994. Under Section 6 of the Act a declaration stating the government's intention to acquire the land for the purpose of construction of new broad gauge line of the Konkan Railways between Roha and Mangalore was made on 09.11.1994. An award was passed by the Special Land Acquisition Officer granting compensation to the appellant @ Rs.4/- per sq. metre and Rs.59,192/- for trees standing on the said land. The appellant on 06.12.1996 made an application before the Land Acquisition Officer to refer the matter for determination of compensation under Section 18 of the Act and claimed a sum of Rs.89,06,250/- for the acquired land and Rs.71,000/- for the trees standing thereon. Reference under Section 18 was made by the Special Land Acquisition Officer to District and Sessions Judge on 28.02.1996 and reference under Section 19 of the Act was made by the Special Land Acquisition Officer, Margao. Evidence was adduced by the appellant - Mr. Nelson Fernandes before the Addl. District Judge. Two sale deeds dated 13.12.1993 are annexed and marked as Annexure-P5. Evidence was adduced by Government Approved Valuer - Pratima Kumar on the valuation report submitted by her before the Addl. District Judge, Margao on 15.12.2000. Evidence was adduced by Bartoleuma Gama on the sale of land by him @ Rs. 449/- per sq. metre by sale deed being Ex.AW1/B was annexed and marked as Annexure-P7.

4. The Addl. District Judge passed an award increasing the rate of compensation from Rs. 4/- per sq. metre to Rs.192/- per sq. metre, but did not give any compensation for the trees standing on the said land. First Appeal Nos. 66 and 75 of 2002 were preferred by both the appellants and the respondents before the High Court against the judgment and award dated 29.08.2001 of the learned District Judge.

5. First Appeal Nos. 66 of 2002 and 75 of 2002 were disposed of by the Division Bench of the High Court by rejecting the appeal of the appellants and allowing the appeal of the respondents. The Division Bench rejected the report of the valuer and the findings of the District Judge and reduced the rate of compensation from Rs. 192/- per sq. metre as awarded by the District Judge to Rs. 38/- per sq. metre. Hence the above appeal.

CIVIL APPEAL NO.1137 OF 2007

(Arising Out of SLP (C) NOS. 16503-16504 OF 2005)

6. Leave granted.

7. The above appeal was filed against the final judgment and order dated 09.03.2005 passed by the Division Bench of the Bombay High Court at Goa in First Appeal Nos. 63 and 67 of 2002 arising out of Land Acquisition Case No. 391 of 1995 wherein the Division Bench rejected the claim of compensation of the appellants for acquisition of the land belonging to them of Rs.470/- per sq. metre and reduced the rate of compensation from Rs.108/- per sq. metre as awarded by the District Judge to Rs.27/- per sq. metre after re-appraising the evidence and substituting their own finding of facts in place of the findings of the District Judge.

8. In the above case, notification under Section 4 of the Act was published by the Special Land Acquisition Officer, for acquisition of land for construction of new BG line for the Konkan Railways. The notification was published in the local dailies. Declaration was made on 16.06.1992 and award was passed on 24.01.1995 granting compensation to the appellant @ Rs. 4/- per sq. metre and Rs.82,282/- for trees standing on the land. The appellant on 27.03.1995 made an application before the Land Acquisition Officer to refer the matter for determination of compensation under Section 18 of the Act and claimed a sum of Rs. 470/- per sq. metre for the acquired land and in support of their contention relied on 3 sale deeds of adjoining plots, one award and a report of a valuer. Reference under Section 18 was made by the Special Land Acquisition Officer to the District and Sessions Judge on 06.09.1995. Evidence was adduced by the appellant before the District Judge on 30.02.1999 and 24.09.1999. Evidence was adduced by Government Approved Valuer - Pratima Kumar on the valuation report submitted by her before the Addl. District Judge, Margao on 15.12.2000. Evidence was adduced by Antonio Rosario Rodrigues on the purchase of land by him at Rs. 480/- per sq. metre by sale deed being Ex.AW1/F was marked as Annexure-P7. Likewise, evidence adduced by Maria Piea Carvalho on the purchase of land by her at Rs.200/- per sq. metre by sale deed being AW1/E was marked as Annexure-P8.

9. The Addl. District Judge passed an award increasing the rate of compensation from Rs.4/- to Rs.108/- per sq. metre but did not give any compensation for the trees standing on the said land.

10. First Appeal No. 67 of 2002 was preferred by the appellants and 63 of 2002 was preferred by the respondents before the Bombay High Court at Goa against the judgment and award dated 29.08.2001 of the District Judge. Both the appeals were disposed of by the Division Bench by rejecting the appeal of the appellants and allowing the appeal of the respondents. The Division Bench rejected the report of the valuer and the findings of the District Judge and reduced the rate of compensation from Rs. 108/- per sq. metre as awarded by the District Judge to Rs. 27/- per sq. metre. Hence the above appeal.

11. We heard Mr. Dinesh Dwivedi, learned senior counsel for the appellant and Mr. Atul Y. Chitale, learned counsel for the Konkan Railways.

12. Though notice was served on the first respondent - Special Land

Acquisition Officer South Goa and service of notice is complete, there is no representation on behalf of respondent No.1. However, Mr. Atul Y. Chitale, learned counsel appeared and made his submissions.

13. Mr. Dinesh Dwivedi, learned senior counsel appearing for the claimants submitted that the Division Bench was under the obligation to satisfy the conditions imposed under Section 23 of the Act for the purpose of determining the amount of compensation to be awarded to the appellants and that the Court is bound and obliged to ensure that its judgment is in conformity with the provisions of the statute. He further submitted that Court cannot reject the opinion of an expert and substitute its own opinion in place instead of the same. Likewise, the Court has committed an error in regard to the rate of compensation to be awarded for acquisition of land after rejecting all the evidence on record including the opinion of expert. It is also submitted that Court cannot fix separate rate of compensation for similarly placed lands and that the Court has to consider the sale of land in the locality and the facilities available thereon.

14. Mr. Dwivedi, learned senior counsel took us through the pleadings and the grounds alleged in the grounds of appeal and submitted that while fixing the rate of compensation, the District Judge did not consider that the land in question was situated at a place which is of high commercial value and is well connected to other cities and that the High Court has failed to appreciate that the compensation awarded by the Courts below has no basis whatsoever and was not supported by cogent reasons. Likewise, the Court did not consider the future prospect of development of the land in question and also failed to appreciate that the trees grown by the appellants on the land in question were of high value at the time of awarding the compensation. It is also submitted that the High Court has failed to appreciate the documentary evidence submitted in support of the claim made by the appellants. According to the learned senior counsel, the High Court ought to have enhanced the compensation awarded to the appellant in view of the evidence adduced by it. The High Court also did not assess the damages that the appellant is bound to sustain by such acquisition. The High Court also erred in passing the order impugned holding that the appellant was entitled to compensation @ Rs.38/- per sq. metre and that the Division Bench erred in passing the order impugned thereby reducing the rate of compensation from Rs.192/- to Rs.38/- without considering the prayer of the appellant to fix the rate of compensation at Rs.750/-. Thus, it is argued that the High Court has erred in passing the order impugned in utter mis-interpretation of the evidence on record and that the High Court by the impugned order rejected the just and equitable claim of the appellant and acted in a flagrant error of law and facts which, according to the appellant, resulting in manifest injustice being caused to the appellant. The High Court also erred in holding that the appellant's land was hilly and deduction of 65% ought to have been made by the learned Judge and not 33% as done by him. Likewise, the learned Judges of the Division Bench have also erred in holding that the acquired land had lost its significance after construction of a bridge over the Zuari River.

15. Similar argument was also advanced by the other counsel in the other connected appeals. It was submitted that the High Court failed to appreciate that the land in question was well developed and the construction thereon and the same was acquired and that the High Court has failed to appreciate that the compensation awarded by the Courts below had no basis whatsoever and was not supported by cogent reasons. It was further argued that the Court did not consider that the land in question was substituted at a place which is of high commercial value and well connected to other cities. Concluding his arguments, learned senior counsel submitted that the High Court at Goa has erred in passing the order impugned thereby reducing the rate of compensation from Rs.108/- as an order passed by the learned District Judge to Rs. 27/- without considering the prayer of the appellant to fix the rate of compensation at Rs. 470 per sq. metre. It was also submitted that the High Court has erred in passing the order impugned without any application of mind and also by rejecting the just and equitable claim of the appellant and acted in a flagrant error of law and facts. Therefore, it was submitted that the order passed by the High Court is erroneous and resulting in manifest injustice being caused to the appellant.

16. Mr. Atul Y. Chitale, learned counsel appearing for respondent No.2 - Konkan Railways submitted that the land acquired by the State Government for KRCL project in question is for public purpose and not for any commercial exploitation and for construction of new broad gauge line for Konkan Railway adjacent to the land already acquired for the same purpose earlier. He further submitted that the acquired land is 11,875 sq. metres, hilly area, about 30 metres from the road level and is undeveloped land as most of the area is a low lying area and that the topography of the acquired land in question are such that a major part of the land is of Bharad type with fess paddy fields cultivated for both the seasons, part of the land is under coconut cultivation and some portion is under water and to develop the land would be expensive, as the land would require to be filled up and then developed. According to learned counsel, the Land Acquisition Officer, in his award, took into consideration the following in fixing the rates:

- 1) prevailing conditions of the land;
- 2) rates awarded recently for such types of land and approved by the Government and;
- 3) restrictions under Goa, Daman and Diu Agricultural Tenancy Act, 1964.

He further submitted that the Land Acquisition Collector arrived at the valuation of the trees, after considering the fact that the valuation had been done by the technical staff of the Directorate of Agriculture and Deputy Conservator of Forests and, therefore, the appellant would be entitled to the market value of the land as on the date of publication of the notification under Section 4 of the Act i.e. on 01.08.1994 and that the rate of land approved by the Government under Section 11(1) of the Act in respect of untenanted Bharad/garden in orchard zone types of land in village Cortalim

as on 17.01.1995 was Rs. 4/- per sq. metre. He then submitted that the valuation report of Mrs. Pratima Kumar cannot be relied upon by the appellant as she is not competent to value the land in question and that the valuation of Rs.500/- per sq. metre arrived at by the valuer is not based on any known method of valuation, but is solely on the basis of the facility available. Further no reasons have been given in support of the opinion arrived at by the valuer.

17. Learned counsel also submitted that the compensation payable to the appellant for the acquired land cannot be based on the average price of the two sale deeds dated 11.12.1993 relied upon by the appellant as the sale deed dated 11.12.1993 pertain to plots that are smaller in size i.e. Rs.365/- sq. metre and Rs.275/- sq. metre. This apart, plots were not developed by making roads, drainages etc. as required under the planning law and sub-divisions made were also approved by the Town and Country Planning Department as well as the village panchayat. Hence, the price at which the plots were sold i.e. at Rs.250 per sq. metre cannot be considered for the purpose of valuation of the acquired land. Further, the price fetched for smaller plots cannot be applied to lands covering large area as held by this Court in various judgments and, in particular, **1977 (1) SCC 684 Prithvi Raj Taneja (dead) by LRs Vs. State of Madhya Pradesh and Anr.** It is further argued that the acquired land in question is located at a distance of 15 kms. from the airport, 20 kms. from Vasco city, 18 kms. from Panaji, 3 kms. from Cortalim market and there is no approach road to the location.

18. It was further submitted that the comparable sales method of valuation of land can be adopted in case where the acquired land in question is being compared to the similar type of acquired land, made pursuant to the same preliminary notification. But if any of the factors such as location, shape, size potentiality or tenure of the acquired land widely differs from the other plots then the market value of the acquired land has to be determined independently of the others as held by this Court in **Printer House Pvt. Ltd. vs. Mst. Saiyadan (deceased) by LRs and Others, 1994 (2) SCC 133.** It was also submitted that while determining the amount to be awarded for the acquired land in the year 1994, the LAO while passing the award dated 25.08.1995, in terms of the provisions of the Act had considered:

- a) the area and the nature of the acquired land,
- b) the objects filed by the petitioner,
- c) damages sustained by the petitioner,
- d) inspected the land under acquisition to ascertain the advantages and disadvantages from the valuation point of view,
- e) the market value of trees, structure etc.
- f) the provisions of the Goa, Daman and Diu Agricultural

Tenancy Act, 1964 as applicable to the Acquired land,

- g) the rate of land approved by Government under section 11(1) of the said Act in respect of various types of land in the aforesaid villages which are as follows:

Letter of Dy. Collector (L.A) of Collectorate of South Goa No.	Date	Village	Type of Land	Rate per Sq. Mtrs. Rs. Ps.
2/4/94-CVS/57-LAR/418	19.09.1994	Sancoale	Tenanted Double Cropped Paddy	9.00
			Coconut Bharad Marshy/Under Water	4.00 2.00
2/4/94-CVS/90-LAR/474	24.10.1994	Sancoale (Addl.)	Tenanted Double Cropped Paddy	9.00
2/4/94-CVS/65-LAR/12	17.01.1995	Cortalim	Untenanted Bharad/ Garden in Orchard Zone	4.00

19. According to the learned counsel, the High Court, after considering all the above-mentioned facts, had correctly made the deduction, that the land in question is an undeveloped stretch of land which is held by the tenants and has no marketable title and cannot be used for any other purpose other than what it was being used for now and that no approvals to develop the land has been taken from the appropriate authority. It is also submitted that for laying of the track, respondent No.2 had to carry out the filling of the acquired land up to 6 metre of height. Concluding his argument, learned counsel for the Konkarn Railways submitted that the High Court, after hearing both the parties and after considering the evidence on record had correctly reduced the compensation awarded by the ADJ from Rs. 192/- per sq. metre to Rs. 38/- per sq. metre for the acquired land by a well-reasoned judgment and order and that in view of the above, this Court should dismiss the civil appeal filed by the appellants with costs.

20. We have carefully considered the rival submissions with reference to the pleadings, documents and annexures filed in the instant case. In the instant case, no document whatsoever was filed by both the respondents.

21. In determining the amount of compensation to be awarded, the LAO shall be guided by the provisions of Sections 23 and 24 of the Act. As per Section 22 of the Act, the market value of the land has to be determined at the date of publication of notice under Section 4 of the Act i.e. 25.08.1994. As per Section 24, the LAO shall also exclude any increase in the value of land likely to accrue from use to which it will be put once acquired. The market value of the land means the price of the land which a willing seller is reasonably expected to fetch in the open market from a willing purchaser. In other words, it is a price of the land in hypothetical market. During the site inspection, it has been observed that

the land under acquisition is situated in Sancoale and Cortalim village adjacent to the land already acquired for the same purpose earlier.

22. In the instant case, two sale deeds were relied upon dated 13.12.1993 which is 8 months before Section 4(1) notification. The property was sold at Rs. 250 per sq. metre. We have perused the sale deed and the recitals in the document. The property is an extent of Rs. 385/- sq. metre as shown in the plan attached. Thereafter, the owners as recited in the partition deed developed the said property by making roads, drainage etc. as required under the planning laws which were approved by the town and country planning authorities on 22.10.1993 and by the village panchayat by their license VPC/4 93-94/754 dated 15.11.1993. The land in question is more particularly described in the second schedule. An extent admeasuring 385 sq. metre was sold for a total price of Rs. 96,250/- which was the then market value. Another sale deed was sold on the same date admeasuring around 257 sq. metres as shown in the plan attached. It is stated in the deed that all the co-owners have developed the property by making roads, drainage etc. as required under the standing laws. The total sale consideration is Rs.64,250/- The Government registered valuer Mrs. Pratiba Kumar was examined as witness AW 2. She is also a panel valuer for LIC, GIC and Bank of India. She has prepared the valuation report at the request of the appellants. According to the report, the acquired land admeasures 11,875/- sq. metres and the said property is a joint property of the applicants which is situated close to the ferry point at Cortalim and it is abutting the public road and that the acquired land abuts the acquired land of LAC 391/95 which touches the public road which was acquired for Konkan Railways broad gauge line. The acquired land is situated in settlement zone S2 police station, petrol pump, salgaonkar ship yard, government warehouse within a range of about 200 metres and market, school, bank etc. are within a range of 1 km and in the year 1994 and even prior to a point when electricity, telephone and water facility were available to the acquired land. After taking into consideration all the factors mentioned in her report, she has arrived at the market value of Rs. 500/- per sq. metre. Nothing has been elicited from her in the cross-examination in regard to her statements made in the chief examination. It is thus seen from the above report that the approved valuer, taking into consideration the location of the property amenities available and also the cost of similar properties in the locality, has arrived at the present fair market rate of the land which was fixed at Rs. 500 per sq. metre.

23. The Addl. District Judge South Goa considered the 2 sale deeds relied upon by the appellants. Both the sale deeds are dated 13.12.1993 Ex AW1/B and Ex AW1/C. The executants of the sale deed was examined as AW3 and AW1. According to them, the land was sold @ Rs. 250/- per sq. metre which is situated about 3 kms away from the acquired land and that the second sale deed is in respect of Rs. 257 sq. metres and also situated at a distance of about 3 kms. Both the sale deeds are about 8 months prior to the acquisition of the land. Both the lands were sold @ Rs. 250/- per sq. metre.

24. It was argued that small extent of land sold cannot be taken into account. According to the District Judge deduction has to be made where there is larger area of undeveloped land under acquisition provision has to be made for providing the minimum amenities of town line such as water connections, well laid out roads, drainage facility, electricity connections etc and that the process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on par with the developed lands.

25. In the instant case, taking the average of both the sale deeds Ex. AW 1/B and AW 1/C the District Judge made a deduction @ 33% for the development charges and on deduction of 33% from Rs. 250/- per sq. metre the actual price of the acquired land would be approximately Rs. 192/- per sq. metre which, according to the opinion of the District Judge would be reasonable for the acquired land. By holding so, he passed the following Award.

“Award

This compensation awarded by the Land Acquisition Officer is enhanced to Rs. 192/- per sq.mt. The respondents shall pay to the applicants the said compensation in addition to proportionate solatium charges on the amount thereof and the interest at the rate of 9% during the period of one year from the date of possession of the land delivered to the respondents in terms of section 28 of the Land Acquisition Act and thereafter at the rate of 15% per year under section 28 of the said Act from the date of expiry of the period of one year till the actual payment of the whole amount of compensation plus 12% interest over and above the market value of the land from the date of notification under section 4 of the Act up to the date of the award or taking possession whichever is earlier in terms of section 1A of section 23 of the LA Act. The amount already paid shall be adjusted against the compensation awarded and the applicants shall be entitled to the refund of the court fee paid by them and the costs of Rs. 1000/- to be paid by the respondents.”

26. The High Court, in para 10 of its judgment, however, held that the District Judge was not justified in principle to take an average of the price of two sale deeds and apply the same for fixing the compensation payable to the claimants. The High Court held that the two sale deeds could be used as a guide for the purpose of fixing the compensation to the acquired land and the same could be used but by making further deductions. According to them, to carry out the development of such land which was not at one level the applicant would have to spend a considerable amount towards the development, namely, level terracing roads etc. and, therefore, considering the nature of the land which was hilly at least a deduction of 65% ought to have been taken by the Addl. District Judge and not 33% as done by him. Again, the High Court was of the view that the District Judge ought to have made a further deduction of at least 10% since the distance between the acquired land and the plots was about 3 kms. Further, the High Court held that the prices fetched from small plots cannot be applied

to the lands covering large area and, therefore, a further deduction ought to have been made on this ground of at least of 10%. The High Court, therefore, held that considering the location of the acquired land vis-à-vis its nature and the plot of the sale deeds, the District Judge ought to have made a deduction of at least 85% and in view of the said deduction, the price of the acquired land works out to Rs. 37.50 which is rounded off to Rs.38/- per sq. metre. A further direction was issued that the compensation paid towards the trees must be adjusted from the compensation fixed for the lands.

27. In our opinion, the High Court has adopted a rough and ready method for making deductions which is impermissible in law. We have already noticed the valuers report. No reason whatsoever was given by the Reference Court or by the High Court as to why the report of the valuer and her evidence cannot be relied on. In our opinion, the compensation awarded by the High Court had no basis whatsoever and was not supported by cogent reasons and that it did not consider the future prospect of the development of the land in question. The High Court also did not assess the injury that the appellant is likely to sustain due to loss of his future earnings from the said land and also did not assess the damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession. The Division Bench of the High Court has miserably erred in passing the order impugned thereby reducing the rate of compensation from Rs. 192/- to Rs. 38/- and in utter mis-reading of the evidence on record and acted in a flagrant error of law and facts. In our view, the orders passed by the Division Bench resulted in manifest injustice being caused to the appellants. The High Court also erred in passing the order by holding that the opinion of the government approved valuer was not based on any opinion method of valuation but solely on the basis of facilities available to the land. In our view, the High Court ought to have appreciated that the government approved valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

28. Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgment of this Court of **Viluben Jhalejar Contractor (D) by Lrs. Vs. State of Gujarat reported in 2005(1) L.A.R. 611 = JT 2005 (4) SC 282**. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges. In the above case, the lands were acquired because they were submerged under water of a dam. Owners claimed compensation of Rs. 40/- per sq. ft. LAO awarded compensation ranging from Rs. 35/- to Rs. 60/- per sq. mtr. Reference Court fixed the market value of the land at Rs. 200/- per sq. mtr. and after deduction of development charges, determined the compensation @ Rs. 134/- per sq. mtr. In arriving at the compensation, Reference court placed reliance on

the comparative sale of a piece of land measuring 46.30 sq. metre @ Rs. 270 per sq. mtr. On appeal, the High Court awarded compensation of Rs. 180/- per sq. mtr. in respect of large plots and Rs. 200/- per sq. mtr. in respect of smaller plots. On further appeal, this Court held that since the lands were acquired for being submerged in water of dam and had no potential value and the sale instance relied was a small plot measuring 46.30 sq. mtr. whereas the acquisition in the present case was in respect of large area, interest of justice would be subserved by awarding compensation of Rs. 160/- per sq. mtr. in respect of larger plots and Rs.175/- per sq. mtr. for smaller plots. In **Basavva (Smt.) and Ors. Vs. Spl. LAO and Ors. reported in JT 1996 5 SC 580**, this Court held that the purpose by which acquisition is made is also a relevant factor for determining the market value.

29. We are not, however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in **Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, 1995 2 SCC 422** and **L.A.O. vs. Nookala Rajamallu, 2003 (10) Scale 307** had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed. I.A. No. 1 of 2006 for substitution is ordered as prayed for.

Civil Appeal No. 1137 of 2007

(Arising Out of SLP (C) Nos. 16503-16504 of 2005)

30. In this case, the LAO awarded compensation to the appellant @ Rs 4/- per sq. mtr. and Rs.82,282/- for trees standing on the said land. The appellants claimed a sum of Rs. 470/- per sq. mtr. for the acquired land and in support of their contention relied on 3 sale deeds of adjoining plots, one award and a report of a valuer. The District Judge in accordance with the rate of compensation from Rs.4/- to Rs.108/- but did not give any compensation for the trees standing on the land. In the first appeal preferred by the appellant and the appeal preferred by the respondents, the High Court against the judgment and award dated 29.08.2001 of the District Judge rejected the appeal of the appellants and allowed the appeal of the respondents. The Division Bench rejected the report of the valuer

and findings of the District Judge and reduced the rate of compensation from Rs. 108/- as awarded by the learned District Judge to Rs. 27/-. This case also stands on the same footing as that of the other appellant in SLP (C) Nos. 16533-16534 of 2005. Therefore, they are also entitled to compensation on par with the other appeal. In this case, the appellant adduced two sale deeds AW1F and AW1E on the purchase of land by him at Rs. 480 per sq. mtr. and Rs. 200 per sq. mtr. respectively. The Government valued approver also submitted his report and also deposed before the Court. The land in question is also acquired for the same purpose. Therefore, the appellant in this case is also entitled to the same compensation at Rs. 250/- per sq. mtr. with deduction of 20%. The appellant will be entitled to compensation for the trees standing thereon at Rs. 82,232/- as justified by the L.A.O. The appellant will also be entitled to all the other statutory benefits such as solatium, interest etc. Both the appeals are ordered accordingly. Since the acquisition was made under Section 4(1) notification and the matter was pending from the year 1996 the appellant shall be entitled for payment of compensation now fixed by this Court together with solatium, interest and other statutory benefits as permissible under law and that the compensation and other payment shall be made within 3 months from today after adjusting the payments which have already been made. No costs.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Ashutosh Mohunta, J.

Civil Writ Petition No. 16622 of 1996

Decided on 05.07.2006

Jasmer Singh Jaijee and others

Petitioners

Versus

The Financial Commissioner, Punjab and others

Respondents

For the Petitioners: Mr. S.C. Kapoor, Senior Advocate with Mr. Vikas Suri, Advocate.

For the Respondents: Mr. C.M. Munjal, Addl. A.G. Punjab, Mr. R.S. Mittal, Sr. Advocate with Mr. Arun Palli, Advocate.

A. Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (Act No. 3 of 1953), Section 2, 3 – Occupancy tenants – Proprietary rights – A person shown to be in possession of the land in dispute as an occupancy tenant in the Jamabandi for the year 1949-50 -- Continued as such in the Jamabandies and the Khasra Girdawaries uptill the years 1995-96 – Municipal Committee has depicted him, being in possession of the