ADMINISTRATOR GENERAL OF WEST BENGAL

v.

COLLECTOR, VARANASI

FEBRUARY 16, 1988

[S. NATARAJAN AND M.N. VENKATACHALIAH, JJ.]

Land Acquisition Act, 1894: Sections 4, 11, 18 and 23—Compensation—Valuation of land—Determination of market value—Price fetched for comparative land sold at time of section 4 Notification—Best evidence of valuation—Land with building—Determination of value of building—Free growth on land—Whether can be valued on basis of horticultural value.

Solatium and interest—Applicability of higher rates—Effect of U.P. Land Acquisition (Amendment) Act 1972 and Central Amendment Act 1982—Question left open in view of pendency of Bhag Singh v. U.T. Chandigarh.

Practice and Procedure: Compensation to be awarded for change of residence—Question under Section 23 clause Fifthly L.A. Act 1894—Raised for first time in S.L.P. under Article 136 without taking specific ground—New plea—Disallowed.

The suit property known as "Gopal Lal Villa" situated on the outskirts of the city of Varanasi was a sprawling 60 years old building, part of the estate of a Raja, and vested in the appellant. It was acquired pursuant to preliminary Notification dated 4.7.1959 under the Land Acquisition Act 1894 for the purposes of the Education Department of the Government of Uttar Pradesh.

The building was of about 25,000 square feet plinth area comprising 35 rooms, halls and other appurtenances, and the 23.66 acres of ground appurtenant to the building, had 431 fruit and 13 timber trees and 12 bamboo clumps.

The appellant claimed compensation of Rs.8,00,580 for the land valuing it at Rs.352 per decimal. Rs.3,50,000 for the building and structures; Rs.41,010 for the tree growth and Rs.5,000 as compensation for change of residence.

The Land Acquisition Officer by his Award dated 4.11.1961

A under s. 11 of the Land Acquisition Act determined the market value of the land at Rs.3,31,340 valuing it at Rs.140 per decimal; of the building and superstructure at Rs.57,660 and of the tree growth at Rs.355.83.

Being aggrieved with the aforesaid determination of compensation the appellant did not accept the offer contained in the Award, and B sought for a reference under s. 18 of the Act to the Civil Court.

The District Court enhanced the market value of the land to Rs.4,73,200 i.e. from Rs.140 to Rs.200 per decimal and left the valuation of the building and the tree growth undisturbed.

C The High Court affirmed the Award of the District Court and dismissed the appellant's claim for further enhancement.

In the appeal to this Court, it was contended on behalf of the appellant that the claim of Rs.352 per decimal was not accepted and that the High Court in affirming the valuation of the land at a mere D Rs.200 per decimal overlooked certain settled principles of valuation. It adopted the District Judge's valuation which was the average of the valuation reflected in Ext. 2 and Ext. 19 while the higher of the two figures indicated by Ext. 2 should have been adopted. It was further contended that the appellant was entitled to solatium and interest at higher rates in view of the re-introduction of s. 23(2) in 1972 by the U.P. E Land Acquisition (Amendment) Act, 1972 and under the Central Amendment Act 68 of 1984.

On behalf of the respondent it was contended that the changes in law brought about by the State Amendment Act No. 28 of 1972 and the Central Amending Act 68 of 1984 are presumptively prospective except F to the extent that they are made expressly or by compelling implication retrospective in the extension of their benefits.

On the question whether:

G (1) the estimate of the market-value of the acquired land at Rs.200 per decimal is unreasonably low and is arrived at ignoring the evidence on record and settled principles of valuation.

(2) the valuation of the buildings and structures at a mere H Rs.57,660 calls for an upward revision.

(3) the award made for the tree-growth is inadequate and is required to be valued higher. A

(4) appellant is entitled to the benefit of s. 23(2) of the Act as introduced by the U.P. Land Acquisition (Amendment) Act 1972 providing for solatium and to higher rates of solatium and interest under the Central Amending Act 1984 on the B ground that proceedings were pending in appeal before this Court on the dates the amendments came into force.

Appeal allowed in part—compensation awarded for land left undisturbed, compensation for building and tree growth enhanced.

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HELD: 1.(i) The determination of market-value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. [1033C-D]

(ii) The market value of a piece of property for purposes of s. 23 of the Land Acquisition Act is stated to be the price at which the pro- D perty changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arm's length. [1033D]

(iii) Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evi- E dences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available. [1033E-F]

(iv) Prices fetched for smaller plots cannot form safe bases valuation of large tracts of land as the two are not comparable properties. [1034E] F

Collector of Lakhimpur v. *B.C. Dutta,* AIR 1971 SC 2015; *Mirza Nausherwan Khan & Anr.* v. *The Collector (Land Acquisition), Hyderabad,* [1975] 2 SCR 184; *Padma Uppal etc.* v. *State of Punjab & Ors.,* [1977] 1 SCR 329 and *Smt. Kaushalya Devi Bogra & Ors.* v. *The Land Acquisition Officer, Aurangabad & Anr.,* [1984] 2 SCR 900, G referred to.

(v) However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building plots that could be laid-out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay out H

A could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. [1034G-H]

(vi) In a case such as the above, necessary deductions for the extent of land required for the formation of roads and other civic B amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. [1034H; 1035A-B]

Sahib Singh Kalha & Ors. v. *Amritsar Improvement Trust and* C *Ors.*, [1982] 1 SCC 419 referred to.

(vii) Prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the 'retail' price of land and the latter the 'wholesale' price. [1035B]

D (viii) Subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. [1035C]

(ix) Where it is shown that the market was stable and there were E no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. (a) When there is evidence to the effect that there was no upward surge in the prices in the interregnum. (b) The burden of establishing this would be squarely on the party relying on such subsequent transaction. [1035C-D, G]

F *State of U.P.* v. *Major Jitender Kumar,* AIR 1982 SC 877 referred to.

In the instant case, the appellant did not endeavour to show that between the date of preliminary notification i.e. 4.7.1959 and the date of Ext. 24 i.e. 18.8.1960 there was no appreciation in the value of land G in the area. Therefore, Ext. 24 cannot be relied upon as affording evidence of the market value as on 4.7.1959. [1035G-H]

(xi) The valuation of land made in the present case does not call for or justify any upward revision at all. (a) There is no justification to H interfere with the determination of the market value of the land approved by the High Court. [1036C-D]

In the instant case Rs.200 per decimal for the large extent of the acquired land works out to 40% of the "retail" price even if Rs.500 is taken as the 'retail' price. That apart, in the case of land with potentialities for a more profitable use it is necessary to acknowledge, and make due allowance for, the possibility that the land might not be applied for the prospective use at all or not so applied within a reasonable time. [1036H; 1037A-B] A B

Bombay Improvement v. *Mervanji Manekji Mistry,* AIR 1926 Bombay 420 referred to.

2.(i) Usually land and building thereon constitute one unit. Land is one kind of property; land and building together constitute an altogether different kind of property. The latter must be valued as one unit. [1037C-D] C

(ii) However, where, the property comprises extensive land and the structures standing do not show that full utilisation potential of the land is realised it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary-notification and to add to it the value of the structures as at that time. [1037D-E] D

(iii) By the above method, building value is estimated on the basis of the prime-cost or replacement-cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (less the salvage valued at the end of the period of utility) by the number of years of utility of the building. [1037E-F] E

(iv) The factors that prolong the life and utility of the building, such as good maintenance, influence and bring down the rate of depreciation. [1037F] F

In the instant case, the estimate of the proper market-value of the building has not received the requisite attention both before the High Court and the District Court. It is no doubt true that the Valuation Report, Ext. I, was prepared on 20.7.1960 one year after the date of the preliminary notification. But the extent of the built area was about 25,000 sq. ft. There is no evidence to suggest that the rates mentioned and adopted in Ext. I were not rates valid for a spread out period. No case was made out that the building had lost its utility and that the only mode of valuation appropriate to the case was one of awarding merely the salvage-value. The building, according to the evidence was quite G H

A strong though about 60 years old at the time. The appropriate thing to do would have been to set aside the award in so far as the valuation of the building is concerned and remit the matter for a fresh determination of its market value as on 14.7.1959. However, in the interest of justice it would be proper to make some ready and rough estimate drawing such sustenance as the evidence on record could afford and B impart a quietus to this vexed litigation. Accordingly, the compensation for the buildings and structures is enhanced from Rs.57,660 to Rs.2,00,000. [1038G-H; 1039D-G; 1040G]

3. Where land is valued with reference to its potentiality for building purposes and on the basis of prices fetched by small sites in a C hypothetical lay-out the tree growth on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield. This principle, however, does not come in the way of awarding the timber-value or the salvage-value of the tree growth after providng for the cost of cutting and removing. [1040G-H; 1041A]

D In the instant case, the evidence shows that there were 471 fruit bearing trees and plants, 13 timber trees and 12 bamboo clusters. Though there is some evidence as to the value of the yield, there is no evidence about the timber value and fuel value of the trees. The District Judge has awarded a sum of Rs.355.85 for the entire tree growth. Having regard to the large number of trees and to the fact that some of E them were timber trees, it would be appropriate to award a lump-sum of Rs.7,500 under this head. The compensation for tree growth is accordingly enhanced from Rs.355.85 to Rs.7,500. [1041A-C]

4. By the U.P. Land Acquisition (Amendment) Act, 1954, Section 23(2) had been deleted from the statute. It was re-introduced by the F U.P. Land Acquisition (Amendment) Act 1972. The preliminary notification for the acquisition was issued subsequent to the deletion. Whether re-introduction of sub-section (2) would enure to the benefit of the person whose land is acquired on the ground that proceedings in appeal were pending on the date of introduction of that provision, and availability for further enhancement of the solatium and rates of in- G terest under the Central Amendment Act 68 of 1984 are left open with consent of counsel to be agitated after final decision in *Bhag Singh* v. *U.T. of Chandigarh,* by a larger Bench of this Court. [1041E-F; 1042B]

5. The point concerning compensation to be awarded for change of residence under clause 'fifthly' in section 23(1) does not appear to H have been raised and urged before the High Court. No specific ground

has also been taken in this behalf in the appeal before this Court. The appellant should not, therefore, be permitted to re-agitate this question over again in this Court. [1042D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 877 of 1974.

From the Judgment and Decree dated 17.11.1971 of the Allahabad High Court in First Appeal No. 171 of 1966.

D.N. Mukherjee, G.S. Chatterjee and A. Bhattacharjee for the Appellant.

Prithvi Raj and Mrs. Shobha Dikshit for the Respondent.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. This appeal, for enhancement of compensation, by Special leave, arises out of and is directed against the judgment and decree dated 17th November, 1971 of the High Court of Allahabad in First Appeal No. 171 of 1966 affirming the Award and Decree dated 13.12.1965 of the Ist Addl. District Judge, Varanasi, made in a Reference Under Section 18 of the Land Acquisition Act 1894.

Property known as "Gopal Lal Villa" a sprawling 60 year old building of about 25,000 square feet of plinth-area comprising of 35 rooms, halls and other appurtenances, its large 23.66 acre grounds with 431 fruit and 13 Timber trees; 12 Bamboo-clumps, situated on the outskirts of the City of Varanasi, originally part of the estate of Raja P.N. Tagore, and now vesting in the Administrator General, West Bengal, was acquired pursuant to the preliminary notification, published in the Gazette, dated, 4.7.1959 for the purposes of the education department of the Government of Uttar Pradesh.

2. Before the Land Acquisition Officer, Appellant claimed compensation of Rs.8,00,580 (at Rs.352 per decimal) for the land; Rs.3,50,000 for the building and structures; Rs.41,010 for the tree growth; and Rs.5,000 as compensation for change of residence.

The Land Acquisition Officer, however, by his Award dated 4.11.1961 under Section 11 of the Act determined the market-value of the land at Rs.3,31,340 valuing it Rs.140 per decimal (or Rs.14,000 per

A acre); of the building and structures at Rs.57,660 and of the tree-growth at Rs.355.83. Appellant, not having accepted the offer contained in the award, sought for a reference under Section 18 of the Act to the Civil Court in proceedings pursuant to which the District-Court enhanced the market-value of the land to Rs.4,73,200 (from Rs.140 to Rs.200 per decimal) leaving the valuation of the building and the B tree-growth undisturbed. The High Court has affirmed the Award dismissing appellant's claim for further enhancement before it.

3. We have heard Shri D.N. Mukherjee, learned counsel in support of the appeal and Shri Prithviraj, learned Senior-Advocate for the respondent. We have been taken through the judgment under C appeal and the evidence on record.

On the contentions urged at the hearing, the following points fall for consideration:

(a) Whether the estimate of the market-value of the acquired-D land at Rs.200 per decimal is unreasonably low and is arrived at ignoring the evidence on record and settled principles of valuation?

(b) Whether the valuation of the buildings and structures at a mere Rs.57,660 calls for an upward revision?

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(c) Whether the award made for the tree-growth is inadequate and is required to be valued higher?

(d) Whether appellant is entitled to the benefit of Sec. 23(2) of the Act as introduced by the U.P. Law Acquisition (Amend-F ment) Act 1972 providing for solatium and, further, to higher rates of solatium and interest under the Central Amending Act (Act No. 68 of 1984) on the ground that proceedings were pending in appeal before this court on the dates these amendments came into force?

G 4. *Re: Contention (a)*

The acquired land had the potentiality for building purposes. Learned District Judge found that:

"..... The Land Acquisition Officer himself realised this H fact and has observed that "the land under acquisition is

> situated within the Corporation limits in Mohalla Orderly Bazar, a thickly populated locality and is near to Kutchery. It has, therefore, a potential value as building site." I may add here that though the acquired land is at a distance of about 3 to 3½ miles from the main markets of Varanasi City, yet every thing of daily need and of day today utility is available in the market which exists in the locality of the acquired land. It may also be added that the land adjacent to the west of the acquired land known as 'Tagore Nagar' formerly formed part of this Gopal Lal Villa and both were covered by one boundary. The land of Tagore Nagar has been divided into small portions and a colony with residential quarters has grown up there. This was already in existence before the present acquisition ....."

The determination of market-value of a piece land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market-value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event. viz, the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under *bona fide* transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

In the District-court, appellant relied upon eight transactions of what, according to him, were sale, of similar lands. The transactions at Ext. 18, 20, 21 and 22, dated, 25.3.1952, 1.12.1955, 11.8.1953 & 11.7.1957 respectively were rejected by learned District Judge on the ground that they were long enterior in point of time to the acquisition and lacked the element of contemporaneity. Ext. 23 dated, 25.10.1958 and Ext. 24 dated, 18.8.1960 were also held not to afford reliable evidence of market-value on the ground that while in the former case the property was sold along with a construction thereon without any indication as to the apportionment of the price between the land and the construction, in the latter case the sale was about an year subsequent to the date of the preliminary notification.

A What remained were the evidence of sale transactions at Exts. 2 and 19 dated 16.9.1958 and 22.12.1958 respectively indicating a price of Rs.1250 and Rs.900 per biswa respectively. The District Judge struck an average of the two and fixed the rate at Rs.1075 per biswa which worked out to about Rs.350, or thereabouts, per decimal. But since Ext. 2 and Ext. 19 related to very small plots, the learned District B Judge on some calculations of his own, fixed the rate of Rs.200 per decimal for the acquired land.

5. Shri Mukharji in support of the appellant's claim @ Rs.352 per decimal submitted that the High Court, in affirming the valuation of the land at a mere Rs.200 per decimal, overlooked certain settled C principles of valuation in that it approved the process—adopted by the learned District Judge—of striking an average of the valuations reflected in Ext. 2 and Ext. 19, while the higher of the two figures indicated by Ext. 2, should have been adopted. Learned Counsel submitted that the acquired land, though situate about 3½ miles away from the heart of Varanasi City, had all the potentiality for use for D building purposes and that the rejection of the evidence of market-value afforded by Ext. 24, the transaction of sale dated 14.7.1960 which indicated a price of Rs.2,000 per biswa on the ground that it was an year later than the preliminary notification was erroneous.

6. It is trite proposition that prices fetched for small plots can E not form safe-bases for valuation of large tracts of land as the two are not comparable properties. (See Collector of *Lakhimpur* v. *B.C. Dutta,* AIR 1971 SC 2015; *Mirza Nausherwan Khan & Anr.* v. *The Collector (Land Acquisition), Hyderabad,* [1975] 1 SCR; *Padma Uppal etc.* v. *State of Punjab & Ors.,* [1971] 1 SCR; *Smt. Kaushalya Devi Bogra & Ors.* v. *The Land Acquisition Officer Aurangabad & Anr.,* F [1984] 2 SCR. The principle that evidence of market-value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building G purposes; that building lots that could be laid-out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the H extent of land required for the formation of roads and other civic

amenities; expenses of development of the sites by laying-out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In *Sahib Singh Kalha & Ors.* v. *Amritsar Improvement Trust and Ors.*, (See 1982 1 SCC 419, this court indicated that deductions for land required for roads and other developmental expenses can, together, come-up to as much as 53%. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the 'retail' price of land and the latter the 'wholesale' price.

The sale transaction at Ext. 24 was an year later. Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market-value. This court in *State of U.P.* v. *Maj. Jitender Kumar,* (See AIR 1982 SC 877) observed:

> "..... It is true that the sale deed Ext. 21 upon which the High Court has relied is of a date three years later than the Notification under S. 4 but no material was produced before the Court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land dispute. On the whole we are not satisified that any error was committed by the High Court in relying upon the sale deed Ex. 21....."

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction. In the present case appellant did not endeavour to show that between the date of preliminary notification i.e. 4.7.1959 and the date of Ext. 24 i.e. 18.8.1960 there was no appreciation in the value of land in the area. Therefore, Ext. 24 cannot be relied upon as affording evidence of the market-

A value as on 4.7.1959. We cannot accept the argument that the price indicated in Ext. 24 should be accepted after allowing an appropriate deduction for the possible appreciation of the land-values during the period of one year. Apart from other difficulties in this exercise, there is no evidence as to the rate and degree of appreciation in the values of land so that the figure could be jobbed backwards from 14.7.1960 to
B 4.7.1959.

7. It appears to us that even if the value at Rs.1,250 as on 27.8.1958 indicated by Ext. 2 is adopted and something is added thereto for the possible appreciation for the period till the preliminary notification, also taking into account the trend of appreciation in the
C prices in the area as indicated by Ext. 24 and the value of small developed sites is estimated somewhere between Rs.1,400 and Rs.1,600 per biswa or Rs.450 to Rs.500 per decimal, yet, the valuation made in the present case does not call for or justify any upward revision at all. There is a simple way of cross checking these results. The value of small plots—Rs.500 per decimal as now estimated—represents what
D may be called the "retail" price of the land. What is to be estimated therefrom is the "wholesale" price of land. In *Bombay Improvement* v. *Mervanji Manekji Mistry,* (See AIR 1926 Bombay 420) Mecleod CJ suggested a simple rule:

> "..... Valuation cases must be dealt with just as much
E from the point of view of the hypothetical purchase as of the claimant. The valuation itself must often be more or less a matter of guesswork. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give ....."

> F "....I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than far simpler methods. But, in any event, no harm can be done by testing a conclusion arrived at in one way by a conclusion arrived at in another ....."

> G "....A *very simple method of valuing land wholesale from retail prices is to take anything between one and half one-third, according to circumstances of the expected gross valuation, as the wholesale price* ....."
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> (emphasis supplied)

H In the present case, Rs.200 per decimal for the large extent of the

acquired land works out to 40% of the "retail" price even if we take, Rs.500 as the "retail" price. That apart, in the case of land with potentialities for a more profitable use, it is necessary to acknowledge, and make due allowance for, the possibility that the land might not be applied for the prospective use at all or not so applied within a reasonable time.

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There is, therefore, no justification to interfere with the determination of the market-value of the land approved by the High Court. Contention (a) is accordingly answered against the appellant.

8. *Re: Contention (b)*

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The District Court proceeded to value the property on the "Land and Building Method". The appositeness of this method to the present case was not debated before us. Usually, land and building thereon constitute one unit. Land is one kind of property; land and building together constitute an altogether different kind of property. They must be valued as one unit. But where, however, the property comprises extensive land and the structures thereon do not indicate a realisation of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market-value of the land with reference to the date of the preliminary-notification and to add to it the value of the structures as at that time. In this method, building-value is estimated on the basis of the prime-cost or replacement-cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (Less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation.

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Hari Shanker Misra PW 3 referring to the nature and quality of the building stated:

> ". . . . The Northern part of this Villa was double storeyed and rest was single storeyed. Its plinth was 3 feet high and rooms were 14 feet high. The building bore 35 rooms and besides this there was a big hall 65 feet × 22 feet. Its floor was made up of some patent stones. Some monthly some market and Vkiya were stoned. The doors were 8 feet × 4 feet and they were made up of Burma teak wood and up ways were double doored. When Improvement Trust oc-

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A cupied the property of Nejai at that time building was well maintained. Over and above the main building there were manager quarters. Kitchen, out house, servant quarters, Chowkidar quarters and a stable. Now they were in good condition. Its boundary wall was 7 feet and at some places they were 8 feet high. This also consists of 2 iron gates. B One is main gate and the other one is by its side of some distance ....."

Learned District Judge based his valuation almost entirely upon the report of the Chief Engineer, estimating the building at Rs.57,660. That report itself was not brought on record in the proceedings of reference. It is not clear from the judgment of the High Court whether C this estimate of Rs.57,660 represented the cost of replacement of the structure less depreciation or whether it represented merely the salvage-value of the building. High Court rejected the Valuation Report, Ext. 1 relied upon by the appellant on the ground that it was made with reference to a date which was an year later than the preliminary notification. The High Court observed:

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"....The appellant had examined Narain Chand Das, an Overseer who had assisted the Executive Engineer, in preparing the valuation of the constructions and the well. The report of the Executive Engineer is Ext. 1 on the record. It E appears from the said report that the valuation was determined on the basis of the rates prevailing in the year 1960 where-as the preliminary notification in the instant case was issued in the year 1959. Moreover, this building appears to be about 60 years old and the market value thereof could not be determined on the basis of the cost of F constructions prevailing in the year 1960. This method of calculating the market value of the property is obviously erroneous and cannot be accepted. No other evidence was produced by the appellant to determine the value of the constructions and the well. The evidence produced by him being not satisfactory, the compensation already deter- G mined by the Land Acquisition Officer in respect of this item of the property was not liable to be enhanced ....."

We are afraid the estimate of the proper market-value of the building has not received the requisite attention both before the High Court and the District Court. It is no doubt true that Ext. 1 was H prepared on 20.7.1960, an year after the date of the preliminary notifi-

cation in the present case; but the extent of the built-area was about 2,500 sq. ft. Ext. 1 gives a breakdown of the area of the various parts of the building and sets out the nature of the construction and proceeds to estimate the value in terms of the then current PWD rates less depreciation of 20%. The rates adopted were not particular to the date of valuation i.e. 20.7.1960. The PWD rates are operative over a period, generally for an year or so. The extent or the quality of construction were also not in dispute. The main building of an area of 18828 sq. ft. consisted of 35 rooms, and a big hall with 'Marble Flooring', 'Burma Teak Shutters', 'Stone Slab Roofing', a portico with 'Glazed Gracian Pillars' etc. In Ext. 1, the main portion was valued at Rs.12 per sq. ft. Apart from the main building, there were other appurtenances such as the Managers' quarters, kitchen-house, chowkidars' quarters, out-house, stables, pucca wells etc. The other structures have been valued area-wise at much lesser rates, according as the nature of the construction. The decendants of Raja P.N. Tagore, it was claimed, were residing in the building till a few days before possession was taken. There is no evidence to suggest that, the rates mentioned and adopted in Ext. 1 were not rates valid for a spread-out period.

A B C D

It appears to us somewhat unreasonable that the extensive building of 25,000 sq. ft. with big-halls and 35 rooms constructed with quality-material, marble flooring, burma teak joinery should be valued at a mere Rs.57,660. No case was made-out that the building had lost its utility and that only mode of valuation appropriate to the case was one of awarding merely the salvage-value. The building, according to the evidence, was quite strong though about 60 years old at the time.

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Having regard to the circumstances of this case, the appropriate thing to do would have been to set-aside the award in so far as the valuation of the building is concerned and remit the matter for a fresh determination of its market-value as on 14.7.1959. But the parties have been at litigation for decades. The acquisition is of the year 1959. We, therefore, thought—and put to the learned counsel on both sides—whether in the interests of justice, it would not be proper to make some rough and ready estimate, drawing such sustenance as the evidence on record could afford and impart a quietus to this vexed litigation. Learned counsel very fairly submitted that this would be the appropriate course. In the very nature of things, the exercise that we make, must share the imperfections of the evidence on record. But then, some element of speculation is inevitable in all valuations. In the

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best of exercises some measure of conjecture and guess-work is inherent in the very nature of the exercise.

9. We may first proceed to estimate the prime-cost of the building. The measurement set-out in Ext. 1 is not disputed. If Ext. 1 is taken as the starting point for the estimate of cost of replacment as on 4.7.1959; the depreciation of 20% allowed in Ext. 1 has to be added back and, further, some deduction towards the possible escalation of costs of construction between the date of preliminary-notification and of the period of validity of the rates adopted in Ext. 1 has to be made. On this basis, the cost of replacement could be estimated at about Rs.4 lakhs. This works out to Rs.16 sq. ft. on the average. Even in respect of 1959, this figure may not be much, having regard to the quality of the construction.

From this sum of Rs.4 lakhs, depreciation for the past life of 60 years of building would have to be deducted. Depreciation depends upon and is deduced from factors such as the cost of the construction; the expected life-span; its salvage-value realisable at the end of the period of utility etc. Rate of depreciation is generally, the prime-cost less salvage value divided by the life-span. These, of course, are matters of evidence. In the present case, if we make a rough and ready estimate of the salvage-value at say, 10% of the cost and estimate the period of utility of life-span of the building at, say, 90 years, the depreciation which is the annual loss of value due to physical wear and tear works out to about Rs.4,000 per year or roughly 1%. Without going to the finer details of the calculation of the depreciation on the progressive written-down values, we think, an estimate of 50% of the cost of the building may, again on a rough and ready basis, be deducted towards depreciation. The market-value of the building as on the date of the preliminary notification could accordingly be fixed at Rs.2,00,000.

Accordingly, the compensation for the buildings and structures is enhanced from Rs.57,660 to Rs.2,00,000, point (b) is held and answered accordingly.

10. *Re: Contention (c):* So far as the tree-growth is concerned, it is trite proposition that where land is valued with reference to its potentiality for building-purposes and on the basis of prices fetched by small sites in a hypothetical lay-out, the tree-growth on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield. But this principle does not

come in the way of awarding the timber-value or the salvage value of the tree-growth after providing for the cost of cutting and removing. The evidence shows that there were 471 fruit-bearing trees and plants: 13 timber trees and 12 Bamboo clusters. Though there is some evidence as to the value of the yield, this may not be a relevant factor having regard to the principles of valuation appropriate to the case. There is no evidence about the timber value and the fuel value of the trees. Learned District Judge has awarded a sum of Rs.355.85 for the entire tree-growth. Having regard to the large number of trees and to the fact that some of them were timber trees, we think we should award lump-sum of Rs.7,500 under this head.

Accordingly, compensation for the tree-growth is enhanced from Rs.355.85 to Rs.7,500.

11. *Re: Contention(d)*

This leaves us with the question whether the benefit of Section 23(2) introduced by the UP Land Acquisition (Amendment) Act 1972 (Act No. 28 of 1972) providing for a solatium is available to the appellant on the ground that the proceedings in appeal were pending as on the date when that provision was introduced. It is to be recalled that by U.P. Land Acquisition (Amendment) Act (Act No. 22 of 1954) Section 23(2) had been deleted from the statute. The preliminary notification was long subsequent to this deletion. The question is whether the introduction or re-introduction of Section 23(2) in 1972 would enure to the benefit of the appellant on the premise that rules of construction appropriate to such remedial measures would require their benefit to be extended to pending proceedings. Appellant has also claimed the benefit of the further enhancement of the solatium and the rates of interest under Central Amending Act 68 of 1984. Shri Mukharjee submitted that these amendments, both by the State Law and the Central Law, were remedial legislations and would apply to pending actions.

Shri Prithviraj, on the contrary, submitted that these changes in the law, brought in by the amended provisions are presumptively prospective except to the extent that they are made expressly or by compelling implication retrospective in the extension of their benefits. Learned Counsel said that application of these provisions even to pending proceedings envisages a principle of retro-active application which must expressly be enabled by the statute or is to be inferred as an inevitable implication.

A Shri Mukharjee relied upon certain observations of this court in the case of *Bhag Singh & Ors.* v. *Union Territory of Chandigarh,* (See 1985 Suppl. 2 SCR 949). There are some observations at 958 of the report which tend to lend support to Shri Mukharjee. But the matter is pending decision at the hands of a larger bench.

B

12. In the circumstances, learned counsel on both sides submitted that the appeal be disposed of on the other points leaving it open to the appellant to agitate Contention (d) after a final pronouncement in *Bhag Singh's* case, if in the light of the said judgment, this claim or any part of it survives. We accept this submission and reserve liberty to the appellant accordingly.

C

13. Shri Mukharjee sought to raise another point concerning compensation to be awarded for change of residence under Clause 'fifthly' in Sec. 23(1); but as this point does not appear to have been raised and urged before the High Court. We think, we should not permit the appellant to re-agitate this question over again in this court. D It is also to be observed that no specific ground is taken in this behalf in this appeal either.

14. In the result, this appeal is allowed in part and while the compensation determined and awarded for the land is left undisturbed, the compensation awarded for the building and tree-growth is E enhanced from Rs.57,660 to Rs.2,00,000 and from Rs.355.85 to Rs.7,500 respectively. Appellant shall be entitled to interest at 6% on the enhanced amount of compensation from the date of taking of possession till realisation. Liberty is reserved to the appellant to seek such additional relief on Contention (d) depending upon the ultimate decision in *Bhag Singh's* case. The appeal is disposed of accordingly. F The appellant shall be entitled to the costs in this appeal. The advocate's fee fixed at Rs.2,500.

N.V.K. Appeal allowed.