IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 268 OF 2021

S. N. Desai Hospitalities & Developers LLP, Mumbai … Appellant
vs.
Deputy Collector (Land Acquisition Officer)
No.7, Mumbai and another … Respondents

WITH
FIRST APPEAL NO. 541 OF 2021

Municipal Corporation of Greater Mumbai,
Through Municipal Commissioner … Appellant
vs.
S. N. Desai Hospitalities & Developers LLP,
Mumbai and another … Respondents

Mr. Girish Godbole, Senior Advocate, a/w. Mr. Shivraj Patne, Mr. Rahul Soman and Ms. Pallavi Khale, i/b. Komal Punjabi for appellant in FA/541/2021 and for respondent – MCGM in FA/268/2021.

Mr. C. M. Korde, Senior Advocate and Mr. F. E. De Vitre, Senior Advocate, a/w. Mr. Rohaan Cama, Mr. Pheroze Mehta, Mr. M. S. Federal, Ms.Rashne Mulla-Feroze, Mr. Shrinivasan Mudaliar, Ms. Sejal Jain and Mr. Dinkar Desai, i/b. M/s. Federal and Company for respondent No.1 in FA/541/2021.

Mr. F. E. De Vitre, Senior Advocate and Mr. C. M. Korde, Senior Advocate, a/w. Mr. Rohaan Cama, Mr. Pheroze Mehta, Mr. M. S. Federal, Ms.Rashne Mulla-Feroze, Mr. Shrinivasan Mudaliar, Ms. Sejal Jain and Mr. Dinkar Desai, i/b. M/s. Federal and Company for appellant in FA/268/2021.

Mr. Dinesh J. Haldankar, AGP for respondent – State in both matters.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ

Reserved on : 22nd JULY, 2026
Pronounced on : 15th OCTOBER, 2026

JUDGEMENT: (*Per Manish Pitale, J*):

. The claimant as well as the acquiring body/beneficiary of

acquisition i.e. Municipal Corporation of Greater Mumbai (MCGM) are aggrieved by an award dated 30.03.2021 passed by the Land Acquisition, Rehabilitation and Resettlement Authority, Nagpur (hereinafter referred to as the LARR Authority). By the impugned award, the LARR Authority enhanced the amount of compensation payable to the claimant. While the claimant contends that further enhancement is warranted in the facts and circumstances of the present case, the MCGM claims that the enhancement is unjustified and that the original award dated 03.05.2017 passed by the Deputy Collector (Land Acquisition) No.7, Mumbai, was justified and needs to be restored.

2. The claimant is S. N. Desai Hospitalities and Developers LLP, Mumbai, while the acquiring body is MCGM. The nature of submissions made on behalf of the rival parties call upon this Court to decide two aspects of the matter.

3. Firstly, MCGM claims that the impugned award is a nullity, as a reference under Section 18 of the Land Acquisition Act, 1894 (LA Act) was the only remedy available to the claimant, because in the present case, the acquisition was under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). According to MCGM, this vital point was not even adverted to and decided by the LARR Authority in the impugned award. In this context, the claimant has contended that the reference before the LARR Authority, under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013), was clearly maintainable and that the impugned award cannot be held a nullity on the said ground.

4. Secondly, the rival parties have made detailed submissions on

the merits of the matter, concerning the question of determination of quantum of compensation, on the basis of all the relevant factors, particularly upon application of Section 26 of the Act of 2013. The parties have made submissions on the question of the manner of determination of true market value of the subject property on the basis of ready reckoner value, sale instances and also, residual land value technique.

5. While considering the rival submissions on these aspects of the matter, this Court will have to go into the manner in which Section 26 of the Act of 2013 can be applied to the facts and circumstances of the present case, for examining whether the quantum of compensation has been correctly determined in the impugned award or not.

6. Thus, the aforesaid two aspects will have to be considered in detail, so as to dispose of these two appeals. For the sake of convenience, the appellant – S. N. Desai Hospitalities and Developers LLP, Mumbai is referred to as the claimant and the acquiring body / beneficiary of acquisition i.e. MCGM as being referred to as MCGM in this judgement. A brief reference to the chronology of events would be necessary to consider the rival submissions.

7. In the year 1991, the final development plan of Greater Mumbai came into force on 16.02.1991. As per the said development plan, the subject property was reserved for garden, recreation ground and 27.45 meter wide DP road. The subject property included specific areas of land in CTS numbers of Village Oshiwara and Ambivali. On 01.07.2011, the claimant issued notice under Section 127 of the MRTP Act and in that backdrop, on 19.06.2012, the State Government issued a notification under Section 126(2) read with Section 126(4) of the MRTP Act in respect of the subject property.

This notification was deemed to be a declaration under Section 6 of the LA Act and the purpose of acquisition was the aforesaid garden, recreation ground and DP road.

8. On 15.10.2012, notices under Sections 9(1) and 9(2) of the LA Act were issued by the Land Acquisition Collector. On 24.10.2017, joint measurement exercise was carried out by the City Survey Officer in the presence of a representative of MCGM. On 01.01.2014, the Act of 2013 came into force. On 27.08.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 (hereinafter referred to as the Rules of 2014), came into force.

9. Rule 19(3) of the said Rules specifies that where the land was reserved for public purpose under the MRTP Act and a declaration under Section 6 of the LA Act was issued prior to 31.12.2013 and award was not declared, the proceedings would continue as per the formula provided in Sections 26 to 30 of the Act of 2013.

10. On 29.08.2015, Section 126 of the MRTP Act was amended to replace the words 'Land Acquisition Act, 1894' with the words 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'. According to the claimant, in the year 2015, the levelling work was carried out in the subject property and compound wall was constructed. On 03.05.2017, the respondent – Deputy Collector and Land Acquisition Officer No.7, Mumbai passed the award, determining the quantum of compensation at ₹ 5,11,48,81,199/-.

11. On 12.06.2017, an application was preferred by the claimant for reference under Section 18 of the LA Act / Section 64 of the Act of 2013. On 10.01.2018, Land Acquisition Reference No.1 of 2018

was filed, seeking enhancement of compensation under Section 18 of the LA Act. The same was preferred before this Court on the original side. On 10.01.2019, a learned Single Judge of this Court passed an order, directing the reference to be transferred to the LARR Authority constituted under the provisions of the Act of 2013.

12. At the relevant time, the LARR Authority was established only at Nagpur and therefore, the reference proceedings stood transferred to the LARR Authority at Nagpur, for being considered under Section 64 of the Act of 2013. The affidavits-in-evidence of witnesses of the claimant were filed before the LARR Authority. The MCGM also submitted affidavit-in-evidence of its witness.

13. During the pendency of the proceedings before the LARR Authority, on 27.06.2019, the MCGM filed Review Petition No.7 of 2020, seeking review/recall of the aforesaid order dated 10.01.2019, whereby the reference was transferred to the LARR Authority at Nagpur. The review petition is pending and the learned counsel for the parties informed this Court that the question as to whether LARR Authority had jurisdiction under Section 64 of the Act of 2013, may be decided in these proceedings, which in turn, would decide the issue raised in the review petition by the MCGM.

14. In this backdrop, on 30.03.2021, the LARR Authority passed the impugned award. After considering the rival submissions in the backdrop of the evidence and material on record, the LARR Authority enhanced the compensation to ₹ 15,91,12,24,012.30. This amount was over and above the amount of compensation awarded in the original award, thereby indicating that the total compensation payable, as held by the LARR Authority, was ₹ 21,01,20,23,522.30.

15. As noted hereinabove, the claimant as well as the MCGM are

aggrieved by the impugned award passed by the LARR Authority. The learned counsel for the parties have made their submissions on the two aspects noted hereinabove. The first aspect pertains to the very jurisdiction of the LARR Authority and the second aspect pertains to the merits of the matter as regards determination of quantum of compensation.

16. Mr. C. M. Korde, learned senior counsel appearing for the claimant submitted on the first aspect regarding jurisdiction of the LARR Authority to consider the reference under Section 64 of the Act of 2013, that in the first place, it cannot lie in the mouth of MCGM as to whether the forum of reference has to be a Court under Section 18 of the LA Act or the LARR Authority under Section 64 of the Act of 2013. It was emphasized that the MCGM has no right to seek reference in respect of the original award passed by the respondent – Deputy Collector (Land Acquisition). The only right that MCGM, as a beneficiary of acquisition, has is the right to be added as party in the reference proceedings to adduce evidence on the aspect of determination of quantum of compensation. This is also for the reason that the financial burden of payment of compensation is on the MCGM. In such circumstances, MCGM has no reason to make the grievance with regard to the said aspect of the matter.

17. It was further submitted that under the provisions of the Act of 2013, only the forum of reference has changed from the Court to the LARR Authority. Such a change in the forum is purely procedural in nature and it does not impinge upon any substantive right of the parties. It was submitted that no litigant has a vested right in a particular forum or the procedure for seeking reference and since the LARR Authority has all the trappings of a Court for deciding the issues pertaining to a claim of enhancement of compensation, there

is no prejudice caused to any party, thereby further indicating that MCGM is not justified in raising grievance with regard to jurisdiction of the LARR Authority in entertaining the reference and passing the impugned award.

18. It was further submitted that MCGM fully participated in the reference proceedings before the LARR Authority, led its own evidence and also, cross-examined claimant's witnesses, thereby showing that no prejudice was suffered by MCGM to now raise the question of the very jurisdiction of LARR Authority in entertaining the reference and passing the impugned award. It was further submitted that under the Act of 2013, since statutory appeal is provided before this Court, as was provided under the LA Act, to challenge the award passed by the Court in reference proceedings, no prejudice has been demonstrated by MCGM to claim that the impugned award has been passed without jurisdiction.

19. The learned senior counsel appearing for the claimant referred to Section 114 of the Act of 2013 pertaining to repeal and saving, which in turn refers to Section 6 of the General Clauses Act, 1897 for the effect of repeal of the LA Act. Upon referring to Section 6(c), (d) and (e) of the said General Clauses Act, it was submitted that since the right for legal remedy of reference proceedings remained unaffected and only the forum changed from the Court to the LARR Authority, even upon applying the aforesaid provisions to the facts and circumstances of the present case, it was evident that the LARR Authority clearly had jurisdiction to entertain the reference proceedings and to pass the impugned award. It was submitted that in such circumstances, the learned Single Judge of this Court was justified in transferring the reference proceedings to the LARR Authority, upon its establishment at Nagpur under the provisions of

the Act of 2013.

20. It was submitted that a Full Bench of this Court, in the case of *Pune Municipal Corporation vs. Rajeev L. Sangtani and others*, **2019 SCC OnLine Bom 1492**, considered a similar question and came to the conclusion that upon the Act of 2013 coming into force, reference proceedings would lie before the LARR Authority, under Section 64 of the Act of 2013, in the light of the LA Act being repealed. It was submitted that the Full Bench of this Court in the said judgement held that the substantive right in such cases was the right to move a reference for seeking enhancement of compensation when the claimant was dissatisfied with the compensation determined in the original award. The claimant would not have a substantive right of choice of forum and introduction of a new forum for consideration of the reference would not amount to violation of a vested right of the claimant. It was submitted that although MCGM has placed much emphasis on the fact that the aforesaid question arose before the Full Bench of this Court in an acquisition undertaken under the LA Act and not under the MRTP Act, the ratio of the said judgement, according to the learned senior counsel appearing for the claimant, applied to the present case also.

21. The learned senior counsel appearing for the claimant further relied upon judgement of the Supreme Court in the case of *Maria Cristina De Souza Sodder and others Vs. Amria Zurana Pereira Pinto and others*, **(1979) 1 SCC 92**. It was submitted that in the said judgement also, right of appeal was held to be a substantive right but it was clarified that the same had nothing to do with the forum where the appeal would lie, as the aspect of forum of remedy was in the realm of procedure.

22. Reliance was further placed on judgement of the Supreme

Court in the case of *Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor*, **AIR 1961 SC 1087**. It was emphasized that in the said case also when the new Act came into force and another forum of appeal was provided, the contention of one of the parties that appeal being provided before a new forum affected the substantive right, was rejected and the said position of law inures to the benefit of the claimant in these appeals also.

23. Reliance was also placed on judgement of the Division Bench of this Court in the case of *Securities and Exchange Board of India (SEBI) Vs. Sterlite Industries (India) Limited*, **2003 SCC OnLine Bom 981**. In this case, the Division Bench of this Court placed reliance on the said judgement of the Supreme Court in the case of **Maria Cristina De Souza Sodder and others Vs. Amria Zurana Pereira Pinto and others** *(supra)*. It was held that in a repealing Act, a new forum of remedy must be provided so that the substantive right of recourse to the remedy is not taken away. By placing reliance on the said judgement, it was submitted that in the present case, since the Act of 2013 clearly provides for forum of remedy in the form of the LARR Authority under Section 64 of the Act of 2013, it cannot be contended that the reference proceeding could have been pursued only before this Court exercising jurisdiction on the Original Side. It was submitted that, in any case, it is surprising that the said contention is being raised by MCGM, which does not have a right to prefer reference in the context of the original award. Since the substantive right of the claimant of preferring a reference has been saved and provided in the Act of 2013, the said position of law inures to its benefit. It cannot be said that the LARR Authority did not have jurisdiction to entertain and decide the reference by the impugned judgement and order. On this basis, it was submitted that the preliminary issue raised on behalf of MCGM deserves to be decided

in favour of the claimant.

24. On the merits of the matter, the learned senior counsel appearing for the claimant submitted that the LARR Authority erred in determining the market value of the land only under Section 26(1)(a) of the Act of 2013, by relying upon the Ready Reckoner value. The contentions raised on behalf of the claimant for determination of market value and compensation on the basis of Section 26(1)(b) of the Act of 2013 were wrongly rejected by the LARR Authority on the ground that the valuer had taken into consideration sale instances of flats from only one of the several projects in the vicinity of the subject land. It was further submitted that the LARR Authority erroneously proceeded to determine the market value and compensation by treating the date 19.06.2012 as the date of reckoning, while the same should have been determined by treating 01.01.2014 i.e. the date on which the Act of 2013 came into force, as the relevant date for determining compensation. It was conceded that the said issue presently stands covered against the claimant as per Division Bench judgement of this Court in the case of *Sahebrao Bhausaheb Kalate Vs. State of Maharashtra and others*, **2019 SCC OnLine Bom 1504**. It was submitted that an appeal against the said judgement is pending before the Supreme Court and therefore, the claimant is not giving up the said point for consideration.

25. The learned senior counsel appearing for the claimant submitted that the method specified in Section 26(1)(a) of the Act of 2013, for the sake of convenience, can be referred to as the 'Ready Reckoner Method' and the method provided under Section 26(1)(b) of the Act of 2013 can be referred to as the 'Sale Instances Method'.

26. On the Ready Reckoner Method adopted by the LARR

Authority, the learned senior counsel for the claimant submitted that a perusal of the relevant documents on record would show that the controversy is really in respect of the Ready Reckoner rate for the land located in Village Oshiwara and that there is no real controversy with regard to the land located in Village Ambivali. In this context, the learned senior counsel for the claimant referred to the map of Village Oshiwara on record and the document in that regard issued by the Sub-Registrar. It was contended that since CTS No.737 was mentioned in two zones of Village Oshiwara i.e. Zone 50/240 and Zone 50/240A and there was an overlap between the zones, it was necessary to reconcile the two zones.

27. According to the claimant, the portion of CTS No.737, which is to the West of Veera Desai Road falls in Zone 50/240 and portion of CTS No.737, which is to the East of Veera Desai Road falls in Zone 50/240A. It was asserted that the land of the claimant in Village Oshiwara is towards the East of Veera Desai Road and hence, it falls in Zone 50/240A. On this basis, it was further asserted that since the Ready Reckoner specifies the rate of ₹ 90,670/- per square meter for land of Village Oshiwara falling in Zone 50/240A, it is the said rate that must be applied to the land of the claimant. In this context, it was further submitted that a sketch map on record contains obvious errors as Zone 50/240A is marked in the area falling in Zone 50/240, the southern boundary of Zone 50/240 is shown in the sketch map as Zone 50/240A, while the southern boundary is actually the village boundary and the marking of Zone 50/240A should have been on the area to the East of Veera Desai Road and not to the West of the same.

28. It was further submitted that even if it was assumed for the sake of arguments that the boundaries of Zone 50/239 would include

the land of the claimant in Village Oshiwara, it would still be incorrect because CTS No.737 does not find mention in Zone 50/239 and it is specifically mentioned in Zone 50/240A. The description of Zone 50/240A is more specific than Zone 50/239, the boundaries of Zone 50/239 have been loosely described, even including Zone 50/238, which is actually a separate and independent zone. On this basis, it was submitted that if the contentions raised on behalf of MCGM in the context of the sketch map and the Ready Reckoner are accepted, it will lead to an anomalous situation. In that light, it was asserted that the correct rate of Ready Reckoner applicable to the land of the claimant located in Village Oshiwara in CTS No.737 is ₹ 90,600/- per square meter.

29. Thereupon, the learned senior counsel appearing for the claimant submitted that the land of the claimant fell within two villages i.e. Ambivali (47,002 sq.mtrs.) and Oshiwara (1895.60 sq.mtrs.) and it was divided in several CTS numbers. If the said land was to be sold as one piece, it would be anomalous to determine its rate by emphasizing upon the rates in different villages covered under different Zones and therefore, the basis for determining the rate ought to be weighted average. The learned counsel then referred to the arithmetical formula for determining weighted average. On this basis, calculations were placed on record for consideration of this Court. It was further submitted that MCGM cannot be permitted to mix up the two methods of determination of market value under clauses (a) and (b) of Section 26(1) of the Act of 2013. It was submitted that if the market value was being determined on the basis of the Ready Reckoner Method, sale instances cannot be permitted to be relied upon to claim that the rate arrived at on the basis of the Ready Reckoner Method should be reduced in the light of the rate indicated in sale instances.

30. It was submitted that the two methods being mutually exclusive, any attempt on the part of MCGM to reduce the quantum of compensation on the basis of the aforesaid contention, ought not to be accepted. It was further submitted that MCGM cannot contend that since the agreement between the claimant and the Government in the context of the subject land consisted of number of conditions, that would substantially reduce the value of the plot under acquisition. In this regard, reliance was placed on order dated 27.05.2005 passed by the Collector, Mumbai Suburban District, whereby the restrictions ceased to be applicable.

31. As regards the question of Transferable Development Rights (TDR) potential, reliance was placed on the evidence of the witnesses of the claimant on record, to contend that the market value deserved to be increased by 40%. It was also submitted that Fungible FSI was available for the land under acquisition. Reliance was placed on Circular dated 12.01.2012, to contend that the cost of Fungible FSI for residential development was 60% of the Ready Reckoner value. It was submitted that the net gain would be 40% and not 35% as claimed by MCGM. It was submitted that therefore, the claimant was applying its interpretation as regards TDR and Fungible FSI in its calculations placed for consideration before this Court.

32. Thereupon, the learned senior counsel for the claimant emphasized upon the special features concerning the subject land while applying the Ready Reckoner. Submissions were also made in the context of the large plot area of the land, the development potential thereof and the fact that prospective buyers for the land in question would be developers having deep pockets, thereby indicating higher market value of the land in question. It was emphasized that the subject land had frontage on two roads, thereby

further indicating its higher market value. The learned senior counsel for the claimant then referred to the oral and documentary evidence on record, to contend that on the relevant date, the land was levelled and boundary wall was constructed. The claimant was certainly entitled to the actual cost incurred for, both, levelling of the land and for construction of the compound wall.

33. Apart from this, it was submitted that the classic test formulated in the judgement of the Supreme Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*, **(1988) 3 SCC 751** would apply to the present case. The said judgement gave certain illustrative factors, but also emphasized that common sense was the best and most reliable guide in such cases. Thereupon, the learned senior counsel for the claimant submitted charts and calculations based on various formulae as alternatives to assist this Court in reaching a conclusion as to whether the LARR Authority, in the impugned judgement and order, was justified in determining the extent of enhancement of compensation and as to whether the contentions of the claimant could be accepted.

34. On the basis of the aforesaid submissions, it was submitted that the appeal filed by MCGM deserved to be dismissed and the appeal filed by the claimant deserved to be allowed to that extent.

35. Mr. DeVitre, the learned senior counsel appearing for the claimant submitted that he would place before this Court the interpretation of Section 26 of the Act of 2013, particularly in the backdrop of the method applied by the LARR Authority while determining the market value payable towards compensation in respect of the subject land. The method is called residual land value technique. He submitted that a perusal of the impugned award passed by the LARR Authority would show that the aforesaid

technique was employed while determining the compensation and the evidence of the witnesses of the claimant was taken into consideration, while giving such findings.

36. It was submitted that properties like the subject land are ultimately to be purchased and utilized by developers having deep pockets and when the market value of the land is to be estimated from the point of view of the developer, the rates of flats, to be ultimately constructed, becomes the starting point for ascertaining the market value of the land. In this context, the learned senior counsel for the claimant referred to Section 26(1)(b) of the Act of 2013 read with the explanation appended thereto, in order to explain the manner in which the residual land value technique could be applied for reaching findings with regard to the market value of the land in question. In this context, the learned senior counsel for the claimant referred to the evidence of the two witnesses of the claimant i.e. Mr. Parekh and Mr. Pendse. It was submitted that even under the strain of cross-examination at the behest of MCGM, the witnesses held their own and placed sufficient material on record to indicate as to what the market value of the land could be by applying the aforesaid residential land value technique.

37. It was submitted that even in the impugned award of the LARR authority, transactions pertaining to flats were taken note of and thereupon, the market value was estimated. In this regard, the learned senior counsel for the claimant referred to the written note and particularly emphasized upon certain responses given by the witnesses of the claimant with regard to the complexes of apartments in the vicinity, in order to give a fair assumption of the market value of the land in question. It was further submitted that the evidence of the witnesses clearly demonstrated that efforts were made to find out

the market value of plots in the vicinity. Since, a plot of comparable size was not available in the immediate vicinity, the sale transactions pertaining to flats were taken into account and after applying the well-known residual land value technique, the estimated market value of the subject land in question was stated.

38. It was further submitted that the aforesaid residual land value technique was accepted as a recognized technique for determination market value of land concerning plots that ultimately are to be developed as huge apartment complexes with latest facilities. In this regard, the learned senior counsel for the claimant referred to judgement of learned Single Judge of this Court in the case of *Special Land Acquisition Officer (3) vs. Godrej & Boyce Manufacturing Co. Ltd.*, **2017 SCC OnLine Bom 10088**. It was emphasized that in the said case also the Court noted that, not a single vacant land was available for determining market value of the acquired land. The Court then took note of the fact that the subject land was situated in a fully developed area. Thereupon, reference was made to rate per square meter at which flats were being sold and upon observing that some guesswork is always available for fixing market value of property in such cases, the learned Single Judge of this Court determined the market value of the subject land. It was emphasized that the aforesaid residual land value technique was effectively accepted and applied in the said case, thereby demonstrating that the said technique could certainly be employed for reaching a reasonable conclusion with regard to the determination of compensation in the acquired land.

39. Thereupon, the learned senior counsel for the claimant referred to and relied upon judgement of the Supreme Court in the case of *Madhya Pradesh Road Development Corporation vs. Vincent*

Daniel and others, **(2025) 7 SCC 798**. It was submitted that in the said judgment, the Supreme Court took into account the manner in which Section 26 of the Act of 2013 operates while determining market value of acquired land, with specific reference to theory of deduction for reaching reasonable findings in respect of undeveloped lands, which has tremendous potential of development. The learned senior counsel relied upon the portions of the judgements that took into consideration the explanation appended to Section 26(1) of the Act of 2013. After referring to the said portions of the said judgement, it was submitted that calculation of accurate market value can never be an exact science and some amount of guesswork is always involved in such an exercise.

40. The learned senior counsel appearing for the claimant submitted that one of the tests that can be applied for determining market value of the subject land is as to whether the land is capable of absorbing TDR. It was submitted that the contentions already raised on behalf of the claimant with regard to the manner in which TDR potential is to be assessed and applied for adding to the market value of the subject land, ought to be favourably considered to reach any conclusion, as regards the just, fair and reasonable compensation payable to the claimant. It was submitted that a proper appreciation of oral and documentary evidence placed on record would show that further enhancement of compensation is warranted. A chart was submitted giving details of calculations for such enhancement.

41. On the other hand, Mr. Godbole, learned senior counsel appearing for MCGM submitted that LARR Authority, by the impugned award, has granted enhancement of compensation, which is not justified at all by the evidence and material on record. It was submitted that the astronomical enhancement is based on a complete

misunderstanding of various aspects of assessment of market value of the subject land under the provisions of the Act of 2013. But, before addressing this Court on the merits of the matter, the learned senior counsel appearing for MCGM seriously contended that the impugned award rendered by the LARR Authority was completely without jurisdiction and that therefore, it can be said to be a nullity. It was emphasized that the LARR Authority was first required to consider as to whether the reference proceedings were maintainable under Section 64 of the Act of 2013, as a proper reading of the relevant judgments and the position of law would show that reference proceedings only under Section 18 of the LA Act could be maintained before the Court.

42. In support of the said submission, the learned senior counsel appearing for MCGM heavily relied upon judgment of the Constitution Bench of the Supreme Court in the case of *Girnar Traders (3) Vs. State of Maharashtra and others*, **(2011) 3 SCC 1**. It was submitted that in the said judgement, the Supreme Court categorically laid down that the provisions of the LA Act were incorporated in the MRTP Act and that the same being a case of 'legislation by incorporation' as opposed to 'legislation by reference', the remedy of reference in the facts of the present case, could only be under Section 18 of the LA Act. It was submitted that the most crucial aspect of the matter, in the present case, is that the acquisition commenced under Section 126(4) of the MRTP Act as opposed to acquisitions initiated by issuance of notification under Section 4 of the LA Act. This distinction goes to the very root of the matter and as per the law laid down by the Supreme Court in the aforementioned judgement in the case of **Girnar Traders (3) Vs. State of Maharashtra and others** *(supra)*, only the determination of quantum of compensation could be under the relevant provisions of

the Act of 2013 as per Section 24(1)(a) thereof and all other remedies were necessarily available only under the LA Act. It was submitted that the point in time when the acquisition stood initiated, in this case by notification dated 19.06.2012 under Section 126(4) of the MRTP Act read with Section 6 of the LA Act, it was as if the provisions of the LA Act incorporated in the MRTP Act at that point in time stood frozen. On this basis, it was submitted that the remedy of reference could only be under Section 18 of the LA Act and recourse to Section 64 of the Act of 2013 was clearly not available.

43. In this connection, it was submitted that merely because subsequently, the reference to LA Act in Sections 125 to 129 of the MRTP Act stood replaced by the Act of 2013 (w.e.f. 29.08.2015), and the Rules of 2014, with specific reference to Rule 19(3) thereof, came into force from 27.08.2014, it cannot be said that in the facts and circumstances of the present case, the remedy of reference under Section 64 of the Act of 2013 became available. The learned senior counsel for MCGM submitted that reliance placed on behalf of the appellants on judgement of the Full Bench of this Court in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)* is wholly misplaced, for the reason that the questions for consideration before the Full Bench arose out of acquisition under the LA Act and not under the MRTP Act. In paragraphs 110 and 111, the Full Bench consciously refrained from considering the questions framed by it in the context of acquisitions under the MRTP Act. It was submitted that even if the judgement of the Division Bench of this Court in the cases of *Jairam Gangaram Burke and others Vs. State of Maharashtra*, **2017 SCC OnLine Bom 1835** was approved by the Full Bench, the judgement in the case of *Ashok Narayan Lande Vs. State of Maharashtra*, **2018 SCC OnLine Bom.1763** was not disapproved. On this basis, it was submitted that the impugned

award was rendered without jurisdiction.

44. It was further submitted that as per judgement of this Court in the case of **Sahebrao Bhausaheb Kalate Vs. State of Maharashtra and others** *(supra)*, the MRTP Act is a self-contained Code for acquisition proceedings in respect of reserved sites and the Full Bench of this Court in its judgement in the case of *Mehtab Laiq Ahmed Shaikh And Anr vs State Of Maharashtra*, **2017 (6) Mh.L.J. 408**, held that in such cases where the acquisition is initiated under the MRTP Act prior to the Act of 2013 coming into force, the provision pertaining to lapsing i.e. Section 24(2) thereof, will not apply to such acquisitions. Much emphasis was also placed on judgement of the Supreme Court in the case of *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, **AIR 1957 SC 540**, to contend that despite repeal of LA Act, all remedial pursuits, including reference, would necessarily have to be undertaken as per Section 18 of the LA Act before the Court and not before the LARR Authority under Section 64 of the Act of 2013.

45. On this basis, it was submitted that nothing further was required to be enquired into as the impugned award, in the light of the contention recorded hereinabove, was rendered a nullity and on this basis itself, the appeal filed by MCGM deserves to be allowed so that the original award passed by the Collector is restored and the appeal filed by the claimant deserves to be dismissed.

46. On the merits of the matter, the learned senior counsel appearing for MCGM submitted that Section 26 of the Act of 2013 has to be interpreted in a proper manner to apply the same to the facts of the present case. It was emphasized that the criterion for assessing and determining market value under Section 26(1)(a) of the Act of 2013 (Ready Reckoner Method) is distinct from the criterion under Section 26(1)(b) thereof, which pertains to the

comparable Sale Instances Method. It was submitted that the Sale Instances Method under Section 26(1)(b) of the Act of 2013 necessarily has to be read with the four explanations appended thereto. It was submitted that when the Sale Instances Method is applied, the sale deeds pertaining to similar type of land situated in the nearest vicinity are required to be taken into consideration. It was submitted that when such sale instances are available, recourse to the residual land value technique cannot be permitted.

47. It was submitted that sale instances, in the present case, were available, particularly the conveyance deed dated 28.12.2007, registered on 22.04.2008, concerning a piece of land forming part of the subject land of acquisition itself. It was submitted that the aforesaid and other sale instances could have been taken into consideration to assess the market value. But the Ready Reckoner Method was followed in the present case. It was submitted that the evidence and material on record, when appreciated in the correct perspective, would show that recourse to residual land value technique by taking into account sale instances of flats in a scheme located in a nearby land, was not justified and in any case, the witnesses for the claimant ought to have placed before the authorities below, sale instances from more schemes in the vicinity existing on comparable lands, in order to apply explanations appended to Section 26(1)(b) of the Act of 2013 for a proper assessment of the market value. Reliance only on sale instances pertaining to one scheme was wholly unworkable in the light of the method specified in the aforesaid explanations appended to Section 26(1)(b) of the Act of 2013. In this context, it was submitted that the judgement of the Supreme Court in the case of **Madhya Pradesh Road Development Corporation vs. Vincent Daniel and others** *(supra)*, ought to be read against the claimant and in favour of

MCGM. The contentions raised on behalf of the claimant by relying on sale instances of the flats indicating further astronomical enhancement in the quantum of compensation ought to be rejected outright.

48. On the application of the Ready Reckoner Method, the learned senior counsel appearing for MCGM submitted that the map along with the location of the relevant CTS number of Village Oshiwara, on being read in the correct perspective, would show that the rate for Village Oshiwara concerning CTS No.737 ought to be held as ₹33,800/- per square meter. Since there is no dispute about the rate pertaining to the part of subject land falling in Village Ambivali, even if weighted average was to be applied, the market value for the entire land would be substantially less than the enhanced value granted by the LARR Authority in the impugned award. It was submitted that the LARR Authority committed a grave error in taking a uniform rate of ₹ 90,600/- per square meter for the entire land covering both the villages, resulting in such a high level of enhancement in the quantum of compensation. It was submitted that the claimant was deliberately misreading the map and the Ready Reckoner on record as the description of the land in Village Oshiwara clearly shows that it can never be held to be part of Zone 50/240A for which only the rate of ₹ 90,600/- per square meter can be said to be applicable. On this basis, it was asserted that the basic market value of the subject land was far less than the one granted by the LARR Authority in the impugned award.

49. The learned senior counsel appearing for MCGM submitted that in the facts and circumstances of the present case, the further enhancements for TDR and Fungible FSI were clearly not applicable. It was submitted that the land was under reservation, and therefore,

the question of TDR and Fungible FSI would not be available. It was further submitted without prejudice that even if the aforesaid two factors were to be applied, Fungible FSI granted by the LARR Authority was erroneous and not sustainable. It was also submitted that even the deductions were not properly assessed by the LARR Authority and the contentions raised by the claimant in that regard are also unsustainable; it was asserted that 15% deduction as per Regulation 35 and 15% deduction as per valuation guideline 17 are both justifiably being pressed by MCGM in the facts and circumstances of the present case. It was further submitted that 10% was required to be deducted towards the nature of the land, which was uneven and had a hillock. It was emphasized that levelling of the land undertaken by the claimant after the notification was issued under Section 126(4) of the MRTP Act cannot inure to its benefit and there was no question of granting the actual amount spent by the claimant for constructing the boundary wall on the subject land.

50. The learned senior counsel for MCGM asserted that further enhancement towards TDR and Fungible FSI was inadmissible and yet, on a 'without prejudice' basis, he tendered a calculation sheet, in order to meet the contentions raised on behalf of the claimant. It was submitted that in any case, there was no question of sustaining the impugned award passed by the LARR Authority and that, a proper appreciation of the evidence on record, particularly the admissions given in the cross-examination by the witnesses of the claimant would show that the impugned award is rendered unsustainable.

51. On this basis, it was submitted that the appeal of MCGM may be allowed and that of the claimant may be dismissed.

52. In the light of the evidence and material on record and considering the rival submissions, the following points arise for

determination:-

POINTS FOR DETERMINATION

I. Whether the impugned award passed by the LARR Authority is without jurisdiction and hence a nullity?

II. Whether reference under Section 64 of the Act of 2013 was maintainable or it could have been pursued only under Section 18 of the LA Act, considering that the acquisition, in the present case, was initiated under the provisions of the MRTP Act read with LA Act?

III. In the facts and circumstances of the present case, whether market value of the subject land has to be assessed under Section 26(1)(a) of the Act of 2013 (Ready Reckoner Method) or under Section 26(1)(b) thereof (Sale Instances Method)?

IV. Whether the residual land value technique could be applied in the facts and circumstances of the present case to assess the market value of the subject land under Section 26 of the Act of 2013?

V. Whether the LARR Authority was justified in enhancing the quantum of compensation?

VI. Whether the impugned award passed by the LARR Authority deserves interference?

VII. What is the quantum of compensation payable to the claimant as per law in the facts and circumstances of the present case?

53. **As to point Nos.I and II**: These two points can be taken up for consideration together as they pertain to the jurisdiction of the LARR

Authority, in the backdrop of a serious dispute raised by MCGM on the ground that reference proceeding could not have been entertained under Section 64 of the Act of 2013.

54. In order to counter the stand taken on behalf of MCGM, the claimant has heavily relied upon Full Bench judgment of this Court in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)*. In the said judgement, the Full Bench of this Court took into consideration the conflict in the views of two Division Benches of this Court in the cases of **Jairam Gangaram Burke and others Vs. State of Maharashtra** *(supra)* and **Ashok Narayan Lande Vs. State of Maharashtra** *(supra)*. The two questions for consideration before the Full Bench of this Court in the aforesaid judgement were as follows:-

> "(I) In any case of land acquisition initiated under the Old Act, whether reference in respect of an award, passed after the commencement of the Act, shall be made to the Court under section 18 of the Old Act or the Authority under section 64 of the Act, 2013?
>
> (II) Whether, in any case of land acquisition proceedings initiated under the Old Act, award has to be made under section 11 of the Old Act or under the provisions of the Act, 2013?"

55. After detailed discussion on the provisions of the Act of 2013, including Sections 24 and 114 thereof with reference to Section 6 of the General Clauses Act, 1897, the Full Bench of this Court answered the question by holding that when acquisition was initiated under the LA Act and during pendency of the proceedings, the Act of 2013 came into force, upon an award rendered by the Collector, the reference proceedings would lie before the LARR Authority under Section 64 of the Act of 2013. It was also held that in such a scenario, the award would have to be passed and compensation was to be determined as per the provisions of the Act of 2013.

56. While rendering the aforesaid conclusions, the Full Bench of this Court categorically held that the right to a remedy like a reference in such cases, was the vested right, but the party seeking such a remedy did not have a vested right of choice of forum. In this context, the Full Bench judgement specifically referred to Sections 51 to 69 of the Act of 2013 to elaborately discuss the nature of jurisdiction exercised by the LARR Authority. It was held that the LARR Authority conducted judicial proceedings and merely because the reference was now to be made before such an authority under Section 64 of the Act of 2013, it would not result in any prejudice to the party seeking such a remedy. In this context, the Full Bench of this Court referred to judgements of the Supreme Court in the case of **Maria Cristina De Souza Sodder and others Vs. Amria Zurana Pereira Pinto and others** *(supra)* and **Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor** *(supra)*, as also judgment of Division Bench of this Court in the case of **SEBI Vs. Sterlite Industries (India) Limited** *(supra)*.

57. In the said judgements also, it was laid down that when the original enactment was repealed and a new enactment came into force, so long as the substantive right of appeal and other remedies was protected, mere change of forum of such a remedy would not cause any prejudice to the party seeking to avail such a remedy. It was held that the forum of remedy was in the procedural realm and so long as the vested right in the remedy was protected in the new legislation, the party seeking a remedy could not insist upon the remedy under the repealed Act. We are of the opinion that the said position of law clearly inures in favour of the stand taken by the claimant and it sufficiently answers the serious attack made by MCGM on the very jurisdiction of the LARR Authority in entertaining the reference proceedings.

58. Much was said on behalf of the appellant MCGM on the observations made in paragraphs 110 and 111 of the aforesaid Full Bench judgement of this Court in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)*, to contend that acquisitions initiated under the provisions of the MRTP Act read with the provisions of the LA Act were not subject matter of consideration before the Full Bench; that the questions framed in the said judgement, did not deal with such acquisitions and that, only acquisitions purely initiated under the LA Act were the subject matter of discussion. In this context, much emphasis was also placed on judgement of the Constitution Bench of the Supreme Court in the case of **Girnar Traders (3) Vs. State of Maharashtra and others** *(supra)*. The said judgement was rendered before the Act of 2013 came into force. At that time, the general law pertaining to land acquisition was the LA Act. The provisions of the MRTP Act, including Sections 125 to 129, specifically mentioned the LA Act and acquisitions were undertaken as per MRTP Act read with the provisions of the LA Act. One of the questions that arose for consideration was, as to whether acquisition could lapse under Section 11A of the LA Act when acquisitions were initiated by issuance of notifications under Section 126 of the MRTP Act.

59. It is to be noted that when a notification under Section 126 of the MRTP Act is issued, it is equivalent to notification under Section 6 of the LA Act. There is no notification under Section 4 of the LA Act in such circumstances because issuance of the draft development plan itself is declaration of intention of utilization of the subject land for public purpose. In such a scenario, the Constitution Bench of the Supreme Court in the case of **Girnar Traders (3) Vs. State of Maharashtra and others** *(supra)* considered the question as to whether the LA Act when read with the MRTP Act was a case of

'legislation by incorporation' or 'legislation by reference'. After detailed discussion, the Constitution Bench of the Supreme Court concluded that it was a case of legislation by incorporation. On this basis, it was vehemently submitted on behalf of MCGM that the provisions of the LA Act stood incorporated and 'frozen' in the MRTP Act and since that was the status of the Legislation when notification, in the present case dated 19.06.2012 was issued under Section 126(4) of the MRTP Act, the available remedy of reference could only be before the Court under Section 18 of the LA Act. It is the case of MCGM that even Section 24(1)(a) of the Act of 2013 inures to its benefit, for the reason that it specifically provides that in cases where land acquisition proceedings are initiated under the LA Act and no award has been rendered when the Act of 2013 came into force, only the provisions relating to determination of compensation under the Act of 2013 would apply.

60. In other words, MCGM asserts that even if the determination of compensation is to be as per the provisions of the Act of 2013, all other aspects, including remedy for enhancement of compensation, is available only under the LA Act and not under the Act of 2013. MCGM makes a distinction between acquisitions purely under the LA Act by issuance of notifications under Section 4 thereof, as opposed to initiation of acquisition under the MRTP Act with no award being rendered by the time the Act of 2013 came into force on 01.01.2014.

61. As noted hereinabove, it is in this context that MCGM heavily relies on paragraphs 110 and 111 of the Full Bench judgement in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)*. We have given our thoughtful consideration to the said aspect of the matter. It is to be noted that upon the Act of 2013 coming into force on 01.01.2014, on 27.08.2014, the

aforementioned Rules of 2014 were framed and came into force. Rule 19(3) thereof is relevant and it reads as follows:-

> "19. Land Acquisition Proceedings Initiated Under Land Acquisition Act, 1894.
>
> (1) ***
>
> (2) ***
>
> (3) Where the land is reserved for public purposes according to the Maharashtra Regional Town Planning Act, 1966 (Mah. XXXVII of 1966), and a declaration under sub-section (1) of section 6 of the Land Acquisition Act, 1894 (I of 1894) has been made before the 31st December 2013 and an award under section 11 of the Land Acquisition Act, 1894 (I of 1894) has not been declared before the 31st December 2013, then the proceeding shall be continued as per the formula provided in sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013). "

62. It is also relevant to note that with effect from 29.08.2015, the MRTP Act itself stood amended and the reference to the LA Act in the provisions of the MRTP Act, particularly in Sections 125 to 129 stood replaced by the Act of 2013. As a result, on and from 29.08.2015, reference to the LA Act in the MRTP Act stood obliterated and only the Act of 2013 finds mention therein. In this context, the chronology of events pertaining to the present case assumes significance. The acquisition stood initiated by the aforesaid notification dated 19.06.2012 issued under Section 126(4) of the MRTP Act read with Section 6 of the LA Act. On 01.01.2014, during the pendency of the acquisition proceedings, the provisions of the Act of 2013 came into force. On 27.08.2014, Rule 19(3) of the Rules of 2014 framed under the Act of 2013 came into force, specifying that the proceedings of acquisition would continue as per the formula provided in Sections 26 to 30 of the Act of 2013. On 29.08.2015, the MRTP Act itself stood amended with all references to LA Act being removed and substituted by the Act of 2013. The original award by the Collector,

in the present case, was passed on 03.05.2017. At this point in time, even in the MRTP Act, only the Act of 2013 found mention and there was no reference to the LA Act at all. We are unable to agree with the learned senior counsel appearing for MCGM that applying the Constitution Bench judgement of the Supreme Court in the case of **Girnar Traders (3) Vs. State of Maharashtra and others** *(supra)*, the LA Act stood incorporated and 'frozen' in the MRTP Act for acquisitions initiated prior to the Act of 2013 coming into force and the eventual award being rendered after coming into force of the Act of 2013.

63. Certain observations of the Full Bench judgement in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)* are significant in this context. In paragraph 73 of the said judgement, it was observed as follows:-

> "73. The aforesaid pronouncement of the Supreme Court underscores the indivisibility of the right to receive compensation. It is laid down in clear and explicit terms that there are no two separate rights. The right to make a reference from this stand point is implicit in the right to receive compensation, if the land owner does not accept the offer made by the Collector in the form of award under section 11. We are, therefore, of the view that the right to make a reference survives the award and draws sustenance from the right to receive compensation for the acquisition of the land. The passing of the award by the Collector merely provides the cause for making the reference, as the offer is crystalized. However, the source of the right to make a reference is very right to receive compensation for the compulsory acquisition."

64. Thus, it was held that the source of the right to make the reference is the very right to receive compensation for compulsory acquisition. Therefore, the remedy of reference is inextricably linked with the determination of the quantum of compensation and the market value of the subject land. It is undisputed, even by MCGM that in the facts and circumstances of the present case, applying

Section 24(1)(a) to the Act of 2013, the determination of the quantum of compensation has to be under the provisions of the Act of 2013, particularly Sections 26 to 30 thereof. Hence, a reference arising out of determination of compensation under the Act of 2013 will have to be decided on the touchstone of the question as to whether the Collector did properly apply the parameters envisaged under Sections 26 to 30 of the Act of 2013. This assumes particular significance in the facts and circumstances of the present case. In this context, the following observations of this Court in the Full Bench judgement in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)* are extremely relevant and they read as follows:-

> "**66.** If we compare the provisions of sub-section (1) of section 23 of the Old Act with the parameters prescribed in section 28 of the Act, 2013, it becomes crystal clear that the Act, 2013 enjoins the Collector to take into account the very same parameters which the Reference Court was bound to consider under section 23 of the Old Act. The provisions of section 30(3) of the Act, 2013 correspond with the provisions of section 23(1-A) of the Old Act which provided for the award of interest @ 12% per annum on the market value of the land from the date of the notification under section 4 to the date of taking possession or till the date of the award, whichever is earlier. The provisions contained in section 30(1) of the Act correspond with the provisions contained in section 23(2) of the Old Act in the matter of award of solatium with the change that under the Act, 2013, the solatium equivalent to one hundred percent of the compensation has to be awarded instead of 30% on the market value of the land, under the Old Act.
>
> **67.** In view of the clear and explicit mandate of clause (a) of sub-section (1) of section 24 of the Act, 2013, concededly, the compensation is to be determined by the Collector in adherence to the provisions of this Act including sections 26 to 30 of the Act, 2013. The prescription of these parameters, which the Reference Court was enjoined to consider under section 23 of the Old Act, thus constitutes a significant departure from the provisions of the Old Act. The parameters which the Reference Court was expected to consider under the Old Act shall now be adhered to by the Collector in the matter of determination of the compensation. It could be urged that under the Old Act also, while passing the award, the Collector was required to

> consider the very same parameters which the Court was enjoined under sections 23 and 24 thereof. But the matter does not rest here.
>
> **68.** If we consider the provisions of section 69 of the Act, 2013, extracted above, the departure from the scheme of the Old Act becomes vivid. Section 69(1) of the Act, 2013 enjoins the Authority to take into consideration whether the Collector has followed, *inter alia*, the parameters set out under sections 26 to 30 in the matter of determination of compensation. In contrast to the provisions of section 18 of the Old Act, where the Reference Court was not supposed to sit in appeal over the award, in respect of which the reference is made, the Act, 2013 envisages an enquiry into the question as to whether the Collector has followed the parameters set out under sections 26 to 30 of the Act, 2013. The consideration of this aspect would involve an element of appraisal of the correctness or otherwise of the disposition made by the Collector, on the parameters set out under sections 26 to 30."

65. We find that it would render a reference proceeding under Section 18 of the Repealed LA Act, as insisted by MCGM, to test the determination of compensation by the Collector under the provisions of the Act of 2013, as an unworkable exercise, particularly in the light of the above-quoted observations in paragraphs 66 to 68 and 73 of the Full Bench judgement in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)*. The Court considering a reference under Section 18 of the LA Act, unlike the LARR Authority, would not have the jurisdiction to examine whether the Collector followed the parameters set out in Sections 26 to 30 of the Act of 2013.

66. We are of the opinion that MCGM cannot seek to take advantage of the observations made in paragraphs 110 and 111 of the Full Bench judgement in the case of **Pune Municipal Corporation vs. Rajeev L. Sangtani and others** *(supra)*, to claim that the law laid down therein will not apply to the facts of the present case, simply for the reason that after framing of Rules of 2014 under the Act of

2013, particularly Rule 19(3) thereof and amendment of the MRTP Act itself, with effect from 29.08.2015, removing all references to the LA Act and substituting them with the Act of 2013 in the MRTP Act, the forum for maintaining reference can only be the LARR Authority under Section 64 of the Act of 2013. The substantive right of remedy of reference is indeed retained in the Act of 2013 and only the forum changes to the LARR Authority. When the determination of compensation in the facts and circumstances of the present case, as per the statutory mandate under Section 26(1) of the Act of 2013 can only be under the provisions of the said Act of 2013, the exercise of examination of the correctness or otherwise thereof in a reference proceeding can only be under Section 64 of the Act of 2013. This is because Section 69 of the Act of 2013 specifically provides as follows:-

> "**69. Determination of award by Authority.-**
>
> (1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.
>
> (2) In addition to the market value of the land, as above provided, the Authority 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 preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
>
> *Explanation*. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.
>
> (3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount."

67. It is also relevant to note that under the provisions of the Act of 2013, particularly Sections 26 to 30 thereof, even the Collector is enjoined to determine the market value and hence the compensation is payable to the claimant upon applying the parameters in Sections 26 and 28 of the Act of 2013, apart from the other relevant provisions.

68. This is in contradistinction to the provisions of the LA Act, whereby only the reference court under Section 18 read with Section 23 thereof is required to determine the amount of compensation by considering the parameters in Sections 23 and 24 of the LA Act. As noted hereinabove, since the source of the right to make a reference is the very right to receive compensation and the exercise of determination of quantum of compensation, in the facts of the present case, has to be under the Act of 2013, the reference was maintainable only before the LARR Authority under Section 64 thereof and the MCGM is not justified in contending that the reference ought to have been made only before Court under Section 18 of the LA Act.

69. Even otherwise, it is surprising that MCGM, which is the beneficiary of acquisition, has raised this point of maintainability of the reference before the LARR Authority under Section 64 of the Act of 2013. Such a remedy of reference is available only to the claimant, for the reason that obviously, the quantum of compensation cannot be reduced below what has been offered in the original award by the Collector. The only aggrieved person in such a situation, is the claimant in reference proceedings in, both, the LA Act as well as the Act of 2013. The vested right of the remedy of reference is very much retained and it has been exercised as a matter of right, by the claimant, who has no grievance with the LARR Authority considering

such a reference. Yet, it is the beneficiary of the acquisition i.e. MCGM that has raised such an objection while it can never demonstrate any prejudice in such reference proceedings. This is another ground for holding against MCGM on this aspect of the matter.

70. Hence, it is held that the impugned award passed by the LARR Authority was clearly within its jurisdiction and that it cannot be said to be a nullity on the grounds raised on behalf of MCGM. The contentions raised on behalf of MCGM in that regard are rejected and accordingly, point Nos.I and II are answered in favour of the claimant.

71. **As to point Nos.III and IV**: These points and for that matter, remaining points for consideration in these appeals have to be determined in the backdrop of certain admitted position on facts. There is no dispute between the parties that the total land acquired in the present case located in the two villages of Ambivali and Oshiwara comprises total 48,897.60 square meters. It is also an admitted position that the dispute between the parties, in the context of the ready reckoner method of determining compensation, pertains to the rate concerning the portion of land from village Oshiwara and that there is no dispute with regard to the rate pertaining to the portion from village Ambivali. Although, the claimant indicated that it was pressing for assessment of the market value of the subject land as on 01.01.2014 i.e. the date on which the Act of 2013 came into force, but it was conceded that as per the law laid down by the Division Bench of this Court in the case of **Sahebrao Bhausaheb Kalate Vs. State of Maharashtra and others** (*supra*), in such cases of initiation of acquisition under the MRTP Act, prior to coming into force of the Act of 2013, the relevant date for determination of

market value even under the provisions of the Act of 2013, would be the date on which the notification under Section 126 of the MRTP Act was issued. The claimant contended that since a challenge to the said judgement of the Division Bench of this Court in the case of **Sahebrao Bhausaheb Kalate Vs. State of Maharashtra and others** (*supra*) is pending before the Supreme Court, the aforesaid issue was being raised. But, we are of the opinion that since the said judgement of the Division Bench of this Court is holding the field, the rival contentions on the question of determination of market value of the subject land have to be considered with the date 19.06.2012, i.e. the date on which the notification under Section 126 of the MRTP Act was issued, as the relevant date. In fact, during the course of submissions, the learned counsel for the rival parties submitted their calculation sheets with reference to the aforesaid date.

72. It was sought to be argued on behalf of the MCGM that since the subject land was under reservation, its effect on market value will have to be taken into consideration. This was opposed by the claimant, submitting that existence of reservation was wholly irrelevant and that this aspect was covered by the judgement of Division Bench of this Court in the case of *Special Land Acquisition Officer vs. M/s. Govindram Brothers Pvt. Ltd.* (order dated 16.10.2002 in **LAR No. 21 of 1983**). It was submitted that Special Leave Petition (Civil) No. 3008 of 2003 filed by the MCGM against the said judgement and order of the Division Bench of this Court was dismissed, thereby confirming the said view.

73. We find substance in the contention raised on behalf of the claimant in this regard. We find that the said aspect came up for consideration even in a comparatively recent order dated 28.03.2023 passed by the Supreme Court in **Civil Appeal No. 2336 of 2021**

(*Municipal Corporation of Greater Mumbai vs. M/s. B. J. Development Corporation Pvt. Ltd. & Ors.*). Although, by the said order, the matter was remanded back to this Court, the remand was restricted to two specific aspects, while in the said order, the Supreme Court considered the effect of reservation on land which is subject matter of acquisition and its effect upon the question concerning determination of market value. In that context, in the aforementioned order, the Supreme Court observed as follows :

> "19) The mere fact that the land is reserved under the provisions of the Act is subject to the condition that it can either be acquired by an agreement with the owner or if such an agreement is not forthcoming, resorting to the provisions of the 1894 Act, would not mean that he would not be given the benefit of the market value in accordance with the Land Acquisition Act in force. It is to be understood that it is not a case where without acquiring the land as such, the land is required to be maintained as an open space area, as a condition for approving the layout. This is a case of land which is shown as reserved in a development plan. It is reserved in the plan which is meant to be acquired. As to what would happen if the land is not acquired within certain time limits and the rights of the owner are all matters which are specifically dealt with in the Act. If the land is, however, acquired by utilising the law relating to acquisition of land then it cannot be heard from the mouth of the acquiring body that since the land has come under the shadow of reservation under the developmental plan. When it comes to determining the market value, the fact that it is under such a handicap, if we may use the expression, cannot detract from the State and the requisition body has to pay the compensation as determined under the 1894 Act or the 2013 Act, as the case may."

74. Thus, the contention raised on behalf of the MCGM that existence of reservation on the subject land ought to adversely affect the market value of the same, is rejected and the correctness or otherwise of the impugned award passed by the LARR Authority is being tested on the touch stone of the provisions of the Act of 2013, including Sections 26 to 30 thereof.

75. Section 26 of the Act of 2013 reads as follows :

"**26. Determination of market value of land by Collector.**– (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1. – The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2. – For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3. – While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4. – While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that–

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

76. In the facts and circumstances of the present case, the question is as to whether clause (a) or clause (b) of sub-section (1) of Section 26 of the Act of 2013 would come into play. There is no question of clause (c) thereof being considered in the facts and circumstances of

the present case.

77. Section 26(1)(a) of the Act of 2013 provides that the Collector shall adopt the criterion of assessing and determining market value of the subject land, as may be specified in the Indian Stamp Act, 1899 or registration of the sale deeds or agreement to sale in the area where the land is situated. This has been referred to in the present judgement as the ready reckoner method. On the other hand, Section 26(1)(b) of the Act of 2013, pertains to determination of market value of the land on the basis of average sale price for similar type of land situated in the nearest village or nearest vicinity area. In this judgement, the said method has been referred to as the sale instances method. It is significant to note that as per Section 26(1) of the Act of 2013, upon applying the methods specified in clauses (a), (b) and (c) (not relevant for the present case), the market value which is higher has to be adopted.

78. In the present case, the explanations appended to sub-section (1) assume particular significance for clause (b) of sub-section (1) to Section 26 of the Act of 2013. In the case of **Madhya Pradesh Road Development Corporation vs. Vincent Daniel and others** *(supra)*, the Supreme Court had an occasion to consider the manner in which the explanations to Section 26(1)(b) of the Act of 2013 would operate for ascertaining the market value of the acquired land. The relevant portion of the said judgement reads as follows :

> "22. It is important to note that the values computed in terms of clauses (a), (b) and (c) of Section 26(1) of the Acquisition Act, 2013 are not to be averaged. The highest of the values as determined by clauses (a), (b) and (c), is to be treated as the market value under Section 26(1) of the Acquisition Act, 2013.
>
> 23. There are four Explanations to Section 26(1) of the Acquisition Act, 2013. Explanations can form part of the main provision and, when so, can be as central as the

provision itself. This Court in *Bengal Immunity Co. Ltd.* v. *State of Bihar* [*Bengal Immunity Co. Ltd.* v. *State of Bihar*, (1955) 1 SCC 763] stated that an Explanation appended to a section or clause gets incorporated into it, becomes an integral part of it, and has no independent existence apart from it. There is, in the eye of the law, only one enactment, of which both the section and the Explanation are two inseparable parts. They move in a body if they move at all.

24. Similarly, in *Coromandel Fertilizers Ltd.* v. *Union of India* [*Coromandel Fertilizers Ltd.* v. *Union of India*, 1984 Supp SCC 457] this Court, in the context of an Explanation attached to a notification, observed that the notification/provision has to be read as a whole and should not be construed in terms that are contrary to the main provision. Explanations to Section 26(1) are equally important as the main provision. Apart from clarifying the procedure under clauses (a), (b) and (c), the Explanations also confer and refer to the discretion which the Collector may exercise in determining the market value of the acquired land. Thus, while the statutory language makes the procedure under clauses (a), (b) and (c) mandatory, the value as computed according to the Explanations can be increased, decreased or even discarded.

25. Explanation 1 states that the determination of the average sale price under clause (b) must be based on sale deeds or agreements to sell registered for similar type of lands in the same vicinity, during the immediately preceding three years from the year in which acquisition was proposed. Thus, transactions older than three years would be excluded. Explanation 2 states that to determine the average sale price under Explanation 1, one-half of the total sale deeds or agreements to sell in which the highest sale price is mentioned, shall be taken into account. This also implies that there should be multiple deeds available for reference. Singular deals may not supply adequate and reliable data. Explanation 3 states that while determining the market value under Section 26 and the average sale price referred to in Explanation 1 or 2, the price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district, shall not be taken into consideration. Thus, referring to compensation paid for an earlier acquisition in the district concerned is expressly barred.

26. Explanation 4 requires specific attention, as it brings the element of discretion while computing the market value under Section 26(1) to the forefront. Explanation 4 is divided into two parts. The first part refers to sub-section (1)

to Section 26 — the higher value determined as per clauses (a), (b) and (c) of Section 26(1) of the Acquisition Act, 2013. The second part is specific to the average sale price referred to in clause (b) to Section 26(1) read with Explanations 1 and 2. In either case, where the Collector is of the opinion that the value/price computed by applying these provisions is not indicative of the actual prevailing market value, they may discount or enhance it to arrive at the accurate market value.

27. Explanation 4 uses the word "and" in conjoining the values referred to in the two parts of the Explanation. This is done to expand the scope of application of the Collector's discretion to the entire provision, as is also evident from the phrase "while determining the market value under this section". The discretion should not be interpreted as restricting the discretion to only the average sale price under Explanations 1 and 2. The two parts must be given a disjunctive reading, attracting the application of Explanation 4 when either of the values does not reflect the actual market value. Thus, though the word "and" is used to connect the two parts, it should be read as "or" to effectuate the legislative intent. [*Maharishi Mahesh Yogi Vedic Vishwavidyalaya* v. *State of M.P.*, (2013) 15 SCC 677: See also, G.P. Singh, J., *Principles of Statutory Interpretation*, 14th Edn., at pp. 530-534.]

28. This interpretation is also supported by the use of the same phrase in both Explanations 3 and 4. The first part of Explanation 3, which refers to determining the market value under this section, will apply with equal vigour to both clauses (b) and (c) of Section 26(1) of the Acquisition Act, 2013. The latter part of Explanation 3—as in the case of Explanation 4, which refers to Explanations 1 and 2—will specifically apply to clause (b).

29. Under Explanation 4, the formation of the Collector's opinion and any discounting or enhancing of the value must be supported by recorded reasons. At this stage, if the Collector chooses to make adjustments to the market value under Explanation 4, the theory of deduction, the principle of belting and other material factors will also be taken into account. The reason for this is twofold. First, because the calculation of accurate market value is not an exact science, and therefore the Collector must be mindful of the unique factors which affect the valuation of a piece of land. Secondly, apart from clause (b) to Section 26(1), the mandatory procedure of computation under the other two clauses (a) and (c), does not take into account these theories

> and factors, which may result in inaccuracy. Though not determinative in the facts of the present case, a contrary interpretation may cause injustice to the landowners in many situations."

79. In the present case, the LARR Authority proceeded to determine the market value of the subject land and hence, the compensation payable to the claimant on the basis of the ready reckoner method under Section 26(1)(a) of the Act of 2013. The rival parties have relied upon the evidence and material on record to claim that the sale instances method under Section 26(1)(b) of the Act of 2013 could be applied. While the MCGM claims that applying the sale instances method would show that the average sale price for similar types of lands was much lower, the claimant has contended that there was sufficient material on record to indicate that the application of the sale instances method would lead to much higher enhancement in compensation and therefore, the said method ought to have been preferred. In this context, the claimant specifically relies upon the residual land value technique. It was emphasized that in cities like Mumbai, it is not possible to find open lands in the vicinity, due to which sale instances would not be available, necessitating application of the residual land value technique, wherein the sale instances of flats or apartments in schemes on comparable plots in the vicinity are taken into consideration and by a method of deduction, the value of the land is assessed.

80. It was asserted on behalf of the claimant that the evidence and material on record placed by the witnesses of the claimant, sufficiently demonstrated a much higher enhancement of compensation warranted in the facts and circumstances of the present case, which the LARR authority ignored.

81. In this context, this Court has considered sale instances upon

which MCGM has placed reliance. Although the MCGM sought to rely upon sale instances that were permitted to be placed on record in the appeals, including certificate of sale dated 12.05.2017, deed of conveyance dated 27.11.2009, as also deed of conveyance dated 28.12.2007 registered on 22.04.2008, we find that such sale instances could not have been relied upon. We find that the Collector as well as the LARR Authority were justified in reaching the conclusion that there were no sale instances available to arrive at average sale price of similar type of land under Section 26(1)(b) read with Explanations (1) to (3) of the Act of 2013. Even if the said documents are to be taken, we find substance in the contentions of the claimant that the certificate of sale dated 12.05.2017 could not be said to be a sale between a willing seller and a willing buyer, as it was an auction sale of a property attached under the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act), the plot was encumbered and in addition to the price, the purchaser was to satisfy the entire liability of statutory dues on the property. In any case, the said transaction was of the year 2017 and clearly not within immediate preceding three years of the relevant date i.e. 19.06.2012. Similarly, the deed of conveyance dated 27.11.2009 was irrelevant, as the subject land was fully encumbered with tenants and occupants numbering as many as 227 and it was a sale on as is where is basis. As regards deed of conveyance dated 28.12.2007 registered on 22.04.2008, although much emphasis was placed by the MCGM on the fact that it pertained to a piece of land forming part of the larger plot, it is found that the sale pertained to the year 2006, that part payments of the consideration were made as far back as on 22.11.2006 and 22.04.2007. Hence, the said sales was correctly discarded by the Collector/Special Land Acquisition Officer and in

any case, we find that MCGM failed to prove the sale instances as the witness of the MCGM did not depose in respect of the sale instances and even the registered deed copy was not produced. Hence, we find that no sale instances were available of open land of similar type for Section 26(1)(b) read with Explanations (1) to (4) of the Act of 2013 to be made the basis of determining the market value of the subject land.

82. In this context, the claimant has heavily relied upon the residual land value technique to claim that the LARR authority erred in determining the market value of the subject land on the basis of the ready reckoner method under Section 26(1)(a) of the Act of 2013. Elaborate submissions were made with regard to the manner in which the residual land value technique was applied by the expert witness of the claimant, on the basis of the material pertaining to sale instances of flats in the nearby scheme called 'Oberoi Springs'. Detailed submissions were made on the manner in which the formula pertaining to residual land value technique was applied. It was also emphasized that in a city like Mumbai and particularly in the suburban area, where the subject land was located, the application of the said technique had to be viewed from the point of view of a builder intending to develop a modern wholesome scheme with all facilities in a plot of land like the subject land under acquisition.

83. We find that the residual land value technique has been referred to in the judgment of the learned Single Judge in the case of **Special Land Acquisition Officer (3) vs. Godrej & Boyce Manufacturing Co. Ltd.** (*supra*) and on that basis, it could be said that the Court took judicial notice of the said technique as a possible method for determining market value of the acquired land. But, it is to be noted that the said reference arose out of an acquisition under

the LA Act and in the absence of a sale instance of vacant land, both the valuers of the claimants as well as the Government had relied upon the value of the built-up areas i.e. flats. The facts in the present case are distinguishable, for the reason that in the present case, the assessment of the market value as per the sale instances method has to be made under Section 26(1)(b) of the Act of 2013 with Explanations (1) to (3) appended thereto. The manner in which the said explanations operate is made abundantly clear in the above quoted portion of the judgment in the case of **Madhya Pradesh Road Development Corporation vs. Vincent Daniel and others** *(supra)*.

84. We find substance in the contention of the MCGM that even if the claimants were to rely upon the residual land value technique under Section 26(1)(b) of the Act of 2013, the expert valuer and witnesses of the claimant ought to have placed on record sale instances of flats in schemes in the vicinity on lands comparable to the subject land under acquisition. We find that the witnesses of the claimant simply stated that a survey was conducted of the schemes in the vicinity on various plots of lands. Only the plot of the scheme Oberoi Springs was found to be of a size comparable to the subject land and therefore, reliance was placed on sale instances of flats only in the said scheme. We are of the opinion that if Explanations (1) to (3) appended to Section 26(1)(b) of the Act of 2013 are to be applied then reliance cannot be placed only on sale instances of a singular flat scheme on a plot of land in the vicinity. In order to ensure that the explanations operate in terms of the language of the statute, there ought to be sale instances from more number of schemes on comparable plots of land in the vicinity, so that the method specified in Explanations (1) to (3) appended to Section 26(1)(b) of the Act of 2013 operates in a logical sequence. We are of the opinion that the claimant has not been able to produce sufficient

material and evidence to apply the residual land value technique in terms of the scheme contemplated under Section 26(1)(b) of the Act of 2013, read with Explanations appended thereto, to claim that there was sufficient material to seek enhancement of compensation on the basis of the sale instances method. Therefore, we are of the opinion that no error can be attributed to the LARR Authority in discarding the evidence and material regarding sale instances relied upon by the claimant in the backdrop of the residual land value technique. The LARR Authority was justified in proceeding to assess the market value of the subject land under Section 26 of the Act of 2013, only on the basis of ready reckoner method by applying Section 26(1)(a) of the Act of 2013. Accordingly, point Nos.III and IV are answered.

85. **As point Nos.V to VII***:* A perusal of the impugned award passed by the LARR Authority shows that the market value of the subject land under Section 26 of the Act of 2013 has been determined by the Authority by applying the ready reckoner method. Section 26(1)(a) of the Act of 2013 has been applied in order to determine the market value and eventually enhancement of compensation has been granted in favour of claimant. To that extent, this Court finds that the LARR Authority was justified in applying the ready reckoner method for determining the market value of the subject land, in the facts of the present case. As noted hereinabove, the evidence and material on record did not justify recourse to Section 26(1)(b) of the Act of 2013, which pertains to the sale instances method. This Court is of the firm opinion that the two methods i.e. ready reckoner on the one hand and sale instances method on the other are mutually exclusive and compensation, whichever is higher, is ultimately payable to the claimant. In the present case, since there is lack of material to even assess the market value under Section 26(1)(b) of the Act of 2013,

using the sale instances method, the LARR Authority correctly took recourse to the only other option available i.e. ready reckoner method under Section 26(1)(a) of the Act of 2013. This Court rejects the contention sought to be raised on behalf of MCGM that the sale instances could be looked into for pulling down the market value of the subject land determined as per the ready reckoner method.

86. The LARR Authority in the impugned award concluded that the rate of the land in question was ₹ 90,600/- per square meter. On the face of it, the same can be said to be erroneous, simply for the reason, the said land was spread over two villages i.e. Ambivali and Oshiwara. The major portion admeasuring 47,002 square meters was in village Ambivali and the remaining 1895.60 square meters was in village Oshiwara. A perusal of the ready reckoner on record shows that the rate applicable to the portion of the land in village Ambivali was ₹ 72,100 per square meter, as it fell in zone 47/231A. There was no controversy regarding the same and even before this Court the rival parties agreed that the rate applicable to the portion of the subject land falling in village Ambivali was ₹ 72,100/- per square meter. The controversy was limited to the ready reckoner rate applicable to the portion of the subject land falling in village Oshiwara, admeasuring 1895.60 square meter. In such a situation, the LARR Authority could not have applied blanket rate of ₹ 90,600/- per square meter, pertaining to the portion falling in village Oshiwara to the entire land and to that extent, the aforesaid finding rendered by the LARR Authority is erroneous.

87. The claimant on the one hand and the MCGM on the other, have raised specific contentions on the basis of the copy of the ready reckoner and the map on record to claim different ready reckoner rates for the portion of the subject land falling in village Oshiwara.

While MCGM claims that the ready reckoner rate for the said piece of land in Oshiwara ought to be ₹ 33,800/- per square meter, by treating the same as falling in Zone 50/239, the claimant contends that the rate ought to be ₹ 90,600/- per square meter, by treating the said piece of land as falling in Zone 50/240A. The rival submissions have been considered by perusing the ready reckoner along with the map on record. This Court finds substance in the contention raised on behalf of the claimant that since CTS No. 737 is mentioned in two zones of village Oshiwara i.e. 50/240 with the rate of ₹ 80,000/- per square meter and 50/240A with the rate of ₹ 90,600/- per square meter, a reasonable, plausible and logical interpretation ought to be given to the contents of the ready reckoner along with the map on record. It is to be noted that CTS No. 737 is mentioned in zone 50/240 along with a number of other CTS numbers, while zone 50/240A exclusively refers to only CTS No. 737. The map on record along with the ready reckoner does lead to some ambiguity in this regard, but there is substance in the contention of the claimant that since its portion of land in village Oshiwara is towards the east of Veera Desai Road, it cannot be treated as included in zone of 50/240. Since a reasonable interpretation shows that Veera Desai Road is to the west of the said portion of land of the claimant in village Oshiwara, it cannot be included in zone 50/240, as the boundaries of the said zone specify that veera desai road is to the east of land in zone 50/240. In this manner, it is found that the portion of land of the claimant from village Oshiwara indeed falls in zone 50/240A. Since the rate specified for the said zone is ₹90,600/- per square meter, it is the said rate that must be treated as the basis for determining the market value. Therefore, this Court rejects the claim of MCGM that the portion of the subject land of the claimant falling in village Oshiwara should be treated as located in 50/239, where

the rate is ₹ 33,800/- per square meter.

88. Since the said land falls in the aforesaid two villages and the ready reckoner rate for the portion of land in village Ambivali is ₹ 72,100/- per square meter and the ready reckoner rate for the portion in Oshiwara village is found to be ₹ 90,600/- per square meter, to arrive at a rate for the entire subject land, the method of weighted average must be applied. During the course of arguments, it came to light that there was no serious controversy between the rival parties that the formula of weighted average must be applied and to that extent, the LARR authority was not justified in applying the blanket rate to the entire piece of land, despite the fact that admittedly, the subject land consists of pieces of land from villages Ambivali and Oshiwara.

89. There also did not appear to be any controversy with regard to the arithmetical exercise for arriving at weighted average to determine the market rate of the subject land. The area from village Ambivali being 47,002 square meters, it is required to be multiplied with the ready reckoner rate of ₹ 72,100/- per square meter. Similarly, the area from village Oshiwara being 1895.60 square meter is required to be multiplied by ready reckoner rate of ₹ 90,600/- per square meter. Thereupon, the total amount is to be divided by the total area of 48,897.60 square meters, resulting in the weighted average rate of ₹ 72,817/-. Therefore, this Court finds that the market rate of the subject land as ₹ 72,817/- per square meter. Accordingly, the basic market value of the subject land is equivalent to the area of 48,897.60 square meters multiplied by the aforesaid rate of ₹ 72,817/- per square meter.

90. At this stage, the question arises as to whether the LARR authority correctly applied additions and deductions to arrive at the

total amount of compensation, while determining the extent of enhancement of compensation in favour of the claimant.

91. A perusal of the impugned award shows that the LARR authority took into consideration the evidence of the witnesses of the rival parties, as also the material on record, to arrive at specific additions and deductions under various heads such as TDR, Fungible FSI, large size of the land, other distinct advantages of the land to eventually reach the total compensation of ₹ 21,01,20,23,522.30/-.

92. In this regard, detailed submissions were advanced on behalf of the rival parties, with reference to the evidence and material on record. Each of the heads deserves to be considered in the light of the said rival submissions.

93. On the aspect of TDR, MCGM has taken a stand that no addition can be granted under the said head on the ground that although the claimant had obtained permission for commercial complex for parking lot, shopping center and clubhouse, but, instead of obtaining commencement certificate, the claimant served a notice under Section 127 of the MRTP Act, thereby showing that it had no intention to utilize the TDR. We find substance in the contention of the claimant that the aforesaid aspect is wholly irrelevant because the proposal submitted in the year 2009 on behalf of the claimant, was within the confines of the reservation and the proposal placed on record by the witness of the claimant, during the proceeding before the LARR Authority, pertained to the situation as if there was no reservation. It was correctly stated that if the reservation were to apply, it would not have been possible for the claimant to utilize even the basic FSI of one, leave alone the TDR.

94. This Court has already noted hereinabove the position of law

clarified by the Division Bench of this Court in the case of **Special Land Acquisition Officer vs. M/s. Govindram Brothers Pvt. Ltd.** (*supra*) and order of the Supreme Court in the case of **Municipal Corporation of Greater Mumbai vs. M/s. B. J. Development Corporation Pvt. Ltd. & Ors.** (*supra*), that the cloud of reservation and the implication thereof cannot be taken into consideration while determining the market value of the subject land in such proceeding, on the touchstone of a willing buyer approaching a willing seller. Therefore, the contention of the MCGM that no addition can be made towards TDR, is rejected.

95. Once it is found that addition has to be granted for TDR, the percentage thereof has to be worked out by taking into account the cost that would be incurred for obtaining such TDR. In this context, guideline 3 in the ready reckoner is correctly relied upon by the claimant to contend that in the context of FSI of one, the net benefit has to be quantified at 40%. A reference to the said guideline makes calculations of such addition towards TDR simple and it can be applied across the board for the convenience of calculations. This Court is of the opinion that there was no error committed by the LARR authority in granting 40% addition towards TDR to the claimant.

96. As regards fungible FSI, again MCGM sought to oppose the same on the ground that the claimant in its proposal of the year 2009, had not shown any intention to utilize fungible FSI also. We have rejected hereinabove the identical contention raised in the context of TDR and for the same reason, the stand of MCGM in this regard deserves to be rejected. It is a matter of record that fungible FSI came into existence on 06.01.2012, as per the policy and in the present case, the relevant date for determining market value of the

subject land, is 19.06.2012 i.e. the date on which the notification under Section 126 of the MRTP Act was issued. We find substance in reliance placed on behalf of the claimant on admissions given by the witness of MCGM Mr. Arwikar to the effect that on the relevant date, fungible FSI was available to the claimant. Once this is concluded, it is obvious that an upward addition has to be made to the market value of the subject land.

97. This Court also finds that on a proper application of circular dated 12.01.2012 issued by MCGM itself, fungible FSI comes to 25.2%. As a matter of fact, although MCGM has denied availability of fungible FSI for making further addition to the total compensation, when its calculation sheet was submitted on without prejudice basis, even MCGM conceded that if at all fungible FSI was to be added, it would come to 25.2%. In that light, it is found that LARR Authority erred in granting 28% addition instead of 25.2% for fungible FSI.

98. This takes us to the controversy between the parties on the deductions to be made on account of the Development Control Regulations (DCR). A perusal of the relevant material on record shows that as per DCR 35(1), a deduction of 15% is to be made when the plot area is more than 10,000 square meter and under DCR 27, pertaining to amenity space, a deduction of 5% is required to be made for reservation as amenity space, such as post office, police post, etc. Such deductions are clearly permissible, but we are unable to agree with the submission made on behalf of MCGM that a further deduction of 15% is to be made in the guideline 17 for loss of 15% FSI. We find substance in the contention of the claimant that this amounts to double deduction of 15% when already 15% deduction is made, as per DCR 35(1). This Court also finds that further deduction sought to be claimed by MCGM, on the ground of large size of the

plot, is also not sustainable.

99. On the other hand, we find substance in the contention of the claimaint that the large size of the subject plot of the land is an advantageous feature in the light of the fact that in the said area and its vicinity, large schemes of residential plots and apartments had come up and the subject plot of land was ideal for being developed as a singular plot in order to implement a premium project of residential facility with amenities such as clubhouse, swimming pool, garden, etc. The evidence of the witnesses of the claimant shows that sufficient material was indeed on record to indicate that the subject land was ideal for such a premium project and prospective buyers for such a land would be big developers with deep pockets. Such premium projects were being develped at the relevant time in the vicinity. We find that reliance placed on behalf of MCGM on the general position of law that smaller plot would fetch more value than larger plots does not apply to the facts of the present case. The said contention would have been relevant, if the subject land was such that it was to be developed as a layout of smaller plots for residential use. It is an admitted position that in the city of Mumbai, residential schemes of flats and apartments are only relevant and therefore, the subject land would be developed as a premium project of residential flats and not broken up into smaller plots for sale. The subject land as a whole would become subject matter of sale and purchase and considering its location and its area, the same would be an advantage rather than a disadvantage.

100. We find that the judgments relied upon by the MCGM in this regard would not be relevant to the facts and circumstances of the present case. In the case of *Viluben Jhalejar Contractor (dead) by LRS. vs. State of Gujarat,* **(2005) 4 SCC 789**, the land was located in

a small town called Santrampur in Gujarat, unlike the subject land located in the Andheri (West) in the city of Mumbai. Similarly, in the case of *Vithal Rao & Anr. vs. The Special Land Acquisition Officer*, **(2017) 8 SCC 558**, the relevant date for valuation was 25.01.2003 and the subject land for acquisition was located in a village called Mudhol in Karnataka. As opposed to the said facts, in the present case, the subject land was a large piece of land in Andheri (West) in the city of Mumbai, clearly having very high potential of being developed into a premium residential project with multi-storied buildings and apartments along with modern amenities. Even if the MCGM relies upon the classic factors indicated in the judgment of the Supreme Court in the case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer** (*supra*), it is to be noted that in the said judgment itself, it was clarified that the evaluation of plus and minus factors, including size of the subject land in question, would depend on the facts of each case and that there cannot be any hard and fast rule. Most importantly, it was held that common sense was the best and the most reliable factor. Applying the said parameters, we find substance in the contention of the claimant that large size of the subject land was indeed an advantage and not a disadvantage, thereby indicating that a further addition was justified. We find that an addition to the extent of 25% in such a scenario would be reasonable.

101. In this context, we find the judgment of the Supreme Court relied upon by MCGM itself is relevant. In the case of *Trishala Jain & Anr. vs. State of Uttaranchal & Anr.,* **(2011) 6 SCC 47**, the Supreme Court had an occasion to deliberate upon the expression 'guesstimate'. It was held that guesstimate being undertaken by the Court could be said to be discretionery, but such a discretion is obviously not unfettered and that it has to have some reference to

the evidence and material on record. We find that the evidence placed on record on behalf of the claimant sufficiently indicates the immense potential of a premium residential project being developed on the subject land with modern amenities, thereby indicating that further addition towards the size of the plot was clearly warranted. We reject the contention of the MCGM that there should be deduction of 10% due to the large size of the plot. On a proper analysis, it is found that even if addition of 25% for the large size of the plot is given, the net benefit to the claimant is only 5%, because 15% is already deducted under DCR 35(1) and 5% is deducted for amenity space under DCR 27.

102. In this context, we find that the LARR Authority did err in ignoring the deductions to be made towards amenities space under DCR 27 and in granting blanket 30% addition for 'advantages'.

103. The claimant has further claimed addition of 15% due to frontage of the subject land on two roads and further 5% on account of its shape. In this regard, we find that there is substance in the contention raised on behalf of MCGM that such factors are indeed taken into consideration by the concerned Authority when ready reckoner rate is specified. Although, much emphasis is placed on behalf of the claimant on the aforesaid two aspects of the matter, we are of the opinion that the claim of further addition of 15% towards frontage on two roads and 5% for shape of the subject land is not justified.

104. We also find that MCGM is not justified in claiming 10% deduction on the ground that the subject land was uneven and that it had a hillock. In this regard, reliance is placed on the judgment of the Supreme Court in the case of *Chandrashekhar (dead) by LRS. & Ors. vs. Land Acquisiton Officer & Anr.*, **(2012) 1 SCC 390**. The said

case is distinguishable on facts, for the reason that in the present case, it was with the knowledge and on the directions of the MCGM that the claimant had undertaken the elaborate effort of levelling of the entire land. The evidence and material on record placed by the witnesses of the claimant demonstrates that substantial amounts were spent on levelling of the land, with full knowledge and clearance given by MCGM. This shows that when the land was actually acquired and taken over, it was a levelled land. Therefore, there is no question of deduction of 10% due to the nature of the subject land. We do not agree with MCGM that since the notification was dated 19.06.2012 and the activity of levelling of the land was taken up thereafter, the deduction of 10% would be justified. As a matter of fact, we find that the work of levelling having been undertaken by the claimant at the behest of MCGM, cannot put the claimant at a disadvantage by allowing such a deduction.

105. We further find that the claimant constructed compound wall on the subject land and the evidence and material on record indicated the actual expenses undertaken for the same. The LARR Authority has added the said expenses to the amount in the compensation table. We find that the LARR Authority having granted the said relief and there being sufficient material to indicate the actual expenses so incurred, it would not be appropriate to deduct the said amount, while reworking the compensation in terms of the findings rendered by this Court. Therefore, the said amount towards expenses of the compound wall can be retained. The other aspects of granting 100% solatium under Section 30(1) of the Act of 2013, cannot be disputed, as also 12% interest component for 1780 days and therefore, the same components also deserve to be retained.

106. We find that the other minor aspects upon which arguments

were made by the rival parties, do not deserve further consideration, in the light of the detailed examination of the matter on merits hereinabove and the findings rendered in that regard.

107. In view of the above, this Court finds that the impugned award passed by the LARR Authority deserves to be interfered with and the quantum of compensation payable to the claimant needs to be reworked, in the light of the findings rendered hereinabove in this judgment. In the facts and circumstances of the present case and in the light of the findings rendered hereinabove, the compensation payable to the claimant for the acquisition of the subject land is held as follows :

Sr. No.	Particulars	% allowance (+ve and -ve)	Amount (in Rupees)
1.	Rate per sq. mt. (on weighted average basis)		72,817/-
2.	Base market value of land (72,817 x 48,897.60 sq. mts.)		356,05,76,539.20
3.	Deduction as per DCR 35(1)/ Guideline 17	-15%	- 53,40,86,480.88
4.	Deduction as per DCR 27 (amenity space)	-5%	- 17,80,28,826.96
5.	TDR	+40%	+142,42,30,615.68
6.	Fungible FSI	+25.2%	+89,72,65,287.88
7.	Largeness of the land	+25%	+89,01,44,134.80
8.	Expenses of compound wall and storm water drains		2,06,72,012.00
9.	**Total market value (2 to 8)**		**608,07,73,281.72**
10.	100% solatium [u/s 30(1) of the Act of 2013]		608,07,73,281.72
11.	12% component (1780 days)		355,85,01,843.79
12.	**Total Compensation (9+10+11)**		**1572,00,48,407.23**
13.	Amount already paid		510,07,99,510.00
14.	**Enhanced Compensation**		**1061,92,48,897.23**

108. The impugned award of the LARR Authority stands modified to the above extent. Accordingly, the enhanced compensation comes to ₹1061,92,48,897.23, taking into account the amount of ₹510,07,99,510/- already paid to the claimant. During the pendency of the appeals, the claimant had also withdrawn ₹250 crores deposited by MCGM. The said amount shall be adjusted and the claimant stands relieved of the undertaking given before this Court while withdrawing the said amount of ₹250 crores. The claimant is entitled to interest @9% p.a, for the first year from the date of possession of the Special Land Acquisition Officer / Collector and thereafter, interest @15% p.a. till realisation of the entire amount.

109. The appeals are disposed of in above terms. Pending applications also stand disposed of.

110. Upon pronouncement of judgement, the learned senior counsel appearing for MCGM submitted that this Court may consider granting stay to the effect of this judgement for a period of 12 weeks. It was pointed out that the fixed deposits submitted before this Court by MCGM and renewed from time to time, as on today, can be kept alive, in the light of the prayer being made for stay.

111. The learned senior counsel for the claimant submitted that this Court may consider granting time of 12 weeks to MCGM to pay the amount, as directed in this judgement and order.

112. Having heard the learned senior counsel for the rival parties, we direct that MCGM is granted time of 12 weeks to make payment of the balance amount to the claimant in terms of this judgement and order.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

MINAL SANDIP PARAB Digitally signed by MINAL SANDIP PARAB Date: 2026.10.15 17:41:10 +0530