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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 353 OF 2012

WITH
CIVIL APPLICATION NO. 6556 OF 2012
WITH
CIVIL APPLICATION NO. 13195 OF 2012

- 1] Malikarjun S/o Rambhau Mahajan,
Deceased through L.Rs.
- 1-A] Suryakant S/o Malikarjun Mahajan,
Age: 49 years, Occu. Agril.,
R/o Majalgaon, Ta. Majalgaon,
Dist.: Beed.
- 1-B] Shivhar S/o Malikarjun Mahajan,
Age: 46 years, Occu. Agril.,
R/o : Vivekanand Nagar Majalgaon,
Ta. Majalgaon, Dist.: Beed.
- 1-C] Sau. Ramabai W/o Jaishankar Mukadam,
Age: 52 years, Occu. Household,
R/o Yusufwadgaon, Tq. Kaij,
Dist. Beed.
- 1-D] Sai Yamunabai W/o Ramlingappa Bidkar,
Age: 45 years, Occu. Household,
R/o : Sailu, Tq. Sailu,
Dist. Parbhani.
- 1-E] Sau Vanmala W/o Rameshwarappa Gulve,
Age: 43 years, Occu. Household,
R/o West to Kala Hanuman Madir,
Dharur, Tq. Dharur,
Dist. Beed.
- 2] Chandrakant S/o Ishwar Mahajan,
Age: 47 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

- 3] Umakant S/o Ishwar Mahajan,
Age: 39 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 4] Nilkanth S/o Ishwar Mahajan,
Age: 33 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 5] Arjun S/o Ishwar Mahajan,
Age: 31 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

...APPELLANT
(Ori. Plaintiffs)

VERSUS

- 1] Ramsukh S/o Gopulal Jethaliya,
Age: 67 years, Occu. Advocate,
R/o Dnyandeep, Infront of Bus Station,
Majalgaon, Tq. Majalgaon, Dist. Beed.
- 2] The State of Maharashtra
Through Collector, Beed,
Dist. Beed.
- 3] The Special Land Officer,
J.P. No. 4, Beed, Dist. Beed.
- 4] The District Resettlement Officer,
Beed, Dist. Beed.
- 5] The Tahsildar,
Tahasil Offic, Majalgaon,
Dist. Beed.

...RESPONDENTS
(Respondent No. 1 - Ori.
Defendant No. 5 and
Respondents No.2 to 5 are
original defts. No. 1 to 4)

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Mr. B.S. Kudale, Advocate for appellants -applicants
Mr. P.M. Shah, Senior Advocate instructed by
Mr. D.R. Jethaliya, Advocate for respondent No. 1

Mrs.R.K. Ladda, AGP for respondents No. 2 to 5

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WITH
SECOND APPEAL NO. 410 OF 2012

WITH
CIVIL APPLICATION NO. 7090 OF 2012
WITH
CIVIL APPLICATION NO. 13194 OF 2012

- 1] Malikarjun S/o Rambhau Mahajan,
Deceased through L.R's.
- 1-A] Suryakant S/o Malikarjun Mahajan,
Age: 49 years, Occu. Agril.,
R/o Majalgaon, Ta. Majalgaon,
Dist.: Beed.
- 1-B] Shivhar S/o Malikarjun Mahajan,
Age: 46 years, Occu. Agril.,
R/o : Vivekanand Nagar Majalgaon,
Ta. Majalgaon, Dist.: Beed.
- 1-C] Sau. Ramabai W/o Jaishankar Mukadam,
Age: 52 years, Occu. Household,
R/o Yusufwadgaon, Tq. Kaij,
Dist. Beed.
- 1-D] Sau Yamunabai W/o Ramlingappa Bidkar,
Age: 45 years, Occu. Household,
R/o : Sailu, Tq. Sailu,
Dist. Parbhani.
- 1-E] Sau Vanmala W/o Rameshwarappa Gulve,
Age: 43 years, Occu. Household,
R/o West to Kala Hanuman Madir,
Dharur, Tq. Dharur,
Dist. Beed.
- 2] Chandrakant S/o Ishwar Mahajan,
Age: 47 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

3] Umakant S/o Ishwar Mahajan,
Age: 39 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

4] Nilkanth S/o Ishwar Mahajan,
Age: 33 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

5] Arjun S/o Ishwar Mahajan,
Age: 31 years, Occu. Agri & Trade,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

...APPELLANT
(Ori. Plaintiffs)

versus

1] The State of Maharashtra
Through Collector, Beed,
Dist. Beed.

2] The Special Land Officer,
J.P. No. 4, Beed, Dist. Beed.

3] The District Resettlement Officer,
Beed, Dist. Beed.

4] The Tahsildar,
Tahasil Offic, Majalgaon,
Dist. Beed.

5] Ramsukh S/o Gopulal Jethaliya,
Age: 67 years, Occu. Advocate,
R/o Dnyandeep, Infront of Bus Station,
Majalgaon, Tq. Majalgaon, Dist. Beed.

...RESPONDENTS

(Respondents No.1 to 4 are
original defts. No. 1 to 4 and
Respondent No. 5 - Ori.
Defendant No. 1)

.....

Mr. V.D. Salunke, Advocate for appellants -applicants

Mrs.R.K. Ladda, AGP for respondents No. 1 to 4
Mr. P.M. Shah, Senior Advocate instructed by
Mr. D.R. Jethaliya, Advocate for respondent No. 5

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th DECEMBER, 2015

ORAL JUDGMENT :

1. Aggrieved by a common judgment and order dated 5th May, 2012 delivered by District Judge -2, Majalgaon in regular civil appeal No. 24 of 2010 filed by original defendant No. 5 and regular civil appeal 32 of 2010 filed by original defendants No. 1 to 4 reversing decision in regular civil suit No. 76 of 2004 (Old regular civil suit No. 697 of 2000) dated 29th March, 2010, allowing the appeals and dismissing the suit, appellants-original plaintiffs are before this court.

2. These appeals are concerned with an area of land *ad-measuring* 4 Are forming southern part of block No.144 (survey No.75) situated at village Bhatwadgaon, Taluka-Majalgaon, District-Beed.

3. Learned advocates appearing for appellants as well as learned senior advocate Mr. P. M. Shah for defendant No.5 and learned AGP have referred to various documents relied on by the

courts and have advanced various submissions.

4. The plaintiffs contend that portion of 24 *Are* from land bearing block No.144 (then survey No.75) already was being used for Majalgaon - Gadhi road. Subsequently in 1978 proceedings had been initiated for acquisition of area of 4 hectare, 73 *Are* including aforesaid 24 *Are* land under said road from aforesaid land block No.144. It is their contention that in the acquisition proceedings, only portion on northern side of the road had been acquired whereas portion of 4 *Are* land on south of the road had not been subject-matter of the acquisition. They claimed declaration of ownership and along with same, also claimed declaration to be in possession of the suit property.

5. Learned advocates Mr. B. S. Kudale and Mr. V. D. Salunke, appearing for the appellants contend, it is not disputed that the plaintiffs were the owners of entire survey No.75 (Block No.144) which had been divided into parts by Majalgaon-Gadhi Road (it is now stated to be a state highway) from a long time. The land having divided into two parts by passage of the road, triangular portion of 4 *Are* land had got separated and is on southern side of said road. According to learned advocates for the appellants, said triangular portion of 4 *Are* land on the southern side of

Majalgaon-Gadhi road continues to be in ownership and possession of plaintiff's – appellants.

6. It is contended by the learned advocates that the acquisition proceedings initiated in 1978 of block No.144 referred to acquisition of 4 hectare, 73 *Are* land. From block No.144 (survey No.75) road passage had covered an area of 24 *Are* land. Compensation is paid for an area of 4 hectare, 49 *Are* of the land from erstwhile survey No.75/1. Acquisition of area of 4 hectare, 49 *Are* is from the northern side of aforesaid road and that triangular portion of 4 *Are* land had not been subject matter of acquisition proceedings. Learned advocates contend that there is sufficient evidence indicating aforesaid position. According to them, in collusion with defendant No.5, defendants No.1 and 2 purport to have acquired said 4 *Are* land on the southern side of road and have shown it to be given to defendant No.5. Learned advocates contend that the land had been acquired for the purpose of resettlement and rehabilitation of project affected persons and the lay out prepared for said rehabilitation indicates that the triangular portion on southern side of the road is not the subject matter of acquisition and as such, had not been allotted any number in the lay out. It is submitted by them that the evidence also shows the plaintiffs to be in possession. Learned

advocates contend that on appreciation of evidence, the trial court had rightly come to the conclusion that the triangular portion of 4 Are land falling on southern side of Majalgaon-Gadhi road was not subject matter of acquisition of land initiated in 1978 from Block No.144. According to them, the appellate court, however, had committed error in reversing the findings of the trial court and has got swayed away by considerations, which would not be germane having regard to evidence on record.

7. The learned advocates for the appellants vehemently submit that the appellate court has committed grave error in not framing proper points for consideration.

8. The learned advocates also rely on witnesses of the plaintiffs referring to that said triangular portion had not been given any number in the lay-out prepared for resettlement of the project affected persons. According to them, there are conflicting findings of facts giving rise to substantial questions of law. Particularly, no proper points for determination have been framed by the appellate court. According to them, admissible evidence has been ignored and inadmissible evidence has been taken into account by the appellate court.

9. Additionally, in their effort to show that triangular portion

had not been subject matter of acquisition, the appellants-plaintiffs have filed civil application referring to certified copy of a map of which photo copy had been placed on record in the trial court. Learned advocates for appellants have placed heavy reliance on the map as is sought to be produced under said application referable to Order XLI, Rule 27 of the Code of Civil Procedure which according to them gives clear indication of that triangular portion of land on southern side of 24 Are road was not subject-matter of the acquisition, contending that the same would repel the evidence adduced in the courts below in the shape of Exhibit-71. Learned advocates contend, map which is sought to be produced under the civil application, however, had not been taken into account by the courts being a photo copy, whereas now having regard to the position that the certified copy of the same has been acquired, it has to be taken into account.

10. A judgment in case of "*Shyam Gopal Bindal and Others V/s. Land Acquisition Officer and Another*" reported in 2010 (2) SCC 316 has been pressed into service by learned advocates for the appellants in order to support civil application for production of document, pursuant to Order XLI, Rule 27 of the Civil Procedure Code. It was in the facts of that case, the Supreme Court appears to have

considered that documents sought to be produced were judicial orders declaring ownership rights of appellants which had crucial bearing on merits of their claim. As such, the application for additional evidence in said case was allowed.

11. On the other hand, Mr. P. M. Shah, learned senior advocate submits that non framing of proper points for determination may not be said to give rise to any substantial question, for, discussion by the appellate court amply reflects that all aspects, including the relevant issues those were framed by the trial court, have been considered in appeals and entire evidence, including the submissions advanced on behalf of the plaintiffs have been appreciated. No prejudice is caused to the plaintiffs. Present matter would not be a case giving rise to any substantial question of law.

12. According to learned senior advocate, as a matter of fact, solitary point framed is more than sufficient and separate points for determination in the facts of the case would not be a must.

13. Learned senior advocate further submits that case being canvassed or points sought to be raised do not give rise to any substantial question of law and are only questions of facts. He refers to various documents, *inter-alia*, the land acquisition

award, E-statement, maps at Exhibits-71, 280 to 294 and 295 showing portion on northern side area of the road of land gut No. 144 *admeasuring* 4 hectare, 45 *Are* and 24 *Are* from the very same block/gut number covered by the road and triangular portion of southern side of road *admeasuering* 4 *Are* forming part of area of 4 hectare, 73 *Are* had been the subject matter under acquisition proceedings. He refers to deposition of the witnesses on behalf of the plaintiffs, who according to him admit this position. He submits that in the face of documentary evidence and evidence as had been adduced on behalf of the plaintiffs it cannot be said that plaintiffs had been able to prove their case even by preponderance of probabilities.

14. Learned senior advocate submits that the document sought to be produced under civil application is of no consequence at all. It is not in the course of acquisition and has no concern with acquisition of land and said document is not signed by any authority. It might have been prepared during the process of preparation of lay-out and cannot constitute final statement on acquisition. Creation of said document is post acquisition.

15. He further contends that it is a fact that land was taken in

possession under acquisition proceedings way-back in 1981 including the triangular portion of 4 Are on south of the road from block No.144 (survey No.75) and that had been allotted to defendant No.5 in 1990 and its taking over of possession had not been objected to when it had been taken over before the award and even after passing of award. According to him, map at Exhibit-295 clearly establishes that from acquired portion of 4 hectare, 73 Are northern area comprises 4 hectare, 45 Are land and on southern side there is triangular portion of 4 Are. Learned senior advocate submits, 4 hectare, 73 Are in the notification comprises 4 hectare 45 Are on northern side of road, 24 Are road and 4 Are on southern side of road.

16. After hearing learned advocates for the parties, the question that will have to be addressed to is -

“ Whether it can be said that a portion of 4 Are land forming southern side of block No.144 after its division by 24 Are road running east-west from Gadhi to Majalgaon was subject matter of acquisition initiated in the year 1978 ? ”

17. Learned advocates for the appellants have submitted that the appellate court has erred in not framing points for determination and as such, decision rendered by the appellate

court is contrary to and in contravention of the intention underlying Order, XLI Rule 31 of the Code of Civil Procedure. They refer to a judgment in case of “*Khatunbi Mohammad Sayyad and Others V/s. Aminabi Mohammad Shabib*” reported in 2007 (2) BCR 900 wherein it appears, having regard to various rulings pressed into service, it had been considered that it was an error committed in disposing of the appeal for non appearance of respondents, without complying with the requirements of Order XLI, Rule 31 of the Code of Civil Procedure, since the judgment of the lower court was being reversed.

18. Learned advocates for the appellants further press into service decisions by the Hon'ble single judges in the cases of “*Harising Kevala Rathod V/s, Ramji Hemla*” reported in 2009 (2) ALL MR 169, and “*Employees State Insurance Corporation V/s. Vishnu Saw Mill Factory*” reported in 2009 (5) ALL MR 136 and one by a division bench in the case of “*Ajit Gaitonde & Another Vs. Ezilda Emiliana Cristina Pinto*” reported in 2009 (3) ALL MR 838.

19. Yet another decision in the case of “*Francisco Countinho V/s. Comunidade*” reported in 2014 (6) ALL MR 162 has been relied upon by learned advocate for the appellants.

20. Aforesaid submissions are being resisted and countered by

the respondents, particularly respondent No.5. As far as compliance of Order XLI, Rule 31 of the Civil Procedure Code is concerned, the learned senior advocate refers to a judgment in case of “*G. Amalorpavam and Others V/s. R. C. Diocese of Madurai and Others*” reported in (2006) 3 SCC 224 wherein the first appellate court had considered entire evidence on record and discussed the same while coming to the conclusion and giving findings supported by reasons. In the same it appears to have been considered by the Supreme Court that even if the points for determination have not been specifically framed by the appellate court, but if the decision gave indication of substantial compliance of the provisions of Order XLI, Rule 31 of the Civil Procedure Code, then it cannot be said that the judgment is vitiated by absence of points for determination. The Supreme Court has held that the question whether in a particular case there has been substantial compliance of the provisions of Order XLI, Rule 31 of the Civil Procedure Code, has to be determined in the nature of judgment delivered in each case. Non compliance of the provisions may not vitiate judgment and make it wholly void and may be ignored if there has been substantial compliance with it and the higher appellate court is in a position to ascertain the finding of the lower appellate court. The

Supreme Court had considered that the High Court recorded finding that the lower appellate court had considered evidence lead by parties and had given finding to come to the conclusion arrived at. It noted that the lower appellate court had independently considered the evidence and had given different findings on the basis of arguments which were advanced before it. It was further noted that there was detailed discussion for affirming the order of the trial court. Although the Supreme Court had not acceded to the request of the appellant, yet the court had made aforesaid categorical observations.

21. Yet another decision in case of “*Mahadev Govind Gharge and Others V/s. Special Land Acquisition Officer*” reported in (2011) 6 SCC 321 has been relied upon on behalf of the respondents to buttress their case and to support the appellate level decision submitting that after all Order XLI, Rule 31 of the Civil Procedure Code is a procedure and it is for the purpose of facilitating decision. The observations in the same are being stressed upon and emphasized to state that the procedure and procedural law is always intended to facilitate the process of achieving ends of justice. The courts normally favour the interpretation which would achieve said object. The provisions of procedural law which do not provide for penal consequence in default of their

compliance should normally be construed as directory in nature and should receive liberal construction.

22. According to the respondents, in the face of such a legal position, decisions relied upon on behalf of the appellants would not hold sway in the facts and circumstances of the case. According to them, matter has to be considered on its own merits. In the present case, the appellate court has quite elaborately considered cases of the parties, referred to evidence, material and record and discussed the same and had given reasons in support of the conclusions.

23. Plaintiffs' case proceeds on the footing that the triangular portion of the land did not form subject matter of acquisition. According to them said portion even otherwise could not have formed part of acquisition for the purpose for which the acquisition proceedings had been undertaken i.e. rehabilitation and resettlement of project affected persons of Renapur. It had been assumed that only rectangular plots can be created for settlement and such triangular portion would not have been of any use. They further purport to rely on that said triangular portion had not been given any specific plot number in the layout prepared for re-settlement purpose. It is being contended

that Exhibit-71 relied upon by the appellate court cannot be said to be authentic record, for, it is stated to be a copy of joint measurement map and joint measurement map had never seen light of the day during the course of the trial. They also purported to dispute Exhibit-56 stating that it cannot be an authentic record of possession of portion "A", "B", "C" and "D", appearing on Exhibit-71 having been handed over to the State authorities.

24. The land acquisition proceedings were initiated in the year 1978 showing area under acquisition to be 4 hectare 73 *Are*, inclusive of 24 *Are* road. With intention to acquire, it appears that requisite notifications and corrigenda had been issued from time to time. Looking at the exigency, applying urgency clause, even possession of the entire land under intended acquisition had been taken over. Subsequently, in 1983, award had been passed for payment of compensation of 4 hectare 49 *Are* from the acquired area of 4 hectare 73 *Are*. It appears that said authorities have all along considered triangular portion to be part and parcel of the acquired land and had acted upon the same accordingly. Pursuant to some proceedings, it appears, southern triangular portion 4 *Are* of block No.144 had been allotted to defendant No.5. There was no overt act till suit had been

instituted in 2000, by the plaintiffs asserting their ownership right in respect of said triangular portion.

25. Trial court had framed about thirteen issues, two major issues, which are relevant for consideration in these matters, are at serial No.1 and 2, whereunder it appears to be considered that whether the plaintiff had been able to prove that defendants No.1 and 2 had acquired an area of 4 hectare 49 *Are* land from erstwhile survey no.75 – block No.144 for the purpose of *Gaothan* and 24 *Are* for road. The trial court arrived at a conclusion that the plaintiff has established that survey No.75/1 had been acquired for said purpose and had further in respect of the other issue about whether the plaintiff could prove that southern area of 5 *Are* remaining balance, after acquisition of land for *Gaothan* and road, had not been subject matter of acquisition. The trial court has recorded finding that said 5 *Are* land was not under acquisition and thus decreed the suit.

26. On perusal of the decision of the trial court, it surfaces that the court has considered that erstwhile survey No.75 stood divided into survey No.75/1 and 75/2 by creation of Gadhi-Majalgaon road. It appears that it did not give consolidation proceedings of 1974-75 its due while entire survey number had

been reconstituted into block No.144, inclusive of the road without any sub-division.

27. The trial court appears to have been overwhelmed by consideration that the land comprising erstwhile survey No.75, was divided into parts, oblivious of that land acquisition proceedings were initiated with reference to land block No.144 and were accordingly conducted.

28. Perusal of the judgment of the trial court shows that the trial court has not at all taken into account Exhibit-71 – a copy of the joint measurement map of the land acquisition.

29. Although the trial court has referred to Exhibit-87, a measurement map after institution of the suit, however, said measurement map would not carry forward plaintiff's case.

30. It appears to have been considered that land stood divided into survey No.75/1 (northern portion) and 75/2 (southern portion). It appears to have been considered that the entire northern portion inclusive of road had been considered to be part of survey No.75/1 and survey No.75/1 had been considered to have been acquired. Whereas, acquisition proceedings have proceeded with block No.144 without any subdivisions and about

4 hectare 73 Are had been under consideration for acquisition, including 24 Are already under road. Perusal shows that appreciation appears to be little conjecturous.

31. The appellate court had quite elaborately discussed the land acquisition proceedings and the evidence on record. The discussion which has taken place in paragraphs No.17, 18, 19, 20, 23, 24 and 26 considers the position that land acquisition proceedings were initiated in 1978 for an area of 4 hectare 73 Are of block No.144 for the purpose of rehabilitation of Renapur project affected persons. Possession of the acquired land had been taken on 6th April, 1981, pursuant to section 17 of the Land Acquisition Act, 1894 on payment of compensation.

32. The appellate court has also considered that there had been no challenge to joint measurement and as such, map of joint measurement would be playing a pivotal role. Said measurement map proves that suit site is part of the acquired land. Coupled with that Exhibit-56 which is a copy of *Panchanama* under which possession had been taken by the acquiring body on 6th April, 1981, discloses that possession of land survey No.75 forming southern portion of said land was taken and the same had been identified with marks, which

shows that the land on the southern side of the road was part of the acquisition and its possession had been taken over.

33. During the land acquisition proceedings, there had been joint measurement and that a map accordingly had been prepared. A copy of the same had been placed on record at Exhibit-71 and the same had been referred to in the evidence of Plaintiffs' Witness No.6 – the Town Planner. It has emerged from his evidence that the triangular portion of land on the southern of the Gadhi-Majalgaon road is a portion from acquired 4 hectare 73 *Are* land. He further admitted photo copy of said map had been sent with the proposal of lay out plan for re-settlement of project affected persons from village Renapur.

34. The appellate court had further appreciated that the award refers to an area of 4 hectare, 73 *Are* land from survey No.75 – block No.144, inclusive of 24 *Are* portion consumed by road. It has been considered that under the award, compensation is given in respect of 4 hectare 49 *Are* land from gut No.144 and further in the E-statement as well, which is at Exhibit-162, the acquired area of 4 hectare 73 *Are* land including 24 *Are* road has been mentioned. The appellate court has thus considered that this gives a clear indication that the acquired portion is divided

into parts by the road and it has been considered that the road has been mentioned specifically to identify acquisition of two pieces of land, since, otherwise, it would not have been necessary to make any reference to the road, for, that was already under user. Not only this, but the appellate court also refers to the evidence of plaintiffs' witness No.7 – Purushottam Patodkar, who was working as Rehabilitation Officer, who too in his deposition has admitted that the triangular portion on the southern side of road is part of the acquired land. The Town Planner, plaintiff's witness No.6, had also deposed that resettlement officer had sent proposal for preparation of lay out of the acquired land from survey No.75 and accordingly lay out had been prepared.

35. It further appears that a measurement was carried out from Taluka Inspector of Land Records, at the behest of the plaintiff and the map prepared by him had been placed on record at Exhibit-280, which purportedly had shown that 4 hectare 49 *Are* falling on the northern side of the road had been acquired and that the southern triangular portion of 4 *Are* had not formed part of the acquired 4 hectare 49 *Are* land. However, it has emerged on record that said measurement had been cancelled and discarded and the confusion had been got cleared by

subsequent measurement by concerned officers and map in pursuance of the same had been placed on record at Exhibit-295, which is matching with Exhibit-71. The appellate court had considered that basis of the suit was the measurement-Exhibit 280, which had been subsequently cancelled.

36. The appellate court further found that considerations of division of survey numbers into 75/1 and 75/2 and its area had been presumptive and was not according to factual position and was not supported by any credible material. The appellate court had further noted that while the land was being acquired, there had been no sub-division of survey numbers subsisting.

37. The appellate court also noted that the allotment of land in 1990 of the triangular portion to defendant No.5 was after following procedure pursuant to the rules. It has quite in some details, considered in paragraphs No.27 and 33.

38. The appellate court had considered that claims made of possession by the plaintiffs/appellants in respect of said triangular portion were not reliable. The appellate court as well has considered the aspect for non user of land for acquired purposes, whether that would entitle original owner to claim the property and answered the same in negative, with reference to

some reported decisions.

39. The calculations as have been appearing in the judgment of the appellate court shows that the consideration by the trial court to be incompatible with the situation.

40. The judgment by the trial court has been more on assumptions and surmises rather than on objective appreciation of the evidence. The trial court appears to have been carried away by the considerations which were not germane.

41. On the whole, the situation clearly emerges that there is sufficient record available showing the triangular portion of block No.144 on the southern side of Gadhi-Majalgaon road (forming part of State highway) to be an acquired land under the acquisition procedure. The land stood vested in the acquiring body and it appears that further some years down, the same pursuant to the relevant rules has been given to defendant No.5. Conduct of the plaintiffs as well to a large extent shows their submission to such proceedings.

42. The map, which is a photo copy of the certified copy produced before the courts below is for the purpose subsequent to the acquisition and said map would hardly have any bearing

on the vested land in the acquiring body upon acquisition.

43. The judgment of the appellate court shows that the learned judge has objectively appreciated the evidence and has seen the matter in the perspective emerging therefrom. It is not a case that the relevant issue arising in the matter can be said to have not fallen for consideration by the appellate court in respect of acquisition of land.

44. Having regard to the facts and circumstances involved in the present matters, the Supreme Court's judgments in the cases of "*G. Amalarpavam and Others*" and "*Mahadev Govind Gharge*" (*supra*), would have a hold on facts and circumstances of the present matter.

45. Having regard to aforesaid, the citations relied upon on behalf of the appellants in the case of "*Khatunbi Mohammad Sayyad*" (*Supra*) would not be able to govern present case. The judgments in the cases of "*Harising Kevala Rathod, Employees State Insurance Corporation and Ajit Gaitonde*" (*Supra*) cited by the appellants relate to framing of issue and would not hold the present matters. Judgment in the case of "*Franscisco Countinho*" (*supra*) relied upon on behalf of the appellants was a case wherein it does not appear to have been considered that framing of points

is an absolute necessity. However, in the facts of that case, the court had come to the conclusion that there was no consideration of the material adduced nor any specific reasons were given to conclude that the case of appellants was not established and as such, requirement of Order XLI, Rule 31 of the Civil Procedure Code, was considered not to have been satisfied. In those circumstances, the court had made certain observations, but from the same it cannot be said that it is absolute necessity to specifically frame all the points for determination when all the material on record, including the cases sought to be made out by the parties, have been considered. For want of procedural compliance, referable to Order XLI, Rule 31 of the Civil Procedure Code, decisions cannot be said to be absolutely vitiated.

46. Having regard to that the appreciation of situation is based on evidence on record, it cannot be said that the appellate court has committed any error while reversing the findings given by the trial court. The appellate court has quite in detail referred to relevant aspects involved in the matter and the conduct of the parties upon acquisition.

47. It will also have to be appreciated that it emerges that the

total land under acquisition including 24 Are land of Majalgaon-Gadhi road had been taken into possession even before award for acquisition had been passed and that there had been no resistance to the same at the instance of the plaintiffs. Subsequently, upon passing of the award and the land lying unutilized for quite some time, and finding that under the rules it is permissible to give such land to adjoining land holder, it appears that action pursuant thereto has been taken and accordingly defendant No.5 has been put into possession.

48. The decision rendered by the appellate court, in the circumstances does not appear to be not adhering to the facts and the evidence. The appellate court being the last fact finding court, does not appear to have committed any error in rendering decision sought to be challenged in present second appeals.

49. Having regard to discussion of evidence of the two courts, the question as has been referred to herein above, will have to be answered in defendants' favour. The land having vested in the Government upon award, way back in 1983, claims of the plaintiffs have been rendered unsustainable. It cannot be said that the plaintiffs have been able to prove that the triangular portion did not form subject matter of acquisition. The non

framing of a specific point for determination at the appellate stage, in the circumstances, having regard to elaborate and well reasoned judgment given by the appellate court on consideration of facts and all relevant aspects involved, does not affect merits of the case and as such, it cannot be said to vitiate judgment rendered by the appellate court. Second appeals, as such, stand dismissed.

50. In the circumstances, the applications for production of documents do not deserve any consideration, having regard to the observations made hereinbefore and the same stand rejected.

51. At this juncture, learned advocate for the appellants requests for continuation of the interim relief hitherto operating, in order to enable the applicants/appellants to approach higher court. In the circumstances, having regard to that interim relief as has been operating for quite a while, the same shall continue to operate for a period of twenty weeks.

[SUNIL P. DESHMUKH, J.]