PETITIONER:
UNION OF INDIA & ANR

Vs.

RESPONDENT:
SMT.SHANTI DEVI ETC. ETC

DATE OF JUDGMENT05/10/1983

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SEN, A.P. (J)

CITATION:
1983 AIR 1190 1984 SCR (1) 217
1983 SCC (4) 542 1983 SCALE (2)1020
CITATOR INFO :
R 1984 SC 774 (16)
R 1986 SC1466 (11)

ACT:
Land Acquisition Act 1894 (I of 1894) Section 23-Acquisition of land-Payment of compensation-Market value of land fixed on basis of capitalisation principle-Multiplier to be adopted in determination of compensation-Explained.

HEADNOTE:
Certain lands were notified for acquisition in the years 1962 and 1963 under s.4(1) of the Land Acquisition Act, 1894. On the question of payment of compensation the Land Acquisition Officer, relying on an earlier award in respect of similar lands acquired for the very same public purpose adopted the same criteria and fixed the compensation. He adopted the principal of capitalisation and determined the compensation at Rs. 650 per kanal, as the value of the best category of land and awarded compensation equivalent to 13 times the net annual income.

On reference under Sec.18 the District Judge determined the market value of the land adopting the capitalisation principle, and determined the compensation by multiplying the net annual income from each category of land by 20.

The Union of India and the State Government preferred appeals and contended before the High Court that if the principle adopted by the authorities below was used the Government would suffer. These appeals were however dismissed.

In the meanwhile the High Court in appeals arising out of similar awards set aside the orders of the District Judge and remanded the cases for fresh disposal for failure to determine whether the exemplars on the record could serve as a guide for determining the market value. After remand the District Judge arrived at the very same valuation and this was confirmed by the High Court.

In the appeals to this Court on the question as to what should be the multiplier to be adopted in determining the compensation payable in respect of land acquired in the year 1962-63 where the market value of the land is fixed on the basis of the capitalisation principle.

Allowing the appeals in Part,

HELD: 1. The High Court and the District Court erred in applying the twenty years purchase rule in the case of these lands which were acquired
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in the years 1962 and 1963. The proper principle was fifteen years' purchase rule.[228 H]

2. The relevant date for determining compensation of a property acquired under the Act, is the date on which the notification under s.4(1) is published. The capitalised value of a property is the amount of money whose annual interest at the highest prevailing rate of interest at any given time will be its net annual income. The net annual income from a land is arrived at by deducting from the gross annual income all outgoings such as expenditure on cultivation, land revenue etc. The net return from landed property, reflects the prevalent rate of interest on safe money investments. [225 G-H; 228 A]

3. (i) In India the multiplier which is adopted in determining the compensation by the capitalisation method has varied from time to time. The number of years purchase has gradually decreased as the prevailing rate of interest realisable from safe investments has gradually increased, the higher the rate of interest, the lower the number of years purchase. This method of valuation involves capitalising the net income that the property can fairly be expected to produce and the rate of capitalisation is the percentage of return on investment that a willing buyer would expect from the property during the relevant period.[227 G-H; 228 A]

(ii) In the years 1962 and 1963 an investor in agricultural land expected annual net return of at least 8%. If the land yielded a net annual income of Rs. 8 a willing buyer of land would have paid for it Rs.100 i.e. a little more than 12 times the annual net income. The multiplier for purposes of capitalisation would be about thirteen.[228 D-E]

(iii) In these cases there was no evidence about the potential value of the lands.[228 F]

(iv)In the instant cases neither the Land Acquisition Officer nor the High Court nor the District Court has adopted the other well-known methods of valuation of land namely, the price paid within a reasonable time in bona fide transactions in respect of the land acquired or adjacent lands which possess similar advantages, the price which a willing buyer was prepared to pay to a willing seller of such land or the opinion of valuers or experts. In the absence of any reliable evidence to adopt the other methods of valuation the very same capitalisation method was applied and the Court adopted fifteen years' purchase rule for determining compensation has to be adopted.[225 C-E]

The Collector, Raigarh v. Dr. Harisingh Thakuar and An. and Vice Versa, [1979] 1 S.C.C. 236; State of Kerala v. Hassan Koya, [1968] 3 S.C.R. 459; The State of West Bengal v. Shyamapada etc., A.I.R. 1975 S.C. 1723; Oriental Gas Ltd.
JUDGMENT:
referred to.
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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 51-72 of 1981.

Appeals by Special Leave from the Judgment and Order dated the 22nd September. 1980 of the High Court of Himachal Pradesh at Simla in R.F.A. Nos. 262, 249, 251, 252, 261,

265, 266, 267, 280, 281, 292, 297, 299, 300, 307, 308, 352, 355, 356, 366, 370 and 220 of 1980 respectively.

M.M. Abdul Khader and Ms. A Subhashini with him for the Appellants.

K.R. Nagargia, Mr. Naresh Kaushik and Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH. J. What should be the true multiplier to be adopted in determining the compensation payable in respect of land acquired in or about the year 1962-63 where the market value of the land is to be fixed on the basis of the capitalisation principle, is the question which arises for consideration in these appeals.

The construction of the Beas Project was commenced in the year 1960 as a joint venture of the erstwhile State of Punjab and the State of Rajasthan by mutual agreement between the two States. All decisions on the policy and administrative matters were taken by a Board known as the Beas Control Board which was set up by the Central Government in consultation with the two States on February 19, 1961. The Beas Project Board was presided over by the Governor of the then State of Punjab and its members included Ministers of the States of Punjab and Rajasthan and senior officers of the Central Government and of the two States. The decisions of the Beas Control Board used to be implemented by the Punjab Government which was administering and executing the works on the Project. The expenditure on the Project was shared by the Rajasthan Government.

With the coming into force of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), the new State of Haryana and the Union Territory of Chandigarh came into being, having been formed out of the territory of the erstwhile State of Punjab. A part of the Punjab

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territory was also transferred to what was then the Union of Territory of Himachal Pradesh. What remained with Punjab became the new State of Punjab.

Sub-section (1) of section 80 of the Punjab Reorganisation Act, 1966 provided that the construction including the completion of any work already commenced of the Beas Project should on and from November 1,1966 be undertaken by the Central Government on behalf of the successor States (as defined under that Act) and the State of Rajasthan should provide the necessary funds to the Central Government for the expenditure on the Project including the expenses of the Beas Construction Board. For the discharge of its functions, sub-section (1) and sub-section (2) of section 80 of the Punjab Reorganistation Act empowered the Central Government in consultation with the Governments of the successor States and the State of Rajasthan to constitute a Board to be called the Beas Construction Board, Thus by the Punjab Reorganisation Act, 1966, the entire expenditure for the construction and completion of the Beas Project was to be shared by the successor States and the State of Rajasthan but the responsibility of construction and completion of the Beas Project was entrusted to the Central Government.

About 70,000 acres of land had to be acquired for the Beas Dam Project which was located in the Kangra area of the erstwhile State of Punjab which stood transferred to the then Union Territory of Himachal Pradesh under the Punjab Reorganisation Act, 1966. The necessary notifications under section 4 (1) of the Land Acquisition Act, 1894 had been issued by the appropriate Government for that purpose. We are concerned in these cases with lands which were notified

for acquisition in the years 1962 and 1963 under section 4 (1) of the Land Acquisition Act. The acquisition proceedings in respect of the lands which stood transferred to the Union Territory of the State of Himachal Pradesh, as mentioned above, were to be completed by its officers. The land in question are situated in Tikka Bhararian, Mauza Dhameta, Tehril Dehra, District Kangra. Himachal Pradesh. The Land Acquisition Officer issued notices under section 9 (3) of the Land Acquisition Act to the interested persons inviting their representations and objections with regard to the determination and payment of the compensation. After receiving the representations and objections, the Land Acquisition Officer (Shri Didar Singh) passed a common award on January 31, 1972 in respect of an extent of 1125.33 acres of land in Tikka Bhararian

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which had been notified on April 1,1963. It would appear that another Land Acquisition Officer, Shri Jaswant Singh, had passed an award earlier on April 2,1969 in respect of certain lands situated in Tikka Bihari which has been acquired for the very same public purpose. The Land Acquisition Officer who had to pass the award in these cases being of the opinion that the fertility, productivity and potentiality of land in Tikka Bhararian (the lands in question) were more or less comparable with those of the lands situated in Tikka Bihari and that the classification and valuation of lands in the award passed by Shri Jaswant Singh were quite fair, adopted the same for the purpose of passing the award in respect of the lands in question. It may be mentioned here that Shri Jaswant Singh had adopted for the purpose of valuation of lands the principle of capitalisation. He was of the view that the rule of 20 years purchase was to be adopted. He accordingly after determining the net annual profit per kanal of land of the best category at Rs. 50 and multiplying it by 20 arrived at Rs. 1,000 as the value of one kanal of the best variety of land. In order to determine the net annual profit from the land, it appears that he had carried out a crop cutting experiment on some Plot of land after the publication of the notification under section 4 (1) of the Land Acquisition Act. It would appear that on behalf of the Department, a statement had been filed showing that the lands of similar quality were being sold at or about the time of publication of the notification under section 4 (1) of the Land Acquisition Act at Rs. 300 per kanal. Shri Jaswant Singh (the Land Acquisition Officer) found that a mean between the valuation arrived at by him by adopting the principle of capitalisation i.e.. Rs. 1,000/- per kanal and Rs. 300/- per kanal which, according to the Department was the value of the best category of land in the area would be a reasonable compensation. Accordingly by adding the above two figures and dividing the total by two he arrived at Rs. 650/- per kanal as the value of the best category of land and reduced the value proportionately in respect of other categories of land which were lower in quality. Virtually what was awarded was equivalent to thirteen times the net annual income.

Aggrieved by the award passed by the Land Acquisition Officer, the claimants demanded that a reference should be made under section 18 of the Land Acquisition Act to the Civil Court for the determination of proper compensation payable to them. Accordingly the cases were referred to the District Court of Kangra at Dharamsala. Alongwith these references, several other references also had

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been made to that Court in respect of several other bits of

lands situated at Tikka Bihari Tikka Bhararian which had been acquired at or about the same time. The learned District Judge who tried the cases was of the view that the oral evidence adduced by the owners of the land on whom the burden of proof lay could not be relied upon. After discarding the oral evidence, the learned District Judge determined the market value of the land by adopting the capitalisation principle. He determined the compensation by multiplying the net annual income from each category of land by 20. Accordingly he fixed the compensation of the best category of land at Rs. 1,000 per kanal having held that the net annual income per kanal of that class of land was Rs. 50. For this purpose he appears to have relied on the result of the crop cutting experiment about which there was no evidence before him He rejected the reason given by the Land Acquisition Officer for reducing the compensation from Rs. 1,000 to Rs. 650 on the ground that the Department had asserted that the land of similar quality was being sold at or about the relevant time at Rs. 300 per kanal. The compensation was fixed at comparatively lower rates in respect of other classes of land which were involved in these cases except in the case of G.M. abadi land for which he fixed at Rs. 650 per kanal. Aggrieved by the decision of the District Judge, the Union of India and the State of Himachal Pradesh preferred appeals before the High Court of Himachal Pradesh. The appellants contended that the methods adopted by Land Acquisition Officer and the District Judge were both faulty and if the principle adopted by them was used in respect of all the 70,000 acres of land acquired, the Government would suffer a huge loss.

It is necessary to state here that in the meanwhile the High Court disposed of two appeals being R.F.A. Nos. 16 and 17 of 1970 in respect of the same lands in Tikka Bihari where the two learned Judges (R.S. Pathak, C.J. (as he then was) and D.B. Lal, J.) who heard the said appeals by their separate judgments dated January 14, 1976 set aside the judgment of the District Judge and remanded the cases for fresh disposal to the District Court. Pathak, C.J. in the course of his judgment observed :

> "In my opinion the position is this. The Collector had determined the market value at Rs. 1000 per kanal of the best category of land. He did this on the basis of a method recognised in law. He then took into account
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> an offer of Rs. 300 per kanal made by the State. He did not, when taking that rate into account, determine whether it was based on valid material on the record. He acted arbitrarily in taking that offer into account. Moreover, although he took that offer into account, he did not accept it as a proper basis for determining the market value. He embarked on the novel method of adopting a mean between the market value of Rs. 1000 per kanal determined by him and the offer of Rs. 300 per kanal made by the State. The learned Additional District Judge was entirely right in holding that the award of the Collector was misconceived. But the learned Additional District Judge then proceeded wholly on the basis of the market value of Rs. 1000 per kanal determined by the Collector. What he should also have done was to determine whether the exemplars on the record could serve as a guide for determining the market value. It is this error which has vitiated the decision of the learned Additional District Judge".

After remand the claimants in those cases adduced some

evidence which was not of much value. Again the District Judge arrived at the very same valuation which had been determined by that Court earlier. The appellants once again preferred appeals before the High Court. The High Court dismissed those appeals in limine by a short order dated May 20, 1981. The appeals filed against that order are also before us now.

Now coming back to the present appeals which arise out of R.F.A. No. 262 of 1980 and connected cases which were disposed of by a common judgment dated September 22, 1980, the High Court dismissed all the said connected appeals. The present appeals are filed against that common judgment after obtaining the special leave of this Court under Article 136 of the Constitution. Although the award passed by the Land Acquisition Officer deals with 18 classes of lands, we are concerned in this case with some of them only. The rates of compensation awarded by the Land Acquisition Officer and the District Judge for the following classes of land involved in these cases are as follows :

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| Class of Land | Rate per kanal fixed in the award of the Land Acquisition Officer | Rate per kanal fixed by the District Judge |
|---|---|---|
| Nehri awal | Rs. 650 per kanal | Rs. 1000 per kanal |
| Nehri Bramdi | Rs. 520 -do- | Rs. 800 -do- |
| Barani Dofasli | Rs. 455 -do- | Rs. 700 -do- |
| Barani Ekfasli | Rs. 390 -do- | Rs. 600 -do- |
| Banjar Kadim | Rs. 260 -do- | Rs. 400 -do- |
| G.M. Abadi | Rs. 650 -do- | Rs. 1000 -do- |

(In Himachal Pradesh, 1 acre = 8 kanals)

The High Court has confirmed the rates fixed by the District Judge.

At the outset we should state that we are not happy about the manner in which the proceedings have gone on in these and other similar cases relating to the acquisition of land for the Beas Project. As mentioned earlier the total extent of land acquired is 70,000 acres. We are told there are nearly 800 cases before this Court arising out of those acquisition proceedings. There may be many others which have not yet reached this Court. The only method of valuation adopted in all cases appears to be the capitalisation method. The evidence regarding the crop cutting experiment said to have been conducted is not satisfactory. The crop in question is said to have been grown after the acquisition proceedings commenced only for the purpose of determining the compensation. Naturally if such crop is grown by the owner, there is bound to be some anxiety on his part to adopt extraordinary agricultural practices to show a higher yield than what would be the normal yield of the land. It is seen that the direction given by Pathak, C.J. in the order of remand passed in 1976 in the cases pertaining to lands in Tikka Bihari referred to above appears not to have been kept in view either by the District Court and by the High Court when they subsequently disposed of hundreds of cases arising out of these land acquisition proceedings. The approach on their part has been very casual. The fact that any error committed in one of these cases would affect the compensation payable in respect of 70,000 acres of land does not appear to have weighed with the District Court and the High Court. The spirit behind the observation made by one of us (A.P. Sen, J,) on the question of fixing the compensation for lands acquired under the Land Acquisition Act in the minority judgment of this Court

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in The Collector. Raigarh v. Dr. Harisingh Thakur and Anr. and Vice Versa to the effect that

> "While it is not suggested that unfairly low value should be offered, on the other hand the temptation to over-generosity must be equally resisted. Such generosity at the public expense reacts against the development and against the prosperity of the country and imposes an unnecessary burden on the taxpayer"

appears to be lacking in the disposal of these cases by the District Court and the High Court.

In these and other connected cases, neither the Land Acquisition Officer nor the High Court and the District Court have adopted the other well-known methods of valuation of land namely, the price paid within a reasonable time in bona fide transactions in respect of the land acquired or adjacent lands which possess similar advantages, the price which a willing buyer was prepared to pay to a willing seller of such lands or the opinion of valuers or experts. They have all followed the capitalisation method by adopting the 20 years' purchase rule. In the absence of any reliable evidence to adopt the other methods of valuation, we are also driven in these cases to adopt the very same capitalisation method in disposing of these appeals. Although we are not satisfied with the determination of the net annual profit from each plot of land acquired in these proceedings, we have to adopt the finding of the District Court which has been affirmed by the High Court on the facts and in the circumstances of these cases as none of the parties has questioned it.

The only question which remains to be determined is the appropriate number of years purchase that should be followed in the case of acquisition made in the years 1962 and 1963.

The relevant date for determining compensation of a property acquired under the Land Acquisition Act, 1894 is the date on which the notification under section 4 (1) is published. The capitalised value of a property is the amount of money whose annual interest at the highest prevailing interest at any given time will be its net annual income. The net annual income from a land is arrived at by deducting from the gross annual income all out goings such as expenditure

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on cultivation, Land revenue etc. The net return from landed property generally speaking, reflects the prevalent rate of interest on safe money investments. It is on this basis, Rajamannar offg. C. J. held in T. Radhakrishna Chettiar v. The Province of Madras that the number of years' purchase to be adopted was 33 1/3 where the interest paid on gilt-edged securities at the time of acquisition i. e. in 1942 was 3% per annum. But the same learned Chief Justice held in Sri Lakshmi Narasimha Devaru & Anr. v. The Revenue Divisional Officer. Mangalore & Anr. that 20 years' purchase was the appropriate rule to be followed in determining the value of agricultural Land acquired in the year 1943 by capitalisation method. In State of Kerala v. Hassan Koya in the case of a Land with building acquired in the year 1954 when Government securities were yielding 3 1/2% per annum, this Court upheld the decision of the Kerala High Court which had adopted 33 1/3 as the multiple for determining compensation payable in respect of it. For a land acquired in the year 1952. this Court in The State of West Bengal v. Shyama Pada etc. awarded compensation at 20 times the net annual income. In Varadarajulu Naidu v. The Revenue Divisional Officer, Tirukoilur, the High Court of Madras in

the case of a land acquired in the year 1956 adopted the rule of 11 years' purchase. In Oriental Gas Ltd. & Ors. v. State of West Bengal, the Constitution Bench of this Court speaking through Chinnappa Reddy, J. observed:

"The next target of Mr. Sen's attack was the choice of the multiplier. He submitted that in the year 1962 gilt-edged securities were fetching no more than six per cent per annum and therefore, not eight, but some other higher multiplier should have been specified.

The argument of Shri Sen is based on the observation of Shah, J., in Cooper's case that 'capitalisation of the net annual value of the property at a rate equal in normal cases to the return from gilt-edged securities' was an important method of determination of compensation. The very use of the word normal by Shah J., indicates

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that it was not intended to lay down any invariable rule that whenever a method of capitalisation of net profit was adopted, the return from gilt-edged securities was to be the basis. That should depend on a variety of circumstances such as the nature of the property, the normal return which may be expected on like investment, the state of the capital market and several such factors. For example, it is well known that a large investment yields a higher return that a smaller investment and similarly a long term investment yields a better return than a short term investment. A different principle and a different multiplier may have to be applied to different kinds of property, such as, agricultural land, residential buildings, industrial undertakings etc. In the case of a going business or industrial undertaking the appropriate multiplier may be determined on the basis of the annual return of an undertaking with similar capital investment. If the Legislature thinks that a return of 12 1/2% in the case of a large industrial undertaking such as the petitioner's is reasonable and on that basis adopts the multiplier 'eight', it is not for this Court to sit in judgment and attempt to determine a more appropriate multiplier. We are unable to see how the adoption of the particular multiplier in the present case is the result of the application of any irrelevant principle. We do not, therefore, agree with the submission of Shri Sen.,'

In the above case the Court felt that if 12 1/2% was the annual return, the adoption of multiplier 'eight' could not be unreasonable in the year 1962 in the case of an industrial undertaking.

A perusal of the decisions referred to above and some others which have not been cited here shows that in India the multiplier which is adopted in determining the compensation by the capitalisation method has been 33 1/3, 25, 20, 16 3/2 11 and 8. The number of years' purchase has gradually, decreased as the prevailing rate of interest realisable from safe investments has gradually increased the higher the rate of interest, the lower the number of years' purchase. This method of valuation involves capitalising the net income that the property can fairly be expected to produce and the rate of capitalisation is the percentage of return on his investment that a willing buyer would expect

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from the property during the relevant period. It was once felt that the relevant rate of interest that should be taken

into consideration was the interest which gilt-edged securities or Government bonds would normally fetch. The safety and liquidity of the investment in bonds were relied on as the twin factors to take the view that the interest on gilt-edged securities should alone be taken into consideration. This was at a time when there were not many avenues of safe investments and investment in private commercial concerns was not quite reliable. But from the year 1959-60 circumstances have gradually changed. There are many State Banks and nationalised banks in which deposits made are quite safe. Even in the share market we have many 'blue chips' which command stability and other attendant benefits such as the possibility of issue of bonus shares and rights shares and appreciation of the value of the shares themselves. They are attracting a lot of capital investment. A return of 10% per annum on such safe investments is almost assured. Today nobody thinks of investing on land which would yield a net income of just 5% to 6% per annum. A higher return of the order of 10% usually anticipated. Even in the years 1962 and 1963 an investor in agricultural land expected annual net return of at least 8%. It means that if the land yielded a net annual income Rs. 8 a willing buyer of land would have paid for it Rs. 100 i. e. a little more than 12 times the annual net income. The multiplier for purposes of capitalisation would be about thirteen.

On the question of the potential value of the lands involved in these cases, we may state here that there is no evidence suggesting that the lands were likely to be in demand for any other purpose. They were all agricultural lands or banjar lands on which no agricultural operations could be carried on. They were situated in a hilly tract. There were no potential buyers who were in need of this vast tract of 70,000 acres. If the project work had not been undertaken possibly there would have been no occasion for the sale of all these lands in one lot.

Having regard to all the facts and circumstances of the case we feel that the High Court and the District Court erred in applying the twenty years, purchase rule in the case of these lands which were acquired in the years 1962 and 1963. The proper principle was fifteen years' purchase rule. The District Judge awarded compensation in all these cases at Rs. 1,000 per kanal for the land of the first category by applying the twenty years' purchase rule and has fixed the compensation for other lands on the above basis. The
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High Court has affirmed it. Since we have held that the proper basis of fixing compensation in these cases was fifteen years' purchase rule, the compensation awarded for lands in these cases should be reduced by one-fourth i.e. for lands of the first category compensation payable should be Rs. 750 per kanal instead of Rs. 1,000 per kanal. Similarly in the case of other lands also there should be a reduction of the compensation awarded by one-fourth. The claimants shall get solatium of 15% on the compensation computed on the above basis and they shall be paid interest at the rate ordered by the District Judge on the aggregate amount from the date of taking possession of the land till the date of payment. The orders passed by the High Court in all these cases shall stand modified accordingly.

The appeals are accordingly allowed in part. Parties shall bear their own costs throughout.

N.V.K. Appeals partly allowed.
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JUDIS