argument, submitted by the counsel. Learned Financial Commissioner, in our view, has rightly come to the conclusion that the authorities, while determining the date of possession have to rely upon the khasra girdawari, which exist on the date of issuance of the Press Note. Neither an authority can be permitted to rely upon the corrected khasra girdawari nor such an argument could have been accepted that possession of the appellant was much prior to the cut off date. In para 6 of the order, passed by the learned Financial Commissioner, it has been recorded that from the revenue record, it is quite clear that the respondent came in possession of the land in dispute in Rabi 1979. Prior to that, it has been in the occupation of his mother-in-law Smt. Parbati. The correction of khasra girdawari secured by the respondent after the issue of Press Note had to be ignored under Rule 3 of the Punjab Package Deal Properties (Disposal) Rules, 1976. The finding recorded by the Sales Commissioner as well as the Chief Sales Commissioner about possession of the appellant on the disputed land prior to Rabi 1978 was held to be wrong. Thus, in our opinion, the learned Financial Commissioner has been right, while coming to the aforesaid conclusion. Even if the appellant is held to be in possession of the disputed land prior to Rabi 1978, he was not entitled for allotment of the same under the Punjab Package Act, because the disputed land is not a package deal property vesting in the State Government, but it is an evacuee property, which is to be dealt with and disposed of in accordance with the provisions of the Displaced Persons Act. Under Section 2 (1-A) of the Punjab Package Act, the package deal property has been defined as the surplus evacuee property taken over by the State Government under the letter of the Central Government, excluding such property as may be required for transfer or allotment, by way of compensation to a displaced person, as defined in the Displaced Persons Act and rural agricultural land required for similar allotment to a displaced person of non-Punjabi extraction in pursuance of the directions of the Central Government given under Section 32 of the Displaced Persons Act. Such property has been recorded under the ownership of the Provincial Government. On this account also, the appellant has not claimed the land in question.

9. In view of above, we do not find any illegality in the order passed by the learned Single Judge.

10. Dismissed.

Appeal dismissed.

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SUPREME COURT OF INDIA

Before: Asok Kumar Ganguly & Swatanter Kumar, JJ.

Civil Appeal Nos.7496-7497 of 2005 Decided on: 05.05.2011

Trishala Jain & Anr. Appellant

Versus

State of Uttaranchal & Anr. Respondents

Alongwith

Civil Appeal Nos.7498-7499 of 2005, State of Uttaranchal & Anr. v. Trishala

Jain & Anr.,

Civil Appeal No.1122 of 2011, State of Uttaranchal & Anr. v. Jitendra Kumar etc. and

Civil Appeal No.3613 of 2008, Smt. Krishna Devi and Others v. State of Uttaranchal & Anr.

For the Appellants: R.S. Hegde, Girish Ananthamurthy, P.P. Singh, Braj Kishore Mishra, Ms. Aparna Jha, Abhishek Yadav, Vikram Patralekh, Satyajit A. Desai and Som Nath Padhan, Advocates.

For the Respondents: Ms. Rachna Srivastava, Jitendra Mohan Sharma and Vijay K. Jain, Advocates.

A. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value -- Sale instance -- Sale deeds executed in favour of the family members or persons known to the claimants just about two months prior to the issuance of the notification u/s 4(1) are liable to be ignored.

It is not in dispute that these sale deeds have been executed in favour of the family members or persons known to the claimants. These are circumstances and evidence which clearly indicate that the sale instances relied upon by the claimants are result of collusion between these parties. There was clear attempt on the part of the claimants to execute sale deeds for the purpose of hiking up land price just before acquisition to get more compensation. These two sale instances which have been executed just about two months prior to the issuance of the notification under Section 4(1) stand out as transactions which are sham, collusive, lack bona fide and have been executed with the intention to raise the price of the land in question with the pretence of it being actual market value. We are unable to find any infirmity in this view of the Reference Court in LA Case No. 121 of 1994 which has rightly been upheld by the High Court.

All the claimants in the present appeals have primarily relied upon the sale instances shown at serial Nos. 109 and 110. These sale instances were not relied upon by the SLAO while making the award and were also rejected by the Reference Court in LA Case No.121 of 1994. This view of the Reference Court was upheld by the High Court vide its judgment in First Appeal Nos. 60-63 of 2001 which is subject matter of the appeal before this Court in C.A. No. 3613 of 2008. We have already noticed that as per these sale instances the value of the land comes to a rate of Rs. 32,72,603 and Rs. 34,87,648 per acre respectively. While accepting the concurrent view of the Reference Court and the High Court subject matter of CA No. 3613 of 2008, we have already held that these sale instances are liable to be ignored and have rightly been ignored by the Courts below. Besides the fact that these sale deeds are executed between the members of the family, the claimants had full knowledge of the Government's intention to acquire these lands, for the purpose specified, even prior to issuance of notification under Section 4(1) of the Act through Mr. M.K. Jain. These are reasons enough to doubt the consideration paid in these sale deeds.

The SLAO, in his Award, has taken note of 140 sale instances immediately preceding the issuance of Notification under Section 4(1) of the Act. The Reference Court, in LA Case No. 121 of 1994, specifically recorded that the highest value reflected in these 140 sale instances is Rs. 12,55,550.50 per acre, except in sale instances at serial Nos. 109 and 110 produced by the claimants. It is interesting to note that the claimants did not produce any other evidence except these two sale instances which had been executed between the members of the family and contained unreasonably high price of the land. There is tremendous gap between the prices of the land fetched

in all other sale deeds on one hand, the highest being Rs. 12,55,550.50 per acre and that in sale deeds executed by the claimants between themselves on the other hand which is Rs. 34,87,648 per acre, for sales effected within a span of 2- 3 days for similarly situated lands in the same village. It certainly arouses suspicion in the mind of the Court as to the intention behind execution of these sale deeds. Ex facie they appear to have been executed to hike up the price of the land just before the issuance of Notification under Section 4(1) of the Act. If considered from the point of view of a reasonable man, all these circumstances clearly fall beyond the ambit of coincidence and appear to have been 'managed' to achieve the end of receiving higher compensation. In light of these facts and the reasons already recorded, we have no hesitation in holding that the sale instances at serial Nos. 109 and 110 produced by the claimants are liable to be ignored for the purposes of fixation of market value of the acquired land as these transactions are sham and lack bona fide.

(Para 14, 35,36)

B. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value -- Sale instance -- Vendor or vendee of sale deed had not been examined to prove them in Court -- Sale instances cannot be rejected on that ground. Cement Corporation of India's case (2004)8 SCC 270 relied.

Corollary to the discussion under this head is the question that whether the Reference Court, in LA Case No. 121 of 1994, was right in law in rejecting the two sale instances for the reason that vendor or vendee had not been examined to prove them in Court and thus these sale instances were inadmissible in evidence. While recording such a finding the Reference Court had relied upon the judgment of this Court in the case of A.P. State Road Transport Corporation, Hyderabad v. P. Venkaiah, [(1997) 10 SCC 128]. This issue need not detain us any further as it is no longer *res integra* that the judgment of this Court in the above case has been overruled by a Constitution Bench of this Court in the case of Cement Corporation of India v. Purya, [(2004) 8 SCC 270]. Thus, in our view, these two sale instances cannot be rejected on that ground after the dictum of the Constitution Bench in the above case. Though, this observation is subject to the other findings recorded by us in this judgment.

(Para 16)

C. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value -- Sale instance – Law of deduction – Not possible to state precisely the exact deduction which could be made – Deduction is to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects -- It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the acquisition relates to a large tract of land -- Deduction can also be applied on account of wastage of land -- It is neither possible nor appropriate to stricto sensu define a class of cases where the Court would not apply any deduction -- The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of 'no deduction'.

The law with regard to applying the principle of deduction to the determined market value of the acquired land is quite consistent, though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. In other words, it is not possible to state precisely the exact deduction which could

be made uniformly applicable to all the cases. Normally the rule stated by this Court consistently, in its different judgments, is that deduction is to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects. It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the acquisition relates to a large tract of land. In addition thereto, deduction can also be applied on account of wastage of land. This Court in the case of Land Acquisition Officer, Kammarapally Village v. Nookala Rajamallu [(2003) 12 SCC 334], had also observed that it is advisable to apply some deduction on account of exemplars of plots of smaller size relied upon by way of evidence by the parties. This is the normal rule stated by the Court but is not free of exceptions.

Similarly, it is neither possible nor appropriate to *stricto sensu* define a class of cases where the Court would not apply any deduction. This again would be dependant upon the facts and circumstances of a given case. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of 'no deduction'. Furthermore, where the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features comparable to the proposed acquired land, including that of size, is another category of cases where principle of 'no deduction' may be applied. These may be the cases where least or no deduction could be made. Such cases are exceptional and/or rare as normally the lands which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at the time of issuance of notification under Section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes and intents for determining the market value of the land in question.

(Para 18, 19)

D. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value -- Sale instance of smaller size of land – Sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction.

This Court in the case of Bhagwathula Samanna & Ors v. Special Tahsildar & Land Acquisition Officer, [(1991) 4 SCC 506], stated that it is permissible to take into account of exemplars of even small developed plots for determining value of a large tract of land acquired, if the latter is also fully developed with all facilities requiring little or no further development. In the facts and circumstances of that case the Court felt that it was not appropriate to resort to deduction of 1/3rd value of the comparable sale instances as development charges. The Court reiterated the general rule that if market value of a large property is to be fixed on the basis of a sale transaction for smaller property, a deduction is to be made taking into consideration the expenses required for development of that larger tract and make smaller plots within that area and held as under :

> "8. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing

the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case (supra).

11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted."

It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits.

(Para 20)

E. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value -- Plotting has been done only on part of the acquired land and the land is surrounded by colonies like ITBP etc. but, there is no evidence to show that the acquired land itself is developed and is having all the required facilities and amenities -- It may be a case where less deduction may be applied but certainly it is not a case of 'no deduction' -- Deduction of 10% from the market value on account of development charges and other possible expenditures would be justifiable and called for in the facts and circumstances of the present case.

In the present case, there is evidence on record to show that plotting has been done only on part of the acquired land and the land is surrounded by colonies like ITBP etc. but, there is no evidence to show that the acquired land itself is developed and is having all the required facilities and amenities. It may be a case where less deduction may be applied but certainly it is not a case of 'no deduction'. It also cannot be believed, in the absence of specific documentary evidence, that no further development is required on the acquired land. The claimants, on whom the onus lies to prove inadequacy of compensation have not even stated that whether under the relevant laws

they are expected to leave any part of their land open when they are permitted to raise construction on the land in question. Under these circumstances, we are unable to find any infirmity in the approach of the High Court in applying the principle of deduction. In our opinion a deduction of 10% from the market value on account of development charges and other possible expenditures would be justifiable and called for in the facts and circumstances of the present case.

(Para 25)

F. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value – Compensation payable to the claimants has to be computed in terms of Sections 23 and 24 of the Act -- Market value of the land has to be determined at the date of the publication of the notification u/s 4(1) of the Act, after taking into consideration what is stated under Sections 23(1), 23(1A), 23(2) and excluding the considerations stated under Section 24 of the Act -- It is not possible to fix the compensation with exactitude or arithmetic accuracy -- Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation.

Acquisition of land is an act falling in the purview of eminent domain of the State. It essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. It is trite that no person can be deprived of his property save by authority of law in terms of Article 300A of the Constitution of India. The provisions of the Act provide a complete mechanism for 'deprivation of property in accordance with the law' as stated under the Act. Justifiability and fairness of such compensation is subject to judicial review within the confines of the four corners of the Act. Once the lands are acquired under the Act, the persons interested therein are entitled to compensation as per the provisions of the Act. Thus, in the present case the land in question has been acquired under the provisions of a law which specifically provide that acquisition can only be for a public purpose and upon payment of compensation to the claimants in accordance with law. The compensation payable to the claimants has to be computed in terms of Sections 23 and 24 of the Act. The market value of the land has to be determined at the date of the publication of the notification under Section 4(1) of the Act, after taking into consideration what is stated under Sections 23(1), 23(1A), 23(2) and excluding the considerations stated under Section 24 of the Act. More often than not, it is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the persons interested in the acquired land.

(Para 26)

G. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value – Principle of guesstimation -- Principle of guesstimation will have no application to the case of "no evidence"-- This principle is only intended to bridge the gap between the calculated compensation and the actual compensation – Certain principles controlling the application of guesstimate are : (a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to -- (b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence.

Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.

'Guess' as understood in its common parlance is an estimate without any specific information while 'calculations' are always made with reference to specific data. 'Guesstimate' is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time 'guess' cannot be treated synonymous to 'conjecture'. 'Guess' by itself may be a statement or result based on unknown factors while 'conjecture' is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. 'Guesstimate' is with higher certainty than mere 'guess' or a 'conjecture' per se.

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These precedents clearly demonstrate that the Court may apply some guesswork before it could arrive at a final determination, which is in consonance with the statutory law as well as the principles stated in the judicial pronouncements. As already noticed, the guesswork has to be used for determination of compensation with greater element of caution and the principle of guesstimation will have no application to the case of 'no evidence'. This principle is only intended to bridge the gap between the calculated compensation and the actual compensation that the claimants may be entitled to receive as per the facts of a given case to meet the ends of justice. It will be appropriate for us to state certain principles controlling the application of 'guesstimate:

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.

(Para 27-33)

H. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23,24 – Acquisition of land -- Market Value – Small sale instance -- Deduction from -- Land acquired had the potential of being developed for residential or institutional purposes, the same was acquired for construction of a Government Polytechnic Institute – Sale instance is situated at a distance of 1-1/2 furlong from the acquired land cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance – Value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land – 10% deduction is made from the estimated market value of acquired land.

The cumulative effect of the documentary and oral evidence on record is that it is a case of acquisition of land which is situated on a reasonably good location surrounded by developed areas having civic amenities and facilities and further development activity was going on in nearby areas. It was also submitted by the claimants that plotting has already been done on the acquired land and some plots of land have been sold immediately prior to the issuance of the Notification under Section 4(1) of the Act. It is evident that the land acquired had the potential of being developed for residential or institutional purposes and as already noticed, the same was acquired for construction of a Government Polytechnic Institute. Therefore, it is a case where the Court should

apply minimal deduction which will meet the ends of justice and would help in determining just and fair compensation for the land in question. We are of the considered view that 10% deduction from the market value of the acquired land would meet the ends of justice.

It is not in dispute before us that sale instance at serial No. 108 falls in the Revenue Estate of the same Village and as recorded by the Reference Court, in LA Case No. 121 of 1994, it is situated at a distance of 1½ furlong from the acquired land. The acquired land belonging to the claimants forms part of Khasra No.39/2 while, in the same Reveue Estate, the sale instance at serial No. 108 is part of Khasra No. 410. Thus a sale deed related to a land in such proximity of time and distance cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance. Though it relates to the sale of a smaller plot of land but is certainly bigger than the land sold by the claimants between themselves. Its location and potential, if not identical in absolute terms, is certainly comparable for the purposes of determining market value of the land in question. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land it will meet the ends of justice if 10% deduction is made from the estimated market value of the acquired land.

(Para 42,43)

Cases referred:

1. State of U.P. through Collector, Dehradun v. Smt. Trishla Jain, First Appeal Nos. 920-921 of 2001.

2. Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari (1950) 1 SCR 852.

3. A.P. State Road Transport Corporation, Hyderabad v. P. Venkaiah, (1997) 10 SCC 128.

4. Cement Corporation of India v. Purya, (2004) 8 SCC 270.

5. State of Haryana v. Ram Singh, (2001) 6 SCC 254.

6. Land Acquisition Officer, Kammarapally Village v. Nookala Rajamallu, (2003) 12 SCC 334.

7. Bhagwathula Samanna & Ors v. Special Tahsildar & Land Acquisition Officer, (1991) 4 SCC 506.

8. K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer, (1996) 2 SCC 62.

9. Ram Piari v. Land Acquisition Collector, Solan, (1996) 8 SCC 338.

10. Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona, (1988) 3 SCC 751.

11. Hasanali Walimchand (Dead) by L` v. State of Maharashtra, (1998) 2 SCC 388.

12. V. Hanumantha Reddy (Deceased) by L` v. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642.

13. Atma Singh v. State of Haryana, 2008(1) L.A.R. 316 (SC) = (2008) 2 SCC 568.

14. Charan Dass v. Himachal Pradesh Housing & Urban Development

Authority, (2010) 13 SCC 398.

15. Thakur Kamta Prasad Singh (Dead) through LRs v. State of Bihar, (1976) 3 SCC 772.

16. Special Land Acquisition Officer v. Karigowda, (2010) 5 SCC 708.

17. Commissioner of Central Excise, Jaipur v. Rajasthan Spinning and Weaving Mills Ltd., 2007 (12) SCR 703.

JUDGMENT

SWATANTER KUMAR, J. –

1. By this common judgment, we propose to dispose of the afore-noticed six Civil Appeals as they arise from different judgments of the High Court of Uttaranchal but are result of a common Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (in short the 'Act') and thus are based upon similar facts and documentary and oral evidence.

FACTS:

C. A. Nos.7496-7497 of 2005 and 7498-7499 of 2005

2. On 30th January, 1992, the Government of Uttar Pradesh (now the State of Uttaranchal) issued a Notification under Section 4(1) of the Act for acquiring some land for a public purpose, namely the construction of Government Polytechnic Institute in the District of Dehradun. This Notification came to be published in the Official Gazette on 22nd February, 1992. On 18th April 1992, declaration under Section 6(1) of the Act was issued which was published in the Official Gazette on 12th May, 1992 identifying the land admeasuring 12.85 acres for acquisition for the said purpose in village Sewala Kalan, Pargana Kendriya Doon, District Dehradun, out of which lands admeasuring 4.58 acres and 3.031 acres belonged to the first and the second claimant respectively. In furtherance to this Notification, possession of the acquired land was taken on 7th July, 1992. The Special Land Acquisition Officer (in short the 'SLAO') pronounced his award on 8th June, 1993. While determining compensation, the SLAO applied belting system to the acquired land and assessed the market value of the first belt admeasuring 0.56 acres at the rate of Rs. 9,78,223.40 per acre, second belt admeasuring 1.38 acres at the rate of Rs. 6,52,482.27 per acre and for the third belt admeasuring 10.91 acres at the rate of Rs. 4,39,362.70 per acre. However, the claimants, being dissatisfied with the award of the SLAO, filed applications under Section 18 of the Act which in turn came to be referred to the Court of competent jurisdiction (hereinafter referred to as the 'Reference Court').

3. The Reference Court, in LA Case No. 386 of 1993, considered the list of 140 sale instances attached with the award of the SLAO. It noticed that the SLAO had relied on sale instance at serial no. 43 related to land admeasuring 0.094 acre for a total consideration of Rs. 92,000 and assessed the market value of acquired land at the rate of Rs. 9,78,723 per acre before applying the belting system. This sale deed was executed on 10th June, 1991 and the land was from the revenue estate of the same village but at some distance from the acquired land. The Reference Court also noticed the evidence of DW 1, Ram Singh, who had stated that ITBP quarters are located to the north of the acquired land; and to the east of ITBP Colony, is a 20 feet wide passage which

ends on the acquired land. A high tension line of 1100 K.V. also runs near the acquired land. This witness admitted that the land in question was full of residential potentialities. Reliance was also placed upon the statements of PW7 and PW8 in regard to the urbanization of the surrounding areas and the potential of the land in question for building construction and residential purposes.

4. Out of those 140 sale instances, sale instance at serial Nos. 109 and 110 are stated to be the sale deeds executed on 26th November, 1991 and 27th November, 1991, which were heavily relied upon by the Reference Court. The Reference Court vide its judgment-cum-award dated 12th May, 1995 held application of belting system improper as entire land was acquired for one purpose, i.e. construction of Government Polytechnic Institute. It determined the market value of the land at the rate of Rs. 6,40,000 per *bigha* and after applying 20% deduction, enhanced compensation to flat rate of Rs. 5,12,000 per *bigha* along with other statutory benefits.

5. The State, aggrieved by the enhancement of compensation awarded to the claimants by the Reference Court, preferred appeals being First Appeal Nos. 920-921 of 2001, before the concerned High Court. The High Court vide its judgment dated 20th July, 2005, primarily accepted the findings recorded by the Reference Court on merits and merely raised the deduction from 20% to 33.33% thus awarding the compensation at the rate of Rs. 4,26,667 per *bigha*. The High Court recorded a definite finding that the Reference Court was fully justified in setting aside the order of the SLAO applying belting system for determination of compensation in relation to the acquired land. It also did not consider it appropriate to rely upon the sale instances placed on record by the State and practically affirmed the findings of the Reference Court including finding based upon sale instances at serial Nos. 109 and 110 for determining the market value of the acquired land. The High Court modified the order of the Reference Court only by raising the deduction on account of development charges and fixing of the final amount of compensation as afore-indicated.

6. Against the above judgment of the High Court, Civil Appeal Nos.7498-7499 of 2005 have been preferred by the State of Uttaranchal while Civil Appeal Nos. 7496-7497 of 2005 have been preferred by the claimants.

C.A. No. 1122 OF 2011

7. Civil Appeal No. 1122 of 2011 has been preferred by the State of Uttaranchal against the judgment of the Uttaranchal High Court dated 9th March, 2006 passed in First Appeal Nos. 918 and 919 of 2001. Vide that order the Court had primarily relied upon another judgment of the Division Bench of that Court passed in **First Appeal Nos. 920-921 of 2001** (in the case of **State of U.P. through Collector, Dehradun v. Smt. Trishla Jain**) and awarded compensation at the rate of Rs. 4,26,667 per *bigha* reducing the compensation of Rs. 5,12,000 per *bigha* as awarded by the Reference Court. The High Court in this case had echoed in entirety the reasoning and compensation awarded by the other Bench in the case of **Trishala Jain (supra).** This judgment of the High Court, impugned in Civil Appeal No. 1122 of 2011, therefore has to be treated at parity for all intents and purposes with the impugned judgment in Civil Appeal Nos. 7496-7497 of 2005 and Civil Appeal Nos. 7498-7499 of 2005.

C.A. No. 3613 of 2008

8. Civil Appeal No. 3613 of 2008 is directed against the judgment of the Uttaranchal High Court dated 11th May, 2006 passed in First Appeal Nos. 60-63 of 2001. It is necessary for us to notice the facts giving rise to this appeal separately because there are certain distinguishing features with regard to factual matrix as well as evidence of this case. The land in question in this case also forms part of the land admeasuring 12.85 acres sought to be acquired by the Notification dated 30th January, 1992 issued under Section 4(1) of the Act and is covered by the common award passed by the SLAO on 8th June, 1993 awarding the compensation at the same rate as in other cases.

The claimants herein made a separate reference under Section 18 of the Act and the Reference Court, in LA Case No. 121 of 1994, awarded compensation at the rate of Rs. 12,50,000 per acre (i.e. Rs. 2,38,095.24 per *bigha* approximately) in addition to granting other statutory benefits and interests. It needs to be noticed that the two sale instances at serial Nos. 109 and 110, which were the foundation of the judgment pronounced by the Reference Court in other cases, i.e. sale deeds dated 26th November, 1991, and 27th November,1991, had been rejected on the ground that they were not admissible in evidence as neither the vendor nor the vendee had been produced to prove the sale instances in Court. The Reference Court also noticed the contention raised on behalf of the State, i.e. these sale instances were collusive. It will be useful to refer to the relevant part of the judgment of the Reference Court which reads as under:

> "The respondent No.2 have (sic) taken a special stand in his written statement that the sale deed executed by Sri Viresh Jain was forged and fictitious and collusive and no reliance can be placed on such a sale deed. He has further argued that the judgment passed in L.A. Case No. 386 of 1993 Smt. Trishla Jain vs. Collector and another in such circumstances cannot be made the basis for awarding compensation in the present case. The rtno. 2 has filed voluminous documents in support of their case that the sale deed executed by Sri Viresh Jain were collusive and were made only to create evidence of hither compensation. He has further filed various documents, which supports the contention of the respondent no. 2 that Sri Dinesh Jain and Sri Viresh Jain themselves offered their 100 *bigha* of land in village phoolsani for the purpose of Government polytechnic. He has also filed documents and the copy of the Selection Committee in which Sri Manoj Kumar Jain, Upkhand Adhikari, U.S.E.B. was a member, Sri Manoj Kumar Jain was examined as a witness. He was admitted that he is the brother in law of Sri Dinesh Jain and Sri Viresh Jain. He has also admitted that he was member of the selection committee which was to select the land for Government polytechnic. Various other documents were also filed by the respondent no. 2 vide which the signatures of Jinendra Kumar Jain and Smt. Veena Kumar Jain were identified by Sri Dinesh Jain. His sole concentration was that the sale deed executed by Sri Viresh Jain was collusive and since Sri Manoj Kumar Jain was one of the member of the selection committee appointed for the acquisition of land for Government Polytechnic, the information was leaked to Sri Viresh Jain and, therefore, they manipulated these two sale deeds by transferring the land to their near relations say the sister

and the son of his BUA without passing valid consideration. The learned counsel for the respondent no. 2 has placed reliance on the law laid down by the Hon'ble Supreme Court in AIR 1951 page (sic) 16 Yashvant Deoro vs. Jai Chand Ram Chand. It is correct that the fraudulent motive or design is not capable of direct proof in most of the cases. Such intention could only be inferred. It is worthy to point out that the two sale deeds relied upon by the claimants executed by Sri Viresh Jain in favour of Sri Jinendra Kumar Jain and Smt. Veena Kumar Jain have not been proved in accordance with law as laid down by the Hon'ble Supreme Court in as much as vendee or vendor of these sale deeds or any attesting witnesses have not been produced in evidence. Therefore, they cannot be made the basis of awarding of compensation in the present case. The judgment in L.A. Case No. 386 of 1993 Smt. Trishala Jain v. Collector and another is under appeal and the entire matter with regard to the alleged collusive sale deed is yet to be thrashed out. Therefore, it is not fair and justified for this court to comment upon these sale deeds. For the purpose of decision of this case it is only sufficient, if these two sale deeds are discarded and if they are not considered and not made the basis for awarding compensation in these cases. Therefore, it is held that these two sale deeds cannot be made basis for awarding any compensation, in the present case and the argument of the claimants fails in this respect."

Having held thus, the Reference Court relied upon the sale instance at serial No. 108, out of 140 sale instances, of the list produced and proved by the SLAO. As per the sale instance at serial No. 108, a land admeasuring 0.90 acre was sold at the rate of Rs.12,55,550.50 per acre on 29th November, 1991. Examining this document with other evidence on record, particularly statement of DW2, the Reference Court finally awarded compensation at the rate of Rs.12,50,000 per acre without applying any deduction.

The claimants, aggrieved by the above judgment of the Reference Court dated 6th February, 2001, preferred an appeal before the Uttaranchal High Court. The High Court, vide its judgment dated 11th May, 2006, while referring to the different judgments of this Court as well as of different High Courts, opined that the Reference Court had fallen in error of law in not applying, to a certain extent, deduction from the market value determined by that court in accordance with law. The High Court did not interfere with the determination of the market value of the acquired land but applied a deduction of 33.33% on such value and finally awarded compensation to the claimants at the rate of Rs.8,33,334 per acre with other statutory benefits and interests thereupon. Dissatisfied with this judgment of the High Court reducing the compensation awarded by the Reference Court, the claimants-Krishna Devi and others have filed the present appeal before this Court.

Questions of Fact and Law that fall for Determination:

9. On examination of the present appeals, the following common questions arise for consideration of this Court:

I. Whether or not the belting system ought to have been applied for determination of fair market value of the acquired land?

II. What should be the just and fair market value of the acquired land on the date of issuance of notification under Section 4 of

the Act?

III. Whether in the facts and circumstances of the present case there ought to be any deduction after determining the fair market value of the land?

IV. What compensation and benefits are the claimants entitled to?

Question No. 1.

10. As already noticed, the SLAO, in all cases, while giving its award had applied the belting system and categorizing the land into three different categories had awarded the compensation accordingly. However, the Reference Court had held that the land as a whole was similarly placed and was surrounded by developed areas and it was to be used for one purpose, i.e. construction of Government Polytechnic Institute, thus there was no question of applying the belting system. Keeping in view the documentary and oral evidence on record, the Reference Court set aside the belting system and awarded uniform compensation to all the claimants. This finding of the Reference Court was upheld by the High Court in the impugned judgments. The correctness of this concurrent view has also not been questioned by any of the parties in the present appeals before us. Therefore, concurrent finding recorded by the Courts below which remained unchallenged before this Court need not be disturbed by this Court.

Question No. II

11. Now, we have to examine the most important question arising in the present appeal as to how this Court should determine the fair market value of the acquired land in the given facts and circumstances. First of all, we need to refer to the evidence that was produced by the parties in support of their respective claims. The principal evidence relied upon by the claimants in all these cases are the two sale instances shown at serial Nos. 109 and 110. These were executed by Shri Viresh Jain, in favour of Jitendra Kumar and Smt. Veena Kumari, on 26th November, 1991 and 27th November, 1991 respectively. These lands are situated in Khasra No. 39/2, a part of which was acquired under the same Notification. Under these sale deeds areas of 440.8 sq. yards and 283.3 sq. yards were sold at the rate of Rs. 32,72,603.49 and Rs. 34,87,648.30 per acre respectively. The claimants in different cases examined themselves to prove these sale instances as a whole, as they are the main witnesses and the sale instances were also executed between themselves. It needs to be noticed that one of the purchasers and the seller are the claimants in the present appeals and the other purchaser is their close relative. According to the claimants, they were entitled to compensation on the basis of these two sale instances. The claimants have also brought on record documents, viz., Exh.11 and Exh.12, which are the agreements signed between Trishala Jain and one Vikram Singh Bangari, executed on 23rd April, 1991 for the purpose of leveling of the land in question. Shri Bangari was examined as PW 6 who submitted that he had completed the leveling work on or before 3rd February, 1992. Further, the testimony of PW7, according to the claimants, clearly shows that there was urbanization all over the periphery of municipal limits and building activities were increased even beyond the municipal limits. Claimants have also relied upon other evidence including the cross examination of DW 1, Ram Singh, who admitted that these sale deeds

were unlikely to have been executed at higher rate for enhancing the rate of compensation of the acquired land. As we have already noticed, this witness also gave the statement that towards the North of the acquired land, there were several quarters of ITBP and there was 20 feet wide passage which ended on the acquired land. He further stated that some shops are located in the South of the acquired land across the road and facilities of schools and post office are also available near the acquired land. On the backdrop of this entire evidence, the claimants contended that the deduction applied by the High Court is not justified and their claim for compensation in line with the two sale instances proved by them on record is to be upheld. According to them, the sale instances produced by the SLAO were far away from the acquired land and were not relevant or comparable instances.

12. On the other hand, the SLAO, in his award, had considered details of 140 sale instances executed over a period from the Revenue Estate of the same Village. Most of these sale instances were found to be not relevant by the Reference Court. The SLAO had relied upon the sale deed at Serial No.43 in which the land admeasuring 0.094 acres had been sold by a registered sale deed on 10th June, 1991 for a sum of Rs.92,000 giving the value of the land at the rate of Rs.9,78,732.40 per acre, and determined the market value of the land acquired at that rate. When the matter came up before the Reference Court for consideration, in all other references except Reference No. 121 of 1994 titled as Chamel Singh v. Collector, Dehradun, the Reference Court had relied upon the two sale instances produced by the claimants and awarded compensation at the rate of Rs. 5,12,000 per *bigha* which was later reduced by the High Court to Rs. 4,26,667 per *bigha*. In the case of Chamel Singh (supra), the Reference Court rejected these two sale instances at serial Nos. 109 and 110 as vendor or vendee had not been examined. It also noticed the allegation of the State that those sale deeds were not bona fide and have been executed only with the intention to enhance the value of the acquired land and as such declined to rely on them in its judgment. The Reference Court in that case also rejected the reliance placed by SLAO upon sale deed at serial No. 43 for determining the market value of acquired land and instead relied upon the sale instance at serial No. 108 where the land admeasuring about 0.90 acres was sold on 29th November, 1991 at the rate of Rs. 12,55,550.50 per acre. After discussing the evidence at some detail, the Reference Court awarded the compensation to the claimants at the rate of Rs.12,50,000 per acre without making any deduction from such market value. In appeal the High Court, however, applied a deduction of 33.33% and awarded compensation to the claimants at the rate of Rs. 8,33,334 per acre. From the above factual matrix the first question that requires consideration of this Court is whether the Reference Court was justified in law with reference to the facts on record in declining to consider the two sale instances produced by the claimants at serial Nos. 109 and 110. In other words, was it justified on part of the Reference Court to keep them outside the zone of consideration while determining the market value of the acquired land?

13. Firstly, it cannot be disputed that both the seller and the purchaser in sale instances at serial Nos. 109 and 110 are either claimants in different claim petitions or belong to the same family. The sale deed is stated to be executed by Sh. Viresh Jain in favour of Jitender Kumar Jain and Smt. Veena Kumari Jain (sister of Sh. Viresh Jain).

Veena Kumari Jain has described herself as wife of M. Kumar who appears to be Sh. Manoj Kumar Jain, who was examined as a witness as he was a Member of the Selection Committee dealing with the acquisition of the land for the purpose of construction of Government Polytechnic Institute. In his examination he admitted that he was brother-in-law of Sh. Viresh Jain. As a member of that Committee he had a definite role to play in selection of the land for that purpose. In other words, the claimants had full knowledge of acquisition of land and as well as the purpose for which the said land was sought to be acquired. With respect we reiterate the view expressed by this Court in the case of **Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari [(1950) 1 SCR 852]** that a fraudulent move or design is not capable of direct proof in most cases; it can only be inferred. Under such circumstances, the Court has to take a general view keeping in mind the facts and circumstances of the case with particular reference to the intent of parties, their action in furtherance thereto and the object sought to be achieved by them.

14. It is not in dispute that these sale deeds have been executed in favour of the family members or persons known to the claimants. These are circumstances and evidence which clearly indicate that the sale instances relied upon by the claimants are result of collusion between these parties. There was clear attempt on the part of the claimants to execute sale deeds for the purpose of hiking up land price just before acquisition to get more compensation. These two sale instances which have been executed just about two months prior to the issuance of the notification under Section 4(1) stand out as transactions which are sham, collusive, lack bona fide and have been executed with the intention to raise the price of the land in question with the pretence of it being actual market value. We are unable to find any infirmity in this view of the Reference Court in LA Case No. 121 of 1994 which has rightly been upheld by the High Court.

15. It will be appropriate at this stage to notice that in C.A. Nos. 7498-99 of 2005 a specific ground has been taken by the State that the High Court erred in not considering the application of State filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 during pendency of First Appeal Nos. 920 and 921 of 2000 to lead additional evidence to show that the sale deeds relied upon by the Reference Court in LA Case No. 386 of 1993 and accepted by the High Court were collusive and the claimants had prior knowledge of the impending acquisition proceedings. This additional evidence is basically related to the facts which have already been mentioned by us while discussing the facts of C.A No. 3613 of 2008. In that application, it was specifically stated that Smt. Veena Kumari is sister of one of the claimants, i.e. Viresh Jain and she is wife of Manoj Kumar Jain, who was member of the Selection Committee aforereferred and these facts had duly been verified from the local police station vide letter dated 11th September, 1996. However, this application appears to have been rejected by the High Court without recording any appropriate reasons in support thereof. In view of the peculiar fact that the Reference Court, in its award in L.A. Case No. 121 of 1994 which is subject matter before us in C.A. No. 3613 of 2008, has noticed this entire evidence in great detail, it can hardly be contended that the application has rightly been rejected by the High Court. In our opinion, the High Court should have allowed this application particularly when the entire evidence sought to be produced by way of additional evidence challenged the very basis of the judgment of the

High Court. In view of these peculiar facts we need not discuss this issue at any greater length and according to us the facts stated in that application can be examined by this Court as they are already part of the judicial record in C.A. No. 3613 of 2008, which has been listed for hearing along with other appeals and all these appeals have been heard together.

16. Corollary to the discussion under this head is the question that whether the Reference Court, in LA Case No. 121 of 1994, was right in law in rejecting the two sale instances for the reason that vendor or vendee had not been examined to prove them in Court and thus these sale instances were inadmissible in evidence. While recording such a finding the Reference Court had relied upon the judgment of this Court in the case of **A.P. State Road Transport Corporation, Hyderabad v. P. Venkaiah, [(1997) 10 SCC 128].** This issue need not detain us any further as it is no longer *res integra* that the judgment of this Court in the above case has been overruled by a Constitution Bench of this Court in the case of **Cement Corporation of India v. Purya, [(2004) 8 SCC 270].** Thus, in our view, these two sale instances cannot be rejected on that ground after the dictum of the Constitution Bench in the above case. Though, this observation is subject to the other findings recorded by us in this judgment.

17. A Bench of this Court in the case of **Chimanlal Hargovinddas (supra)** stated that the Court while tackling the problem of valuation of the land under acquisition should necessarily make some general observations. Explaining the factors, which must be etched on the mental screen while performing such exercise, this Court specifically held, "only genuine instances have to be taken into consideration (sometimes instances are rigged up in anticipation of acquisition of land)". Further, this Court in the case of **State of Haryana v. Ram Singh [(2001) 6 SCC 254],** has reiterated this principle and held, "It is open to the Court to accept the certified copy as the reliable evidence and without examining parties to the documents. This does not however, preclude the Court from rejecting the transaction itself as being malafide or sham provided such a challenge is already before the Court".

Question No. III

18. The law with regard to applying the principle of deduction to the determined market value of the acquired land is quite consistent, though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. In other words, it is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases. Normally the rule stated by this Court consistently, in its different judgments, is that deduction is to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects. It shall also be applied where the sale instances (exemplars) relate to smaller pieces of land and in comparison the acquisition relates to a large tract of land. In addition thereto, deduction can also be applied on account of wastage of land. This Court in the case of **Land Acquisition Officer, Kammarapally Village v. Nookala Rajamallu [(2003) 12 SCC 334],** had also observed that it is advisable to apply some deduction on account of exemplars of plots of smaller size relied upon by way of evidence by the parties. This is the normal rule stated by the Court but

is not free of exceptions.

19. Similarly, it is neither possible nor appropriate to *stricto sensu* define a class of cases where the Court would not apply any deduction. This again would be dependant upon the facts and circumstances of a given case. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of 'no deduction'. Furthermore, where the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features comparable to the proposed acquired land, including that of size, is another category of cases where principle of 'no deduction' may be applied. These may be the cases where least or no deduction could be made. Such cases are exceptional and/or rare as normally the lands which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at the time of issuance of notification under Section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes and intents for determining the market value of the land in question.

20. This Court in the case of **Bhagwathula Samanna & Ors v. Special Tahsildar & Land Acquisition Officer, [(1991) 4 SCC 506],** stated that it is permissible to take into account of exemplars of even small developed plots for determining value of a large tract of land acquired, if the latter is also fully developed with all facilities requiring little or no further development. In the facts and circumstances of that case the Court felt that it was not appropriate to resort to deduction of 1/3rd value of the comparable sale instances as development charges. The Court reiterated the general rule that if market value of a large property is to be fixed on the basis of a sale transaction for smaller property, a deduction is to be made taking into consideration the expenses required for development of that larger tract and make smaller plots within that area and held as under :

> "8. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case (supra).
>
> 11. The principle of deduction in the land value covered by the

comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted."

It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits.

21. This Court, depending on the facts and circumstances of each given case, has taken the view that deduction on account of expenses of development of the sites could vary from 10% to 86.33% depending on the nature of the land, its situation, the purpose and stage of development. Reference can be made to the cases of **K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer [(1996) 2 SCC 62], Ram Piari v. Land Acquisition Collector, Solan [(1996) 8 SCC 338], Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona [(1988) 3 SCC 751], Hasanali Walimchand (Dead) by L` v. State of Maharashtra [(1998) 2 SCC 388].**

In **K.S. Shivadevamma (supra), this** Court held as under:

"10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under

Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date, In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, ordered by the High Court, was not illegal."

Thus, a deduction of 53% was given on account of Building Rules and a further deduction of 33.33% on account of development charges on the fact of that case, amounting to a total of 86.33% deduction. The above view was reiterated in the case of **Nookala Rajamallu (supra).**

22. On similar lines, this Court in the case of **V. Hanumantha Reddy (Deceased) by L` v. Land Acquisition Officer & Mandal R. Officer [(2003) 12 SCC 642],** while considering that the acquired land was adjacent to developed land, held that neither its high potentiality nor its proximity to a developed land can be a ground for not deducting the development charges and that normally 1/3rd deduction could be allowed.

23. Though in the case of **Bhagwathula Samanna (supra)** referring to the peculiar facts of the case, this Court observed that it was not necessary to make any deduction, the consistent view taken by this Court is that normally deduction has to be made. In the cases above mentioned this Court has directed to make deduction ranging from 20% to 86.33%.

24. The learned Counsel for the claimants relied upon the judgment of this Court in the case of **Atma Singh v. State of Haryana 2008(1) L.A.R. 316 (SC) = [(2008) 2 SCC 568],** to contend that even if exemplars of small plots are tendered in evidence, the deduction cannot be more than 10%. He contended that the Reference Court as well as the High Court both have fallen in error of law in applying the deduction of 20% and 33.33% respectively. In this judgment, this Court clearly observed that the price fetched for small plots cannot form safe basis for valuation of large tracts of land as substantial area is used for development of sites by providing various facilities for which expenses are also incurred; such amount, which normally would vary from 20% onwards depending upon the facts of each case, should be deducted. However, in that case the land had been acquired for setting up a sugar factory which, for its efficient running, may also require part of the land to be used for construction of residential colonies for the staff working in the factory. The sugar factory that was sought to be constructed on the acquired land was to carry on its business to make profits. The Court noticed that earlier the by-products of a sugar factory like molasses were treated as waste and its disposal itself was a problem. However, with the passage of time and scientific developments, such by- products are being used for production of Alcohol and Ethanol which added to the profits. It was in these circumstances that Court was of the view that it was not a case for higher deduction and discounted only 10% from the determined market value of the acquired land. Thus the claimants cannot derive any advantage to contend that there should not be any deduction in this case. Reliance by them was also placed upon the judgment of this Court in the case of **Charan Dass v. Himachal Pradesh Housing &**

Urban Development Authority [(2010) 13 SCC 398]. In that case the Court was concerned with the question that whether deduction of 40% from the market value determined by the High Court towards development charges was justified or not. This Court held that where the acquired land falls in the amidst of an already developed land with amenities of roads, electricity etc., deduction on this account may not be warranted. At the same time it also held that where all civic and other amenities are yet to be provided to make the land suitable for building purposes or when under the local building regulations setting apart some portion of the lands for sanctioning common facilities is mandatory, an appropriate deduction may be justified. Referring to the facts of that case, this Court permitted deduction of 30% as development charges from the market value of the land.

25. In the present case, there is evidence on record to show that plotting has been done only on part of the acquired land and the land is surrounded by colonies like ITBP etc. but, there is no evidence to show that the acquired land itself is developed and is having all the required facilities and amenities. It may be a case where less deduction may be applied but certainly it is not a case of 'no deduction'. It also cannot be believed, in the absence of specific documentary evidence, that no further development is required on the acquired land. The claimants, on whom the onus lies to prove inadequacy of compensation have not even stated that whether under the relevant laws they are expected to leave any part of their land open when they are permitted to raise construction on the land in question. Under these circumstances, we are unable to find any infirmity in the approach of the High Court in applying the principle of deduction. In our opinion a deduction of 10% from the market value on account of development charges and other possible expenditures would be justifiable and called for in the facts and circumstances of the present case.

Question No. IV:

Determination of Compensation

Application of principle of guesstimate for determining the amount of compensation to be awarded for the land acquired under the Act

26. Acquisition of land is an act falling in the purview of eminent domain of the State. It essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. It is trite that no person can be deprived of his property save by authority of law in terms of Article 300A of the Constitution of India. The provisions of the Act provide a complete mechanism for 'deprivation of property in accordance with the law' as stated under the Act. Justifiability and fairness of such compensation is subject to judicial review within the confines of the four corners of the Act. Once the lands are acquired under the Act, the persons interested therein are entitled to compensation as per the provisions of the Act. Thus, in the present case the land in question has been acquired under the provisions of a law which specifically provide that acquisition can only be for a public purpose and upon payment of compensation to the claimants in accordance with law. The compensation payable to the claimants has to be computed in terms of Sections 23 and 24 of the Act. The market value of the land has to be determined at the date of the publication of the notification under Section 4(1) of the Act, after taking into consideration what is stated under Sections 23(1), 23(1A), 23(2) and excluding the considerations stated under Section 24 of the Act. More often than not, it is

not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the persons interested in the acquired land.

27. 'Guess' as understood in its common parlance is an estimate without any specific information while 'calculations' are always made with reference to specific data. 'Guesstimate' is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time 'guess' cannot be treated synonymous to 'conjecture'. 'Guess' by itself may be a statement or result based on unknown factors while 'conjecture' is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. 'Guesstimate' is with higher certainty than mere 'guess' or a 'conjecture' per se.

28. The concept of 'guesswork' is not unknown to various fields of law. It has been applied in cases relating to insurance, taxation, compensation under the Motor Vehicles Act as well as under the Labour Laws. All that is required from a Court is that such guesswork has to be used with greater element of caution and within the determinants of law declared by the Legislature or by the Courts from time to time. In the case of **Charan Dass (supra)** this Court on the use of guesswork for determining compensation, has held as under:-

> "10. Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act. Section 23 provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall, inter alia, take into consideration the market value of the land at the date of the publication of the Notification under Section 4 of the Act. The Section contains the list of positive factors and Section 24 has a list of negatives, vis-à-vis the land under acquisition, to be taken into consideration while determining the amount of compensation. As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under Sub-section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar

in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. **Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard.**

(emphasis supplied)

29. Even in the case of **Thakur Kamta Prasad Singh (Dead) through LRs v. State of Bihar [(1976) 3 SCC 772],** this Court had held that there is an element of guesswork inherent in most cases involving determination of the market value of the acquired land and observed as under:

"6. Section 23 of the Act provides that in determining the amount of compensation to be awarded for land acquisition under the Act the court shall inter alia take into consideration the market value of the land at the date of the publication of the notification under Section 4 of the Act. Market value means the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantages due to the carrying out of the scheme for which the property is compulsorily acquired. In considering market value the disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. There is an element of guesswork inherent in most cases involving determination of the market value of the acquired land, but this in the very nature of things cannot be helped. The essential thing is to keep in view the relevant factors prescribed by the Act. If the judgment of the High Court reveals that it has taken into consideration the relevant factors, its assessment of the fair market value of the acquired land should not be disturbed. No such infirmity has been brought to our notice as might induce us to disturb the finding of the High Court. The appeal consequently fails and is dismissed but in the circumstances without costs."

30. Similar view was taken by another Bench of this Court in the case of **Special Land Acquisition Officer v. Karigowda [(2010) 5 SCC 708]** where this Court held, "the Court is entitled to apply some amount of reasonable guesswork to balance the equities and fix a just and fair market value in terms of the parameters specified under Section 23 of the Act."

31. The observations made by this Court in a case under the Central Excise Valuation Rules, 1975 titled as **Commissioner of Central Excise, Jaipur v. Rajasthan Spinning and Weaving Mills Ltd. [2007 (12) SCR 703],** can be aptly referred to at this stage wherein this Court had held that valuation is not an exact science and some amount of guesswork exists in valuation. Different methods for valuation are prescribed by Valuation Rules which may be applied by the Department but it has to be ultimately ascertained by applying the rule of convergence, the estimated ad valorem value of which would constitute the base of the assessable value.

32. Under the Act, as settled by various judgments of this Court, there are different methods of computation of compensation payable to the claimants, for example it can be based upon comparable sale instances, awards and judgments relating to the similar or comparable lands, method of averages, yearly yields with reference to the revenue earned by the land etc. Whatever method of determining the compensation is applied by the court, its result should always be reasonable, just and fair as that is the purpose sought to be achieved under the scheme of the Act. For attaining that purpose, application of some guesswork may be necessary but this principle would have hardly any application in a case of no evidence. In other words, where the parties have not brought on record any evidence, then the court will not be in a position to award compensation merely on the basis of imagination, conjecture etc.

33. These precedents clearly demonstrate that the Court may apply some guesswork before it could arrive at a final determination, which is in consonance with the statutory law as well as the principles stated in the judicial pronouncements. As already noticed, the guesswork has to be used for determination of compensation with greater element of caution and the principle of guesstimation will have no application to the case of 'no evidence'. This principle is only intended to bridge the gap between the calculated compensation and the actual compensation that the claimants may be entitled to receive as per the facts of a given case to meet the ends of justice. It will be appropriate for us to state certain principles controlling the application of 'guesstimate:

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.

34. Applying these principles to the facts of the present case, we have to take recourse to the 'principle of guesstimation' inasmuch as it is essential for fixation of fair market value of the land which shall be the basis for determining the compensation payable to the claimants. Now, we will discuss the evidence led by the parties in that behalf.

35. All the claimants in the present appeals have primarily relied upon the sale instances shown at serial Nos. 109 and 110. These sale instances were not relied upon by the SLAO while making the award and were also rejected by the Reference Court in LA Case No.121 of 1994. This view of the Reference Court was upheld by the High Court vide its judgment in First Appeal Nos. 60-63 of 2001 which is subject matter of the appeal before this Court in C.A. No. 3613 of 2008. We have already noticed that as per these sale instances the value of the land comes to a rate of Rs. 32,72,603 and Rs. 34,87,648 per acre respectively. While accepting the concurrent view of the Reference Court and the High Court subject matter of CA No. 3613 of 2008, we have already held that these sale instances are liable to be ignored and have rightly been ignored by the Courts below. Besides the fact that these sale deeds are executed

between the members of the family, the claimants had full knowledge of the Government's intention to acquire these lands, for the purpose specified, even prior to issuance of notification under Section 4(1) of the Act through Mr. M.K. Jain. These are reasons enough to doubt the consideration paid in these sale deeds.

36. The SLAO, in his Award, has taken note of 140 sale instances immediately preceding the issuance of Notification under Section 4(1) of the Act. The Reference Court, in LA Case No. 121 of 1994, specifically recorded that the highest value reflected in these 140 sale instances is Rs. 12,55,550.50 per acre, except in sale instances at serial Nos. 109 and 110 produced by the claimants. It is interesting to note that the claimants did not produce any other evidence except these two sale instances which had been executed between the members of the family and contained unreasonably high price of the land. There is tremendous gap between the prices of the land fetched in all other sale deeds on one hand, the highest being Rs. 12,55,550.50 per acre and that in sale deeds executed by the claimants between themselves on the other hand which is Rs. 34,87,648 per acre, for sales effected within a span of 2- 3 days for similarly situated lands in the same village. It certainly arouses suspicion in the mind of the Court as to the intention behind execution of these sale deeds. Ex facie they appear to have been executed to hike up the price of the land just before the issuance of Notification under Section 4(1) of the Act. If considered from the point of view of a reasonable man, all these circumstances clearly fall beyond the ambit of coincidence and appear to have been 'managed' to achieve the end of receiving higher compensation. In light of these facts and the reasons already recorded, we have no hesitation in holding that the sale instances at serial Nos. 109 and 110 produced by the claimants are liable to be ignored for the purposes of fixation of market value of the acquired land as these transactions are sham and lack bona fide.

37. The SLAO, in his award had relied upon sale instance shown at serial No. 43 and had therefore determined the market value of the land at the rate of Rs. 9,78,723.40 per acre (i.e. Rs. 1,86,423.50 per *bigha* approximately). The compensation awarded on the basis of the above market value and by applying belting system was not accepted by the Reference Court. The Reference Court in LA Case No. 121 of 1994, instead relied upon sale deed at serial No. 108 where the land was sold at the rate of Rs. 12,55,550.50 per acre on 29th November, 1991, i.e. even subsequent to the sale instances relied upon by the claimants. The Reference Court had therefore awarded compensation at the rate of Rs.12,50,000 per acre which was reduced by the High Court to Rs.8,33,334 after applying a deduction of 33.33%.

38. The Reference Court, in LA Case Nos. 386 of 1993, had determined the market value of the land at a rate of Rs. 6,40,000 per *bigha* (i.e. Rs. 33,60,000 per acre approximately) and after applying a deduction of 20% awarded compensation at the rate of Rs. 5,12,000 per *bigha*. This was reduced further by the High Court by increasing the deduction from 20% to 33.33% and therefore awarding a sum of Rs. 4,26,667 per *bigha* (i.e. Rs. 22,40,001.80 per acre) as compensation. The two exhibits produced by the claimants were the sole basis for awarding compensation to the claimants in this line of cases. These exhibits offend the very essence of the parameters stated under Section 23 of the Act as defined by this Court in the case of **Ram Singh (supra).** Thus,

the view taken by the Reference Court and the High Court, which is subject matter of C.A. No. 3613 of 2008, rejecting these instances as collusive and sham is liable to be sustained.

39. The judgment of the Reference Court and that of the High Court in these cases, accepting the sale instances under serial Nos. 109 and 110, cannot be sustained in law and is liable to be set aside. However, as it appears from the record the earlier judgments of the Division Benches of the High Court in First Appeal Nos. 920-921 of 2001, dated 20th July, 2005, and in First Appeal Nos. 918-919 of 2001, dated 09th March, 2006 were not brought to the notice of the Division Bench of the High Court which pronounced the judgments in First Appeal Nos. 60-63 of 2001, dated 11th May, 2006.

40. Now, after we have rejected the sale instances at serial Nos. 109 and 110, we have to consider what compensation the claimants are entitled to receive in accordance with other evidence on record. The sale instance shown at serial No. 108 is certainly an exemplar which can be taken into consideration. This is a sale deed executed on 29th November, 1991 where a land admeasuring 0.90 acres has been sold at a rate of Rs. 12,55,550.50 per acre. As far as the location and potential of this land is concerned, we may refer straightaway to the award of the Reference Court, in LA Case No. 121 of 1994, where it referred to the statement of PW1, Sh. Gyan Swarup, stating that the land which was subject matter of this sale deed is situated at a distance of 1½ furlong of the acquired land in the same village. It is the case of the claimants in all these appeals that the acquired land is surrounded by developed areas like ITBP Colony on the North and there was a 20 feet wide passage ending on the acquired land. Facilities of post office, electricity, hospital, schools etc. were available in those colonies which are very close to the acquired land. The Reference Courts, in their respective awards, have also noticed that heavy construction activity was going on nearby Shimla Road and the value of this land is continuously rising.

41. Another relevant piece of evidence with reference to potential and location of the land is the statement of PW-4 Girdhari Lal Arora, noticed in the judgment of the Reference Court in L.A. Case No. 386 if 1993, who is an Architect by profession. He claims to have visited the site and made plans to divide the land in question into plots after making provision for civic amenities, children park etc. In these circumstances, it is difficult to doubt that the land in question has substantial potential and is located adjacent to developed areas. He further stated, “In the year 1992 the value of the land around, the acquired land was Rs. six to 6.50 lacs per *bigha* and thereafter there had been a slump in the prices of the land”. Statement of this witness has to be given its due value as nothing controversial appears to have come in evidence in his cross-examination. According to this witness, there has been a decreasing trend in the value of the land in that area. The declaration under Section 6 was issued in April, 1992 itself at a time when the prices had started falling.

42. The cumulative effect of the documentary and oral evidence on record is that it is a case of acquisition of land which is situated on a reasonably good location surrounded by developed areas having civic amenities and facilities and further development activity was going on in nearby areas. It was also submitted by the claimants that plotting has already been done on the acquired land and some plots of land have been sold immediately prior to the issuance

of the Notification under Section 4(1) of the Act. It is evident that the land acquired had the potential of being developed for residential or institutional purposes and as already noticed, the same was acquired for construction of a Government Polytechnic Institute. Therefore, it is a case where the Court should apply minimal deduction which will meet the ends of justice and would help in determining just and fair compensation for the land in question. We are of the considered view that 10% deduction from the market value of the acquired land would meet the ends of justice.

43. It is not in dispute before us that sale instance at serial No. 108 falls in the Revenue Estate of the same Village and as recorded by the Reference Court, in LA Case No. 121 of 1994, it is situated at a distance of 1½ furlong from the acquired land. The acquired land belonging to the claimants forms part of Khasra No.39/2 while, in the same Reveue Estate, the sale instance at serial No. 108 is part of Khasra No. 410. Thus a sale deed related to a land in such proximity of time and distance cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance. Though it relates to the sale of a smaller plot of land but is certainly bigger than the land sold by the claimants between themselves. Its location and potential, if not identical in absolute terms, is certainly comparable for the purposes of determining market value of the land in question. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land it will meet the ends of justice if 10% deduction is made from the estimated market value of the acquired land.

44. The comparable sale instance under serial No. 108 depicted the fair value of land in that area at the time of issuance of Notification under Section 4(1) of the Act which is Rs. 12,55,550.50 per acre. The time gap between this sale instance and issuance of said Notification is merely two months which would hardly call for any increase in the said value but to balance the equities between the parties we would round off the figure to Rs. 13,00,000 per acre. By applying the principle of guesstimate, thus, we determine the market value of the acquired land at Rs. 13,00,000 per acre as on the date of the issuance of the Notification under Section 4(1) of the Act. Deducting 10% therefrom, it would come to Rs. 11,70,000 per acre which will be the compensation payable to the claimants with statutory benefits and interests thereupon in accordance with law.

45. Ergo, for the reasons aforerecorded, we pass the following orders in the appeals, subject matter of the present judgment :

(i) The Civil Appeal No. 3613 of 2008, the appeal preferred by the claimants Krishna Devi and Others, is partially accepted and the judgment of the High Court impugned in this appeal is modified to the extent that the claimants would be entitled to receive compensation at the rate of Rs. 11,70,000 per acre with interests and other statutory benefits permissible under the law.

(ii) Civil Appeal Nos. 7498-7499 of 2005 preferred by the State of

Uttaranchal are partially accepted and the compensation payable to the claimants is reduced from Rs. 22,40,001.80 per acre to Rs. 11,70,000 per acre. The claimants would be entitled to interest and all statutory benefits permissible under the law.

(iii) Civil Appeal No. 1122 of 2011 preferred by the State of Uttaranchal is partially accepted and the compensation payable to the claimants is reduced from Rs. 22,40,001.80 per acre to Rs. 11,70,000 per acre. The claimants would be entitled to interest and all statutory benefits permissible under the law.

(iv) Civil appeal Nos. 7496-7497 of 2005 preferred by the other claimants are dismissed without any order as to costs.

Order accordingly.

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PUNJAB AND HARYANA HIGH COURT

Before: Paramjeet Singh, J.

C.W.P. No. 7142 of 2011 Decided on: 12.01.2012

Mohinder Singh Petitioner

Versus

Financial Commissioner and others Respondents

Present: Mr. Deepak Thapar, Advocate, for the petitioner.

Mr. Ranvir S. Chauhan, DAG, Punjab, for respondent Nos. 1 to 4.

Mr. Sanjeev Sharma, Advocate, for respondent No.5.

A. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation proceedings – Mutation does not confer any title.

(Para 4)

B. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation proceedings – Res-judicata -- Finding recorded during the mutation proceedings while sanctioning or rejecting the same in favour of either of the parties in a suit for declaration of title or possession on the basis of sale deed etc., does not operate as res judicata.

(Para 4)

C. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation proceedings – Civil suit -- Observation made in the summary proceedings of the mutation by the revenue authorities starting from the Assistant Collector Ist Grade upto the Financial Commissioner, shall not prejudice the mind of the Civil Court and the Civil Court shall independently decide the suit in accordance with law.

I am of the view that mutation does not confer any title. The finding recorded during the mutation proceedings while sanctioning or rejecting the same in favour of either of the parties in a suit for declaration of title or possession on the basis of sale deed etc., does not operate as res judicata. While exercising the jurisdiction under Article 226 of the Constitution of India, I am not inclined to look into the correctness of