

# VALUATION BY DEVELOPMENT METHOD

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## Chapter 1 Introduction

### 1.0. Preamble

**1.0.** Development Method is one of the methods under market approach. There are two main methods in Market Approach - Sales Comparison Method and Development Method.

In sale comparison method, **the direct comparison** made on the land value by comparing between the subject property under valuation and the comparable property. Development Method or residual technique is an indirect manner of deriving land rate from sale transaction. **Like direct sale comparison method, in this technique there is no direct comparison.**

**1.1. IVS 410 Development Property** - Development properties are defined as interests where redevelopment is required to achieve the highest and best use, or where improvements are either being contemplated / in progress at the valuation date and include:

- (a) The construction of buildings,
- (b) Previously undeveloped land which is being provided with infrastructure,
- (c) The redevelopment of previously developed land,
- (d) The improvement or alteration of existing buildings or structures,
- (e) Land allocated for development in a statutory plan, and
- (f) Land allocated for a higher value uses or higher density in a statutory plan.

### 1.2. Different purposes of Valuations of development property

- (a) Proposed projects are financially feasible
- (b) In acquisition and loan security
- (c) Taxation analyses
- (d) For litigation requiring valuation analysis

- (e) For financial reporting purposes, valuation is required for accounting purpose, asset acquisitions and sales, and impairment analysis, and
- (f) For compulsory purchases.

### **1.3. IVS 410 - Valuation Approaches and Methods**

The three principal valuation approaches described in IVS 105 Valuation Approaches and Methods may all be applicable for the valuation of a real property interest. There are two main approaches in relation to the valuation of the development property. These are:

- (a) The market approach
- (b) **The residual method**, which is a hybrid of the **market approach, the income approach and the cost approach.**

**Market Approach** - This approach may also be appropriate for establishing the value of a completed property as one of the inputs required under the residual method, which is explained more fully in the section on the residual method.

**Income Approach** - Establishing the residual value of a development property may involve the use of a cash flow model in some markets. The income approach may also be appropriate for establishing the value of a completed property as one of the inputs required under the residual method, which is explained more fully in the section on the residual method.

**Cost Approach** - Establishing the development costs is a key component of the residual approach. The cost approach may also exclusively be used as a means of indicating the value of development property such as a proposed development of a building or other structure for which there is no active market on completion.

### **1.4. Use of Development method in Banks valuation**

When the security is to be mortgaged to the bank, the bank may direct the valuer, for the project feasibility for developing the property under HABU status. The highest and best use must be physically possible (where applicable), financially feasible, legally permissible and result in the highest value. The valuer may be directed to value the property in stages.

1. **Proposed Project feasibility Report** - At the time of providing the loan (i.e.) while taking the asset as Primary / Collateral security for financing the project. (Inclusive of property Zone classification, checking the proposed building plan for the viability of the proposed project according to land classification, location, cost of construction and income projection on completion) (Refer: Chapter 4 - page 39)

2. **Stage Inspection Report** - Periodical distribution of loan, which requires stage inspection on the completion status of the project.

3. And finally **Completion report** of the project based on loan provided and if any, on the cost overrun on the project. And also valuation report may be required in case of, acquisition and the asset turning in to a non- performing asset.

### **1.5. Applicability of this Method**

If a property is fully developed or under-utilized or of inferior use, to get best and high use, and where there is no prior sale instances available, this method is contemplated for valuation.

**Example:** commercial / industrial / non-availability of plots sales - there may not be many sale instances available) for a direct comparison, to find out the land rate, these types of residual techniques are used.

In cases, where sales of developed properties available, this indirect method provides the probable land value in the locality.

In cases, where residential apartment's composite rates are available, this residual techniques can be adopted to find out the rate for land component. For apartments, the outgoings towards promoter's profit, architect fees, interest components, plan approval charges, FSI stipulations, development charges, etc. have to be ascertained. If it is a tenanted or leasehold property, then the land is arrived with the help of rental income method and by cost approach method.

Another circumstance for applicability of this method is the total unavailability of sale instances of similar open large piece of land in the locality for direct comparison purpose to find out land rate.

Invariably, in Centrally Business District area of town, such situation always exists. There are no open plots left and hence sale instances for such open lands are not available for relevant year.

Sales of even prior or post periods of such relevant year are also not available. However sales of developed property would be available.

Under such circumstances this indirect method provides probable land value in locality, which is derived by residual technique from sale instance of developed property.

Such built-up properties may be either vacant or owner occupied. Such properties could also be tenanted properties.

### **1.6. Large extent of land**

When a large extent of land is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sqft or sqm basis.

Sale of bigger plot fetches less consideration than smaller piece of land.

The nature and location of land, adaptability, advantages, the purpose for which the land can be used in the most lucrative way affects the value.

For the potential / demand value, the locality, situation and size and shape of the land, the rise or fall in the value of the land in the locality, are the relevant factors.

### **1.7. Market Approach - Comparable sales method of valuation of land, for fixing the market value of the land is always concluding but subject to the factors:-**

- Sale must be a genuine transaction & sale execution must have been at the time proximate to the date of valuation.
- Nearness to in the vicinity of the subject land
- Land covered by the sales must be similar to the land
- Size of plot of the land sold must be comparable to this land
- Any dissimilarity in regard to locality, shape, site or nature of land between land sold and this land, valuer can consider the sale value with a reduction proportionately.
- A comparable instance has to be identified having regard to the proximity from time angle & proximity from situation angle.
- For determining the market value of the industrial land under valuation, suitable adjustment has to be made having regard to various positive and negative factors of the land.

#### **1.7.1. Factors considered for land valuation purpose**

**General factors :** Proximity to a road, Frontage, Narrow strip with very small frontage compared to depth, Nearness to developed area, Probable open space reservation requirement, development charges, conditions & nature of land, provisions (under building rules) for roads, sewerage, electricity, parks, water etc., potentiality (demand

& supply). If the depth is more when compared to frontage implementation of belting method or Hypothetical Plotting Scheme. Any change in the Government Policy decisions may affect the value. Even political uncertainty has some effect on the value.

**Additional factors for industrial land:** Pollution Control Act, Factory Act, and Building Bye Laws applicable will also add to the adverse effects of the land value.

If the unit is a Chemical Industry we may have more of deteriorative elements and the industrial land and the surrounding areas may get polluted. The effluent discharge norms play a major role in chemical industries.

The procedure for applying the principle of deduction to the market value of the 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.

It is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases.

**1.8. Probable Land Value:** By determining value of the property by Market Approach Sale Comparison method.

The probable land value will be Market rate of the nearby area, sold, nearness to the time of valuation subject to the following Deductions (May not be the same for all cases)

1. OSR Area in case using Development method
2. Shape (land to be wasted)
3. Development cost (development charges, nature of development, the land required to be set apart under building rules for roads, sewerage, electricity, parks, water)
4. Nearness to infrastructure and civic amenities availability
5. Adoption of belting method if depth of the land is more when compared to frontage
6. Potentiality / Real estate Promoter's profit
7. Charges for contemplation of conversion of land to other uses like residential, commercial or mixed use
8. Effect of Pollution Control Act, Factory Act, and Building Bye Laws

<b>Sample - Probable land value (Assuming land rate as Rs 1800 / sqft)</b>	
Market rate of the nearby area per sqft	Rs 1800
Less : Promoter's Profit @ 15%	(Rs 270)
Land cost per sqft	Rs 1530

Deductions (May not be the same for all cases)		
1. OSR Area using Development method	10%	
2. Shape (land to be wasted)	1%	
3. Development cost	30%	
4. Infrastructure and civic amenities	2%	
5. Adoption of belting method	10%	
6. Potentiality / Demand	2%	
7. Land Conversion charges to other uses	1%	
8. Pollution Control, Factory Act & Building Laws	1%	
9. Total Deductions	57%	(Rs 872)
Land rate to be adopted per sqft		Rs 658

**Remarks:** The derived market rate as above, need not be the actual Market price. Since, the percentage used by the valuer is not properly defined, and this method adoption will not reflect the true market price (is an ad-hoc one) No scientific solution or definition to the deductions have been briefed out based on the factors involving in the property.

If an investor would like invest, he makes a through enquiry, since huge investment which he has to make, viability of the income that will be generated from the money invested will be carrying more weightage.

The valuer, must work out in a scientific manner in deriving the land market price. If the valuer reports more on the land market price, the investor will be hesitant to enter in to an agreement with the seller, because there is possibility of expected rate of return from the capital getting reduced.

Otherwise, if the valuer reports for lesser land market price, the seller will be hesitant to enter in to an agreement with the investor, because there is possibility of expected market rate may not be equal to the market value.

So, the valuer plays a vital role in matching both the seller and the buyer.

### **1.09. Supreme Court Judgment (For other judgments –refer page 43)**

In case of Special Land Acquisition Officer Eluru vs Jasti Rohini (1995) A I R SCW - 823 /1995 1 SCC 717, Supreme Court held –

“Value fetched by sale of small extent land cannot be adopted for large extent land. Loss of land for road and park, expenses for development should be deducted”-.

In case of Collector Lakhimpur vs. Bhubanchandra Dutta (A I R 1971 SC 2015), Supreme Court held that –

“The plot which is to be considered as large and the plot which could be treated as small plot, would again depend on factors such as user of plot and area where plot is situated.”

### 1.10. Types of Development Method

The development method is based on the Residual Techniques of the subject property under valuation. Land value can be derived by residual technique in both types of such occupancy. All these situations calls for use of development method, because such situation will bring in higher monetary returns from the property in case of sale.

**1. Hypothetical Plotting Scheme** - This method is used for large extent of land

**2. Hypothetical Building Scheme** - There 4 Types Methods of Residual Techniques used based on the concepts.

#### Sample working of Development Method:

<b>Data available as referred from document</b>	
Sale consideration as referred from document	Rs 20.00 lakhs
Land area as referred from document	1000 sqft
Building area as referred from document	1000 sqft
Building Age as referred from document	10 years
Assumptions made for building	
Replacement cost on date of sale	Rs 1200/ sqft
Salvage value assumption	Nil
Physical life	60 years
Building value=(DRC)=1000 x Rs 1200 x 50/60	Rs 10,00,000.
Land value derived from sale consideration by deducting building value (Rs 20,00,000 –Rs 10,00,000)	Rs 10,00,000.
Land rate per sqft = Rs 10,00,000 / 1000 sqft	Rs 1,000 per sqft

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## Chapter 2

### Hypothetical Plotting Scheme

#### 2.0. Introduction

Where there is a large sized land to be valued, and the total unavailability of sale instances of similar open piece of land in the locality are for direct comparison purpose to find out land rate. As against this, sale instances are available for smaller size of subdivided plots in the same or nearby locality.

The adoption of this method, is resorted to value a large sized plot but comparable available in market are only small plots.

In such cases a direct comparison of value with small sized plot may not be effective in estimation of large sized plot value.

Difference in size, location and fluctuation of land value of plots comes into picture in valuing. There may be a fall in value of the rear plot away from the road compared with the value of the front plot just on the roadside.

This method is more scientific and rational method of **valuing very large size plots under one ownership**. Clubbing different ownership title lands at different distance from road cannot be valued by this method.

Like belting theory, there are certain preconditions for applicability of this scheme also.

- ❖ If sales of large size plots in the locality are not available then and then only this scheme can be applied. No comparable sale in locality for similar large size land. Comparable sale instances available for smaller plots only
- ❖ Plot should be in developing area of town where demand for housing site exists. It should not be in fully developed commercial area of town, where there is no demand for housing plots or Land should be in an underdeveloped area
- ❖ The plot should be of sufficiently large size area so that it could be divided into several small size plots, similar to plots in sale instances. Small plots made will be with access from internal layout road of the scheme.
- ❖ Depth of the original land should be considerably more as compared to road frontage (Width).



- ❖ Access to large size land is only by road on one side only. The front area of the land connecting the road is more valuable than the rear portion.
- ❖ The subject large size land must be in single ownership title. Clubbing different ownership title lands at different distance from road cannot be valued by this method

## **2.1. Method of valuation**

### **2.1.1. Development Planning of Hypothetical Plotting Scheme**

The plotting scheme involves planning housing sites in plots, laying out of internal roads and other utility services in the plot and providing requisite amenity area (Open Space Reservation - Garden or Recreation Space) in the plot. The manner of working out values of large plot, by Hypothetical Plotting Scheme, is as follows:

**2.1.2. Layout preparation:** In a large size plot, a valuer should first prepare a. hypothetical layout, subdividing the large land into small size plots as house sites. Such hypothetical layout (selected from many alternative layouts) should be best possible layout with maximum area in saleable plots after observing **Development Control Rules**. (Refer Chapter 5 page 41)

**2.1.3. Roads, services & Amenities:** The internal road network and amenity space should also be planned in the layout as per provisions of development control rules applicable to the town. Wasteful planning by several internal cross roads should be avoided. Normally 15% to 20% of total plot area for internal layout roads is considered normal, but planning should be so economical which would consume minimum area of land in the road: Similarly amenity space (OSR) should be centrally provided so as to benefit maximum number of plots in the layout. Generally as per Development Control rules, 10% or 15% of the total area is required to be provided for this purpose.

**2.1.4. Subdivision of Plot Area:** Area of the small plots (House sites) in the layout should be as per general demand in the area. In small size towns 500 to 750 sqm plots may be in demand and in large size city 225 sq.m to 500 sqm plot may be in demand. It all depends on local conditions and need of people in the concerned locality and market trend.

In this hypothetical layout, valuer may also plan a combination of small size plots and medium size plots. Say medium size plots along main road and small size plots in interior. Valuer should also see that all these plots also confirm to the standards

prescribed, under Development Control rules of the local authority, for layout and subdivisions.

**2.1.5. Rate Analysis:** Having prepared a layout plan, a Valuer should find out and consider prevalent rates of small size, plots in the locality.

Valuer should then estimate values of each of the subdivided plots in the layout scheme.

The valuation depends upon advantages and disadvantages of each of these subdivided plots in the layout by comparing them with lands/plots involved in instances of sale.

Plot along main road may have full value. Plots abutting on internal layout roads may be 15% less in value than the rate of land estimated for plots along main road. Some of the internal plots, in some cases, may even fetch same rate as main road plots.

The plots overlooking large central garden area of the colony, may fetch such higher price. Generally corner plots inside the colony layout, abutting on the colony layout roads, may or may not fetch higher rate, in spite of return frontage.

All these rates have to be determined keeping in view general demand and preferences given by prospective buyers of the locality, to various internal plots in the proposed scheme.

Plots over-looking garden may or may not fetch higher rate, if demand in locality is not much or garden is not on wind ward side but on leeward side.

If topography of large plot is uneven; internal plots in low lying plots may sale at greater discount than plots having level ground or higher ground.

All these land characteristics have to be considered while estimating land rates for plots in hypothetical layout.

**2.1.6. Time factor & Discount factor:** All these plots in the planned scheme may not sale immediately. Depending upon, number of plots in the colony and general demand and competition by other developers, sale of all plots may take 2.to 4 years period. Investor and developer undertaking such a scheme is' required to discount his offer for land, to account for this delay in getting back his capital investment in the land.

Some plots will be sold initially and some in last year.

Hence total receivable sum is generally deferred for half the period of anticipated total sale period. This deferment of value is for locking in period of the capital investment in land, during which return on investment is not likely to be fully available. This

deferment would give present worth of full receivable sum (Total realization) by sale of all the plots.

**2.1.7. Development Expenses:** The Realtor / investor undertaking such, layout development will be required to incur expenses for providing infrastructure amenities in such a layout.

All these expenses must be deducted from total receivable amount from sale of subdivided plots. Such development works can be completed in stages slightly ahead of sale plots.

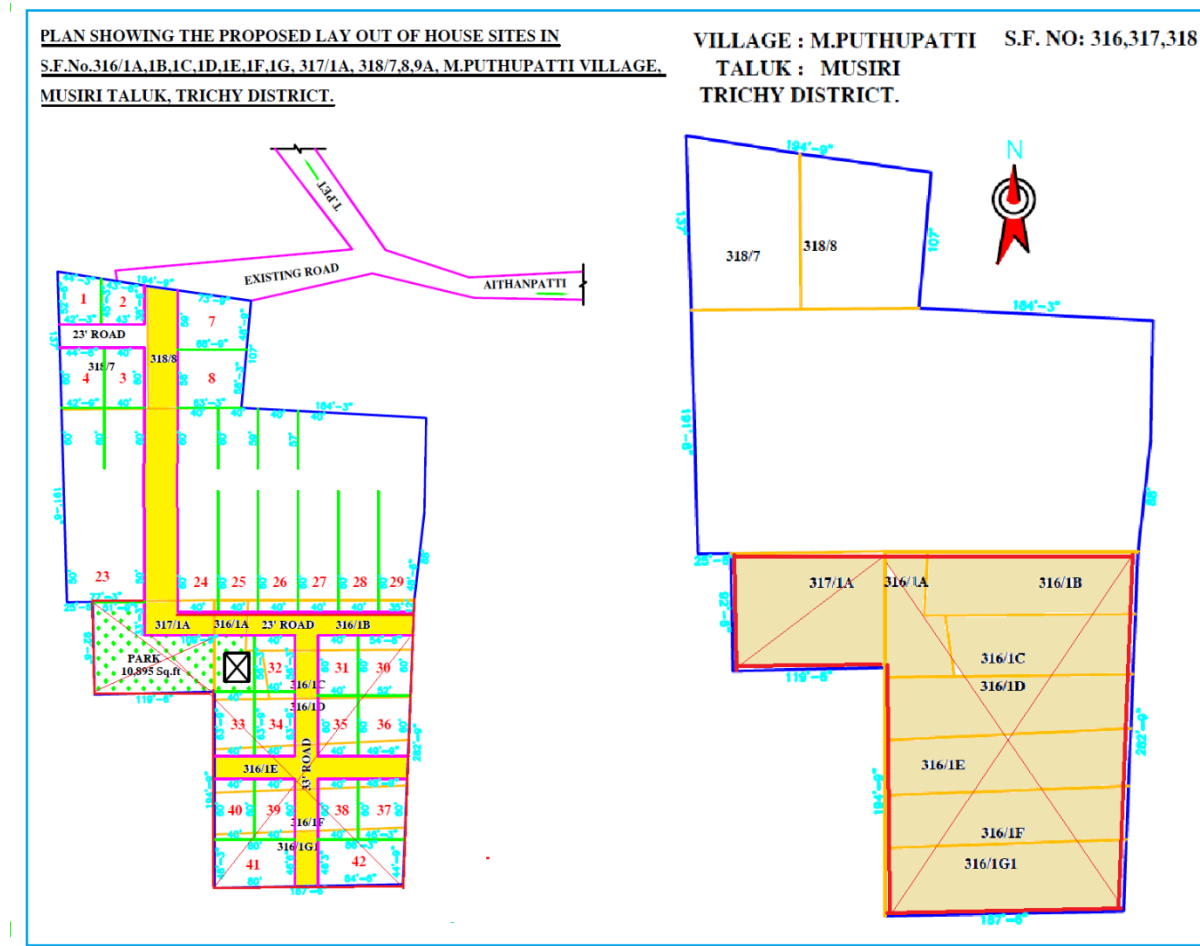
The period for completing development works can be considered, say, one year less than the period for sale of all plots and the cost of development works be deferred for the average period for completing the development works.

Most of local authority insists for providing following amenities and the valuer must assess its cost and deduct, the same from total receivable sum.

1. Construction of internal layout road of required width as per norms.
2. Provision of road side storm water gutters to drain off rain water
3. Provision of street lights on internal roads as per prescribed norms.
- 4: Provision of water mains in layout roads and Underground sewerage mains in road from each plot to municipal sewer mains to be laid under main road.
5. Provision of electric cable in roads and provide sub-station for electric supply
6. Provision for garden development, Open Space Reservation, Public purpose area;
7. Cost of Architects and Consultants fees .for planning and getting approval of layout as well as for survey and demarcation of plots on site: and execution of above stated amenities under his supervision.
8. In addition to the above, from the total amount receivable, the valuer, should also deduct for following expenses.
  - a. Developer's profit at 10% to 15% of total sale proceeds
  - b. Interest on borrowed capital, if any,
  - c. Developers own remuneration, for spending his time and; energy in project. (In addition to developer's profit).
  - d. Advertisements; and brokerage charges which may be 1% to 2% of the sale price of plots.
  - e. Sale documents charges and solicitors fees for conveyances of plots. These fees are usually adopted at about 1% to 2% of sale price.
  - f. If cost is to be borne 50% by the purchaser, as per the prevalent trend in the Locality, lesser amount can be deducted.

g. Registration and stamp duty charges; normally this is borne by the purchasers but in some areas 50% of this charge-is borne by Seller/Developer.

### 2.1.8. Sample FMB drawing & layout drawing as shown



### 2.2. Case study

Mr 'X' owns 35.415 acres of land and desires to sell a portion of his property of 4.904 acres out of the 35.415 acres of land for Rs 175 lakhs per acre as sale offer price.

The real estate promoter is interested in developing that 4.904 acres.

Being a road side property, measuring 340 feet x 600 feet equaling to 213600 square feet (4.904 acres), the real estate promoter intend to develop as residential cum commercial plots.

**Prevailing market rate:** Prevalent rate of commercial plots, in the locality, abutting main road, is Rs. 1500/ square feet.

**Development rules:** OSR / Garden / Public purpose area required to be provided is 10% of total plot area. The main road width is minimum 40 feet wide and side connecting roads must be minimum 30 feet width as per Norms.

**Capital:** Real estate dealer expects a profit of 12%. He expects a rate of return 9% on the capital. Sale of all plots is likely to take 2 years.

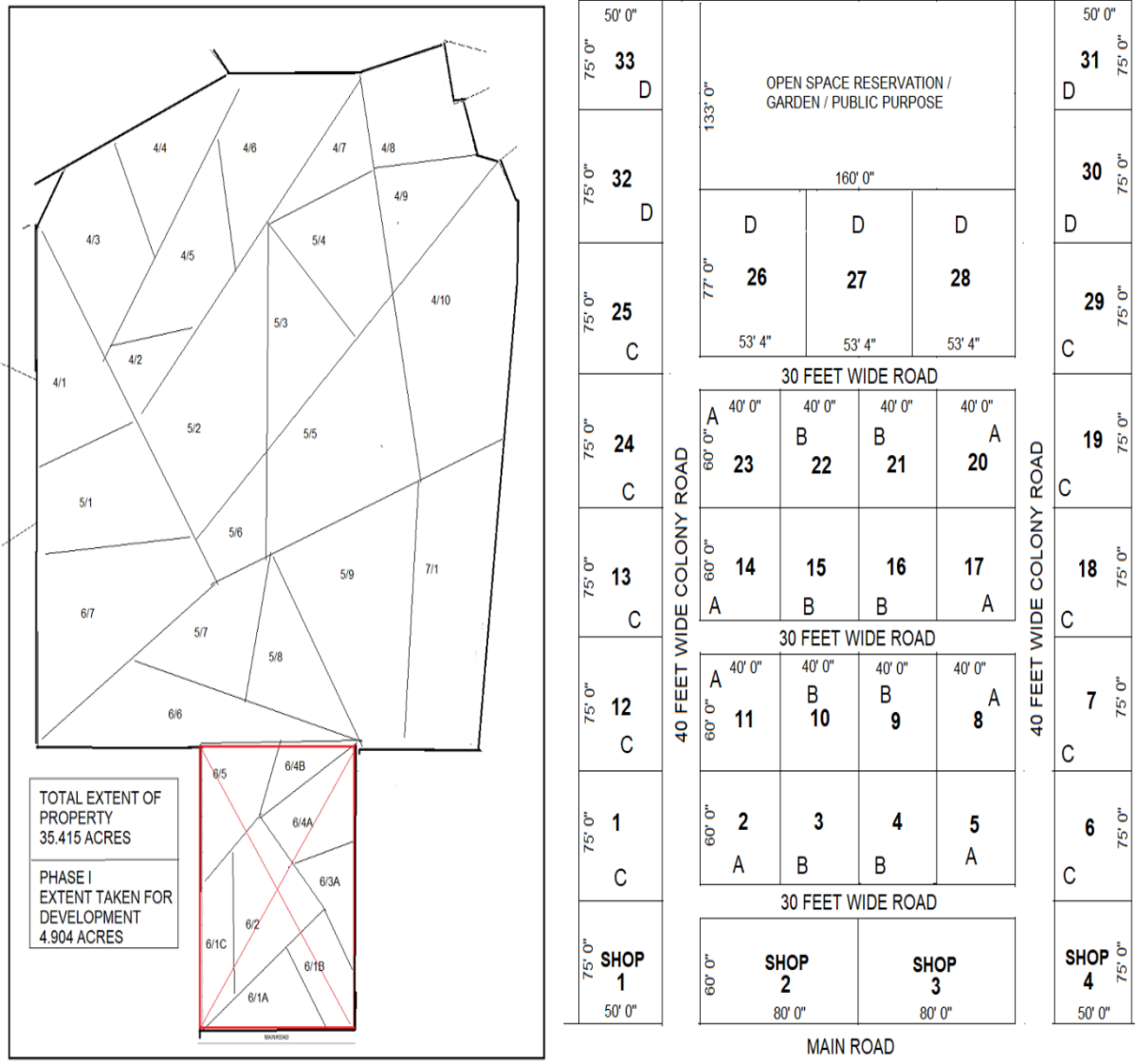
**Expenses to be incurred:** Assumed the road cost at Rs.200/ sq ft, cost of laying water supply, sanitary and electrical services at Rs.20/ sqft. Architects fees at 6% of cost of amenities. The brokerage and advertisement charges at 2% of sale price. Ignore legal and stamp charges, as it to be borne by the buyer of the plots.

**Question:** What will be the fair Value of the plot for the real estate promoter to buy the 4.904 acres by adopting plotting scheme method of valuation? Also work out value of the plot by Belting Theory.

**Solution:**

A hypothetical layout is prepared for the plot, with Open space reservation and road demarcation, consisting of various plot sizes, relevant details works out as under.

In the layout, OSR / Garden / Public purpose area of 133 ft x 160 ft equaling to 21280 sqft has been proposed (9.97%). Main road of 40 feet wide and 30 feet wide internal layout roads are proposed as per norms. Total 33 residential plots and 4 commercial shop area are proposed which could be divided into number of groups for value purpose.



### Solution Part 1 – Adoption by Hypothetical Plotting Scheme

Total area of land	340 ft x 600 ft	213600 sqft
OSR / Garden / Public purpose @ 10% (actual 9.97%)	133 ft x 160 ft	21280 sqft
Internal road provision - (40ft & 30 ft wide roads)	As per drawing	62400 sqft
'A' type plots allotted	Nos 2,5,8,11,14,17,20,23	8 Plots
'B' type plots allotted	Nos 3,4,9,10,15,16,21,22	8 Plots
'C' type plots allotted	Nos 1,6,7,12,13,18,19,24,25,29	10 Plots
'D' type plots allotted	Nos 26,27,28,30,31,32,33	7 Plots
Shop site	Nos 1,2,3,4	4 shops

<b>Group Name / Location</b>	<b>Number of plots</b>	<b>Plot size</b>	<b>Area per plot</b>	<b>Total extent</b>
'A' (40&30ft Rd) Corner plot	8	40 ft x 60 ft	2400 sqft	19200 sqft
'B' (30 ft Rd) Middle plot	8	40 ft x 60 ft	2400 sqft	19200 sqft
'C' (40 ft Rd) Side	10	50 ft x 75 ft	3750 sqft	37500 sqft
'D' (40 ft Rd) OSR facing	3	53' 4" x 77 ft	4106.67 sqft	12320 sqft
	4	50 ft x 75 ft	3750 sqft	15000 sqft
Shop 1 & 4	2	50 ft x 75 ft	3750 sqft	7500 sqft
Shop 2 & 3	2	60 ft x 80 ft	4800 sqft	9600 sqft
<b>Total</b>	<b>33 plots + 4 shops</b>			<b>120320 sqft</b>
Area of internal roads				
Main Road - 2 Nos x 40 feet width x 600 feet length				48000 sqft
Side Road - 3 Nos x 30 feet width x 160 feet length				14400 sqft
<b>Total road area (29.21% of total plot)</b>				<b>62400 sqft</b>

**Prevailing Market rate:** The Commercial plots with main Road frontage have a market value of Rs.1500 / sqft.

#### **Assumptions**

1. The rate for 'A' group Corner plots is estimated at Rs.1100 / sqft.
2. For 'B' group middle plots is estimated at the rate of Rs.800 / sqft,
3. 'C' group 40 feet road approach plots is estimated at the rate of Rs.900 /sqft.
4. 'D' group 40 feet road approach OSR facing plots is estimated at the rate of Rs.950 /sqft.

Note: This discount provided is not a fixed percentage and it could vary depending upon the town, locality, demand and market trend, evidenced by instances of sale of similar comparable plots.

<b>Value of plots</b>
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'A' (40&30ft Rd) Corner plot	19200 sqft	Rs.1100 / sqft	2,11,20,000
'B' (30 ft Rd) Middle plot	19200 sqft	Rs 800 / sqft	1,53,60,000
'C' (40 ft Rd) Side	37500 sqft	Rs 900 / sqft	3,37,50,000
'D' (40 ft Rd) OSR facing	12320 sqft	Rs.950 / sqft	1,17,04,000
'D' (40 ft Rd) OSR facing	15000 sqft	Rs.950 / sqft	1,42,50,000
Shop 1 & 4	7500 sqft	Rs.1500 / sqft	1,12,50,000
Shop 2 & 3	9600 sqft	Rs.1500 / sqft	1,44,00,000
<b>Gross sale value of 33 plots + 4 shops</b>			<b>Rs.12,18,34,000</b>
Anticipated Period of sale			2 years
Deferment period adopted (1/2 period)			1 year
Rate of Deferment			9%
Present (deferred) value of land	12,18,34,000 x 0.917 = Rs.11,17,21,778		Say Rs.11,17,00,000

<b>Expenses incurred</b>		
Road formation	62400 sqft x Rs 200 / sqft	Rs 1,28,40,000
Amenities – water & 85 Nos EB street light post	120320 sqft x Rs 20 / sqft	Rs 24,06,400
Garden development	21280 sqft x Rs 20 sqft	Rs 4,25,600
Architect fees @ 3% of Rs. 1,56,72,000	3% of Developer's cost	Rs. 4,70,160
Developer profit @12%	12% of Rs 11,17,00,000	Rs 1,34,04,000
Cost of advt. & brokerage	2% of Rs 11,17,00,000	Rs 22,34,000
Total expenses	Rs 3,17,80,160	Say Rs.318 lakhs



Net realisable Value	Rs.11,17,00,000 - Rs.3,18,00,000	Rs.799 lakhs
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### Remarks

Offer Price by the seller Rs 175 lakhs / acre

Offer Price by the seller for 4.904 acres Rs 858.20 lakhs

Net realisable Value on development of 4.904 acres Rs 799 lakhs

Net realisable Value per acre = Rs 799 lakhs / 4.904 Rs 162.30 lakhs

**Opinion:** The real estate dealer can be advised to offer a sum of Rs.799 Lacs for the 4.904 acres of plot (i.e. Rs 162.30 lakhs)

### Solution Part II

#### Adopting Belting Theory Method:

In case of belting method, the first belt is assumed as a notional division based on the comparable sale instance smaller plot.

The middle or second belt can be 1.50 times the first belt and third belt 2.25 times. No rigid rule can be set for the plot depth and rate of fall in value.

It will be appreciated that belting is not a method of valuation. It is a method of comparison to indicate the extent of land at different belts of a large sized land. The entire land area of the land can be converted into number of smaller plots.

Depending upon the location, size and usage of the each smaller plot is valued. Or an average rate considering the rear and front or average rate for number of belts assumed and the subject large land can then be valued.

Value of above plot is estimated by belting theory.

#### Solution:

Plot size: 340 feet frontage x 600 feet depth = 213600 sqft

#### Assumption

1<sup>st</sup> belt 100.feet depth

2<sup>nd</sup> belt 150.feet depth

3<sup>rd</sup> belt 350 feet depth

Land rate of 1st belt is adopted at 100% Rs.1500 Sqft

Land rate of 2nd belt is adopted at 66% Rs. 990/Sqft.

Land rate of 3rd belt is adopted at 50% Rs. 750/Sqft.

#### Value of land:

1st Belt = 100 x 340 = 34000sqft. @ Rs.1500/Sqft= Rs. 5.10.00,000

2nd belt = 150 x 340 = 51000 sqft. @ Rs.990/Sqft. = Rs. 5,04,90,000

3rd belt = 350 x 340 = 1,19,000 @ Rs.750/Sqft.. =	Rs.8,92,50,000
Total	Rs.19,07,40,000
	say Rs.19,07,00,000

It will be seen that value by belting theory is 238% higher than the price receivable in the market as worked out by Hypothetical Plotting Scheme Method.

**Remarks:**

Following points emerge out of on comparison of working of both Hypothetical plotting scheme and belting method. From the above, we can ascertain that the belting method, the value is more and not realistic.

1. No value of OSR / Garden / Public purpose (21280 sqft) and road land (62400 sqft) are adopted in plotting scheme. But in belting theory, additional cost of these portions (21280sqft + 62400 sqft = 83680 sqft) approximately contributing 39.18 % of land area is considered.
2. In market no developer pays any value for road and garden area as its F.S.I. is not available for construction on the remaining land.
3. Cost of infrastructure in plot is wholly ignored in belting theory.
4. Developer cum investor's profit is not considered in belting theory.
5. Middle belt and rear belt plots are discounted at 33% and 50% under the belting theory but in actual market, discount may not be so high and it could range from 10% to 30% only.

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## Chapter 3

### Hypothetical Building Scheme

**3.0. Introduction**

By adopting a hypothetical building scheme to be proposed in the property, the sale value of the proposed multi-storeyed buildings like flats / shops can be derived. The sale value will be inclusive of profits, interest components, construction cost, outgoings, and management expenses for implementation of the project, etc.

After adjustments the net proceeds will be taken as hypothetical building cost. The land component can be determined from the sale proceeds after deducting the hypothetical building cost.

In case of properties are considered for redevelopment as shopping / office / malls and others subject to assumption of rental income or profit, this method can be adopted both by income and cost approach method.

Profitability of development project is based on the Probable rental income receivable from redeveloping the property.

Same can be reviewed, if it is a tenanted or leasehold property, then the land is arrived with the help of rental income method.

### **3.1. Methods of Residual Techniques**

- ❖ Type 1 Residual Technique on Actual Sales Basis (Owner Occupied properties)
- ❖ Type 2 Residual Technique on Actual Sales Basis ( Tenant Occupied properties)
- ❖ Type 3 Technique of Hypothetical Building Method ( Ownership concept)
- ❖ Type 4 Technique of Hypothetical Building Concept ( Income Concept)

#### **3.1.1. Type 1 - Owner Occupied properties - Residual Technique on Actual Sales Basis**

Under this method, from sale price amount, depreciated cost of building or scrap value of building is deducted, to find out net land value. This concept of deriving land value from the Sale price and Building value is established by a formula:

$$R = (C-S)/ A$$

R = Rate of land/Unit area.

C = Sale consideration amount.

S = Scrap / Salvage value or depreciated cost of building.

A = Total area of plot.

There could be different situations of owner occupied or vacant properties.

1. Land Sale could be with vacant house in corner of the plot (OR)
2. Land Sale could be with owner occupied house centrally placed in the small plot (OR)
3. Sale may be of ownership flat / shop / office with vacant or owners possession. Land value can be derived in each of these situations by residual technique.

##### **3.1.1.1. Case Study**

A property of 1800 sqm land is sold on May 2018, with 150 sqm of house built in corner of the plot. Sale consideration is Rs.314,00,000.

As referred from the sale deed, the house is 20 years old and the prevailing replacement cost is Rs.8000 / sqm. Calculate land rate in 2018 by Residual Technique.

**Solution:** The building is 20 years old, assumed life is 60 years with salvage value @10% and located in corner of the plot. Hence development is possible by retaining the house as such.

Present value of House= Replacement Cost - Depreciation.

Replacement Cost = 150 SM. @ Rs.8000/SM.	Rs. 12,00,000/-
Depreciation = Rs12,00,000 x 20/60 x 0.90	Rs.3,60,000/-
Net Present Value (S) = 12,00,000 – 3,60,000	Rs 8,40,000/-
Sale Consideration	Rs 3,14,00,000/-
Area	1800 sq.mt
Land rate R = (C-S)/ A = (314,00,000 – 8,40,000) / 1800	Rs 16978 / sqm

### 3.1.1.2. Case Study

Mr 'X' sold 1800 sqm of land in October 2018 with 150 sqm single storey house in centre of the plot. Sale price is Rs.314,00,000/-.. House is 40 years old. Calculate land rate by Residual Technique.

#### **Solution:**

House is centrally placed and hence full development is not possible without demolishing it. Again the house is 40 years old. Hence it is valued as salvage value. If replacement cost in 2018 is Rs.8000/Sqm. Salvage value assumed to be 10% i.e. Rs.800/ Sq.mt.

Sale Consideration	Rs 3,14,00,000/-
Scrap value P = 150 sq.mt. x Rs.800/ Sq.mt	Rs.1,20,000/-
Area	1800 sq.mt
Land rate R = (C-S)/ A = (314,00,000 – 1,20,000) / 1800	Rs 17,378 / sqm

**3.1.1.3. Notes:** Deriving land rate from sale rates of ownership premises is little difficult task due to indirect method of working.

Sale price of ownership flat comprises of several factors like land component price, building component price, developers profit, interest on capital invested, effects of different attributes of land and building on sale price, effects of other market forces etc. However all types of outgoings including depreciation can be considered as shown below.

1. Developer's profit on sale price.
2. Cost of construction if building is new.
3. Depreciated cost of construction if building is old.
4. Interest expenses for 1/2 period of construction.
5. Professional charges of Architects and Structural Engineers
6. Municipal scrutiny fees & municipal land tax
7. Water charges & Electrical charges
8. Supervision & security charges
9. Management and administrative expenses etc.

Professional charges of Architects, Engineers and Consultants, Supervision charge and water charges are grouped with cost of construction.

Management and security expenses, municipal taxes and interest on loan capital are all clubbed together and are included in gross profit of developers. These aspects can be explained as under:

#### **Cost of construction**

For Cost of construction at Rs. 10,000 /sqm the breakup could be as under:

Actual building cost (say)	Rs. 8,750/sqm.
Architects/Const. Fees at 4%	Rs. 350/sqm
Municipal charges 3% of cost	Rs. 262/sqm
Supervision & contingency @ 5%	Rs.438/sqm
other expenses	<u>Rs. 200/sqm</u>
Total Cost	Rs. 10,000/sqm

#### **Developer's Profit**

Similarly developers profit if it is adopted at 25% of sale price by valuer, breakup could be as under:

Developer's profit 15%	15 %
Interest burden on finance. (1/2 period of construction)	8 %
Other outgoings like Brokerage, legal exp. etc.	<u>2 %</u>
Total	25 %

In low cost ownership premises, developers profit could be as low as 5% to 7% where as high cost ownership premises, developers profit could be as high as 30% to 40%. For higher turnover, profit % is less and also,. If project is quickly completed then also profit margin is less. It also depends on town and competition in the market.

#### **3.1.1.4. Case Study**

A flat promoter sold 200 sqm of flat in new building for a price of Rs.1,60,00,000 in June 2010. Building cost in 2010 is Rs. 10,000 / sqm. This includes the promoter's profit and interest expenses of 20% of sale price. Find out the land rate by residual technique. F.S.I. of the area is 1.33.

**Solution:**

Sale price rate of the flat / sqm = 1,60,00,000 / 200 sqm	Rs.80,000 / sqm
Less: Promoter's profit @ 20%	Rs 16,000 / sqm
Net rate of the flat / sqm	Rs 64,000 / sqm
Less: Building construction cost / sqm	Rs 10,000 / sqm
Land component rate / sqm	Rs 54,000 / sqm
Overall FSI area utilised	1.33
Prevalent land rate = Rs.54,000 x 1.33	Rs 71,820 / sqm

**3.1.1.5. Case Study**

An industrial property admeasuring 250 sqm with 30 years old building is sold in January 2005 for a price of Rs.45,00,000/-.

Newly constructed building on adjoining plot is available at the rate of Rs.22,000 / sqm in the same year. Cost of construction is Rs.8500 / sqm in 2005.

Adopt developers profit at 15%. Calculate derived land rate for both plots if F.S.I. of zone is 1.00.

**Solution:**

<b>Sale Price of 'A'</b>	<b>Rs 45,00,000</b>
Land area of 'A'	250.00 sqm
Sale rate of 'A' per sqm = Rs 45,00,000 / 250 sqm	Rs 18,000
Less: Developer profit 15% on Rs 18000 / sqm	Rs 2,700
Net rate of sale of 'A' per sqm	Rs 15,300
Building cost per sqm	Rs 8,500
Less: Depreciated bldg cost ((8500- (8500 x 0.9 x 30/60))	Rs 4,675
Land component in sale Price of 'A' = (15300-4675)	Rs 10,625

<b>Sale rate of 'B' per sqm</b>	<b>Rs 22,000</b>
Less: Developer profit 15% on Rs 22,000 / sqm	Rs 3,300
Net rate of sale of 'B' per sqm	Rs 18,700
Less: Building cost per sqm	Rs 8,500
Land component in sale Price of 'A' = (18700-8500)	Rs 10,200

**Remarks:** It will be seen that land rate under Sale 'A' plot with 30 years old building, gives more plot rate whereas under sale 'B' on which new building is constructed, land rate as worked out is less. If we see developers profit in sale 'A' it is Rs.2700 / sqm and under sale 'B' it is Rs.3300 / sqm. Hence land rate is low in sale -B. In reality developer's profit factor deducted is only notional aspect for sale 'A' as the building is old. If this is not allowed, land rate will be still higher.

This difference could be attributed to some other factors or market forces like better location aspect or extra price paid for low maintenance charged by society for the properties in old building (Low property taxes in old buildings as compared to the taxes in new building). For example, the purchaser may likely to pay higher price for obtaining sanctioned EB power in an old unit, in comparison to that of, to be obtained in new unit. So difference can be ascribed to such other factors or demand and supply factor rather than towards land component. There could be many factors responsible for such difference. This is the reason why residual method which is indirect way of deriving land rate is considered less accurate than direct sale comparison method of open plots of land.

### **3.2. Type 2 - Tenant Occupied Properties - Residual Technique on Actual Sales Basis**

In a wholly tenanted building in the plot, the building may be placed in corner, so that, new building in the plot can be easily built without disturbing tenanted building and retaining it as it is.

It is very likely that tenanted building in the plot is so built that upper floor can be easily raised without disturbing tenanted premises. From sale of both these type of buildings with plot, we can derive land rate easily by Residual Method. However if tenanted building is centrally placed in the plot, then we have to take alternative option of hypothetical building scheme under development method.

The tenants must be vacated, relocation of tenants till completion of the new building. So, the time factor, capital infusion factors, etc., are to be dealt in a detailed manner.

### 3.2.1. Case Study

Mr 'Y' sold his property is sold in Feb. 2010 for a sale consideration of 50 lakhs. The property is with 1400 sqm plot area and three storeyed rented building **in corner of the plot**. Built-up area of rented building is 250 sqm / floor. F.S.I. of zone is 1.00. Net total rent from 12 tenants of building is Rs.5000/- per month. Calculate derived rate of land from this sale by Residual Technique. (Assume the rate of capitalisation is 8%).

**Solution:** Unutilised FSI is available in corner of the plot. Hence without disturbing the existing building, tenanted building is valued by rental method.

Total sale price	Rs 50,00,000
Existing Building area = 250 sqm per floor x 3 floors	750 sqm
Net rental income Rs 5000 x 12 months	Rs 60,000
Capitalised value on rent = NI x YP = 60,000 x 100/ 8	Rs 7,50,000
Net sale for land component = Rs 50,00,000 – Rs 7,50,000	Rs 42,50,000
FSI	1.00
Unutilised balance F.S.I. available = 1400 sqm – 750 sqm	650
Rate of land per sqm = 42,50,000 / 650	Rs 6,538
In this example land value for the portion of land appurtenant to tenanted building (750 Sqm) is taken as nil value, being on rental valuation	

### 3.2.2. Case Study

A property with 8000 sqft of plot area with two storeyed tenanted building with built up area of 3250 sqft / floor is sold in September 2019 for a price of Rs.75,00,000/-. Building is strong to take 2 more floors without external pillars. F.S.I. of zone is 1.50. Total net rent from 2 floors is Rs.10000 / month. Calculate land rate by Residual Technique (Assume the rate of capitalisation is 8%).

**Solution:**

Total sale price	Rs 75,00,000
Building area = 3250 sqft per floor x 2 floors	6500 sqft
Net rental income Rs 10,000 x 12 months	Rs 1,20,000



Capitalised value on rent = $NI \times YP = 1,20,000 \times 100 / 8$	Rs 15,00,000
Net sale for land component = $Rs75,00,000 - Rs 15,00,000$	Rs 60,00,000
FSI	1.50
Unutilised balance F.S.I. available = $(8000 \times 1.5) - 6500$	5500
Rate of land per sqm = $60,00,000 / 5500$	Rs 1091

### 3.3. Type 3 - Hypothetical Building Scheme (Ownership Concept)

This technique of land valuation is also indirect method of deriving land rate by residual technique and not by direct comparison of open land sales. This technique involves preparation of a hypothetical building project scheme first. Then valuer is required to work out sale value or rental value of flats / shops / office / malls (**Market Approach & Income Approach**) designed and planned under hypothetical building scheme.

After deducting for profits, cost of construction, management expenses and other outgoings in implementing project are worked out, the same are deducted from sale price to arrive at final net proceeds (**Cost Approach**). Said amount is taken as value of the land component and rate is derived there from.

This hypothetical building scheme should not be confused with hypothetical plotting scheme which is used to value large open plot of land. There is a difference between the two schemes.

Hypothetical building scheme is normally used for underutilised property with existing structures on the plot. Either F.S.I. is underutilized or the user aspect is not highest and best.

This method is most commonly used and very popular method with most of the developers operating in various cities of India. This working enables developer to offer fair and reasonable land price to the owners of partially developed or underutilised properties. Sometimes high price is offered for probable commercial use of land in comparison with or in relation to the existing residential use. The process under this method consists of following steps.

**3.3.1. Highest and Best Use Planning:** In this method best possible plan of the hypothetical building scheme is first prepared visualizing new building in the plot as per municipal rules. It is assumed that old existing structure in the plot will be demolished. Highest and Best user of the plot is considered for redevelopment i.e. for new building in the plot.

**3.3.2. Encumbrances Analysis:** Encumbrances on the plot in form of existing tenanted building are determined. Built-up area in occupation of tenants is worked out and probable cost of rehousing each tenant in new building on the plot or elsewhere in the locality is found out. There are four or five possibility or options available for tenant and case of each tenant may differ. The possibilities could be any one of the following.

- i. Tenant may agree to take some lump-sum amount for surrender of tenancy right and he may go away elsewhere on his own.
- ii. Tenant may want free of cost flat of equal area in new building on same plot on ownership basis instead of tenancy basis.
- iii. Tenant may accept free of cost alternate accommodation elsewhere in the locality and may ask for some additional sum over and above free flat.
- iv. If it is a small town and prices of flats are not very high, to make the project viable, the tenants may agree to pay some cost, say cost of construction of flat, to acquire flat in new building on the plot on ownership) basis.
- v. There may also be a tenant who will not accept any of these proposals and may prefer to go to Court to obtain stay against redevelopment project to protect his tenancy rights. Developer has to assess all possibilities and arrive at total cost of removing encumbrances from the plot.

**3.3.3. Market survey of probable sale price:** Now developer should conduct market survey to find out probable sale price of all flats, shops, garages proposed under the hypothetical building scheme as per prevalent rate of such ownership premises in the locality. Area of flats for rehousing tenants, should be excluded from total area.

**3.3.4. Expenses to be incurred:** Developer should also estimate total likely expenses for construction of new building on the plot. Apart from building cost, these expenses should also include for professional charges for Architects, Engineers and other Consultants, municipal taxes, water charges, and development expenses like filling in plot, compound wall cost, providing amenities, if any, etc.

**3.3.5. Developer Capital infusion & Time factor:** Developer may expect a profit of 12%. He may expect a rate of return 9% on the capital. Sale may likely to take 2 years. In other outgoings, developer should deduct for interest on borrowed capital, brokerage charges, advertisement charges and legal charges. Developer should also

deduct for his profit for management of entire project. Final land values are determined by deducting total expenses from total realisable amount.

We find two types of developers in the real estate market.

a) One group of developers carry out only administrative work of project and sale the property without undertaking building construction. Such persons get plans and designs made from Architects and Consultants, negotiate with sitting tenants and remove encumbrances and get approval for building scheme from local authority. These persons complete this 1st stage and sale the property to other developers at profit. They do not erect the building or sale flats/shops in proposed new building.

b) Other group of developers are doing both activities. 1st stage of planning, removal of encumbrances and approval part also and 2nd stage work of execution of building and sale of ownership premises to the prospective buyers. Some developers undertake only 2nd stage work to save time.

### 3.3.6.1. Case Study

Area of plot 18000 sqft and old tenanted building of ground floor existing in the plot and it has 2500 sqft built-up floor area. Total rent is Rs.2500 / month. F.S.I. of zone is 1.00. Replacement cost of building is Rs.850/ sqft.

Present sale price of flats in the locality is Rs.5000/ sqft. Expected developers profit is 15% on sale value. Interest on borrowed capital is 12% on 50% of sale value for 1.50 year period.

Assume settlement period with tenants at 2 years and legal cost at 50,000/-. Scrap value at Rs.60 / sqft. A developer desires to purchase a property.

What will be the fair price for land purchase to be offered to vendor?

**Solution:** Total built-up area under hypothetical building scheme is considered for land area of 18000 sqft.

Existing tenant in the property are not vacated. The building will not be demolished and reconstruction for highest best use for the balance land area will be designed.

<b>Data available</b>	
Plot area in sqft	18000
Tenanted portion in ground floor the property in sqft	2500
Rent received from tenants	Rs 2500
FSI permissible	1.00

Replacement cost	Rs 850 / sqft
Prevailing sale price for similar property	Rs 5000 / sqft
Expected developers profit on sale value	15%
Interest (borrowed capital) - 50% sale value in 1 ½ year	12%
Settlement period with tenants	2 years
Legal cost	Rs 50,000
Scrap value on demolition of existing building	Rs.60 / sqft

<b>Property Sale Income</b>	
Plot area in sqft	18000
Tenanted portion in ground floor the property in sqft	2500
Balance area =18000-2500	15500
FSI permissible	1.00
<b>saleable area in sqft</b> (Tenants have to be rehoused)	<b>15500</b>
Prevailing sale price for similar property	Rs 5000 / sqft
Net realisable (on saleable area) value = 15500 x 5000	Rs 7,75,00,000
<p>Immediate realisation of this amount is not possible. Project may take say 2 years' time for sale of all flats in the project for full realization of estimated sale value. It is assumed that the developer will have to borrow capital of 50 % of realization sum (387.50 Lakhs) for a period of 1.00 year.</p>	
<p>It is therefore proposed to defer the value at 12% for 1 year i.e. 50% period of realization of total sum.</p>	
Deferment value at 12% for 1 year	0.892
NPV of realisable amount = Rs 7,75,00,000 x 0.892	Rs 6,19,30,000
<b>Less: Expenses and Outgoes</b>	
Building construction cost = 18000 sqft x Rs 850 / sqft	Rs 1,53,00,000
Developers profit at 15% of 775 lakhs	Rs 1,16,25,000
Borrowed capital Interest 12% on 387.50 lakhs for 1 ½ year	Rs 69,75,000

Legal expenses	Rs 50,000
<b>Expenses and Outgoes</b>	Rs 3,39,50,000
Net income (Rs 6,19,30,000 - Rs 3,39,50,000)	Rs 2,79,80,000
Add: Salvage value for old building = 2500 x 60 / sqft	Rs 1,50,000
Total net income = Rs 2,79,80,000+ Rs 1,50,000	Rs 2,81,30,000
Total Plot area in sqft ( including rehousing of tenants)	18000
Rate of land per sqft = Rs 2,81,30,000 / 18000 sqft	Rs 1562.77

### Opinion

Net realisable (on saleable area) value Rs 7,75,00,000

**Opinion:** The vendor can be advised for fair price for land purchase of Rs 2,81,30,000 for the 18000 sqft of plot (i.e. Rs 1562.77 per sqft)

### 3.3.6.2. Case Study

**Buying an encumbered property:** An investor is offered a property having 13000 sqft plot with 3500 sqft tenanted building. Rate of open plot of land (unencumbered) in locality is Rs.800 / sqft. F.S.I. is 1.00. Rehousing cost for tenants is Rs 1600/sqft. Settlement period with tenants is 1 year. Legal cost Rs.50,000/-. Interest on borrowed capital is 12%. Developers profit is 15%. Scrap value Rs.60/sqft.

What will be the fair purchase price of property that could be offered to plot owner, if investor intends to sale the property after removal of tenants' encumbrance and before constructing new building on the plot.

### Solution:

<b>Data available</b>	
Plot area in sqft	13000
Tenanted portion in the property in sqft	3500
Open land market value	Rs 800
FSI permissible	1.00
Rehousing of tenants	3500 sqft
Rehousing cost of tenants	Rs 1600 / sqft

Settlement period with tenants	1 year
Expected developers profit on sale value	15%
Interest (borrowed capital)	12%
Legal cost	Rs 50,000
Scrap value on demolition of existing building	Rs.60 / sqft

<b>Working</b>	
Plot area in sqft	13000
Open land market value	Rs 800
Sale value assumed as if open plot (encumbrance: nil)	Rs 1,04,00,000
Add: Scrap value of existing building (3500 sqft x 60 / sqft)	Rs.2,10,000
Total sale income (Rs 1,04,00,000+ Rs.2,10,000)	<b>Rs 1,06,10,000</b>
<b>Expenses &amp; outgoes</b>	
Rehousing of tenants cost (3500 sqft x Rs 1600 / sqft)	Rs 56,00,000
Legal cost	Rs 50,000
Developers profit on sale Rs 1,06,10,000 @ 15%	Rs 15,91,500
Interest (capital) @ 12% on 50% on Rs 1,06,10,000	Rs 6,36,600
<b>Total expenses &amp; outgoes</b>	<b>Rs 78,78,100</b>
Net sale income (1,06,10,000 - Rs 78,78,100)	Rs 27,31,900
<b>Note:</b> This net sale amount is realisable after 1 year. NPV realisable after 1 year, deferring at 12% for 1 year	
Net present value (Rs 27,31,900 x 0.897)	Rs 24,505,14
Rate of plot per sqft (Rs 24,505,14 / 13000 sqft)	Rs 188.50
<b>Remarks:</b> Though the prevalent rate of land in the locality is Rs.800/sqft., due to tenants' encumbrance, land rate has fallen down to Rs.188.50/Sqft. (i.e. by about 76.43%).	
<b>Opinion:</b> Developer is advised to offer a price of not more than Rs.24,50,000 /- to the land owner, if he intends to sale the property at Stage I viz. after removal of tenants encumbrance.	

### 3.3.6.3. Case Study

A Housing Promoter proposes to purchase a plot admeasuring 1,20,000 sqft (2.75 acres) area with 5 tenants in old colony row house building admeasuring 5000 sqft. Permissible F.S.I. is 1.00 and 15% of the land proposed is to be earmarked for OSR / public purpose area (18000 sqft) as per norms.

A hypothetical building scheme is proposed for residential flats of total built up area of 90000 square feet and 30 shops of total built up area of 12000 Sqft.

Sale Rate of flats in locality is Rs.1800 /sqft and for shops the rate is Rs 3000 /sqft. Cost of construction is Rs.900 /sqft.

And development cost of plot filling, sub-station and compound wall is estimated at 37.50 lakhs.

Promoter expects a profit of 15% and borrowed interest charges at 18% on construction cost.

Assume legal charges at Rs.200,000/-.

Approval, statutory expenses and overheads 2.5% of building cost.

Contingencies 1 % of Bldg. cost.

Scrap value on demolition of existing building will be Rs 60 per sqft

What will be fair land price that could be offered to owner of property?

#### Solution:

Data available	
Plot area in sqft	1,20,000
Tenanted portion in the property in sqft	5,000
FSI permissible	1.00
OSR / public purpose area as per norms 15% on 1,20,000	18000 sqft
Area that can be developed (1,20,000-18,000)	1,02,000 sqft
Out of 1,02,000 sqft – residential apartment area	90000 sqft
Out of 1,02,000 sqft – commercial shop area	12000 sqft
Prevailing sale rate for residential apartment	Rs 1800 / sqft
Prevailing sale rate for commercial shop	Rs 3000 / sqft

Cost of construction	Rs 900 / sqft
Development cost - site filling & compound wall estimate	Rs 37.50 lakhs
Expected developers profit on sale value	15%
Interest (borrowed capital) charges on construction cost	18%
Legal cost	Rs 2,00,000
Approval, statutory expenses and overheads charges	2.5% of bldg cost
Contingencies - on of Building cost	1.00 %
Scrap value on demolition of existing building	Rs.60 / sqft

<b>Working</b>	
Area that can be developed (1,20,000-18,000)	1,02,000 sqft
Out of 1,02,000 sqft – residential apartment area	90000 sqft
Out of 1,02,000 sqft – commercial shop area	12000 sqft
Prevailing sale rate for residential apartment	Rs 1800 / sqft
Prevailing sale rate for commercial shop	Rs 3000 / sqft
Saleable area for apartments (90000-5000 for tenants)	85000 sqft
<b>Gross Income on sale</b>	
Sale price - apartments (85000 sqft x Rs 1800 sqft)	Rs 15,30,00,000
Sale price– commercial shop (12000 sqft x Rs 3000 / sqft)	Rs 3,60,00,000
Total sale price	Rs 18,90,00,000
Add: Scrap value on demolition of existing building ( 5000 sqft x Rs 60 / sqft)	Rs 3,00,000
<b>Total gross income</b>	<b>Rs 18,93,00,000</b>
<b>Expenses &amp; outgoings</b>	
Cost of construction (102000 sqft x 900 / sqft)	Rs 9,18,00,000
Development cost - site filling & compound wall estimate	Rs 37,50,000
Developers profit on sale value @15% of Rs 18,93,00,000	Rs 2,83,95,000



Interest (borrowed capital) charges 18% on construction cost Rs 9,55,50,000 (918 lakhs + 37.50 lakhs)	Rs 1,71,99,000
Legal cost	Rs 2,00,000
Approval, statutory expenses and overheads charges@ 2.5% of building cost Rs 9,55,50,000	Rs 23,88,750
Contingencies @ 1.00 % of Bldg. cost Rs 9,55,50,000 round off to	Rs 9,67,250
<b>Total Expenses &amp; outgoings</b>	<b>Rs 14,47,00,000</b>
<b>Net value (Rs 18,93,00,000 - Rs 14,47,00,000)</b>	<b>Rs 4,46,00,000</b>
<b>Opinion;</b> Hence, Housing Promoter must be advised to offer a price of not more than Rs. 4,46,00,000 for the property. (Rs 437.25 per sqft)	

### 3.4. Type 4 - Hypothetical Building Scheme (Income Concept)

This technique is now becoming popular but it was not much in use in India as in most of the cities of India, Rent Control Act is applicable. Due to this Rent Act which results in controlled income from the property, Rental Income will be under restriction and it will not either increase or decrease.

Probable land price that could be offered to land owner on the basis of probable rental income will be derived from hypothetical new building scheme. Profitability of development project is based on probable income receivable from the redeveloped property. Rental rates prevalent in the locality are found out by market survey of instances at rentals and probable expenses are estimated. Capital value of hypothetical building project is worked out as if completed.

From the total capital value of the hypothetical building, estimated cost of construction and other expenses except developer's profit are deducted and surplus is offered to the property owner. The entire scheme is based on the Investment Theory viz. on the basis of fair rate of returns (Expected rate of return) on invested funds. Developer expects profit as return in ownership scheme. However in Investment Scheme, the investor gets return in form of rental income. Like developer, investor does not expect 15% returns by way of onetime payment in form of sale value of flats / commercial / office space. Investor expects return in form of regular continued income (rent) from the property for his entrepreneurship of undertaking this building project. Following example will explain the process.

### 3.4.1. Case Study

An Investor desires to purchase a property by undertaking building project for regular rental income. The project time period is 2 years.

Area of plot is 2500 sqm. Permissible F.S.I. = 1.00. Zoning of plot is commercial. Prevalent rental value for built up area of offices in the locality is Rs.200 / sqm / month. Property taxes are Rs.60 / sqm /month. Building construction cost is Rs.8000 / sqm. Expected rate of return on investment is 12%. Insurance charges at ½ % of rent, collection and repair and maintenance expenses at 5% of Rent. Calculate land price that could be offered to the land owner by residual method.

#### Solution:

<b>Data available</b>	
Plot area	2500 sqm
FSI permissible	1.00
Zone classification	Commercial
Prevalent rental value for built up area of offices in the locality	Rs.200 / sqm / P M
Property taxes	Rs.60 /sqm / P M
Building construction cost	Rs.8000 / sqm
Expected rate of return on investment	12%.
Insurance charges	½ % of rent
Collection and repair and maintenance expenses	5%
<b>Working</b>	
Total built up area of offices	2500 sqm
Gross Annual Receivable Income (2500 x 200 x 12)	<b>Rs.60,00,000</b>
<b>Deduction: Probable outgoings</b>	
Property taxes : 2500 x 60 x 12	Rs. 18,00,000
Repairs 5% of Gross Income	Rs. 3,00,000
Insurance ½ % of Gross Income	Rs. 30,000
Collection & Management 3% of Gross Income	Rs. 1,80,000

<b>Probable outgoings</b>	<b>Rs 23,10,000</b>
Net Income / Per annum (Rs 60,00,000 – Rs 36,90,000)	Rs.36,90,000
Expected rate of return on investment	12%.
Capitalising net income at 12% in perpetuity, we get capital value of land and building (Total sale price)	
<b>Total sale price (36,90,000 x 100/12)</b>	<b>Rs.307,50,000</b>
Project time period	2 years
Full rental income is not likely to start at least for 2 years period. About one year will be required for construction and one year to find all tenants for premises available in building. The value is therefore deferred at 12% for 2 year (full period of commencement of full income)	
<b>NPV before expenses - Rs.307,50,000 x 0.797</b>	<b>Rs 2,45,07,750</b>
<b>Expenses incurred for project completion</b>	
Building cost - 2500 sqm @ Rs.8000/ sqm.	Rs.200,00,000
Architects & Consultants fees 3% of cost	Rs. 6,00,000
Advertisement & brokerage 1% of probable annual rental	Rs. 60,000
Legal and administrative cost 2% of building value	Rs. 4,00,000
<b>Total expenses</b>	<b>Rs.210,60,000</b>
<b>Net Present Value (Rs 2,45,07,750- Rs.210,60,000)</b> <b>Or Land Price that could be offered</b>	<b>Rs 34,47,750</b>
<b>Opinion: The investor can offer a sum of Rs 34,45,000 (rounded-off) towards land price</b>	

**Remarks:**

1. Interest on borrowed capital is not considered in the working. The investor proposes to invest his own funds in the project. Hence question of borrowing outside funds and pay interest on same does not arise.
2. However if investor borrows fund from market, interest should be allowed and corresponding price to be offered will reduce.
3. However there are certain other aspects which should also be considered in this working.

i) There is a risk of rental yield falling at future date depending upon demand and supply condition in the locality, money market situation and financial or economic policies of the country.

ii) There may be vacancies in offices which may result in fall of forecasted rental yield. Appropriate weightages should be considered for these aspects.

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## **Chapter 4**

### **IVS 410 DEVELOPMENT PROPERTY**

**4.0.** The valuation of development property often includes a significant number of assumptions and special assumptions regarding the condition or status of the project when complete. For example, special assumptions may be made that the development has been completed or that the property is fully leased Property

#### **4.1. Special Considerations for a Development Property**

- (a) Residual Method
- (b) Existing Asset
- (c) Special Considerations for Financial Reporting
- (d) Special Considerations for Secured Lending

#### **4.2. Special Considerations for a Development Property - Residual Method**

The residual method is so called because it indicates the residual amount after deducting all known or anticipated costs required to complete the development from

the anticipated value of the project when completed after consideration of the risks associated with completion of the project.

This is known as the residual value.

In applying the residual method, a valuer should consider and evaluate the reasonableness and reliability.

#### **4.3. Value of Completed Property - Analysis of Project report**

The following basic elements require consideration in any application of the method to estimate the market value of development property and if another basis is required, alternative inputs may be required.

- (a) Completed property value
- (b) Construction costs
- (c) Consultants fees
- (d) Marketing costs
- (e) Timetable
- (f) Finance costs
- (g) Development profit,
- (h) Discount rate.

Estimate of the value of the relevant interest in the real property following notional completion of the development project. If current values are used then the costs should also be current and discount rates derived from analysis of current prices.

**Construction Costs** - The costs of all work required at the valuation date to complete the project to the defined specification to be identified.

**Consultants' Fees** - These include legal and professional costs that would be reasonably incurred by a participant at various stages through the completion of the project.

**Marketing Costs** - If there is no identified buyer or lessee for the completed project, it will normally be appropriate to allow for the costs associated with appropriate marketing, and for any leasing commissions and consultants' fees incurred for marketing not included

**Timetable** - The duration of the project from the valuation date to the expected date of physical completion of the project to be considered, together with all cash outflows for construction costs, consultants' fees, Allowance should be considered for costs incurred by the owner during this period such as additional marketing costs, incentives, maintenance and/or unrecoverable service charges.

**Finance Costs** - These represent the cost of finance for the project from the valuation date through to the completion of the project, including any period required after

physical completion to either sell the interest or achieve stabilised occupancy. The finance cost during each period may also need to be considered separately. Even if an entity is intending to self-fund the project, an allowance should be made for interest at a rate which would be obtainable by a participant for borrowing to fund the completion of the project on the valuation date.

**Development Profit** - Allowance should be made for development profit, or the return for taking on the risks for completion of the project on the valuation date. The following are examples of factors that may typically need to be considered in an assessment of the relative risks associated with the completion of a development project:

- (a) Unforeseen complications that increase construction costs,
- (b) Potential for contract delays caused by nature or outside of the developer's control,
- (c) Delays in obtaining statutory consents,
- (d) Supplier failures,
- (e) Entitlement risk and changes in entitlements over the development period,
- (f) Regulatory changes, and
- (g) Delays in finding a buyer or lessee for the completed project.

**Discount Rate** - The residual method requires the application of a discount rate to all future cash flows in order to arrive at a net present value. This discount rate may be derived using a variety of methods

#### **4.4. Special Considerations for a Development Property - Existing Asset**

Check list for valuation of a development property before a project commences:

- (a) Market potential for the proposed development,
- (b) Proposed development is HABU in current market,
- (c) Any non-financial obligations (political or social criteria),
- (d) Legal permissions or zoning, - conditions or constraints on permitted development,
- (e) Limitations, encumbrances or conditions imposed
- (f) Rights of access to public highways or other public areas,
- (g) Geotechnical conditions, including potential for contamination or other environmental risks,
- (h) Availability of, or improve needed for services,
- (i) The need for any off-site infrastructure improvements and the rights required to undertake this work,
- (j) Archaeological constraints / archaeological investigations required,
- (k) Sustainability and client requirements in relation to green buildings,

- (l) Economic conditions and trends and their potential impact on costs and receipts during the development period,
- (m) Current / projected supply and demand for proposed future uses,
- (n) The availability and cost of funding,
- (o) The expected time required to deal with preparatory matters prior to starting work, for the completion of the work and, if appropriate, to rent or sell the completed property,
- (p) Any other risks associated with the proposed development. And also, when project is in progress, need for additional enquires or investigations for design, construction and supervision.

#### **4.5. Special Considerations for a Development Property - for Secured Lending**

The appropriate basis of valuation for secured lending is normally market value. However, in considering the value of a development property, regard should be given to the probability that any contracts in place, eg, for construction or for the sale or leasing of the completed project may, become void or voidable in the event of one of the parties being the subject of formal insolvency proceedings. Further regard should be given to any contractual obligations that may have a material impact on market value.

Therefore, it may be appropriate to highlight the risk to a lender caused by a prospective buyer of the property not having the benefit of existing building contracts and/or pre-leases, and pre-sales and any associated warranties and guarantees in the event of a default by the borrower.

The valuer must be able to justify the selection of the valuation approach reported and should provide

1. an "As Is" (existing stage of development) and
2. an "As Proposed" (completed development) value for the development property and record the process undertaken and a rationale for the reported value"

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## **Chapter 5**

### **Annexures**

#### **5.1. Annexure 1 - Hypothetical Plotting Scheme - Prevailing Government Rules**

The power to give technical approval to sub-division / amalgamation of plots is vested with Member secretaries of Composite Local planning authorities to certain extent.

**5.1.1.** The layout approval can be ascertained from:

1. Up to 5 acres extent of land in respect of Corporation, Municipality and Town Panchayat and a Maximum extent of 10 acres in respect of rural areas, the local planning authority has the power to issue the regularization.
2. Above 5 acres extent of land in respect of Corporation, Municipality and Town Panchayat and above 10 acres extent in respect of rural areas, the DCTP has the power to issue the regularization.



### **5.1.2. Non eligibility for regularization of unapproved plots and layouts.**

- (1) Plot or layout in part or whole, which is located in public water body like Channel, Canal, Tank, Lake, River, etc..
- (2) Plot or layout in part /whole in Government Poramboke (waste land) land.
- (3) Plot or layout in Open space reservation (OSR) land, Park or Play-field reserved in any approved layout or sub-division
- (4) Vacant plots blocking access to surrounding lands which do not have any other means of access (land locked).
- (5) Plot or layout, lying in the lands affected by the alignments of proposed road or rail corridors and street alignments specified in the development plans.
- (6) Plot with any encroachment on to a public road or street or on any other land over which the applicant does not possess ownership right and lands
- (7) Plot or layout in part or whole, lying in the lands below the alignment of high tension and extra high voltage electric line including tower lines

### **5.1.3. Sub-division and amalgamation of plots**

The sub-division of sites for the uses like residential, commercial, industrial, public and semi-public purposes etc., can be approved subject to the following conditions:

- Sub-division of sites in approved layouts may be approved;
- Sub-division of sites abutting the roads owned and maintained by the local bodies may be approved;
- Sub-division of sites will not be approved in unauthorized layout;
- Sub-division can also be approved where one plot abuts an authorized private or public street or the proposed road of Detailed Development Plan or Master Plan, if the Executive Authority gives certificate to the effect that the street is taken over by the Local body and it is a recognized public street/road;
- Sub-division will not be approved when the sub-division proposal violates the regulations of Building Rule, Multi-storey Building Rule, Public Building Rules, Detailed Development Plan regulations and proposals, Master Plan regulations, Coastal zone regulations, Hill Area Building rules, Heritage town regulations as stipulated by the Government and any other regulations notified under other Acts but concerned with urban planning and developments.
- Sub-division proposals if create new roads as access ways to the sites, must not be considered as a sub-division (private road).

### **5.1.4. Amalgamated sites**

If the amalgamated sites satisfy the requirements for minimum width, minimum depth and minimum extent as required under relevant norms and statutory regulations; If the proposal does not violate the regulations and proposals of the Master Plan and Development Plan: No amalgamation proposal be approved if the building proposed in the amalgamated site violates the statutory regulations of relevant Building Rules and the regulations and proposals of Master Plan and Detailed Development Plan.

**5.1.5. List of documents for regularisation of unapproved individual plot in a sub division or layout:**

- (i) Copies of plan showing the site plan with dimensions of the plot or sub division as per the patta or Field Measurement Book (FMB) sketch, and the width of the access road prescribed in the relevant Act or Building Rules;
- (ii) A copy of layout plan showing the plot proposed for regularization, dimensions of the plots, road network, width of the roads, dimensions of public open spaces and public purpose plots along with survey field numbers of the village covered by the layout;
- (iii) A copy of topo sketch showing the location of layout and connectivity of the layout to the public road and physical features surrounding the layout;
- (iv) copy of sale deed or title deed for the plot.
- (v) Permanent Land Record (PLR) or Town Survey Land Record (TSLR) extract in favour of the applicant shall be furnished. If the patta, Permanent Land Record (PLR) or Town Survey Land Record (TSLR)
- (vi) Encumbrance certificate issued by the Registration Department covering the plot transaction issued not more than a week before the date of application;

**5.1.6. Application under these rules shall be in conformity with the following:**

- 1) The Civil Aviation Regulations of the Ministry of Tourism and Civil Aviation under the Aircraft Act, 1934 (Central Act XXII of 1934);
- 2) The Ministry of Defence Regulations for developments in the vicinity of the Air Force Stations within 100 metres around the areas notified under the Works of Defence Act, 1903 (Central Act 7 of 1903);
- 3) The Coastal Zone Regulations of the Ministry of Environment and Forest under the Environment (Protection) Act, 1986 (Central Act 29 of 1986), notified in the Gazette of Government of India Extraordinary, Part-II, Section 3, sub-section (ii), dated 6th January, 2011;
- 4) The District Municipalities (Hill Stations) Building Rules;

- 5) Development Regulations of Metropolitan Planning Area in respect of Aquifer Recharge Area;
- 6) Development Regulations of Metropolitan Planning Area in respect of Catchment Area;
- 7) Areas notified under the Ancient Monuments and Archaeological Sites and Remains Act, 1959 (Central Act 24 of 1958), and the Ancient and Historical Monuments and Archaeological Sites and Remains Act,

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## **5.2. Annexure 2 Court Cases - Hypothetical Plotting Scheme**

**5.2.1.** It would be interesting to notice review of **various cases by Supreme Court demonstrating that deduction applied** has varied in all cases.

(a) In **Brig. Sahib Singh Kalha Vs. Amritsar Improvement Trust, (1982) 1 SCC 419**, the Court said where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly, deduction of 20 percent of total acquired land should be made for land over which infrastructure has to be made (space for roads etc.). Besides, cause of raising infrastructure like roads, electricity, water, underground drainage, etc. is also to be considered and for this purposes deduction would raise from 20% to 33%. Thus, in all the Court upheld deductions between 40% and 53%.

(b) In **Administrator General of West Bengal Vs. Collector, Varanasi, (1988) 2 SCC 150**, the Court upheld deduction of 40%.

(c) In **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona** and another (supra), the Court upheld deduction between 20% to 50%.

(d) In **Land Acquisition Officer Revenue Divisional Officer, Chottor vs. L. Kamamma (Smt.) Dead by and others, (1998) 2 SCC 385**, Court upheld deduction of 40% as development cost.

(e) In **Kasturi and others vs. State of Haryana (supra)**, 1/3rd deduction was upheld on development, clarifying that deduction can be more or less of 1/3rd depending upon facts of the case.

(f) In **Land Acquisition Officer vs. Nookala Rajamallu and others, (2003) 12 SCC 334**, Court upheld 53% deduction.

(g) In **V. Hanumantha Reddy (Dead) Versus Land Acquisition Officer, (2003) 12 SCC 642**, Court upheld 37% deduction towards development.

(h) In **Viluben Jhalejar Contractor Versus State of Gujarat, (2005) 4 SCC 789**, Court observed that deduction of 20 to 50% towards development is permissible.

(i) In **Atma Singh Versus State of Haryana and another, (2008) 2 SCC 568**, 20% deduction towards largeness of area was applied.

(j) In **Subh Ram and others Vs. State of Haryana and others, (supra)**, Court observed that where valuation of a large area of agricultural or undeveloped land has to be determined on the basis of sale price of a small developed plot, standard deductions would be 1/3rd towards infrastructural space and 1/3 towards infrastructural developmental cost, i.e. 2/3rd % i.e. 67%.

(k) In **Andhra Pradesh Housing Board Versus K. Manohar Reddy and others, (2010) 12 SCC 707**, it was observed that deductions on account of development could vary, between, 20% to 75%.

(l) In **Special Land Acquisition Officer and another Versus M.K. Rafiq Sahib, (2011) 7 SCC 714**, Court was upheld 60% deduction.

In **Sabha Mohammed Yusuf Abdul Hamid Mulla (d) by L.Rs. and others vs. Special Land Acquisition Officer and others (2012) 7 SCC 595** Reference Court while determining market value observed that though land was agricultural but had

non-agricultural potential and determined market value. High Court made a deduction of 15% towards development charges.

Referring to an earlier decision in *Viluben Jhalejar Contractor vs. State of Gujrat*, (2005) 4 SCC 789, Court in **Sabhia Mohammed Yusuf Abdul Hamid Mulla (supra)** said that development charges may range, between, 20% to 50%, of the total price. Court further observed: "in fixing market value of the acquired land which is undeveloped and under-developed the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired."

In making this observation Court relied on its earlier decisions in *Kasturi vs. State of Haryana (supra)*, *Tejumaal Bhojwani vs. State of U.P.*, (2003) 10 SCC 525, *V. Hanumantha Reddy vs. Land Acquisition Officer and Mandal Revenue Officer (supra)*, *H.P. Housing Board vs. Bharat S. Negi*, (2004) 2 SCC 184 and *Kishan Tandon vs. Allahabad Development Authority*, (2004) 10 SCC 745, *Lal Chand vs. Union of India (supra)*, *A.P. Housing Board vs. K. Manohar Reddy*, (2010) 12 SCC 707 and *Subh Ram vs. State of Harayana (supra)*.

In *Ashrafi and others Vs. State of Haryana and others*, (2013) 5 SCC 527, Court has observed, if acquired land has potentiality, it would not be justified to apply "belting system".

With respect to factors of comparable sales, Court in *Major General Kapil Mehra Vs. Union of India and another (supra)* has referred to its earlier decision in *Urban Water Supply and Drainage Board and Others Versus K.S. Gangadharappa and another*, (2009) 11 SCC 164, and has observed that element of speculation is reduced to minimum if underlying principles of fixation of market value with reference to comparable sales are satisfied, i.e.,

(i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) It should possess similar advantages.

Where there are several exemplars showing different rates, it has been said that averaging is not permissible, if land acquired are of different types and different locations. But where there are several sales of similar land, more or less, at the same time, prices whereof have marginal variation, averaging thereof is permissible. It is further held that for the purpose of fixation of fair and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully

discarded. If number of sale deeds of the same locality and of same period with short intervals are available, average price of available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc.

### **5.2.2. How SLAO adopted Hypothetical Plotting Scheme and Hon'ble Court verified?**

#### **Bombay High Court - Anant Vishnu Vartak vs Special Land Acquisition Officer on 23 July, 2010**

1. Both these Appeals can be disposed of by common Judgment, as the controversy to be addressed is emanating from the common Notification issued to acquire the subject land. The Appeal No.1033 of 2003 is filed by the one set of claimants who had held land admeasuring 8311.37 sq.mtrs. 4 FA.1033.03.sxw known as `Vartaks'. The Appeal No.26 of 1996 has been filed by the other set of claimants in relation to land admeasuring 9511.38 sq.mtrs., known as `Pundales'.

Their land was in possession of the occupants/tenants known as `Dhades'.

2. The Development Plan for the City of the then Pimpri Chinchwad Municipal Council was sanctioned on 17th March 1978. As per the said sanctioned Development Plan, the land in question bearing CTS No. 3608(p) (Plot No.195p) of Village Chinchwad was shown as reserved for childrens' playground. The said land is admeasuring 17822.75 sq.mtrs. As aforesaid, part of the said land is owned by Vartaks admeasuring about 8311.37 sq.mtrs. and the other part by Pundales admeasuring 9511.38 sq.mtrs. The land owned by Pundales was in occupation of tenants Dhades. The then Chief Officer, Pimpri Chinchwad Municipal Council requested the Collector of Pune to initiate land acquisition proceedings in respect of the above said land admeasuring 17822.75 sq.mtrs. Consequent to the said request, Notification under Section 126 of the Maharashtra Regional Town Planning Act, 1966 r/w Section 6 of the Land Acquisition Act, 1894 came to be issued on 19th January 1984.

Thereafter, inquiry regarding acquisition of the subject land was commenced. In the said 5 FA.1033.03.sxw inquiry, the claimants appeared and demanded compensation for the said land at the rate of Rs.269/- per sq.mtr. In support of their claim, they relied on sale instances pertaining to plots in the nearby localities. The Land Acquisition Officer after considering the evidence in support of the claim and the relevant sale instances which, in his opinion, were comparable sale instances, proceeded to

determine fair market price of the said land vide award dated 12th May 1986. In the said Award, reference is made to the two sale instances relied upon by Vartaks - one of the claimants. The first was pertaining to Survey No.195/196, Plot No.61, admeasuring 320 sq.mtrs. The said land was sold for Rs.30,000/- i.e. at Rs.93.75 per sq.mtr. on 31st August 1983. The second instance pertains to Survey No.195/1 bearing Plot No.58, admeasuring 294 sq.mtrs. This land was sold for Rs. 30,000/- at the rate of Rs.102 per sq.mtr. on 3rd August 1983. While considering the valuation of the property, the SLAO has also adverted to other six sale instances, namely:-

(i) S.No.195-196 of Chinchwad, Plot No.67 admeasuring (1200 sq.ft.) 308 Sq.Mtrs. has been sold on 15-3-79 at the rate of Rs.32.46 per sq.mtrs.

(ii) S.No.164-165 of Chinchwad Plot No. admeasuring 464.68 Sq.mtrs. has been sold on 16-11-81 at the rate of Rs.26.90 per sq.mtrs. 6 FA.1033.03.sxw

(iii) S.No.195-196, plot No.155 having an area of (3000 sq.ft.) 280.67 Sq.mtrs. was sold on 1-4-82 at the rate of 61-85 per sq.mtrs.

(iv) S.No.195-196 plot No.57 having an area of (2046 sq.ft.) 194 Sq.Mtrs. was sold on 10-6-83 at the rate of Rs.82/- per sq.mtr.

(v) S.No.195-196 Plot No.87 admeasuring 195 Sq.Mtrs. (2046 sq.ft.) was sold on at the rate of Rs.82/- per sq.mtr. on 31-12-83.

(vi) S.No.195-196 plot No.99 admeasuring 195 Sq.Mtrs. (2046 Sq.ft.) was sold on 14-9-84 at the rate of Rs.87/- per sq.mtr.

3. After having adverted to all these sale instances, the SLAO proceeded to hold that the comparable sale instances were building plots and forming part of sanctioned layouts having roads and other facilities. Besides, the area was of small size ranging between 195 to 300 sq.mtrs.

Whereas, the area under acquisition was 17822.75 sq.mtrs. The SLAO then applied **hypothetical plotting scheme to arrive at fair market price of the land under consideration**. Considering the above mentioned sale instances it was found that the sale price was ranging between Rs.32.46 to Rs.87/- per sq.mtr during the relevant period. The Agreements in respect of the said sale were generally executed between span of 1½ to two years prior to the date of acquisition. Taking overall view of the matter, the SLAO assumed 7 FA.1033.03.sxw the hypothetical plotting scheme rate in respect of the land under consideration at Rs.100/- per sq.mtr on the net building plot. After having arrived at the said opinion, he then proceeded to provide for deduction towards road and open space of about 25% of the total plot area. On providing the said deduction, the SLAO arrived at the net plot saleable area as 13367 sq.mtrs. only (i.e. 17822.75 - 4435.68). The SLAO then applied the assumed fair market price in

respect of the said land at Rs. 100/- per sq.mtr. to the said net saleable plot area and computed the total market value payable in respect of the said land at Rs.12,36,707/- Thereafter the SLAO provided for further deduction at the rate of 7% per annum on the assumption that for selling the 50 plots of 250 sq.mtrs. to be formed out of the land in question, it would take at least two years to complete the sale of the said plot. In other words, deduction towards deferred value has been provided at 7% per annum period on two years by applying the ratio of 0.8734. After providing for the said deduction, the deferred value of the plot in question has been arrived at Rs.11,67,479.90.

The SLAO then provided for further deduction towards cost of development of road, water supply and electricity, etc. of lump sum amount of Rs.1,50,000/-; towards Architect's fees, legal charges, etc. at 5% being Rs.58,374/-; and further Developer's profit at 15% of the gross proceeds being Rs.2,00,506/-. This 8 FA.1033.03.sxw additional deductions are provided for the entire plot, the aggregate amount whereof works out at Rs.4,08,880.05. After providing for the above said deductions, the SLAO arrived at the net fair market value of the land in question and the overall rate thereof at Rs.43/- per sq.mtr.

4. The SLAO then proceeded to examine the claim of Pundales in respect of land owned by them admeasuring 9511.38 sq.mtrs. It is noticed that the said land was encroached upon by unauthorised hutment dwellers, about 340 in number. Besides, Dhadges claimed to be in occupation of the said land as tenants. Considering the said encumbrances, the SLAO provided for deduction of further amount of Rs.8/- per sq.mtr. in relation to the land owned by Pundales. On that basis, the fair market price of the land owned by Pundales has been arrived at Rs.35/- per sq.mtr. Insofar as the land belonging to Pundales, the SLAO has recorded the joint statement of the Pundales and Dhadges that they would apportion the compensation amount in the ratio of 60 : 40. On the basis of the said statement, the amount payable to the land belonging to Pundales has been apportioned between the Pundales and Dhadges. The SLAO, however, has declined to grant any compensation to the hutment dwellers on the finding that the permanent structures and other temporary structures standing on the subject 9 FA.1033.03.sxw land were unauthorised, for which reason, they were not entitled to any compensation. On the above basis, the award came to be passed by the SLAO. On arriving at the fair market value of the land held by the respective owners, the SLAO then provided for 12% interest on the market value from the date of Section 6 Notification to the date of declaration of award i.e. 12th May 1986.



5. This common award was put in issue by the claimants by instituting Reference under Section 18 of the Land Acquisition Act. The Reference filed by Pundales and Dhadges was numbered as Reference No.230/1986. Whereas, the Reference instituted by Vartaks was numbered as Land Reference No.313 of 1987. Both these land References were tried separately.

6. Insofar as the Reference instituted by the owners Pundales and occupants/tenants Dhadges, the claimants not only produced documentary evidence but also examined witnesses in support of their claim. The claimants examined in all five witnesses. Whereas, the State examined in all four witnesses. The Reference Court on analysing the said evidence, in the first place, rejected the plea of the State that the Reference filed by the 10 FA.1033.03.sxw claimants was barred by limitation. It then proceeded to reject the plea of the State to give nominal compensation of only Rs.1/- to the owners as vacant possession of the land could not be obtained as the land was in possession of the unauthorised occupants. **The Reference Court has then adverted to the evidence of the expert examined by the claimants Mr.Gangadhar Dattatraya Karkare** who has deposed that after providing for reasonable deductions, the fair market price of the land irrespective of occupation by unauthorised structures can be arrived at, at Rs.105/-. The Reference Court, however has rejected the claim of the claimants on the finding that the instances relied upon by the claimants was in respect of small plot transactions of sanctioned lay out plan. The Reference Court has then opined that the claimants have failed to produce any evidence regarding the cost involved in evicting the hutment dwellers. There were about 340 slum dwellers occupying the plot since 1976. The Reference Court has also taken note of the decision of the Apex Court in the case of Kumari Veeraias & Ors. v. State of A.P. reported in 1995 (4) SCC 136. On this reasoning, the Reference filed by the claimants (Pundales) Dhadges came to be rejected on 14th September 1995.

7. In the Reference by Vartaks, besides relying on documentary 11 FA.1033.03.sxw evidence also examined five witnesses in support of their claim that the SLAO committed manifest error in arriving at the market value at the rate of Rs.43/- only. Whereas, he ought to have determined the market value of the said land at the rate claimed by them of Rs.269/- per sq.mtr. Significantly, before the Reference Court, the Vartaks (claimants) relied on sale instance in respect of Plot No.119 which was sold on 12th October 1984 at the rate of Rs.141.26 per sq.mtrs. (Exhibit 79). Besides producing the certified copy of the Sale Deed dated 12th October 1984 in respect of the said plot which was admeasuring 283.17 sq.mtrs., the claimants (Vartaks) caused to examine Vaishali Shashikant Sane to prove the said Sale Deed. The said Vaishali

Sane had sold the said plot in favour of Mr.Parshuram Dhondu Kadam and Mr.Shankar Govind Jadhav. However, the Reference Court has discarded this sale instance on the finding that the claimants failed to produce copy of the Agreement for Sale on the basis of which the Sale Deed was executed. Besides, the sale was after a period of ten months. In addition, the Reference Court negated the claim of the claimants on the finding that the sale instances which were relied by the claimants were in respect of small plots whereas, the plot under acquisition was around 17822.75 sq.mtrs. The Reference Court further found that the method adopted by the SLAO was not arbitrary or improper. The 12 FA.1033.03.sxw Reference Court also took notice of the fact that in spite of the deficiencies in the sale instance pressed into service by the claimants, the SLAO assumed the fair market price in relation to the land under acquisition at the rate of Rs.100/- per sq.mtr. While reverting to the sale instance Exhibit 79, the Reference Court has opined that the same cannot be reckoned, as it was post Notification. The Reference Court then upheld the deductions provided for by the SLAO as permissible and reasonable ones. The Reference Court has adverted to the decision of the Apex Court in the case of K.S.Shivadevamma & Ors. v. Assistant Commissioner & Land Acquisition Officer & Anr. Reported in (1996) 2 SCC 62. The Reference Court has also noticed that although the SLAO has provided for deduction of 25% towards road and open space and reduced that area to arrive at the net saleable plot area, but has multiplied the rate determined by it with the total area of the plot i.e. 17822.75 sq.mtrs. At the end, the Reference Court has also noticed that the Reference filed by the neighbouring land owners (Pundales) pertaining to the same Notification has already been rejected. Taking overall view of the matter, the Reference Court proceeded to dismiss the Reference Application filed by the claimants (Vartaks) for enhancement of the compensation on 3rd August 2001. 13 FA.1033.03.sxw

8. As aforesaid, Reference filed by Pundales was rejected in earlier point of time. As a result, the said Pundales and Dhadges filed Appeals in this Court against the said decision in 1996 which were numbered as First Appeal No.26 of 1996. Whereas, Dhadges filed separate Appeal being First Appeal No.425 of 1998. However, the said Appeal has been subsequently withdrawn by the said Dhadges. With the result, we are left only with the Appeal of Pundales and the other Appeal subsequently filed by Vartak after the decision of the Reference Court in their reference which has been numbered as First Appeal No.1033 of 2003.

9. We have heard Counsel appearing for the claimants as well as the acquiring Authority. With the assistance of the Counsel appearing for the parties, we have

waded through the evidence in the respective Appeals which was produced by the claimants in the Reference filed by them separately.

We have thought it appropriate to dispose of both the Appeals together by this common Judgment as we find that the matter in issue to be answered will be overlapping, as it arises out of common Notification in respect of one consolidated plot of 17822.75 sq.mtrs. Which incidentally was owned by two owners Vartaks and Pundales. The Vartaks owned 14 FA.1033.03.sxw portion of the said plot admeasuring 8311.37 sq.mtrs.; whereas, Pundales owned the other portion of the same plot admeasuring 9511.38 sq.mtrs. We are fortified in adopting this approach, considering the exposition of the Apex Court in the case of Attar Singh v. Union of India & Anr. Reported in (2009) 9 SCC 289.

In Paragraph 17 of the said decision, the Apex Court, in essence, has opined that the claimants pertaining to common Notification should not be treated differently. We are conscious of the fact that separate evidence has been adduced by the parties in the respective Reference Applications but while answering both the Appeals, we would analyse the evidence of both the References to arrive at one common conclusion to obviate any conflicting opinion in respect of the market price or any other incidental issue relating to the compensation payable to the respective claimants.

10. After having considered the submissions in both the Appeals and perusing the material on record, in our opinion, the following points may arise for our determination.

#### POINTS FINDINGS

- |  |   |
|--|---|
| (1) Whether the method adopted by the SLAO for determination of fair market price of the acquired land is just and proper?                             | Yes.  |
| (2) Whether the post-sale instance can be discarded in toto as has been done by the Reference Court?   | No. But for reasons recorded, it would not affect the conclusion. |
| (3) Whether the fair market price determined in respect of land under acquisition by the SLAO and confirmed by the Reference Court is just and proper? | Yes   |
| (4) Whether the deductions provided for by the SLAO and as upheld by the Reference Court can be said to be permissible and just and proper?            | Yes   |
| (5) What order?  |   |

#### POINT NO.1:

11. As is noticed earlier, the SLAO has considered the sale instances which had come on record for arriving at fair market price of the acquired land. Although the SLAO has

noticed that the sale price in respect of the instances relied upon by the claimants or the other sale instances was ranging only between Rs.32/- to Rs.87/- for different period and that price 16 FA.1033.03.sxw was offered in respect of small building plot, has yet fixed the fair market price in respect of the land under acquisition at Rs.100/- per sq.mtr. for the net buildable plot. The SLAO has adverted to total eight sale instances to record the said finding. Insofar as the description of the sale instance given by the SLAO in the Award, the correctness thereof is not in dispute. The area of plot, the date of sale as well as the average price per sq.mtr. of the respective transaction as stated in Paragraphs 6 and 7 of the Award are not challenged before us. As is noticed by the SLAO, the value of the land in the concerned transaction varied between Rs.32.46 to Rs.87/- per sq.mtr. The value of Rs.87/- per sq.mtr. was as recent as of September 1984 i.e. nine months post Notification. The SLAO discarded the sale instances relied by the claimants (Vartaks) in respect of Plot No.61 and Plot No.58 on the finding that the same were slightly higher rates in comparison to the sale instances at Serial Nos.7 and 8 which was only for Rs.82/- and Rs.87/- per sq.mtr. respectively. In substance, the SLAO has adopted the method of comparable sale instances to conclude that at best, the claimants would be entitled for price of Rs.100 /- per sq.mtr.for the net building plot.

12. The claimants on the other hand argued that the method that ought to have been applied by the SLAO should have been that of a belting system. 17 FA.1033.03.sxw According to the claimants, they have led evidence of expert witnesses who have deposed about the efficacy of belting system to arrive at fair market value of the land under acquisition. Our attention was invited to the experts' evidence in both the References. In Reference instituted by the Vartaks, they examined Mr.Upendra Waman Dhongade (PW 2) as expert witness who has spoken about the methodology of belting system and how it could have been applied to the fact situation of the present case. Insofar as Reference filed by Pundales, they examined Gangadhar Dattatraya Karkare, P.W.5 as expert witness. The evidence given by both these experts in the respective References more or less proceeds broadly on the same basis. Both these experts have deposed that the appropriate method for valuation of the property would have been belting system. In their evidence they have stated that the sale instances which have come on record, could be taken as the basis for determining the value of the land under acquisition. Considering the location of each of this sale instance, the same were falling at best within the third belt. Whereas, the land under acquisition ought to be reckoned as falling within Belt No.1 and Belt No.2. On that assumption, the said witnesses have deposed that the price in respect of the land under acquisition

would be superior to that of the price received in respect of the comparable sale instances. According to the expert witness examined by 18 FA.1033.03.sxw the Vartaks, the hypothetical plots which would be facing the Development Plan (DP) Road would fetch higher value to the extent of Rs.200/- per sq.mtr., whereas, the plots which were on the rear side, would fall in Belt No.2 and fetch around Rs.170/- per sq.mtr. Whereas, the expert witness examined by Pundale has claimed that the land under acquisition should fetch rate of at least Rs.250/- per sq.mtr. as it would be in Belt No.1. However, it is also noticed that the said witness has then provided for deductions including in respect of the unauthorised structures standing on the portion of the suit land reducing the potentials thereof and for which reason the price would be around Rs.105/- per sq.mtr. Even the expert witness examined by Vartaks has advocated for providing reasonable deductions on the same lines.

13. In the first place, the question is: whether the assumption of the two expert witnesses examined in the respective References that the only appropriate method to be applied for considering the fair market price of the land would have been Belting System, is correct. Our attention has been invited to the Manual of Land Acquisition for State of Maharashtra. Paragraph 174 thereof deals with valuation of the land by Belting. It mentions that in cases where large holdings having frontage on road and 19 FA.1033.03.sxw large depth are required to be valued and the evidence of land value of only small building plots with frontage on the same or similar road is available question is not so simple. In such cases, value by method of Belting is resorted to. It is further noted that the Belting method is applicable to N.A. lands or lands having N.A. potentials. Further, the value of belt having frontage of the road would be higher. This Manual also provides that the belting method should be worked out by keeping in mind the depth of belt and the values of belt.

14. We find that the assertion of the expert witnesses that belting method is the only method for determination of fair market price of the land under acquisition, is untenable. That plea of the claimants will have to be rejected. We say so because the expert witnesses have assumed that the land in question is a very "large tract" of land. Whereas, the depth of the plot belonging to Vartaks as shown in the map is only 75 mtrs. Further, it is not in dispute and has been accepted by the two witnesses that the frontage of both the plots either belonging to Vartaks and Pundales is towards existing DP road. At the relevant time, the said DP road was only around 33 feet wide which as per the Development Plan, was to be widened to 60 feet wide road. In other words, on the date when the Notification was 20 FA.1033.03.sxw issued, the width of the DP Road was not 60 feet as assumed. In fact, it was not more than 35 feet. At the same

time, it is noticed that the DP road also passes along with the southern side of the plot owned by Vartaks which has been shown as 40 feet wide road. Admittedly, the location of plot is such that it has the frontage of DP road from two sides. Besides, the neighbouring land in respect of which layout plan has already been sanctioned in 1975, belongs to the said Claimants Vartaks and Pundales.

The land under acquisition could be developed in the same way, but for the reservation shown in the sanctioned DP Plan. It is noticed that the sale instances relied by SLAO are from sanctioned lay out. The same is in the neighbourhood of the land under acquisition. Further, even the said plots (sale instances) were similarly located and having frontage of colony road of 40 feet. In any case, what is intriguing is that the expert examined by the Vartaks had assumed the market price in respect of the hypothetical plots shown in map Exhibit `C' being Plot Nos.1, 2 and 3 at Rs.170/- whereas for Plot Nos.4 to 7 at Rs.200/- per sq.mtrs. The basis on which such distinction has been made is untenable. On the other hand, we find that Plot Nos.1, 2 and 3 as shown in the plan at Exhibit `C' of the paper book, even those plots are facing the 40 feet wide DP road. The other plots referred to in the same plan are facing proposed 60' wide DP road (presently, 33 feet wide 21 FA.1033.03.sxw DP road). Considering the location of the land in question, it is not possible to take the view that any portion of the plot can be treated as rear portion as such so as to justify application of belting system. Moreover, the land under acquisition is only around 17822.75 sq.mtrs. The Manual on which emphasis has been placed by the Counsel for the claimants also makes it clear that the principles referred to therein cannot be regarded as hard and fast rule. In the present case, the depth of the plot is only 75 mtrs. It is not a case of large depth of the plot. Besides, the location of the land under acquisition had proximity to DP roads from two different points. Further, if the plot were to be developed as is sought to be projected, the plans recommended by the expert witness itself makes enough provision for Colony road which is also 40' wide road. If so, there can be hardly any distinction between the potentials of the plots as each plot would have frontage either of DP road or of the Colony road.

15. Understood thus, we find no infirmity in the method applied by the SLAO of considering the comparable sale instances as the benchmark for arriving at the fair market price of the land under acquisition. It is not as if as a general rule, the land even though it has width or depth of only 75 sq.mtrs., and having frontage of DP Road from two sides should be still 22 FA.1033.03.sxw assessed under belting system, as is sought to be contended. Reliance was placed on the decision of the Apex Court in Mathura Prosad Rajgharia & Ors. v.State of West Bengal reported in AIR 1971 SC

465. This Judgment has been pressed into service on two propositions. Firstly, as to what is the meaning of word 'disposition'? In Paragraph 11 of the said decision, the Apex Court has expounded that the word 'disposition' means how the land could be disposed of at that time. It does not mean the existing use of the land but means its disposing power "with the arrangement as it was on that date". It has further observed that the market value has to be arrived at keeping in mind the disposition of the land which would mean the value of the land in a hypothetical market which a willing purchaser may, in the prevailing conditions pay for the land to a willing vendor, taking into consideration its situation and advantages. This decision is also pressed into service to persuade us that method of belting system would have been the most appropriate method to be applied to the case on hand. In Paragraph 12 of this decision, the Apex Court has noticed that when a large area of land in an urban locality is sought to be acquired in determining the market value, "the method of belting" is appropriate. This dictum will have to be understood in the context of the fact situation of that case. However, this decision does not postulate that method of belting is the only method to be applied in relation to acquisition of land in urban locality. Further, in that case, the area of land which was acquired was admeasuring 39 bighas and 19 cottahs (63,980 sq.yards). Considering the large tract of area under acquisition in that case, the Apex Court approved application of belting system. Thus, the area of the land which was under acquisition dealt with by the Supreme Court was almost four times bigger than the land under acquisition. Besides, as noticed earlier, expert witnesses examined by the claimants have conceded that the land was accessible from two different DP roads on the western and southern side respectively and the depth of the plot on the southern side was only around 75 mtrs. In our opinion, therefore, no fault can be found with the method applied by the Land Acquisition Officer of comparable sale instances for determining the fair market price of the land under acquisition.

16. We may incidentally point out that expert witnesses as well as the claimants have admitted that high tension line passes through the land under acquisition which cuts across the land from Plot No.13 and travels through Plot No.11 as shown in the map at annexure 'C' of the Appeal paper book. The evidence on record clearly suggests that no construction activity is possible below the high tension line and minimum of three meters on both the sides of the high tension line should be free from any construction. In other words, around over 450 sq.mtrs. of plot would be undevelopable as no construction would be permissible on 75 mtrs. x six meters area of the land on account of passing of high tension line. Even though this aspect

has been noticed by the expert witnesses as also the two authorities below, no deduction has been provided while computing the compensation amount payable to the claimants.

17. Be that as it may, as observed earlier, we find no infirmity in the method adopted by the SLAO while computing the market price in respect of the land under acquisition. On this finding, the next question that needs to be addressed is about the quantum arrived at by the Land Acquisition Officer for determining the fair market price in respect of the land under acquisition.

**POINT NO.2 and 3:**

18. As is noticed earlier, **the SLAO has analyzed eight sale instances for determining the fair market price** in respect of the land under acquisition at Rs.100/- per sq.mtr. He has discarded the two sale instances relied upon by the claimants on the reasoning that the rates mentioned in the said two sale instances were slightly higher rates in comparison to the other sale 25 FA.1033.03.sxw instances during the same period in 1983. The SLAO has noticed that even after the Notification for acquisition was issued, the sale instance No.8, the market rate was around Rs.87/- per sq.mtr. which transaction was effected on 14th September 1984. Even then, the SLAO has assumed the market price at Rs.100/- per square meter. Before the Reference Court in the Reference filed by Vartaks, amongst others, they relied on the sale instance of Plot No.119 from Survey No.195 which was sold by one Vaishali Sane in favour of Mr.Jadhav and Mr.Kadam by registered Sale Deed dated 12th October 1984 Exhibit 79. The certified copy of the said Sale Deed was produced before the Reference Court. In addition, the claimants examined the owner of the said plot Vaishali Sane as their witness. However, the Reference Court has discarded the said sale instance essentially on three counts. Firstly, that the claimants failed to produce Agreement of Sale on the basis of which the Sale Deed was executed. Secondly, the said Sale was after ten months from the date of Notification for acquisition dated 19th January 1984. Thirdly, the plot referred to in the said sale instance was a small plot of only 283 sq. mtrs.

19. Insofar as the first reason which has weighed with the Reference Court to discard this sale instance is concerned, the fact that Agreement to 26 FA.1033.03.sxw Sale was not produced by the claimants, would not militate against the claimants in the fact situation of the present case. That is so because the certified copy of the registered Sale Deed (Exhibit 79) restates the position that Agreement to Sale was executed between the owner and the purchaser on 3rd May 1984. The owners had received part consideration of Rs. 20,000/- and the balance amount of Rs.20,000/- was being



received on the execution of the Sale Deed on 12th October 1984. In this view of the matter, there was hardly any reason to doubt the veracity of the execution of the said Sale Deed and the terms specified therein. Having regard to the fact that the claimants had produced certified copy of the Sale Deed and considering the expansive provision contained in Section 51-A of the Land Acquisition Act, the Court had no option but to accept the said Sale Deed as evidence of the transaction recorded therein. We may usefully refer to the decision of the Constitution Bench of the Apex Court in the case of Cement Corporation of India Ltd. v. Purva reported in AIR 2004 SC 4830. The Constitution Bench of the Apex Court has authoritatively answered the issue regarding the efficacy of Section 51A of the Act. It has held that upon production of certified copy of the Sale Deed, its admissibility in evidence would be beyond any question. In Paragraph 35 of the same decision, the Court has opined that the registered document in terms of Section 51-A of 27 FA.1033.03.sxw the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Suffice it to observe that the issue regarding admissibility of a certified copy of the Sale Deed has now been finally resolved by this decision. In the present case, it is not in dispute that the claimants produced the Sale Deed dated 12th October 1984 which has been marked as Exhibit 79. In any case, the claimants have examined the owner of the said plot Vaishali Sane as PW 3 who has deposed about the said transaction and proved the sale.

20. The second reason which weighed with the Reference Court to discard this sale instance is that it pertains to post acquisition period, in that, the notice for acquisition was issued on 19th January 1984 whereas, the Sale Deed was dated 12th October 1984. In the context of this opinion, Counsel for the Claimants (Vartaks) have relied on the exposition of the Apex Court in the case of Mehta Ravindrarai Ajitrai (deceased by L.Rs.) & Ors. v. State of Gujarat reported in AIR 1989 SC 2051. The main instance relied upon by the claimants in that case was in respect of sale which was post Notification. The High Court rejected the said instance not only on the ground that it was not duly proved but additionally because the same was post Notification. While dealing with this aspect, the Apex Court in 28 FA.1033.03.sxw Paragraph 4 observed as follows:

"There is, however, nothing in the evidence to show that there was any sharp or speculative rise in the price of the land after the acquisition and this has been noticed by the High Court. It appears that under these circumstances the High Court was not justified in not taking this instance into account at all as it has done on the ground that

it was a post-acquisition sale and could not be regarded as a comparable instances at all."

21. The principle stated by the Apex Court is that so long as the sale instance is a bonafide one and does not suffer from sharp or speculative rise, merely because the sale instance is post Notification, it cannot be discarded in toto. Even in the case of *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr.* Reported in AIR 1988 SC 1652, broad contours to be kept in mind while determining the market price have been laid down. One of the factors referred to in Clause (9) in Paragraph 4 of the said decision is regarding the efficacy of post Notification instance. The Court went on to observe as follows:

"Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects."

22. In the present case, it cannot be disputed that the post Notification instance vide Sale Deed dated 12th October 1984 is in close proximity to the 29 FA.1033.03.sxw Notification. In that, the Notification was issued on 19th January 1984 whereas, the Agreement to Sale was arrived at between the owner Vaishali Sane in favour of Mr.Jadhav and Mr.Kadam on 3rd May 1984 and eventually the registered Sale Deed was executed on 12th October 1984. The genuineness of the said transaction also cannot be doubted. As a matter of fact, besides producing the certified copy of the said Sale Deed, the Claimants (Vartaks) have also examined Vaishali Sane as their witness. She has deposed about the correctness and genuineness of the said transaction. The question is: whether the land price mentioned in the said Sale Deed was motivated due to the Notification. Indeed, suggestion in this behalf has been given by the State to this witness, which however has been denied. Suffice it to observe that merely because the sale instance is post Notification that by itself, does not militate against the claimant nor can be the sole basis to discard the same. We shall presently consider the efficacy of the said sale instance.

23. The third reason noticed by the Reference Court to discard this sale instance Exhibit 79 is on account of the smallness of the plot. The area of the plot which was sold by the said Sale Deed was only around 283 sq.mtrs as compared to the land under acquisition admeasuring around 17822.75 sq.mtrs 30 FA.1033.03.sxw. Insofar as this reason is concerned, it is not possible to ignore the same. That is a relevant consideration for determining the fair market price of the land under acquisition. In addition, we find that the owner of the plot which was subject matter of the Sale Deed

Exhibit 79, has been cross examined. During cross examination, it has come on record that she had purchased the said plot on 2nd November 1982 from Indumati Ketkar for Rs. 20,000/- only at the rate of Rs.95.34 per sq.mtr. She has admitted that she purchased the plot as she was in need to purchase the same. At the relevant time, the prevailing market rate, it is stated by her, was Rs.6/- to Rs.7/- per sq.ft, which was told to her by the Estate Agents and also during the inquiry with the Sub-Registrar's Office. However, she was unable to give the details as to why and with whom such inquiry was made by her. What is relevant for our purpose is her evidence in Paragraphs 3 and 4. The relevant portion of the said evidence reads thus:

"3. The said plot was situated nearby to railway line in Chinchwad. It is true, it was a developed plot. It is true that it was in posh locality. It is true, school, colleges, busstop, railway station and market were nearby to that plot. It is true, at that time there was no hutmate in the vicinity of plot. It is not true that since were dire need of plot, it was purchased without making any enquiry.

4. When we purchased the plot, we were not having any need to retain or construct the plot, but the purchaser was in need of it. It is not true that Mr.Kadam and Mr.Jadhav were in dire need of plot and so they purchased by making excessive payment. It is true, there was due negotiations between 31 FA.1033.03.sxw us. It is not true that the market rate mentioned in Ex.79 is not true and it is mentioned approximately. It is not true that, when I sold our plot, construction work started in adjoining plots. According to me there was increase in rate as buyers were more than the sellers."

24. It is seen that she has admitted the special features of Plot No.119 which was the basis for getting good returns by resale thereof. The special reasons which have already come on record during the cross examination of this witness leave no manner of doubt that the said Plot No.119 is an incomparable instance for determination of the fair market price of the land in question. In other words, even if we were to reverse the opinion recorded by the Reference Court of having wrongly discarded this sale instance on the specious ground that it is post Notification, for the reasons noted hitherto, this sale instance cannot be of any avail for determining the fair market price in respect of the land under acquisition. If this sale instance were to be ignored, then the only other sale instance which is on record, the maximum amount fetched by sale of plot No.58, is of Rs.102/- per sq.mtr., which sale was effected on 3rd September 1983. The said sale was also in close proximity to the Notification. The Plot No.58 is part of the same layout where the Plot No.119 sale instance Exhibit 79 has been relied by the claimants. Besides, it is in the neighbouring locality to the land under acquisition. The Land Acquisition Officer has already assumed the fair 32 FA.1033.03.sxw market

price of Rs.100/- per sq.mtr while computing the quantum of compensation. The question as to how the quantum of compensation should be deduced is no more res integra. The Apex Court in the case of Smt. Tribeni Devi & Ors. v. The Collector, Ranchi reported in AIR 1972 SC 1417 has expounded the broad principles to be kept in mind. The same position is restated by the Apex Court in catena of other decisions in latter point of time including in the case of Chimanlal (supra). In Paragraph 4 of the decision in the case of Chimanlal (supra), the Apex Court has articulated the broad contours to be kept in mind for determining the fair market price. The balancing features have also been adverted to in this paragraph. The smallness of size is a plus factor for getting better price. The sale instance relied upon by the claimants were ranging between 195 to 300 sq.mtrs. Whereas, the land under acquisition is 17822.75 sq.mtrs. While considering the argument regarding the method adopted by the SLAO, we have adverted to the consideration of proximity of the land to the road. It is noticed that the existing DP road abutting the land on the western side was about 33 feet wide and the proposed road widening thereof was intended up to 60 feet wide. Besides the said DP road, on the southern side of the land under acquisition, there was provision of 40 feet wide DP road. We have also noticed that as in the case of sanctioned layout of the 33 FA.1033.03.sxw neighbouring land, which was also owned by the claimants, even the land under acquisition could have been developed in the same manner in which case, access to all buildable plots on the land could be provided for. In that case, the argument regarding the advantage on account of proximity to road only to some plots and not to others would not be available. It is not a case of acquisition of small plot but one of about 17822.75 sq.mtrs. The frontage of road would also become relative in the present case, if the layout was to be provided in the same manner as in the case of sanctioned layout. For, the frontage and proximity to the road to every section of the land would become available. Further, we have noticed that the land under acquisition was completely undeveloped. Only the neighbouring land belonging to the claimants was developed and the plots were being sold as building plots which were fully developed. That position is accepted by the witnesses examined by the claimants themselves.

25. In our opinion, taking overall view of the matter, no fault can be found with the opinion recorded by the Reference Court while upholding the market price determined by the SLAO at the rate of Rs.100/- per sq.mtr.

**POINT NO. 4:**

26. That takes us to the next question as to **the justness and reasonableness of the deductions provided by the SLAO which have been confirmed by the Reference**

**Court.** The SLAO has provided deduction up to 25% towards road and open space. Insofar as this deduction is concerned, even the expert witnesses examined by the respective claimants have accepted the fact that such deduction has to be provided as the land under acquisition was undeveloped plot. Insofar as the witness examined by Vartaks PW 2, he has stated that while preparing hypothetical layout of the claimants' plot, he has shown internal roads which are 9.3% because there are other existing roads. He has also shown 10% open area as per the rules. In the cross-examination, he has admitted that he did not consult any Architect while preparing the map and the layout. Suggestion is given to him that as per the Development Control Rules, only 3/4th area of gross area is available for the layout which suggestion has, however, been denied by the witness. He has, however, admitted that while making such provision, 1/10th space out of gross area is to be left out. He has denied that 15% space should be left for roads. The witness examined by claimants- Pundales, has admitted that he has deducted 25% of the gross area towards roads and open spaces. If any authority is required on the point, the Apex Court in the case of Chimanolal (supra) in Clause (15) under Paragraph 4 35 FA.1033.03.sxw has plainly noticed that deduction by way of allowances at an appropriate rate ranging approximately between 20% to 50% to account for the land required to set apart for carving out lands and plotting out small plots can be provided. Even in the case of K.S.Shivadevamma (supra), in Paragraph 10 of the said decision, the Apex Court has noticed that under the Building Rules, 53% of land is required to be left out. It is further observed that the Apex Court has held as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. The fact that the land is being acquired for reservation of childrens' playground that does not mean no deductions can be provided for. Somewhat similar plea was taken before the Apex Court in the case of K.S.Shivadevamma (supra) which came to be rejected as can be discerned from Paragraphs 8 and 9 of the said decision. In that case, the acquisition was for bus stand purpose. On that basis, it was argued that the question of providing deduction towards development cost does not arise. That plea has been rejected on the opinion that the principle is not for what purpose the land was acquired but what is to be kept in mind is that had the owner sold the land in open market as house sites, would he be entitled to use the entire land for building purpose? That is the yardstick to be applied. Understood thus, the deduction provided by the Land Acquisition Officer of 25% towards road and open space i.e. 36 FA.1033.03.sxw 4435.68 sq.mtrs. out of the scheduled area of land to be acquired, cannot be said to be unjust or improper.

Therefore, the net plot of saleable area that would become available for the land under acquisition would be around 13,377 sq.mtrs.

27. The next deduction provided by the SLAO is towards deferred sale at 7% per annum, for a period of two years. This is on the assumption that the land under acquisition would be converted into 50 plots of around 250 sq.mtrs. and the time taken for sale of those 50 plots would be at least about two years from commencing the process of sale. Keeping that principle in mind, the SLAO has provided for 0.8734 value of the land. Insofar as this deduction is concerned, the expert witness examined by claimants (Pundales) PW 5 has admitted that such deduction ought to be provided while determining the fair market price of the land under acquisition. In his evidence, he has stated that the amount would be at the rate of 7% of gross proceeds for two years i.e. multiplier of 0.8734. The Land Acquisition Officer has adopted the same multiplier for deducting the amount towards deferred sale value of the land under acquisition. By now, it is well established that even such deduction is permissible and can be resorted to while determining the fair market price of the land under acquisition.

28. The next deduction provided by the Land Acquisition Officer is towards development of road, water supply and electricity, etc. The Land Acquisition Officer has taken lump sum amount of Rs.1,50,000/- towards this head. These expenses is for the entire land which would be shared between the two sets of land owners in proportion to their land holding. Even the expert witnesses examined by the claimants have provided for amount of deduction in their valuation report as well as deposed to in the evidence, in particular, PW 5 has provided for the same amount of deduction towards this head in the valuation report as well as oral evidence. The expert witness examined by Vartaks PW 3 has also provided for such deduction but at a lesser amount. In our opinion, since the amount is a composite amount to be shared by both the land owners, there would be proportionate deduction to be shared by them as per their holdings. Thus, we have no reason to depart from the view taken by the Land Acquisition Officer. In the circumstances, we have no hesitation in taking the view that the deduction of Rs.1,50,000/- provided by the Land Acquisition Officer towards this head cannot be said to be improper or excessive.

29. The next deduction provided by the Land Acquisition Officer is 38 FA.1033.03.sxw towards Architect's fees, legal charges, etc. at around 5% which comes to lumpsum Rs.58,374/-. Once again, the experts examined by both the claimants have spoken about 5% of gross proceeds to be set apart to cover this head. In other words, even the expert witnesses of the Claimants are ad-idem that such deduction ought to be provided for while determining the fair market price of the land under acquisition.

30. That takes us to the last deduction provided by the Land Acquisition Officer towards developer's profit at 15% of the gross proceeds. Even this deduction has been accepted by the expert witnesses of both the claimants. Even on this deduction, the expert witnesses are ad-idem and have provided for the same in their valuation report as well as have deposed in their evidence. Accordingly, even this deduction neither can be said to be unreasonable or excessive.

31. That takes us to the last deduction provided by the SLAO which is specific to the case of Pundales. The said deduction is in respect of the expenses to be incurred for removing the unauthorised structures for getting back the possession of the land for the purpose for which it is acquired. Insofar as this deduction is concerned, the authorities below have noticed 39 FA.1033.03.sxw that there were in all 340 unauthorised structures on the land owned by Pundales. The Land Acquisition Officer has applied conservative amount of Rs.8/- per sq.mt. to provide for deduction towards expenses for removing such unauthorised structures and hutment dwellers. Notably, the expert witness examined by the claimants Pundales has himself advised deduction in this regard at the rate of Rs.12.85 per sq.mtr. as can be discerned from Paragraph 11 of his evidence. After providing for such deduction, he has arrived at the market value of the land belonging to Pundales at Rs.105/- per sq.mtr. However, as aforesaid, the Land Acquisition Officer has provided for deduction on account of this head only at the rate of Rs.8/- per sq.mtr. which is far less than the one recommended by the expert witness of the claimant. Thus understood, even this deduction provided by the Land Acquisition Officer is unexceptionable and will have to be upheld. In the circumstances, no fault can be found with the view taken by the Land Acquisition Officer that insofar as claimant Pundales are concerned, they would be entitled to compensation at the rate of Rs.35/- per sq.mtr. Instead of Rs.43/- per sq.mtr. on account of encumbrances on the land owned by them admeasuring 9511.38 sq.mtrs.

32. In view of the above, we have no option but to conclude that no fault 40 FA.1033.03.sxw can be found either with the award passed by the SLAO or for that matter rejection of the Reference by the Reference Court.

33. Accordingly, both these Appeals are devoid of merits and ought to fail. Hence, both these Appeals are dismissed with costs.

(A.A.SAYED, J.) (A.M.KHANWILKAR, J.)

**5.2.3. Court cases on Hypothetical Building Scheme - Delhi High Court - D.L.F. United Pvt. Limited vs Union of India on 3 May, 1979 - Equivalent citations: ILR 1979 Delhi 771**

(1) These are four appeals from a common judgment dated 22nd November, 1968. Two appeals are by the owner, D.L.F. United Private Limited. The other two are cross-appeals of the taker of the land, the Union of India. This judgment will govern them all.

The facts:

(2) D.L.F'S land was acquired pursuant to a notification under Section 4 of the Land Acquisition Act 1894 (the Act). Out of 319 Bighas 12 Biswas of land situated in Village Bahapur which was acquired, D.L.F. owned an area of 81 Bighas 17/60 Biswas which is the subject of appeal in R.F.A. 128/69 and 30 Bighas 94/15 Biswas which is the subject of appeal in R.F.A. 127/69. In due course the Land Acquisition Collector made the awards (Nos. 1387 & 1421). He awarded Rs. 2,000 per bigha to D.L.F.

(3) Displeased with the award D.L.F. sought reference to the civil court for the proper determination of compensation under Section 18 of the Act. On reference the Additional District Judge varied the award of the Collector. He enhanced the compensation from Rs. 2,000 per bigha to Rs. 11,000 per bigha. D.L.F. has brought two appeals for further enhancement. They claim Rs. 17,000 per bigha.

The Union of India, on the other hand, in their appeals say that the enhancement made by the Judge is unjustified and he ought not to have awarded to D. L. F. anything more than what the Collector had given them.

(4) The learned Judge adopted the method of valuation called 'hypothetical building scheme' to assess the market value of the land in question. He found as a fact that D.L.F. had purchased the acquired land for extension of their colony known as Greater Kailash No. 1 and that they had submitted a lay out plan to the Municipal Corporation of Delhi for sanction. He, therefore, came to the conclusion that compensation should be awarded to the D.L.F. on the basis of prices prevailing in the nearby colony of Greater Kailash No. 1 at the material time.

(5) The lay-out plan was submitted to the Municipal Corporation on 10th November 1959. Before sanction was obtained the Government issued the notification under Section 4 on 13th November 1959.

(6) The land in question adjoins Greater Kailash Colony. It is contiguous. Therefore, it was an ideal building site for a residential colony. It was excellent for building purposes. In order to determine the market price of the acquired land the Judge ascertained the value of the plots in Greater Kailash at which they were sold on the valuation date i.e. 13th November 1959. Block 'R' of Greater Kailash colony was found to be situated nearest to the land in dispute. In this block he found that the average market value of the plots in or about December 1959 was roughly Rs. 30 per sq. yard. This price he deduced from four transactions of sale which were produced before him



in evidence. On 14th December 1956, a plot measuring 500 sq. yards was sold at Rs. 18 per sq. yard. On 2nd June 1958 another plot was sold in block 'R' at Rs. 24 per sq. yard. On 29th November 1958, another plot was sold for Rs. 27 per sq. yard. Yet another plot was sold on 20th December 1958 at Rs. 24.70 per sq. yard. Taking the average price of these plots and the rise which he noticed during the period 1958 to 1959 he came to the conclusion that the market value of the land in Greater Kailash which was nearest to the land in dispute was Rs. 30 per sq. yard on the given date when the notification under Section 4 was issued. .

(7) The land in question was undeveloped land. The Judge, therefore, set himself to inquire the market value of this undeveloped land on the basis of price of plots in the developed colony of Greater Kailash. He took the cost of development into account and after deducting the same from the price of plots he reached the conclusion that Rs. 11 per sq. yard was the market value of the undeveloped land. On this basis he enhanced the compensation from Rs. 2,000 per bigha to Rs.11,000 per bigha, thus allowing an increase of Rs. 9,000 per bigha. Against the decision both parties appeal to this court, as I have said. Hypothetical Building Scheme:

(8) Counsel for the Union of India has raised a fundamental objection to the method of valuation called 'hypothetical building scheme', which the Judge adopted in this case. He argues that this method ought not to have been applied and the market price ought to be determined on the basis of the sale transactions of this very land or the land situated in the neighborhood.

(9) It is admitted on all hands that the D.L.F. purchased a part of the land in question on 11th June 1958 at Rs. 1,350 per bigha. A part of the land they purchased on 24th April 1959 at Rs. 6,500 per bigha. One Pooran had sold 18 bigha 4 biswas of land to D.L.F. at Rs. 6,500 per bigha. This sale by Pooran in favor of D.L.F. is also not in dispute. Basing himself on this sale counsel for the Union of India says that the sale transaction of 24th April 1959 ought to be accepted as a guide to the market value of the land and all that should be done is to increase this amount of Rs. 6,500 per bigha by a few hundred rupees on account of the period of seven months which elapsed between the purchase by D.L.F. and the notification under Section 4. He further contends that the sale price of Rs. 6,500 per bigha reflects the potential value of the land because the vendor Pooran was aware of the value of his land and that is why he sold it for Rs. 6,500 per bigha. His contention, in other words, is that no separate amount should be awarded to the D.L.F. for the potentiality of the land because the prevailing market value includes the potential value of the land.

(10) In my opinion this contention is not right. The land in question had a potential value for the D.L.F. They are a well-known firm of colonisers. They developed their Greater Kailash colony. The acquired land was purchased for extension of the colony. Therefore, the land had a special value in their hands and they would have exploited it for the purposes of extension if the land had not been taken from them.

(11) In the case of a large building site as is the case hers, 'hypothetical building scheme', as it has been called, is a proper method to adopt. This method received the approval of the high authority of the Privy Council as early as 1912. In a Bombay case Betty J. employed this method (In re Government of Bombay and Merwanji Muncherji Cama. (1907) 9 Bombay Law Reporter 1232) (1).

From his decision an appeal was taken. The appeal was heard by three judges (Batchelor, Heaton and Macleod JJ.). They condemned this method of hypothetical building scheme. In their judgment the scheme was had as being "to remote, speculative and conjectural" (Government of Bombay V. Merwanji Muncherji Cama, (1907) 10 Bombay Law Reporter 907(2) They held that it was inadmissible in evidence and the valuation based thereon must be altogether disregarded. They reversed the decree passed by Betty J.

(12) From the decision of the Full Bench an appeal was taken to the judicial Committee of the Privy Council. The judgment of the Privy Council is reported in Merwanji Muncherji Cama v. The Government of Bombay. (1914) 16 Bombay Law Reporter 55(3). The only question that was argued before the Privy Council was whether hypothetical building schemes were or were not admissible in evidence in assessing compensation for open sites of land compulsorily acquired under the provisions of the Land Acquisition Act, and whether a court of law ought to have regard to hypothetical schemes in assessing such compensation. The Privy Council held that hypothetical building scheme is admissible in evidence and is a proper method of valuation. Lord Shaw of Dumfryline said: "Hypothetical building schemes are the usual basis of valuation in the case of building land. I can say this from my own experience of such cases. The ordinary course will be to call a surveyor who will say that in his opinion the land is worth so much. When asked for his reasons he will proceed to unfold his scheme, saying that he values it at so much because an owner, by expending so much on buildings of such and such a description, can realise such and such a rent, which when capitalized will be worth the sum named by him. In cross-examination, the surveyor's scheme will of course have to be tested in all its details. But the scheme is certainly admissible in evidence and a proper mode of valuation."

Lord Macnaghten said: "I am of the same opinion. Hypothetical building schemes seem to me to

(13) Lord Atkinson, Sir John Edge and Mr. Ameer Ali also concurred in the above expression of

(14) Counsel for the Government of Bombay then argued that the scheme of development on which

(15) Their lordships then suggested to the Government to come to a settlement as to the figure

(16) In the result the appeal of the claimants was allowed and the decree passed by the High Court

(17) I have set out this judgment in full because it has not been noticed anywhere in the text

(18) The method of hypothetical scheme of development has been adopted in a number of decisions in recent years. It was followed by the Bombay High Court in two decisions (Additional Special Land Acquisition Officer, Poona v. Shantaram Shamrao Ghole, Air 1960 Bombay 448(4) and The State of Maharashtra v. Bapurao Dnyanoba Chiddarwar, . In Punjab it was employed in D.L.F. Housing and Construction (P) Ltd. v. Union of India, . Where the judges followed their own decision in Union of India v. Hanuman Pershad, R.F.A. 91-D of 1961 decided on April 29, 1964(7). The Punjab decision in D.L.F. was followed in State of Maharashtra v. Bapurao (supra) by Bombay Judges.

(19) In this court this method of valuation has been accepted in three recent decisions. In Madan Mohan Manoharlal v. Union of India, . S. N. Andley and T. V. R. Tatachari, JJ. applied this method in relation to a colony known as Sangam Park. Likewise in two other cases of D.L.F. this method of valuation was adopted. [See D.L.F. Housing and Construction (P) Ltd. v. Union of India, R.F.A. 79 of 1967, decided on 29th November 1977 (Prakash Narain and Ranganathan, JJ. (9) and D.L.F. United Limited v. Union of India, R.F.A. 282 of 1968 decided on 15th February 1979 (V. D. Misra and F. S. Gill, JJ.)](19). In all these cases what was done was this. The Judges ascertained the maximum value of each plot laid out in the most advantageous and lucrative manner in the light of its potentialities, and in doing so expenses which may have to be incurred in developing the land in the most profitable manner have been taken into account. Cost of development, for example, laying of roads, parks, electricity, water and other modern amenities were taken into account in arriving at the value of the land in question.

(20) I find nothing wrong with this method which the Judge in this case accepted in principle and applied to the facts and circumstances of this case. He took the potentialities and the possibilities of the land into account. The probability of a more profitable future use was an advantage of the land in the hands of D.L.F. Potentialities and Possibilities:

(21) But how is the increase to the value of the land by reason of its potentialities or possibilities to be measured?

As Lord Romer said in *Raja Viricherla Narayana Gajapatiraju v. Revenue Divisional Officer*, I.L.R. 1939 Madras 532(544) (11) : "FOR it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification under Section 4(1) ), but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one."

All advantages which the land possesses, present or future, in the hands of the owner may be taken into consideration, and the owner is entitled to have the price assessed in reference to the advantages which will give the land the greatest value. The probability of a more profitable future use is one such advantage which may be taken into consideration. Thus the land which may possibly be used for building purposes must not be valued on the same basis as purely agricultural land (*Cripps Compulsory Acquisition of Land*, 11th Edition p. 680).

(22) The value of the land must be assessed, it would seem, at what the purchaser of the potentiality is willing to pay for it, and if the owner it's one of the persons able to turn the potentiality to account,

"the value to him of the potentiality will not be less than the profit that would accrue to him by making use of it had he retained it in his own possession." (*Raja Vyricherla (supra)* at page 546).

(23) If the owner of the land is the only person who can turn the potentiality of the land to account the value to the owner must be ascertained by reference to what profit he might thereby have been able to derive from the land in the future. Take as an example the case of an owner of vacant land that adjoins the factory. The land possesses the potentiality of being profitably used for an extension of the factory. But the owner is the only person who can turn the potentiality to account. In valuing the land, however, as between him and a willing purchaser, the value to him of the potentiality would necessarily have to be included. (*Raja Vyricherla (supra)* at pp. 545-546).

(24) That the land in question had potentialities and possibilities. Of a more profitable use in the future cannot be denied. D.L.F. would have made the most of this property. The value to the owner is what it is worth to him. It is exemplified by the developed colony of Greater Kailash where D.L.F. were able to sell a developed plot at the end of 1958 at as much as Rs. 27 per sq. yard. After deducting the cost of development from the price of Rs. 30 per sq. yard, which the Judge fixed as the average price, he came to the conclusion, and I think rightly, that Rs. 11 per sq. yard was the value of the undeveloped plot situated next door to the colony of Greater Kailash at the critical moment.

D.L.F.'s case:

(25) Counsel for the D.L.F. in support of his appeal has raised two arguments. Firstly, he says that the market price of the developed land ought to have been fixed at Rs. 36 and not Rs. 30 per sq. yard as was done by the Judge. For this he relies on a sale of plot on 13th March 1959 at Rs. 36.10 per sq. yard. This instance was cited before" the Judge. He refused to accept it because this plot was situated in block 'C' and not in block 'R'. He was guided by the price prevailing in block 'R' which he said, "is situated nearest to the land in dispute". Block 'R' sales he thought were "the best possible guide for evaluating land in dispute". I think he was plainly right in this. Sales in block 'C' cannot be preferred to sales in 'block 'R'. Block 'R' sales truly represent the value of the developed land because the land there was in the closest proximity to the land in question.

(26) In the second place counsel argues that the learned Judge ought not to have taken development charges at Rs. 5 per sq. yard on the plottable area. He says that he should have fixed the development charges at Rs. 3 per sq. yard instead of Rs. 5. For this he referred me to the audited statement of accounts of Greater Kailash filed by the D.L.F. showing the cost of development in that colony right from 1956 to 1965. The argument is that since the D.L.F. are an experienced people in this line and were extending their own colony, they would have saved Rs. 2 on the cost of development. I do not agree with this submission. In Hanuman Pershad's. case (Supra) cost of development was taken at Rs. 5 per sq. yard and this the learned Judge accepted in this case also. It is impossible to determine the market value with any mathematical accuracy. Valuation is not an exact science. The art of valuation in any case involves making assumptions, because value is to a large extent governed by future prospects which must in turn be largely, though not entirely, governed by assumptions. (Keith Davies Law of Compulsory Purchase and Compensation, Third (1977) Edition, p 175).

**Conclusion:**

(27) In my opinion the Judge was perfectly right in estimating the market value of the land at Rs. 11 per sq. yard for an additional" reason also. In another appeal of D.L.F., a Division Bench of this court fixed the value of the land of D.L.F. in this very locality at Rs. 15 per sq. yard in which notification under Section 4 of the Act was issued on 16th May 1961. (See D.L.F. Housing and Construction (P) Limited v. Union of India, R.F.A. 79 of 1967 decided on 29th November 1977).

Therefore, the Judge's conclusion is confirmed by the fact that after a year and a half the price of the land rose to Rs. 15 per sq. yard. This increment well illustrates the increasing pressure on the land and a rising market.

(28) In my opinion D.L.F. have failed to make out a case for further enhancement. Nor am I persuaded to hold that the value fixed by the learned Judge is in any way erroneous or excessive. I hold it to be reasonable and fair. For these reasons I dismiss all the four appeals, leaving the parties to bear their own costs.

#### **5.2.4. Delhi High Court - Delhi Colonizers vs Union of India on 10 January, 1997**

- Equivalent citations: 1997 IAD Delhi 638, 67 (1997) DLT 506

(1) These five appeals filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') can conveniently be disposed of by a a common judgment since questions of law arising for determination are identical and one set of arguments has been addressed at the Bar by the learned Counsel for the parties.

(2) 475 Big has 13 Biswas of land situate at Village Garhi-Jaria-Maria, Delhi was notified for acquisition through notification published on 3.9.57 at public expense for public purpose, namely. Planned Development of Delhi. Collector, Land Acquisition on 18.9.61 made his Award No. 11174.72 Bighas 10 Biswas of land owned by Pt. Lila Ram was also included in the award. Reeling dissatisfied with the amount of compensation a reference under Section 18 of the Act was sought by Pt. Lila Ram for determination for the amount of compensation. Delhi Colonizers also sought reference for the determination of the amount of compensation with respect to acquisition of 51 Bighas 8 Biswas of land also included in the said award. Reference of Pt. Lila Ram (Land Acquisition Case No. 418/62) was decided on 20.2.69 by Shri M.R. Sikka, Additional District Judge, Delhi. The entire land was categorised in two blocks. The land near the abadi was categorised in Block A and for away from abudi in Block A as on the date of notification under Section 4 of the Act as on the date of notification under Section 4 of the Act was fixed at Rs. 3,800.00 per Bigha and for land falling in Block B at Rs. 3,500.00 per Bigha. Following this award the reference of Delhi (colonizers (Land Acquisition Case No, 417/62) was also decided on 20.2.69 in which also for land

in category A and B, market value was fixed at Rs. 3,800.00 and Rs. 3,500.00 per Bigha respectively.

(3) Regular First Appeal No.-331/69 is against the award of the Additional District Judge dated 20.2.69 in Lac 418/62 by Union of India- questioning the enhancement in the amount of compensation in favour of Pt. Lila Ram who also preferred cross-objections (CM 589/91) seeking further enhancement in the amount of compensation at the rate of Rs.26,000.00 per Bigha. Regular First Appeal No. 109/70 is an appeal by the Delhi Colonizers against award in Lac 417/62 for further enhancement in the amount of compensation at the rate of Rs. 26,000.00 per Bigha. Neither any cross-objections have been preferred nor separate appeal has been filed by the Union of India against the award made by the Additional District Judge in Lac 417/62. Cm 567/91 in Rfa 109/70 is by the claimants for leading additional evidence.

(4) 188 Bighas 16 Biswas of land situate in Village Zamrudpur was acquired at public expense for public purpose, namely. Planned Development of Delhi through notification issued under Section 4 of the Act on 3.9.57. Collector, Land Acquisition on 18.9.61 made his award No. 1176 allowing compensation at the rate of Rs.2,500/ per Bigha. Pt. Lila Ram sought reference for further enhancement in the amount of compensation with respect to 161 Bigha 4 Biswas of land. The said reference (Land Acquisition Case No. 519/62) was decided by Shri M.R. Silla, Additional District Judge, Delhi on 15.7.69 determining the amount of compensation and fixing the market value of the acquired land at the rate of Rs. 5,000.00 per Bigha. Regular First Appeal No. 18/70 against the said award is by the claimants for further enhancement in the amount of compensation at the rate of Rs. 26,000.00 per Bigha and Cm 563/91 in the said appeal is an application for additional evidence. Regular First Appeal 504/69 is a cross appeal by the Union of India against the said award of Additional District Judge dated 15.7.69 questioning the enhancement in the amount of compensation. Regular First Appeal 19/70 is by Delhi Colonizers for further enhancement in the amount of compensation at the rate of Rs. 10,000.00 per Bigha with respect of the land measuring 1 Bigha 12 Biswas against the similarly award made in its land reference. Case No. 521/62.

(5) The reference Court while determining the amount of compensation payable for acquisition of land situate in Village Garhi Jharia Maria (which is the subject-matter of Rfa 331/69) discarded bulk of the evidence adduced on behalf of the claimant as irrelevant and unreliable. The evidence discarded being the sale deeds Ext.A-1,A-2,A-11,A-12 and A-15 relating to the lands in Village Zamrudpur; Ext. A-3 sale deed of land situate in Village Yakutpur and the two awards Exts. A- 5 and A-18 relating to the

acquisition of land in Village Zamrudpur. Sale Deeds Ext. A-4, A-13 and A-14 being post notification, sales situated in well-developed colony of Kailash were also discarded. Reliance was placed only on copies of awards Exts. A-17 and A-27 in L.A.C. Case Nos-67/73 and 801/63 decided on 5.11.65 and 7.6.67. Both pertained to the determination of the amount of compensation payable for land situate in Village Garhi Jharia Maria and acquired under the same notification issued under Section 4 of the Act. Land near the Abadi was put in Block A and the remaining land in Block B for which market value at Rs. 3,800.00 and Rs. 3,500.00 per Bigha was held to be the most reasonable as on the date of notification under Section 4(1) of the Act.

(6) While determining the amount of compensation payable for the lands situate in Village Zamrudpur (which is subject-matter of Rfa 18/70 and 19/70) the reference Court discarded the sale instances reflected in Exts. A-1 to A-6 to be irrelevant and inadmissible, being post notification sale instances. Relying on the sale instances Exs. A-7, A-8, A-9 and A-21, mutation Ext. A-10 and awards Exts. A-12, A-13, and A-19 and A-20 all pertaining to the land situate in Village Zamrudpur, it was held that the market value of land situate in Village Zamrudpur approximately about the time when notification under Section 4 was published as reflected therein varied from Rs. 6,000.00 per Bigha to Rs. 8,000.00 per Bigha. Claimants land was a large piece of land measuring about 161 Bighas. As such the market value reflected in the sale instances of small pieces of land was held as not acceptable to be a fair guide for determining the compensation for large chunk of land, since it would be quite difficult to find out a customer who would buy the entire land measuring 161 Bighas at the rate, which was ordered for small pieces of land. It was observed that even in case the claimants were to convert the lands into plots, at least 33% of the total area would have to be left out for the purposes of road, lanes, open space etc. It was held that the market value of the lands involved in the sale instances measuring about 16 Bigha 6 biswas varied from Rs. 6,000.00 per Bigha to Rs. 8,000.00 per Bigha, therefore, to arrive at the fair market value for 161 Bigha should be 67% of Rs 6,000.00, namely, Rs. 4,000.00 per Bigha. Taking into consideration the circumstances the fact that the acquired land enjoyed a fairly good situation and it constituted on compact block abutting roads and was found to be situated in the immediate vicinity of already developed colony and had a considerable potential value as a building site, it was held that Rs. 5,000.00 per Bigha, on the basis of hypothetical building scheme, would be the fair amount of compensation to which the claimants would be entitled.

(7) During the pendency of appeal claimant Pt. Lila Ram expired, the appeals thereafter have been prosecuted by his legal representatives.



(8) It is the case of the claimants that late Pt. Lila Ram by himself and for Delhi Colonizers, a partnership firm of his sons, purchased land in Village Zamrudpur and Garhi Jaria Maria in 1952-53 with a view to develop it into a colony known as Baikunth Colony. Pursuant to the said objective, lay out plans were submitted to the Delhi Improvement Trust who through its letter dated 8.8.95 agreed to grant sanction for development of the area on prescribed charges and wanted Pt. Lila Ram to deposit 25% of the survey and demarcation charges at the rate of Re. 1.00 (equal to 0.06 Paise) per square yard at an early date. A sum of Rs. 2,000.00 the first instalment towards survey charges was sent with an enquiry whether the lay out plan of the colony had or had not been passed by the Trust. On 18.3.57 another letter with triplicate copies of the key plan and site plan of the land was submitted on the lines on which Baikunth Colony was to be developed. It is further submitted that through letter dated 30.4.87, B.C. Sarkar, Administrative Officer of the Delhi Development (Provisional) Authority informed that the lay out plan of Baikunth Colony was under consideration and decision will be communicated shortly, when arrived at. Through letter dated 3.7.57 Secretary, Delhi Development (Provisional) Authority informed that action on lay out plan had been stopped since the land involved therein was proposed to be acquired by the Government. It is contended that within a period of two months from the last letter a notification under Section 4 of the Act, was published on 3.9.57 conveying the intention of the Government to acquire the land at public expense for public purpose, namely. Planned Development of Delhi.

(9) In the above background it was vehemently contended that claimants lost the colony as also the profits, which they would have made by selling the plotted area. Situation of the land of the colony had been taken note of by the Collector, Land Acquisition that the land was situated on the road linking Lajpat Nagar with Kalkaji. There were large number of constructions in the immediate vicinity of the land, on both sides. The land had potential value as a building site and a large frontage was along the road on two sides. The land enjoyed a fairly good situation as it constituted one compact block abutting two important roads at the time of acquisition. It was situated in the immediate vicinity of developed colonies. In this background it was submitted by the learned Counsel for the claimants that the awards determining the market value under the provisions of the Act in the neighbouring Villages ought to be made basis for determining the market value of the land since they were the relevant pieces of evidence. Developed colony of Kailash had already come up and Friends Colony was being developed in Village Kilokari. Boundaries of Village Kilokari, Bahpur and Zamrudpur adjoin each other. In the case of A.N. Chopra v. Union of India and Others,

market value of the land in Village Zamrudpur has been assessed at Rs. 13.00 per sq. yard. Sale deed of plot in Kailash Colony measuring 500 sq. yards dated 24.3.61 (Ext. A/7) reflects sale consideration of Rs. 25,000.00 thereby giving market rate of Rs. 50.00 per sq. yard. Another sale deed dated 10.10.61 measuring 444.26 sq. yards in Kailash Colony was sold for Rs. 20,346.00 thereby giving market rate of Rs. 45.00 per sq. yard. This material was not relied upon by the Additional District Judge for determining the market value of the land.

(10) Another submission made on behalf of the claimants has been that the market value of the acquired land was liable to be determined on hypothetical building scheme for a commercial-cum-residential colony since the appellant had lost a colony and they would have made profits by selling the plotted area. Considerable material had been placed on record to demonstrate that the sole idea for the purchase of the land was to develop the same in a colony. The purpose of assessing the amount of compensation is to determine the question that what the owner lost and not what the later gained. Applying the said dictum of the facts of this case the claimants by the acquisition lost a colony, which they would have built on the acquired land to be sold as a residential-cum-commercial area.

(11) The third submission made by the learned Counsel for the claimants has been that there has been no fair determination of the amount of compensation and prayed that by way of additional evidence the claimants be permitted to place on record judgments in Rfa 108/68, Uoi v. Het Ram, decided on 20.2.80; Rfa 381/70 Chand Behari v. Uoi decided on 3.9.79; Rfa 95/70 Puneeta Singh v. Uoi, decided on 16.7.84; and Rfa 240/79 Moti Sugar v. Uoi decided on 16.7.84, which fortified the submission of the claimants that market price of the lands acquired in Village Bahpur on 3.8.59 was Rs. 19,000.00 per Bigha whereas market price in the adjoining estate of Village Kilokari for the acquired land on 17.7.57 was Rs. 26,000.00 per Bigha. It would also suggest that there was fall in the prices of undeveloped land from 1957 to 1959. This fall is prices of undeveloped land, according to the submissions of learned Counsel for the claimants was due to the fact that Section 3(1) of the Delhi (Control of Building Operations) Act, 1955 which had come in force had empowered the Central Government to appoint an authority to be called Delhi Development (Provisional) Authority, which could declare an area to be controlled area regarding development of Delhi according to the plans of Delhi Development Authority. It made the purchases and sales of the land in Delhi useless and moreover, the sales of agricultural land in Delhi were being grossly under-valued, which resulted in low fixation of compensation for compulsory acquisition. It was submitted that the Duty Commission, Delhi and

issued an office order in April, 1990 fixing the market value of the lands in Village Gahpur at Rs. 96.00 per sq. yard. On jobbing back the prices at the rate of 12% per year the market value for the acquired land, as on the date of notification ought to be fixed at Rs. 19,035.00 per Bigha or in other words at the rate of Rs. 19.35 per sq. yard for the lands situated in Village Zamrudpur and Garhi Jaria Maria.

(12) Learned Counsel for Union of India contended that there was no material justifying any increase in the amount of compensation. Relevant factors had duly been taken notice of by the Additional District Judge in determining the amount of compensation. On the basis of the material on record what to say of rather enhancement in the amount of compensation, even the award made by the Additional District Judge require interference by reducing the market value.

(13) The first submission made by the learned Counsel for the claimants is that the judgments and awards determining the market value of lands under the provision of the Act in the neighbouring Villages of Bahpur and Kilokari should be made the basis for determining the market value of the land since they are relevant pieces of evidence. It is contended that boundary of Kilokari and Bahpur adjoins Zamrudpur and Zamrudpur adjoins Village Gahri Jharia Maria. Reliance is also placed upon five decisions of this Court namely Het Ram. Chand Gehari, Puneeta Singh, Moti Sagar and Amrit Singh Sabharsal's case (supra) that the sale deed dated 17.7.57 in favour of Standard Vacuum Oil Company therein was held to be a true guide for determining the amount of compensation in Village Kilokari at the rate of Rs. 26,000.00 per Bigha. This submission, in the absence of any evidence on record -about the genuine nature of the transactions and non-production of vendor and vendee or even attesting witness by the claimants or by the respondent, cannot be accepted. For the purposes of determining the market value of the land situate in Garhi Jharia Maria or Zamrudpur, the awards pertaining to the acquisition of the property in Village Kilokari and Bahpur would be relevant only on proof of certain relevant factors.

(14) In order that price under comparable sale is taken into consideration as a relevant piece of evidence as furnishing the price basis for determining the market value of the acquired land, the comparable sale (a) must be genuine; (b) must have taken place at a time proximate to the date of publication of preliminary notification under Section 4(1) of the Act; (c) the land sold under the sale must be similar to the acquired land; and (d) the land sold under the sale must be into the vicinity' of the acquired land. The location, size, shape, if do not compare favorably with the acquired land, the prices fetched in comparable sales cannot furnish the price basis for determination of the market value. Reference may be made to the decision of Supreme Court in M/s.

Printer's House Pvt. Ltd. v. Mst. Saiyadan (deceased) by L.Rs and Others, Comparable sale method of valuation of land in the absence of evidence as regards shape, size potentiality or tenure of the lands in Village Gahri Jharia Maria and Zamrudpur with the sale instances or of the awards pertaining to land situated in Village Bahpur or Village Kilokari as on the date of the notification under section 4 of the Act will not be permissible. It was but necessary for the claimants to have adduced relevant evidence in case claimants wanted to make use of any sale transactions pertaining to Village Bahpur or Village Kilokari that the lands in the two Villages Were similarly situated having same or similar potentiality of fertility or other similar advantageous features. In the absence of comparison as on the date of the notification under Section 4(1) of the Act, the awards relied upon cannot be held and regarded as relevant pieces of evidence and taken as safe guide for arriving at fair market value of the land.

(15) In *Mis. Printers House Pvt. Ltd.'s case* (supra) the Apex Court held that to determine the market value of the land under Section 23(1) of the Act the sales of the land under acquisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentiality or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of a hypothetical willing vendor and willing vendee. The question that whether the lands covered by the sale deeds and relied upon possessed same or similar potentiality or fertility or advantageous features would be a question of fact for which relevant evidence must be brought on record by examining relevant evidence. Since in the instant case there is no evidence of comparison of the lands situate in Village Bahpur or Village Kilokari or with the sale instance dated 17.7.57 by which some land was alleged to have been sold to Standard Vacuum Oil Company with any part of the land acquired, it will not be safe for us to place reliance upon the decisions relied upon and for that reason to made the awards relevant for assessing the amount of compensation.

(16) The other submission of the learned Counsel for the claimants has been that the market value in the present case is liable to be determined on hypothetical building scheme for a commercial-cum-residential colony. In the impugned awards the Additional District Judge duly took into consideration the material on record in separately assessing that part of the land of Village Garhi Jharia Maria, which was found to be adjoining to or located under the link road by putting it in Block A and separately assessing the remaining land, which was found to be further away. The same was put in block B. Similarly for the lands situated in Village Zamrudpur the reference Court while arriving at the conclusion that the fair market value of the land

situate in Village Zamrudpur deserves to be assessed at Rs. 4,000.00 allowed additional sum of Rs. 1,000.00 per Bigha at a flat rate for the acquired land making it as Rs. 5,000.00 keeping in view its advantageous position being nearer to the road. The claimants had pleaded that they had purchased the property for developing a colony for which purpose they had submitted lay out plans. But the reference Court in the impugned awards held that neither any concrete steps had been taken by the claimants from 1955 till the date when notification under Section 4 of the Act was issued, nor any amount was shown to have been spent for development. In the light of this finding on record that no steps had been taken by the claimants towards development of the land as colony and it was only a proposal, the only other factor which now deserves to be taken into consideration in arriving at the fair market value of the land would be the potentiality of the acquired land.

(17) In *Dlt United (P) Ltd. v. Union of India*, the land involved therein sought to be acquired was located in an undeveloped area but adjoining a developed colony, namely. Greater Kailash. The reference Court while determining the market value on the basis of hypothetical building scheme firstly arrived at the total value of plots as the developed area (namely. Greater Kailash). The cost required for development and the cost of land was deducted from the price of developed plots. The balance figure was held to be the market value of undeveloped land on the basis of hypothetical building scheme. Approving the method, this Court observed that the land in question had a potential value. The acquired land was purchased for the extension of colony, therefore, land had a special value in the hands of the claimants as they would have exploited it for the purpose of extension had the land not been acquired.

(18) The above method, as was adopted and approved by this Court by taking into consideration the cost of development into account cannot be applied in the instant case. No such date is placed or is available on the record of this case, in order to arrive at any workable method to assess the amount of compensation on the basis of hypothetical building scheme. It was but necessary for the claimants to have produced on record some material as to the cost of the land, the amount that was likely to be spent for development of the colony, the prices likely to be fetched as on the date of notification under Section 4 of the Act. Statement of Pretoria Raj made on behalf of the claimants that the claimants were colonisers and the land was purchased for the purpose of making colony and the price of land prevailing in the locality verified from Rs. 60.00 to Rs. 70.00 per.sq. yard and an expenditure of Rs. 3.50 sq. yard was the ordinary expense in those days in without any supporting evidence and cannot be relied upon.

(19) It is now a settled law that the market value cannot be fixed ' with mathematical precision but must be based on sound discretion exercised by the reference Court in arriving at just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a hypothetical willing purchaser can be expected to pay for the lands in the existing use as well as valuable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land location, suitability of the purposes it was purchased, its exiting potentialities and likely use to which the land is capable of being put in the same condition would offer' to pay the price, as on the date of the notification. In case of acquisition of large tracts of lands for projects situated in several Villages, stray sale-deeds of small extent here and there would not form the basis to determine the compensation, reference, if any, in case it is required, may be made to a decision of the Supreme Court in *K. Posayya & Others v. Special Tehsildar*, Air 1955 Sc 1641.

(20) It is also necessary that a fair estimate with respect to the surrounding circumstances and the evidence be made so that the party who loses the property on account of compulsory acquisition gets a fair amount of compensation. The submission of the claimants that a colony was lost to them and they must be compensated on that basis by allowing reinstatement value has to be negated in the light of the ratio of the decision in *K. Possiaya's case* (supra), holding that the doctrine of re-instatement value cannot be applied in determining the market value under Section 23(1) of the Act. The reference Court in impugned awards has duly taken into consideration the potentiality of the land that the same could be utilized for the purpose of buildings sites. For that reason, that part of the land, which was found adjacent to the road in Garhi Jharia Maria, the same was rightly put in block A and higher amount of compensation as compared to the remaining land was allowed.

(21) The submission of the learned Counsel for the claimants that the Court ought to determine the market value of the acquired land on the basis of the office order dated 2.5.90 also deserves to be negated, in the absence of relevant and material evidence on record. Market value of the acquired land had to be determined with reference to the date of preliminary notification. Assuming that the office order issued by the Government notifying certain rates of the lands in different localities of Delhi may be taken as a piece of evidence, but such an order notifying rates as prevalent in 1990 will not be relevant. In order that jobbing backward may be resorted to in arriving at the market value in the year 1957 with reference to the prices in 1990 what was necessary

for the claimants was to bring on record relevant material and the conditions prevailing in between 1957 and 1990; the market index of the rise in prices of the lands from 1957 to 1990 the rate of the development etc. It is a well-known fact that on issuance of general preliminary notification in 1957 for acquiring vast tract of land for the planned development of Delhi, development activity in and around Delhi started taking place at a tremendous place and there has been many-fold rise in prices. The crucial dated for determining the market value under the provisions of the act would be the date of publication of notification under Section 4(1) of the Act. When comparable sales are not available of the same date as the date of publication of notification under Section 4(1) of the Act, what is required is that such sales should be of the dated proximate in point of time to the date of notification. Most of them are bound to be of a date either prior to or subsequent to the date of notification. It is also of paramount consideration that in determining the market value and fixation of compensation, the Court should be alive to the factors mentioned in Section 24 of the Act, and keep them at back of the mind and should not be influenced by the further or later development in the locality or neighbourhood and should not get influenced by the prevailing situation as on the date of determination of the compensation. Its consideration should alone be confined to the market value prevailing as on the date of the notification under Section 4(1) of the Act.

(22) For the revenue estates in question, namely, Garhi Jharia Maria and Zamrudpur notifications were issued in 1957. The same were for the planned development of Delhi and there has been tremendous development in and around the area. As such it will not be safe to place reliance upon any officer order issued by the Government in the year 1990, notifying market value of the lands in 1990 which states that irrespective of the sale consideration mentioned in any sale deed, minimum price for agricultural land, for its sheer location in Union Territory of Delhi, irrespective of quality of land for the purpose of registering the sale deed w.e.f. 27.4.90 would be Rs. 4.65 lacs per acre for all agricultural lands. In case jobbing backward ought to be resorted to in order arrive at the market value of 1957 with reference to the market value of 1990 it was also necessary for the claimants to have produced on record material that prices either remained static during the intervening period or that there has been gradual rise in price and not practice or abnormal rise in prices of the lands. Post notification sales or sale transactions or awards are also considered relevant under certain circumstances but for that also it is necessary for the persons relying on such instances to bring or record some relevant material so that the extent of deduction, which is to be made per year, may be arrived at, when jobbing back has to be resorted to. In the absence of

any material, it may not be possible to hold that on jobbing back from 1990 the market value of lands in Garhi Jharia or Zamrudpur would be Rs. 26,000.00 per Bigha in the year 1957 as in the case of lands in Kilokari or Bahpur.

(23) Taking into consideration the evidence adduced or record, we do not find that any wrong principles have been applied by the reference Court of the land. For Village Garhi Jharia Maria awards Exts. A-17 and A-27 were made the basis for arriving at the compensation, which awards were not challenged by the State Government and were not challenged by the State Government and were taken to be an admission on its part as the fair market value of the land. Similarly for Village Zamrudpur also we find that awards Exts. A-12 to A-20 were made the basis and since the same were with respect to smaller pieces of land, allowing the deduction of 33% towards development charges and taking 67% to be the value, the Court arrived at a figure of Rs. 4,000.00 per Bigha to be the market value but added Rs. 1,000.00 per Bigha as an increase due to potentiality and better locality of the land. Claimant's appeals, thus, deserve dismissal, which are hereby dismissed.

(24) The reference Court in its award rightly allowed interest under Section 4(3) of Land Acquisition Act, 1967 taking into consideration the fact that notification under Section 4(1) was published on 3.9.57 and declaration under Section 6 was made on 15.2.61 and award was made on 18.9.61. The award of interest under Section 4(3) of the Act, is perfectly is consonance with law. No interference is called for in that behalf. Consequently, the appeals filed by the Union of India have also no force, which dismissed. Though no separate orders have been passed on applications for additional evidence, arguments at the bar were adrenal ad if the said evidence was allowed to be taken no record and we have also taken into consideration the evidence while decision the appeals.

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