THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 18th October, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

CO No.04 of 2016 in RFA No.15 of 2016

Cross Objector : The Director, Shiga Energy Private Limited

versus

Respondents : State of Sikkim and Others

Cross Objection under Order XLI Rule 22 read with Order XLI Rule 33 and read with Section 151 of the Code of Civil Procedure, 1908

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Rahul Rathi and Mr. Ranjit Prasad, Advocates for the Cross Objector.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for Respondents No.1 to 4.

Mr. T.R. Barfungpa, Advocate with Mr. Kazi Sangay Thupden and Mr. Hem Lall Manger, Advocates for Respondents No.5, 6, 8 and 9.

Ms. Gita Bista and Ms. Pratikcha Gurung, Advocates for Respondent No.7.

Mr. Sudhir Prasad, Advocate for the Respondent No.10.

Mr. Karma Thinlay Bhutia, Senior Advocate (Central Government Counsel) for Respondent No.11.

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with

CO No.05 of 2016 in RFA No.15 of 2016

Cross Objectors : Thupten Kalden Bhutia and Another

versus

Respondents : State of Sikkim and Others

Cross Objection under Order XLI Rule 22 of the Code of Civil Procedure, 1908

Appearance

Mr. T. R. Barfungpa, Advocate with Mr. Kazi Sangay Thupden and Mr. Hem Lall Manger, Advocates for the Cross Objectors.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for Respondents No.1 to 4.

Mr. Sudhir Prasad, Advocate for the Respondent No.5.

Mr. Karma Thinlay Bhutia, Senior Advocate (Central Government Counsel) for Respondent No.6.

Mr. A. Moulik, Senior Advocate with Mr. Rahul Rathi and Mr. Ranjit Prasad, Advocates for Respondents No.7.

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with

CO No.02 of 2022 in RFA No.15 of 2016

Cross Objector : Tenzing Kelsang Kalden

versus

Respondents : State of Sikkim and Others

Cross Objection under Order XLI Rule 22 read with Section 151 of the Code of Civil Procedure, 1908

Appearance

Ms. Gita Bista and Ms. Pratikcha Gurung, Advocates for the Cross Objector.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for Respondents No.1 to 4.

Mr. Sudhir Prasad, Advocate for Respondent No.5.

Mr. Karma Thinlay Bhutia, Senior Advocate (Central Government Counsel) for Respondent No.6.

Mr. A. Moulik, Senior Advocate with Mr. Rahul Rathi and Mr. Ranjit Prasad, Advocates for Respondents No.7.

JUDGMENT

Meenakshi Madan Rai, J.

1. CO No.04 of 2016, CO No.05 of 2016 and CO No.02 of 2022, which were filed in RFA No.15 of 2016 are being taken up together and disposed of by this common Judgment. All the Cross Objections assail the findings of the Learned Reference Court on various issues, in the Judgment dated 31-08-2016, in L.A. (Ref.) Case No.01 of 2014 [*Thupten Kalden Bhutia and Others* vs. *State of Sikkim and Others*].

2. RFA No.15 of 2016 (*supra*) filed by the State-Appellants was subsequently withdrawn as reflected in the Order of this Court dated 01-08-2023, wherein it was recorded *inter alia* as follows;

> **"*1.*** I.A. No.07 of 2023 is an application filed on behalf of the State-Appellant seeking to withdraw from the instant matter on grounds that, during the pendency of the matter, the concerned Departments/ Appellants after due deliberations opined that it would not affect the Appellant i.e., State of Sikkim if the instant case i.e., RFA No.15 of 2016 (*State of Sikkim*

> *and Others vs. Thupten Kalden Bhutia and Others*) was withdrawn in the interest of justice and equity. That, the State-Appellants are also party to the Cross Objection i.e., CO No.04 of 2016 (*Director, Shiga Energy Pvt. Ltd. vs. State of Sikkim and Others*), CO No.05 of 2016 (*Thupten Kalden Bhutia and Another vs. State of Sikkim and Others*) and CO No.02 of 2022 (*Tenzing Kelsang Kalden vs. State of Sikkim and Others*) which are already pending before this Court and should any legal issue arise against the State-Appellants in the Cross Objections, the matter would be addressed accordingly, hence, the prayer to allow the State-Appellants to withdraw the instant matter.
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> ***2.*** Considered, in view of the submissions, the Appeal stands disposed of as withdrawn, however, the Cross Objections shall remain on the File and will be taken up for consideration and hearing on the next date fixed.**"**

3. The Cross Objections were thus heard in terms of the provisions of Order XLI Rule 22(4) of the Code of Civil Procedure, 1908.

(i) The Cross Objector in CO No.04 of 2016 is the Director, M/s. Shiga Energy Private Limited (Respondent No.7 before the Learned Reference Court and for brevity hereinafter, referred to as Respondent No.7). The land was acquired by the Government on the requirement of the Company of Respondent No.7. Respondent No.7 is dissatisfied with the findings of the Learned Reference Court in issues no.2, 6 and 7.

(ii) In CO No.05 of 2016, the Cross Objectors No.1 and 2 are father and daughter respectively, and the Cross Objector in CO No.02 of 2022 is the grandson of Cross Objector No.1 (*supra*). All three Cross Objectors are owners of the land in question and aggrieved by the findings of the Learned Reference Court in issues no.1, 3, 4 and 5. The Cross Objectors No. 1 and 2 were Petitioners No.1 and 2, while the father of the Cross Objector No.3 was the Petitioner No.3 before the Learned Reference Court. On the

passing of his father the Cross Objector No.3 was substituted, in terms of the Order of this Court dated 08-12-2021.

(iii) The Cross Objectors (*supra*) shall hereinafter be referred to as Claimants No.1, 2 and 3 respectively. From the records available before this Court, it is noticed that the Claimant No.2 is the Constituted Attorney for her siblings, who were the Petitioners No.4 and 5 before the Learned Reference Court. Although no arguments were made in this context before this Court, in consideration of Exhibit 5 the General Power of Attorney granted to Claimant No.2, by her siblings, the reference made to Claimant No.2 herein, shall also include her above-mentioned siblings.

4. To comprehend the matter, the facts of the case are briefly narrated herein. The Secretary, Land Revenue & Disaster Management Department, Government of Sikkim (Respondent No.2 before the Learned Reference Court, hereinafter referred to as Respondent No.2) issued a Notice under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, the "Act") on 26-07-2010 and 24-03-2011, for acquisition of plots of land in various revenue blocks in the West District of Sikkim, as detailed in the two Notices. An Award dated 07-07-2011, under Section 11 of the Act for acquisition of the lands of the Claimants No.1, 2, and 3, under the "Omlok Revenue Block" was passed by the District Collector (Respondent No.4 before the Learned Reference Court and hereinafter, referred to as Respondent No.4), calculated at ₹ 3,38,23,704/- (Rupees three crores, thirty eight lakhs, twenty three thousand, seven hundred and four) only. As per the averments of Respondent No.4, on 30-09-2011 the above

compensation amount was amended on detection of arithmetical error and computed under Section 13A(1) of the Act. A Final Award under Section 12 of the Act was computed as ₹ 3,23,32,431/- (Rupees three crores, twenty three lakhs, thirty two thousand, four hundred and thirty one) only.

5. Calling into question the Notice under Section 4(1) of the Act, issued by the Respondent No.2, the Claimants No.1 and 2 were before this High Court in a Writ Petition being WP(C) No.07 of 2012 (*Thupten Kalden Bhutia and Another* vs. *State of Sikkim and Others)*, pertaining *inter alia* to the proposed acquisition of land measuring 5.5050 hectares in various plots, standing in the name of the Claimant No.1. They also sought for quashing of the declaration made by the Respondent No.2 under Section 6 of the Act, for the same property. The Claimants further sought a Writ of Certiorari, quashing and cancelling the procedure initiated under Sections 8 and 9 of the Act and quashing the Award under Section 11 of the Act. This High Court vide its Judgment dated 29-08-2013, in the said Writ Petition *inter alia* ordered as follows;

> **"66.** ..... I am of the view that in view of the patent irregularities perpetrated by the respondents in the matter of service of notice the invocation of urgency clauses and also in the matter of the award which I have found to be not in conformity with the statutory provisions, I am inclined to facilitate a reference under Section 18.
>
> **67.** In case the first petitioner makes a request within 3 (three) weeks from today under Section 18 for a reference to the District Collector, the District Collector shall refer this case to the competent Court under Section 18. If such a reference application is received by the District Collector concerned within 3 weeks from today, that application shall be favourably considered by the District Collector. The matters to be referred will be—
>
> (i) The market value of the property acquired from the possession of the first petitioner;

(ii) The petitioners eligibility for compensation in respect of the Khasmal land in Plot No.712;

(iii) The claim of the petitioners that on account of acquisition in the present fashion the value of the unacquired property has become diminished;

(iv) The claim of the petitioners whether they are entitled for compensation for diminution of the land value injurious affection.

(v) As in the case of Khasmal land comprised in Plot No.712 the rival claims of title can be raised between the Government and the first petitioner. A combined reference be sent under Section 18 read with Section 30.

It is needless to mention that in the reference apart from the petitioners, the State Government as well as the seventh respondent shall also be made parties.**"**

(i) Aggrieved thereof, the Claimants No.1 and 2 assailed the Judgment of this High Court before the Supreme Court of India, in Special Leave to Appeal (Civil) No(s).30943/2013 (*Thupten Kalden Bhutia and Another* vs*. State of Sikkim and Others)*. The Supreme Court vide its Order dated 27-09-2013 upheld the assailed Judgment, while extending the time for filing application under Section 18 of the Act for a period of one month, from 27-09-2013.

(ii) In compliance thereof, Claimants No.1 and 2 were before the District Collector, Gyalshing, West District, with an application for reference under Section 18 read with Section 30 of the Act. The matter was referred by the District Collector to the Learned District Judge, South and West Sikkim, at Namchi. The District Collector also filed an application dated 07-03-2012 under Section 31(2) of the Act seeking to deposit the compensation award before the Learned Reference Court. Following the requisite permission, a cheque of ₹ 3,23,32,431/-(Rupees three crores

twenty three lakhs thirty two thousand four hundred and thirty one) only, dated 06-03-2012, was deposited accordingly.

(iii) On the establishment of a separate District and Sessions Court for West Sikkim at Gyalshing, the case was transferred to the said jurisdictional Court along with the afore-mentioned cheque.

(iv) Based on the pleading of the parties, the Learned Reference Court framed the following issues for determination;

> ***"****(1) Whether the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is applicable for calculating land compensation in the instant matter, if so, whether the compensation amount is required to be enhanced.*
>
> *(2) Whether the compensations awarded to the petitioners was determined on the basis of appropriate market value.*
>
> *(3) Whether plot No.712 acquired by the Government belonging to the petitioners and they are entitled to the compensation of the said plot of land.*
>
> *(4) Whether the petitioners are entitled to the additional compensation on account of diminished value of the unacquired lands.*
>
> *(5) Whether the petitioners are entitled to the compensation for damages caused by the recklessness in construction of road.*
>
> *(6) Whether the deduction of the 40% of market rate by the Land Revenue Department is valid.*
>
> *(7) Relief (s).****"***

(v) Issue no.1 was decided against the Claimants No.1, 2 and 3. The Court however observed that as the award amount had been deposited in the State Bank of Sikkim, Rabdentse Branch, West Sikkim, the compensation did not change hands and hence, the Claimants were entitled to 4% interest on the amount as per the then prevailing rate of interest. It was ordered that the amount deposited by cheque (*supra*), be made over to the Claimants with interest @ 4% from the date of Award, till final realisation.

(vi) Issue no.2 was decided in favour of the Claimants No.1, 2 and 3 with the Court relying of Exhibit 1 the "*Comparative Statement of sale transaction for working out the market rate of Sakyong, Yangthey and Bhaluthang*". The Court concluded that at the time of acquisition of the land of the Petitioners, the prevalent market rate notified by the Government was ₹ 95/- (Rupees ninety five) only, per sq. ft. and not ₹ 30.45/- (Rupees thirty and paise forty five) only, per sq. ft., as calculated in the Award.

(vii) Issues no.3, 4 and 5 were taken up together and decided against the Claimants No.1, 2 and 3 with the reasoning that in issue no.3 the Claimants failed to produce the relevant documents to establish ownership of plot no.712. In issue no.4 it was found that the value of their unacquired land was not diminished as a road under the Pradhan Mantri Gram Sadak Yojana (PMGSY) was constructed long before the land acquisition in question. In issue no.5, it was concluded that, damages if any, were caused to the land during the construction of the PMGSY road and it is not the effect of the acquisition under discussion.

(viii) Issues no.6 and 7 were taken up together for decision and it was concluded that the Respondents No.1, 2 and 4 had nowhere explained the basis of the deduction of 40% from the Award, nor did the witness of Respondent No.4 forward any reason or furnish any documentary evidence for the deduction. The Court was therefore disinclined to permit such deduction.

(ix) Consequently, the total compensation amount for the land of the Petitioners falling under Plots No.702, 704, 705, 706, 707, 708, 709, 710, 711, 719 and 720 was calculated by the Learned Court as follows;

> **"**27. .....
>
> 1. The amount deposited at State Bank of Sikkim, Rabdentse Branch: ₹ 3,23,32,431/-.
>
> 2. Interest of the above amount at the rate of 4% from 6.3.2012 till 31.08.2016= ₹ 59,98,714/-.
>
> 3. Area of the Lands acquired from the petitioners is 5.5050 hectares which is equivalent to 592558.2 sq. feet.
>
> 4. 592558.2 sq. feet of land is to be multiplied by the prevalent rate of ₹ 95/- therefore, 592558.2 sq. feet X 95 = ₹ 5,62,93,029/-
>
> Now ₹ 5,62,93,029/- + ₹ 59,98,714/- + Standing Properties: ₹ 68,27,704/- + Solatium 30% ₹ 1,68,87,909/-
>
> **Total amount - ₹ 8,60,07,356/-**
> (Rupees Eight Crores Sixty Lakhs Seven Thousand Three Hundred and Fifty Six) only.**"**

(x) The Respondent No.4 was directed to pay the Petitioners the above sum within a period of one month from the date of the Judgment, failing which he would be liable to pay interest @ 10% per annum from the date of the filing of the Application for Reference, by the Petitioners before the Respondent No.4, till full realisation.

6. Dissatisfied thereof, the State-Respondents No.1 to 4 were in Appeal in RFA No.15 of 2016, before this Court. On 01-08-2023 the said RFA was withdrawn by the State-Appellants, as already reflected hereinabove.

7. Learned Senior Counsel Shri A. Moulik for the Respondent No.7, while advancing his arguments assailed the decision in issue no.2, contending that the Learned Reference Court erroneously relied on Exhibit 1, which is a comparative statement of sale transaction for working out the market rate of land at places in West Sikkim, named therein, *viz.;* Sakyong, Yangtey and Bhaluthang, which was assessed at ₹ 95/- per sq. ft., and not for Omlok Block, where the land of the Claimants No.1, 2 and 3 are situate. It was canvassed that the Court ought to have

taken into consideration the market value of land as indicated in "Document Y", which was the "*Comparative Statement of Sale Deed for working out the market rate of land at Yangtey, Chumgbung/Omlok Blocks in West Sikkim, placed at ₹ 30.45 per sq. ft.*" That, the rate in "Document Y" was also applicable for the reason that the Notice under Section 4(1) of the Act for acquisition of properties of Claimants No.1, 2 and 3 was issued on 26-07-2010. The year of registration/transactions in "Document Y" pertains to the years 2005, 2007 and 2008, which is immediately prior to the date of Notice under Section 4(1) of the Act and thereby applicable to the lands of the Claimants No.1, 2 and 3, Exhibit 1 on the other hand pertains to transactions between the months of August, 2010 and August, 2011, which is post the Notice dated 26-07-2010 and thereby inapplicable to the present circumstances. That, Section 23 of the Act, which deals with matters to be considered in determining compensation to be awarded for land acquired under the Act, requires that the Court shall take into consideration the market value of the land at the date of publication of the Notice under sub-Section (1) of Section 4 of the Act and not market value post the date of Notice. That, the rates in Exhibit 1 therefore could not have been considered by the Court in computing the Award. Admitting that the Government has not issued any Notice pertaining to the specific valuation of land for the year 2010 of the concerned areas described in the Section 4(1) Notice, it was urged that nevertheless the valuation made after the issuance of Section 4(1) Notice is not permissible or valid for the Claimants' lands. That, in ***Himmat Singh and Others*** vs. ***State of***

Madhya Pradesh and Another[1], it was observed that for determination of compensation amount, the land value after the issuance of the Notification under Section 4 cannot be taken into consideration.

(i) In the next leg of his argument, it was contended that the conclusion of the Learned Reference Court in issue no.6, disallowing deduction of 40% is also erroneous. That, the land is situated in a rural area, hence the development costs are high which includes construction of roads, communication and infrastructure, for which deduction is required. That, the Supreme Court in ***G. Prema*** vs. ***Special Tahsildar, Tirupattur***[2], while considering that the acquired lands were situated on the outskirts of an area surrounded by developed areas and was acquired for making housing sites for weaker sections, which also shows potential for development, permitted deduction of 60% towards development costs, i.e., deduction towards land to be set apart for roads, drains and parks. That, in ***Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by LRS. and Others*** vs. ***Special Land Acquisition Officer and Others***[3] it was observed that in fixing the market value of the acquired land, which is undeveloped or underdeveloped, the Courts have generally approved deduction of 1/3rd of the market value towards development cost. That, in fact the Supreme Court in ***Lal Chand*** vs. ***Union of India and Another***[4] indicated that percentage of deduction for development to be made for arriving at market value of large tracts of undeveloped agricultural land, with potential for development, can vary between 20% and 75% of the price of

[1] (2013) 16 SCC 392
[2] (2010) 12 SCC 502
[3] (2012) 7 SCC 595
[4] (2009) 15 SCC 769

developed plots. That, as admitted by the Claimant No.2 in her evidence, the area is underdeveloped. That, in light of the admission of the Claimant No.2, large amounts of money would be required to develop the entire area. Hence, no error arises in the Award dated 30-09-2011 deducting 40% for development.

(ii) In the final prong of his arguments, Learned Senior Counsel contended that the reliefs as computed by the Learned Reference Court under issue no.7 is not justified, in light of the contentions canvassed. That, the compensation be computed *inter alia* with the value of land at ₹ 30.45 per sq. ft., duly deducting 40% towards developmental costs for the reasons put forth in the arguments.

8. Learned Counsel for the Claimants No.1 and 2 in the first instance conceded that although in his CO No.05 of 2016 the findings in issues no.1 and 3 were assailed, however, he does not seek to press the said averments. While refuting the arguments raised by the Respondent No.7, Learned Counsel contended that no error emanates on the Learned Reference Court assessing the valuation of the suit land at ₹ 95/- per sq. ft., instead of ₹ 30.45 per sq.ft., as worked out by the Respondent No.4 in view of the fact that there was not only one Notice for acquisition of the properties issued under Section 4(1) of the Act, but two Notices, i.e., one dated 26-07-2010 and in continuation thereof a second Notice dated 24-03-2011. That, the plot numbers sought to be acquired and the area of the land therein are undisputed. Vide Notice dated 26-07-2010 (*supra*) the land sought to be acquired for construction of 97 MW Tashiding Hydroelectric Project by Sikkim Power Development Corporation were in the Blocks of

Thingling II, Gerethang, Labing, Chumbung and Omlok of West District and vide Notice dated 24-03-2011 for the same Hydroelectric Project, several pieces of land was sought to be acquired at Bhaluthang, Omlok, Chumbung, Labing and Gerethang Blocks in West Sikkim. Thus, the second Notice was in continuation of the first Notice. The valuation of the land would accordingly be ₹ 95/- per sq. ft. in terms of Exhibit 1, relied on and proved by the Claimants No.1 and 2, the transaction reflected therein being from 23-08-2010 and 06-08-2011 @ ₹ 95/- per sq. ft. That, "Document Y" relied on by the Respondent No.7 pertains to transactions for the years 2005, 2007 and 2008 much before the issuance of the said Notices, reflected hereinabove and inapplicable for the purposes of acquisition of the Claimants' lands while the document itself was inadmissible in evidence. That, Exhibit 1 at Sl. No.1 reflects the acquisition date as "23-08-2010" indicating that it was just a month after the Section 4(1) Notice of 26-07-2010. On this facet, relying on ***Union of India*** vs. ***Dyagala Devamma and Others***[5] it was contended that even post-Notification valuation of land can be taken into account if they are very proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in developmental prospects. Hence, no errors arise in the finding of the Learned Reference Court in issue no.2.

(i) Denouncing the arguments raised by Learned Senior Counsel for the Respondent No.7 on 40% deduction from the Award and arguing that it was correctly disallowed by the Learned Reference Court, the attention of this Court was invited to ***C. R.***

[5] (2018) 8 SCC 485

Nagaraja Shetty (2) vs. ***Special Land Acquisition Officer and Estate Officer and Another***[6]. It was urged that the Supreme Court has categorically laid down that it must be established by positive evidence that such development charges are justified. That, till date no infrastructure development has been made in the area by the Respondent No.7 and only the Power Plant has been established therein. The old existing PMGSY road is being used by the Company with no new roads having been constructed in the area. Hence, the Reference Court was correct in holding that there was no basis for the 40% deduction.

(ii) Learned Counsel for the Claimant No.3 while responding to the contentions of Learned Senior Counsel for the Respondent No.7 in issue no.6 endorsed the arguments as put forth by Learned Counsel for the Claimants No.1 and 2 and stated that no reasons were given by the Respondent No.4 while deducting 40%. That, Respondent No.7 has not filed any documents to justify why the valuation of the acquired land should not be placed at ₹ 95/- per sq. ft. That apart, Learned Counsel agitated that the Award nowhere reflects the addition as mandated under Section 23(1A) of the Act either by Respondent No.4 or the Learned Reference Court. That, the provision requires that in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value, for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land, to the date of the award of

[6] (2009) 11 SCC 75

the Collector or the date of taking possession of the land, whichever is earlier.

9. Learned Senior Counsel appearing for the Secretary, Ministry of Forest & Environment, Government of India (Respondent No.6 before the Learned Reference Court) sought for deletion of the Respondent No.6 from the array of parties as the said Respondent has no role in the instant proceedings. In view of the fact that no reliefs have been sought from Respondent No.6, he be deleted from the array of parties in the Cross Objections under consideration.

10. Learned Additional Advocate General for the State-Respondents No.1, 2, 3 and 4 and Learned Counsel for the Managing Director, Sikkim Power Development Corporation Limited (Respondent No.5 before the Learned Reference Court), had no submissions to advance.

11. Due consideration has been afforded to the contesting submissions of Learned Counsel for the parties, the pleadings and documents on record perused as also the citations made at the Bar.

12. Addressing the challenge of the Respondent No.7 to the determination arrived at by the Learned Reference Court in issue no.2 and the contention that "Document Y" ought to have been considered by the Court below, it is seen that "Document Y" was referred to by the witness, viz., S. K. Subba (witness of State-Respondents No.1, 2 and 4 before the Learned Reference Court), however, all that could be elicited from the witness was that "Document Y" is the "copy of assessment". This document is at the outset inadmissible in evidence being a photocopy, besides the Respondent No.7 failed to prove the document in terms of the

contours prescribed by the Indian Evidence Act, 1872, for proof of a document. The Respondent No.7 is silent on the method of obtainment of the document or from whom and by whom it was obtained. Although Learned Senior Counsel made an effort to convince this Court that in land acquisition proceedings the Evidence Act does not apply in all its rigour, however, I am not impressed by this submission. Despite sufficient opportunity being afforded to Respondent No.7 they not only failed to prove the contents of the document, but failed to even furnish a "certified to be true copy" of the document, which was, as already indicated, a photocopy and hence, this document merits no consideration whatsoever.

(i) That having been said, Exhibit 1 relied on by the Claimants is a "*Comparative statement of sale transaction for working out the market rate of Sakyong, Yangthey and Bhaluthang*" Blocks, it is not in dispute that these areas are adjacent to and in fact contiguous to Omlok Block, where the property of the Claimants are situated and have been acquired. Exhibit 1 reveals that the market rate at the said area was placed at ₹ 95/- per sq. ft. where at Sl. No.1 the date of acquisition/registration was shown to be "23-08-2010" and other acquisitions in the areas have followed, the last being the acquisition dated "06-08-2011". Although Learned Counsel for the Claimant No.3 had argued that the two Notices are in continuation of each other and therefore on this ground alone the valuation of the land reflected in Exhibit 1 is the correction valuation for adoption, this argument cuts no ice, for the reason that, the Section 4(1) Notice dated 26-07-2010 and not of 24-03-2011, is

specifically applicable to the Claimants, the plot numbers of the lands belonging to the Claimants which are to be acquired having been indicated in the Notice of July, 2010, viz., 702/P, 704/P, 705, 706, 707, 708/P, 709, 710, 711/P, 719/P and 720/P. That having been said, the transaction reflected in Serial No.1 of Exhibit 1 is dated "23-08-2010". The transaction and valuation of the land although post the Notice of 26-07-2010, is in close proximity to the date of Notice. "Document Y" being inadmissible in evidence and having therefore been dispensed with, the Court can fall back only on Exhibit 1, where the valuation of the land as discussed above has been placed at ₹ 95/- per sq. ft. on 23-08-2010, less than a month after the Notice dated 26-07-2010, which thereby prompts this Court to consider ₹ 95/- per sq. ft. as the correct valuation per sq. ft. The fact that the rate is genuine is fortified by the evidence of S. K. Subba, the witness for the State-Respondents No.1, 2 and 4 before the Learned Court below, who admitted that Exhibit 1 was issued from their Office. Consequently, I am of the considered opinion that the valuation of land of the Claimants at ₹ 95/- per sq. ft. and selected by the Learned Court below is the correct valuation and no error emanates on such finding. In this context, beneficial reference may be made to ***Dyagala Devamma*** (*supra*) wherein the Supreme Court propounded as follows;

> **"17.** ……
> …….
>
> (9) 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.**
>
> (10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

> (*i*) proximity from time angle,
>
> (*ii*) proximity from situation angle.
>
> (11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.
>
> ……..**"** **[emphasis supplied]**

(ii) Now, while considering the arguments and the legal position pertaining to 40% deduction from the Award for developmental purposes, in ***Sajan*** vs. ***State of Maharashtra and Others***[7] the Supreme Court *inter alia* held as follows;

> **"15. Rule of one-third deduction towards development is the general rule. But depending upon the purpose of acquisition and taking note of well-planned layouts, if any, the deduction for development cost may vary from 20% to 75%. Observing that deduction towards development can range from 20% to 75% of the price of the plot, in *Lal Chand* v. *Union of India*** [(2009) 15 SCC 769]**, the Supreme Court held as under** : (SCC p. 780, paras 19 & 22)
>
> > "*19.* If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (*Note* : The percentages mentioned above are tentative standards and subject to proof to the contrary.)
> >
> > * * *
> >
> > *22*. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%."
>
> **16.** In the present case, since the land was acquired for the construction of Hiwra Dam project, much of the development like in the case of a layout for housing colony is not required. In our view, 40% deduction made by the High Court appears to be on the higher side. Considering the purpose of the

[7] (2020) 14 SCC 139

> acquisition and the facts and circumstances of the case, 20% deduction for development cost would be reasonable. Taking the entire land 2,61,300 sq ft as non-agricultural and making 20% deduction for the development cost, the value of the land is calculated at Rs 12,54,530 as under:
>
> | *Value of the land* | |
> |---|---|
> | 2,61,360 × 6.90 | Rs 18,03,384.00 |
> | 20% deduction | Rs 3,60,67.68 |
> | Rounded to | Rs 3,60,677 |
> | *Total* | *Rs 14,42,707* |
>
> **[emphasis supplied]"**

(iii) In ***Lal Chand*** (*supra*) the Supreme Court held that the percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. The decision in ***Lal Chand*** (*supra*) was followed by the Supreme Court in ***Maya Devi (Dead) through Legal Representatives and Others*** vs. ***State of Haryana and Another***[8] and ***Andhra Pradesh Housing Board*** vs. ***K. Manohar Reddy and Others***[9]. In ***Union of India*** vs. ***Premlata and Others***[10] the Supreme Court referred to ***Dyagala Devamma*** (*supra*) wherein while the High Court made deduction towards development charges at 25% in place of 50% as was deducted by the Reference Court, it was observed and held as under:

> **"16.2.** In *Dyagala Devamma* [*Union of India* v. *Dyagala Devamma*, (2018) 8 SCC 485], while quashing and setting aside the judgment and order [*LAO* v. *Dyagala Devamma*, 2014 SCC OnLine Hyd 1453] of the High Court making deduction towards development charges at 25% in place of 50% as was deducted by the Reference Court, in paras 19 and 20, it is observed and held as under: (*Dyagala Devamma case*, SCC pp. 490-91)

[8] (2018) 2 SCC 474
[9] (2010) 12 SCC 707
[10] (2022) 7 SCC 745

> "*19*. In addition to these principles, this Court in several cases has laid down that **while determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made varies from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc.** It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds of larger parcel of land are not available. This Court has also laid down that the court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. **This Court has also recognised that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act.** …….
> ……..."

(iv) The Learned Reference Court was loathe to deduct 40% reasoning that there was no basis for such deduction. As seen in ***Sajan*** (*supra*) the rule of one-third deduction towards development is a general rule depending upon the purpose of acquisition and taking note of the well-planned layouts. In the said matter, the Supreme Court while considering that the land was acquired for construction of a dam deducted 20% for developmental costs, instead of 40% calculated by the High Court. After considering the averments and the evidence on record, it is apparent that the Respondent No.7 has failed to enlighten the Court about the developmental works that are to be carried out in the area in terms of housing facilities, water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and

community/civic amenities. Admittedly, the road constructed under the PMGSY is being used by Respondent No.7 and no new road has been constructed. What can be culled out on this aspect from the averments and arguments advanced is that, in fact the Respondent No.7 has nowhere made any claims of development of the area or for that matter shown what were the developmental works envisaged for the future or are being carried out in the area. In such a circumstance, in my considered opinion, deduction of 10% as development costs is adequate, reasonable and equitable.

(v) With regard to Section 23(1A) of the Act, a concern was raised by Learned Counsel for the Claimant No.3 that no calculation were made under the provision as mandated by law. The Supreme Court in this context in ***State of Punjab*** vs. ***Amarjit Singh and Another***[11] discussed Section 23 of the Act and observed that it refers to four distinct amounts as under;

> **"4.** Section 23 of the Act refers to four distinct amounts:
>
> **4.1** ***Market value*** **of the land on the date of publication of the notification under Section 4(1) of the Act is the first and foremost of the six factors to be taken note of for determining the amount of compensation for the land acquired.** It is the major component (and in most cases, the only component) of the compensation determined by the court under Section 23(1) of the Act.
>
> **4.2** *Compensation* to be awarded to a person for the acquired land, is to be determined under Section 23(1) of the Act by taking into consideration six factors—
>
> > **(*i*) the market value of the land, on the date of publication of the notification under Section 4(1) of the Act;**
> >
> > **(*ii*)-(*iv*) damage sustained by the person interested by reason of the taking of any standing crops or trees in the lands, or severing such land from his other land(s), or the acquisition injuriously affecting his other property or earnings;**
> >
> > **(*v*) the reasonable expenses incidental to the person interested being compelled to**

[11] (2011) 4 SCC 734

change the residence or place of business as a consequence of acquisition; and

(*vi*) the damage bona fide resulting from diminution of the profits of the land between the time of publication of declaration under Section 6 and the time of the Collector taking possession of the land.

4.3 *Additional amount* at the rate of 12% per annum *on such market value* [for the period commencing on and from the date of publication of the notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking possession of the land, whichever is earlier].

4.4 *Solatium at 30% on such market value*, in consideration of the compulsory nature of acquisition.

5. While *market value* and *compensation* are factors to be assessed and determined by the court, no such judicial exercise is involved in regard to *additional amount* payable under Section 23(1-A) and *solatium* payable under Section 23(2) as they are statutory benefits payable automatically at the rates specified in those sub-sections, qua the market price. No reasons need to be assigned for grant of additional amount or solatium.

6. This Court explained the object of granting *additional amount* under Section 23(1-A) of the Act in *Commr.* v. *Mathapathi Basavannewwa* [(1995) 6 SCC 355] and in *State of T.N.* v. *L. Krishnan* [(1996) 1 SCC 250].

7. In *Mathapathi Basavannewwa* [(1995) 6 SCC 355] this Court observed: (SCC p. 356, para 4)

> "*4*. **The object of introducing Section 23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship, Section 23(1-A) was introduced and the legislature envisaged that the owner of the land is entitled to 12 per cent per annum additional amount on the market value**…."

In *L. Krishnan* [(1996) 1 SCC 250] this Court observed: (SCC p. 270, para 43)

> "*43*. … **The provisions in this sub-section are designed to compensate the owners of the land for the rise in prices during the pendency of the land acquisition proceedings. It is a measure to offset the effects of inflation and the continuous rise in the values of properties over the last few decades**…."

8. In *P. Ram Reddy* v. *Hyderabad Urban Development Authority* [(1995) 2 SCC 305] this Court held that **additional amount under Section 23(1-A) of the Act was payable only on the market value determined under Section 23(1) of the Act, thereby clearly implying that it was not reckonable on any other amount**: (SCC p. 323, paras 20-21)

……..

> *21*. In this context is (sic) has to be noted that the amount payable *is 12 per centum per annum on the market value in the first clause of sub-section (1) of Section 23 of the LA Act*. **It has also to be noted that solatium under sub-section (2) is not payable in respect of the amount awardable under sub-section (1-A), in that, sub-section (2) says that in addition to the market value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.**"
>
> (emphasis supplied)
>
> **9.** In *Sunder* v. *Union of India* [(2001) 7 SCC 211] a Constitution Bench of this Court held that the terms "sum awarded" or "amount awarded" occurring in Sections 34 and 28 of the Act would include not only the compensation determined by taking note of the six factors mentioned in Section 23(1) of the Act, but also amounts awarded under the remaining sub-sections of Section 23 as well, for the purpose of calculating interest. ……..
>
> **10. Section 23(1) refers to market value of the land on the date of publication of the notification under Section 4(1) of the Act as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. Sub-section (2) provides that in addition to the market value of the land determined under Section 23(1), the court shall, in every case, award a sum of 30% on such market value in consideration of the compulsory nature of acquisition.**
>
> **11. Sub-section (1-A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided under Section 23(1), the court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification under Section 4(1) in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. The additional amount under Section 23(1-A) and solatium under Section 23(2) are both payable only on the market value determined under Section 23(1) of the Act and not on any other amount.** ……..**"**
>
> [emphasis supplied]

Hence, the concern raised by Claimant No.3 is quelled by the foregoing pronouncements.

(vi) In this context, we may also refer to ***G. Prema*** (*supra*) where the Supreme Court held as follows;

> **"9. We find that while the High Court awarded an additional amount at 12% per annum from the date of preliminary notification till the date of passing of award or delivery of possession whichever was earlier and solatium at 30% under Section 23(2), it awarded interest only on the compensation**

> **plus additional amount. In regard to interest on the solatium amount, the High Court stated that as the matter was pending before the Supreme Court, depending upon the outcome, the claimants will be entitled to claim the amount before the Reference Court. This Court has subsequently held that interest is payable on the solatium also.**
>
> **10.** In view of the above we allow these appeals in part as follows:
>
> **(*a*) The compensation for the land is increased from Rs. 1,62,500 per acre to Rs. 1,95,000 per acre.**
>
> **(*b*) The compensation awarded in regard to well and the structure is not disturbed.**
>
> **(*c*) The appellants will be entitled to additional amount @ 12% per annum on the market value from the date of notification under Section 4(1) of the LA Act till the date of award of the Collector, and solatium at 30% of the market value and interest on the aggregate including solatium @ 9% per annum for one year from the date of taking possession and 15% per annum thereafter till the deposit.**
>
> **(*d*) The respondent is permitted to draw back any amount deposited in excess of what is due as aforesaid. If the appellants have drawn any amount in excess of what is due to them, the respondent shall be entitled to recover the same.**
>
> (*e*) Parties to bear their respective costs.**"**
>
> **[emphasis supplied]**

13. On the anvil of the plethora of Judgments of the Supreme Court on this aspect, including that of ***G. Prema*** (*supra*), the Claimant No.1, Claimant No.2 for herself and as Constituted Attorney for her siblings, and Claimant No.3 are entitled to the following reliefs;

(i) Valuation of the land, i.e., 5.5050 hectares, equivalent to 592558.2 sq. feet, multiplied by ₹ 95/- per sq. ft., computed by the Learned Reference Court is not disturbed.

(ii) Interest @ 4% added on the amount in the cheque deposited by the Respondent No.4 in the State Bank of Sikkim, Rabdentse Branch, West Sikkim, as per the then prevailing rate of interest, computed by the Learned Reference Court is not disturbed.

*(iii) 10% of the market value of the acquired land be deducted as developmental costs [See paragraph 19 of **Dyagala Devamma** (supra)].*

(iv) The calculation on standing properties computed by the Respondent No.4 at ₹ 68,27,704/- is not disturbed.

(v) Solatium @ 30% of the market value granted by the Respondent No.4 is not disturbed.

*(vi) In conformity with Section 23(1A) of the Act and the ratio of the Supreme Court in **G. Prema** (Paragraphs 9 and 10 supra), the Claimants No.1, 2 and 3 are entitled to an additional amount @ 12% per annum, on the market value of the lands acquired, from the date of Notice under Section 4(1) of the Act, i.e., 26-07-2010, till the date of Award of the Respondent No.4, i.e., 30-09-2011 or the date of taking possession of the land, whichever is earlier.*

*(vii) In conformity with the ratio of the Supreme Court in **G. Prema** (Paragraphs 9 and 10 supra), the Claimants No.1, 2 and 3 are entitled to interest on the aggregate, including solatium @ 9% per annum for one year from the date of taking possession and 15% per annum thereafter, till the deposit of the entire awarded amount.*

14. The Respondent No.4 shall make the necessary computation in terms of the detailed directions above. The payment of the award amount, so computed be released to the Claimants No.1, 2 and 3 within a period of forty-five days from today, failing which the Respondent No.4 shall pay additional interest @ 10% on the entire award amount, from the date of filing of the Reference Application before the Respondent No.4, till full and final realisation.

15. The Cross Objections stand disposed of accordingly.

16. Pending applications, if any, also stand disposed of.

17. Parties to bear their own costs.

18. Copy of this Judgment be forwarded to the Learned Reference Court below for information, along with all records received.

(Meenakshi Madan Rai)
Judge
18-10-2023

Approved for reporting : **Yes**

ds/sdl