

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.205 OF 2014

Bhiwandi Nizampur City	] <u>Appellant</u>
City Municipal Corporation	] Original
Kap Ali, Bali,	] Respondent
District: Thane	] No.2.

V/s.

1. The State of Maharashtra	] <u>Respondent No.1</u>
Special Land Acquisition officer,	] Original
District: Thane	] Respondent No.1
	]
2. Smt. Shaheda Shahnawaz Vinchu	] <u>Respondent No.2</u>
adult,Occn.Household	] Original
Residing at: 76/1st Mohalla, Nizampura	] Petitioner.
Bhiwandi 421 302	]

WITH
FIRST APPEAL NO.206 OF 2014

Bhiwandi Nizampur City	] <u>Appellant</u>
City Municipal Corporation	] Original
Kap Ali, Bali,	] Respondent
District: Thane	] No.2.

V/s.

1. The State of Maharashtra	] <u>Respondent No.1</u>
Special Land Acquisition officer,	] Original
District: Thane	] Respondent No.1
	]
2. Mohkamuddin Gulam Gaus Kazi	] <u>Respondent No.2</u>
age: 59,Occn:Business	] Original
Residing at: 181/4th Patel Mohalla	] Petitioner.
Bhiwandi 421 302	]

WITH
FIRST APPEAL NO.207 OF 2014

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane

] Respondent No.1
] Original
] Respondent No.1
]

2. Shahnawaz Siddique Vinchu
age: adult, Occn: business
Residing at: 13/1st Mohalla, Ghans Bazar
Bhiwandi

] Respondent No.2
] Original
] Petitioner.
]

**WITH
FIRST APPEAL NO.208 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane

] Respondent No.1
] Original
] Respondent No.1
]

2. Zaki Gulam Gous Kazi
age: adult, Occn: business
Residing at: 181/4th Patel Mohalla
Nizampura, Bhiwandi, Dist: Thane

] Respondent No.2
] Original
] Petitioner.
]

**WITH
FIRST APPEAL NO.210 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation

] Appellant
] Original

Kap Ali, Bali,
District: Thane

] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane

] Respondent No.1
] Original
] Respondent No.1

2. Akhtari Mokhmuddin Kazi (since deceased)
Through:

] Respondent
] Nos.2 (a)

2(a) Mohkamuddin Gulam Gaus Kazi
Age: 66 years, Occn. Business
r/o Aashiana, 181/4th Patel Mohalla
Nizampur, Bhiwandi 421 302, Dist. Thane

] to
] 2((d)
] Original
] heirs of
] Petitioner.

2(b) Smt. Sadaf Danish Patel
Age:39 years, Occ. Household,
r/o 38/1, GF 3rd Mohalla, Nizampur
Bhiwandi, Dist.Thane.

2(c) Safi Mokkhmuddin Kazi,
age: 38 years,Ocn. Doctor,
r/o Aashiana, 181/4th patel Mohalla
Nizampur, Bhiwandi 421 302, Dist.Thane

2(d) Smt. Hina Wazid Zakeria
age: 37 rs, Occn.household.
r/o Manzile Nizam, 1st floor
Burhan Chowk, Nala Spara
Tal. Vasai, Dist.Thane.

**WITH
FIRST APPEAL NO.213 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra

] Respondent No.1

Special Land Acquisition officer, District: Thane	]Original]Respondent No.1]
2. Shakila Iqbal Goray age: adult,Occn: Household Residing at: Village Talwali Tal. Bhiwandi, Dist.Thane	] <u>Respondent No.2</u>] Original]Petitioner.]

**WITH
FIRST APPEAL NO.215 OF 2014**

Bhiwandi Nizampur City City Municipal Corporation Kap Ali, Bali, District: Thane	] <u>Appellant</u>] Original] Respondent] No.2.
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V/s.

1. The State of Maharashtra Special Land Acquisition officer, District: Thane	] <u>Respondent No.1</u>]Original]Respondent No.1]
2. Smt. Rehana Aqueel Vinchu age: adult,Occn: business r/o 19/1st Mohalla Nizampur, Tal. Bhiwandi, Dist.Thane	] <u>Respondent No.2</u>] Original]Petitioner.]

**WITH
FIRST APPEAL NO.221 OF 2014**

Bhiwandi Nizampur City City Municipal Corporation Kap Ali, Bali, District: Thane	] <u>Appellant</u>] Original] Respondent] No.2.
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V/s.

1. The State of Maharashtra Special Land Acquisition officer, District: Thane	] <u>Respondent No.1</u>]Original]Respondent No.1]
2. Amichand Lavji Madhani	] <u>Respondent No.2</u>

age: adult,Occn: business
Residing at: 111 Chawala Building
Room No.21, 2nd Floor, Mumbai Devi
Mumbai 400 003

] Original
]Petitioner.
]
]

**WITH
FIRST APPEAL NO.224 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane
2. Sarfaraj Siddique Vinchu
age: adult,Occn: business
Residing at: 13/1st Mohalla, Ghans Bazar
Bhiwandi

] Respondent No.1
] Original
] Respondent No.1
]
] Respondent No.2
] Original
]Petitioner.
]

**WITH
FIRST APPEAL NO.228 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane
2. Shayesta Tafaaj Dhole
age: adult,Occn: Household
Residing at: Patel Mohalla, 4th
Nizampura, Tal. Bhiwandi, Dist. Thane

] Respondent No.1
] Original
] Respondent No.1
]
] Respondent No.2
] Original
] Petitioner.
]

**WITH
FIRST APPEAL NO.233 OF 2014**

Bhiwandi Nizampur City	] <u>Appellant</u>
City Municipal Corporation	] Original
Kap Ali, Bali,	] Respondent
District: Thane	] No.2.

V/s.

- | | |
|-------------------------------------|--------------------------|
| 1. The State of Maharashtra |] <u>Respondent No.1</u> |
| Special Land Acquisition officer, |] Original |
| District: Thane |] Respondent No.1 |
| |] |
| 2. Laeeque Gulam Gaus Kazi |] <u>Respondent No.2</u> |
| age: adult, Occn: business |] Original |
| Residing at: 181/4th Patel Mohalla, |] Petitioner. |
| Nizampur, Bhiwandi, Dist. Thane. |] |

**WITH
FIRST APPEAL NO.315 OF 2014**

Bhiwandi Nizampur City	] <u>Appellant</u>
City Municipal Corporation	] Original
Kap Ali, Bali,	] Respondent
District: Thane	] No.2.

V/s.

- | | |
|--------------------------------------|--------------------------|
| 1. The State of Maharashtra |] <u>Respondent No.1</u> |
| Special Land Acquisition officer, |] Original |
| District: Thane |] Respondent No.1 |
| |] |
| 2. Smt Yasmin Zahid Patel |] <u>Respondent No.2</u> |
| age: 51 yrs, ,Occn: household |] Original |
| Residing at: Haji Miyan Patel Manzil |] Petitioner. |
| Gr. Floor, 15, Dr. Nair Road, |] |
| Agripada, Mumbai 400 011 |] |

**WITH
FIRST APPEAL NO.320 OF 2014**

Bhiwandi Nizampur City	] <u>Appellant</u>
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City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane

] Respondent No.1
] Original
] Respondent No.1
]

2. Biharilal Manilal Shah
Through his legal heir
Manoj Biharilal Shah
age: 38 yrs, Occn: business
Residing at: 37, G Tambakanta, Pydhonie,
Mumbai 400 003

] Respondent No.2
] Heir of
] Original
] Petitioner
]
]

**WITH
FIRST APPEAL NO.365 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

1. The State of Maharashtra
Special Land Acquisition officer,
District: Thane

] Respondent No.1
] Original
] Respondent No.1
]

2. Zakir Gulam Gous Kazi
age: 54 yrs, ,Occn: household
Residing at: Aashiana, 181/4th Patel Mohalla
Nizampur, Bhiwandi, Dist. Thane

] Respondent No.2
] Original
] Petitioner.
]

**WITH
FIRST APPEAL NO.366 OF 2014**

Bhiwandi Nizampur City
City Municipal Corporation
Kap Ali, Bali,
District: Thane

] Appellant
] Original
] Respondent
] No.2.

V/s.

- | | |
|--------------------------------------|-------------------|
| 1. The State of Maharashtra |]Respondent No.1 |
| Special Land Acquisition officer, |]Original |
| District: Thane |]Respondent No.1 |
| |] |
| 2. Smt Nuzhat Nizar Kazi |] Respondent No.2 |
| age: adult, ,Occn: household |] Original |
| Residing at: Haji Miyan Patel Manzil |]Petitioner. |
| R/o 29, Shaniwar Peth, Pune-30, |] |

Mr. N. R. Bubna, for the appellant in all appeals.

Mr. Rajesh Datar, for Respondent No.2 claimant in all appeals.

Mr. Sooraj Halke, AGP for the respondent No.1 State in all appeals

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd SEPTEMBER, 2016.

COMMON JUDGMENT :

1. As all these appeals raise common questions of law and facts, they are heard together and are being decided by this common judgment.

2. These appeals are preferred taking an exception to the judgment and order dated 26.3.2013, passed by the Joint Civil Judge Senior Division, Thane, in each of Land Reference Cases filed by respondent No.2.

3. By the impugned judgment and order, the learned trial Court has enhanced the compensation amount to Rs.1400/- per square meter and at the same time, directed statutory benefits to be paid with the

additional component and the amount of solatium @ Rs.9% per annum for the first year and thereafter @ Rs.15% per annum for the subsequent years from the date of possession i.e. 17.02.1990, till its realization.

4. Facts of the appeal can be stated in brief as under;-

The Respondent No.2/claimants in each of the appeal were the owners of the land bearing City Survey Nos.4366 (part), 4364 (part), admeasuring 9139.15 Sq. meters, situate at Nizampur Bhiwandi, District: Thane. The said land was reserved for Primary School and play ground in the development plan, prepared by the then Bhiwandi Municipal Council (now Municipal Corporation) on 19th December, 1989. The claimants herein addressed a letter to the Chief Officer, of the Municipal Council offering to immediately hand over possession of two portions of the land bearing C.T.S.No.4366 for the public purpose of construction of school and play ground provided the market value of the plot is paid at the rate between Rs.500/- sq. yard to 600 per sq. yard. It was further stated that the price of the land may be fixed by such procedure as may be applicable. The possession of the land was accordingly handed over to the appellant Municipal Council vide receipt dated 17.2.1990. In the possession receipt, it was inter alia recorded that in pursuance of the correspondence arrived at between owners i.e. the claimants and the Municipal Council, it was agreed by the claimants that pending declaration of the final award by competent authority under the Land Acquisition Act,

1894 (for short called as L.A. Act) as well as Maharashtra Regional Town Planning Act, 1966 (for short called as MRTP Act), the owners/claimants shall hand over portion of the said plot of land so as to enable the Municipal Council, to undertake development of the said land for the public purpose of construction of Primary School and play ground. It was also recorded in the possession receipt that the owners shall execute final deed in favour of the Municipal Council, after the award is declared by the competent authority, subject to payment of compensation by the Municipal Council and the Municipal Council shall pay price of the land as per award as also owners/claimants shall have right to challenge the award as provided by law.

5. In pursuance thereto, on 14th March, 1990, the Municipal Council passed resolution authorizing payment of 50% amount, as part payment at the rate of Rs.125 per sq. meter. The Assistant Town Planning vide letter dated 6th June, 1995 informed the Chief Officer, Municipal Council, that the value of the land is Rs.140/- per sq. meter. According to the claimants, the said decision was neither communicated by the Municipal Council or the Assistant Director, Town Planning nor copy of the letter was served on them, hence they accepted the payment without prejudice to their rights.

6. Subsequent thereto, on 29th November, 1991, Municipal Council addressed a letter to the claimants offering 30% further payment

assuring that the said payment would be made at the time of execution of the sale deed. In reply to the said letter of the Municipal Council, the claimants/respondent No.2 informed vide their letter dated 9th December, 1995 that they had offered to co-operate with Municipal Council in a public cause by handing over possession of the property, even before acquisition proceedings were taken up because it was represented to them that such procedure will take long time and for that purpose development work should not be halted. However, at no point of time, claimants had accepted any amount of compensation as adequate. Conversely, the claimants had insisted on acquisition of land under the provisions of Land Acquisition Act, so that legal justice can be done to them.

7. In view of this demand made by the claimants for acquisition of land under the provisions of Land Acquisition Act, on 13th April, 1992, Municipal Council, passed resolution to refer the matter for declaration of award to the Collector of Thane, by letter dated 17th January, 1995. The Administrator of the Municipal Council, forwarded their proposal for acquisition of the land to the Collector. Accordingly on 8th August, 2000, Notification under Section 6 of the L.A. Act read with Section 126(4) of the MRTP Act, was issued on 21st October, 2000. Notice under Section 9 of the Act was issued to the persons interested inviting claims. After the claims were received, on 31st March, 2001, Special Land Acquisition Officer (for short, referred as, "SLAO"), passed award after taking

approval of the District Collector, Thane. As the payment was not received, the claimants filed Writ Petition No.424 of 2002 on 8.1.2002 seeking directions to the State Government and the Municipal Corporation to pay compensation as per award made by SLAO.

8. The appellant herein i.e. Municipal Corporation, then preferred Writ Petition No.859 of 2002 before this Court, challenging the said award. Writ Petition came to be dismissed by this Court vide judgment and order dated 12th August, 2003.

9. In the meanwhile the claimants, herein had filed various Land References before the trial Court, seeking enhancement of the amount of compensation. It was specific contention of the claimants that the amount of compensation was not calculated properly; it was highly inadequate considering locality and the potentiality of the property being non agricultural and required for development purpose. It was contended that the suit property is situated in the heart of the city, having all the facilities and is adjacent to Bhiwandi Nashik Highway, but SLAO has failed to take into consideration these important factors while fixing rate of compensation. Moreover, it was urged that while fixing rate of compensation, SLAO has made the divisions therein. He has fixed compensation at the rate of Rs.1345 for the first 1000 sq. meters and Rs.807 per sq. meter for the remaining area. However, SLAO has failed to explain on which basis such differentiation was made. It was further

urged that the claimants had co-operated and voluntarily surrendered the possession of the land considering public purpose for which it was required and in view thereof they were entitled to get adequate amount of compensation, which was not done by the impugned award and thus, the claimants claimed enhancement of compensation to the tune of Rs.2500/- per sq.meter.

10. These References came to be resisted by the respondent No.1 State of Maharashtra vide affidavit-in-reply and written statement at Exh.17, admitting the fact that the claimants were the owners and possessors of the land and they had voluntarily handed over possession of the same for the public purpose of primary school and playground. Accordingly award was passed after acquisition of the said land under the provisions of Land Acquisition Act. It was, however, denied that the amount of compensation awarded by the SLAO was inadequate or it was not just and proper. According to respondent No.1, SLAO has considered all the material aspects, while determining the amount of compensation and it was fixed at the market rate prevailing at the relevant time; therefore, no interference was warranted in the impugned award.

11. The appellants herein Municipal Corporation, filed its affidavit in reply at Exh.24 and supported the case of respondent No.1 State and raised the same contention that the amount of compensation is fixed by SLAO after considering all the relevant factors and therefore, the

References hold no merits.

12. On the respective pleadings of the parties, the trial Court framed issues at Exh.25. In support of their respective contentions, parties examined themselves.

13. Both the appellant and respondents herein relied upon various documentary evidence like sale instances of the area adjacent thereto and also copy of ready reckoner, copy of Bazar Mulya Takta and other relevant documents.

14. On the basis of this oral and documentary evidence, trial Court came to the conclusion that, having regard to the location of the suit land in the heart of the City of Bhiwandi and considering the fact that it was adjacent to 60 feet width D.P. road and surrounded by the residential houses and commercial buildings, compensation fixed by the SLAO was not just and adequate. While doing so, the trial Court also considered the ready reckoner and Bazar Mulya Takta, sale deeds of the nearby properties, on which parties had placed reliance and accordingly enhanced compensation to Rs.1400/- per sq. meters. The trial Court also found that there was absolutely no reason for the SLAO to make any distinction for fixing compensation at the rate of Rs.1345 for first 1000 sq. meters and Rs.807 per sq. meter for the remaining area.

15. While awarding this compensation at the enhanced rate as stated above, the trial Court also granted solatium of 9% per annum for

the first year and thereafter at the rate of Rs.15% per annum for the subsequent years from the date of possession of i.e. 17.2.1990 till its realisation.

16. These judgments and orders, passed in the Land References, are challenged in these appeals by learned counsel for appellant, the Municipal Corporation, mainly on the two grounds. In the first place, it is submitted that there was no sufficient material before the trial Court for enhancement of the compensation amount from Rs.1345/- per sq. meter for first 1000 sq. meters and Rs.807/- per square meter for the remaining area as awarded by the S.L.A.O, to Rs.1400/-per sq. meter. It is urged by learned counsel for the appellant, that the trial Court has not considered the relevant sale instances which were produced by the Municipal Corporation at the time of hearing. Secondly it is urged that in paragraph No.23 of its judgment, the trial Court itself has made observation that:-

“Court should have to take middle way while granting and enhancing rate of compensation, though the aggregate rate comes to Rs.950/- per sq. meter, however, I am of the view that an amount of Rs.1400/- per sq. meters would be reasonable and appropriate rate of the suit property”.

17. It is urged by learned counsel for appellant Shri. Bubna, that these very observations made by the trial Court make it apparently clear that the trial Court has enhanced compensation amount to Rs.1400/- per

sq. meter at its own whims and fancies, though the trial Court itself has considered that aggregate rate comes to Rs.950/- per sq. meter. Hence according to learned counsel for appellant, without there being any reasoning, recorded by the trial Court as such, the trial Court has enhanced the compensation and on this very ground itself, the impugned judgment and order of the trial Court needs to be interfered with.

18. Per contra, learned counsel for respondent claimants have taken this Court through the entire judgment and award of the trial Court, pointing out that in various paragraphs, the trial Court has recorded the reasons why it has come to the conclusion to enhance the compensation amount to Rs.1400/- per sq. meter.

19. With the able assistance of learned counsel for parties, this Court has gone through the impugned judgment and order of the trial Court, and on perusal of the same this Court is satisfied that the trial Court has elaborately considered the reasons as to why it found it fit to enhance the compensation amount to Rs.1400/- per sq. meter. The trial Court, in paragraph No.17 of its judgment has considered various sale instances on which reliance was placed by the parties. The Trial Court also taken into consideration the ready reckoner and Bazar Mulya Takta, which were produced by the parties themselves and found that this ready reckoner and Bazar Mulya Takta are squarely and perfectly applicable to the lands in the instant case. Trial Court also found that in the award itself, SLAO

has noted that the suit lands are situated in the heart of the Bhiwandi city, adjacent to 60 feet D.P. road and very near to Nashik Agra Road. The trial Court also noted that residential houses and power looms are in the vicinity as well as the suit property is also acquired for the purpose of Primary School and playground. The trial Court, further considered the fact that the suit land is not only non-agricultural, but it has all infrastructural facilities such as road, water, electricity, drainage etc.

20. The trial Court further found that SLAO has totally ignored the rate mentioned in the ready reckoner, produced at exh. 80, 94 and 97 which were filed in L.A.R. No.111 of 2011 though they were very relevant for the purpose of deciding the compensation amount. The trial Court also considered the fact that there was every possibility of the prices of the land increasing in the surrounding area due to faster development and the potentiality of the land. Having regard to all these factors, the trial Court found that the compensation amount, as awarded by the S.L.A.O., needs to be enhanced.

21. In my considered opinion, all these factors which are discussed in detail by the trial Court, in its judgment, in paragraph Nos. 17 to 19, are not only relevant factors but they are just and proper factors to be considered for the purpose of deciding the amount of compensation in respect of any property. It is pertinent to note that when award itself mentions that the suit property is situated in the heart of the city, adjacent

to 60 feet D.P. road and very near to Nashik-Agra road and when admittedly the suit property was non-agricultural land having all the necessary amenities and facilities and further considering the most important factor that the suit property was acquired for the purpose of Primary School and playground, all these factors make it essentially clear that the suit property was very much in the centre of the city and surrounded by the residential and commercial premises. The trial Court, has in this respect also considered the oral evidence as well as other documents like copies of maps at Exh.106 and 107 and observed that the Bazar Mulya Takta and ready reckoner of the year 2000 shows the price of the suit land in the range of Rs.1400/- per sq. meter and Rs.2745 per sq. meter. It is pertinent to note that in paragraph No.16, the trial Court has also taken note of the fact that the suit property falls within location of area known as Chavindra road. Thus, it is apparent that the trial Court has considered all the relevant factors while enhancing amount of compensation.

22. As to the observations made by the trial Court in paragraph No.23 of its judgment and order, that the aggregate rate comes to Rs.950/- per sq. meter, the trial Court has arrived at this aggregate rate in view of the distinction made by the Land Acquisition Officer for awarding compensation at the rate of Rs.1345/ per sq. meter for the first 1000 sq. meters and Rs.807 for the remaining area. Needless to say that the

SLAO has not at all given any reason for such distinction.

23. Thus, having regard to all the relevant factors which the trial Court has discussed in its judgment and especially to the rate mentioned in the ready reckoner and Bazar Mulya Takta, coupled with the sale instances, produced by the parties, this Court has no hesitation in coming to conclusion that the Trial Court has rightly arrived at the compensation at the rate of Rs.1400/- per sq. meter. Hence, absolutely no grounds are made out to cause any interference in the same so as to reduce the said amount.

24. It may be stated that the claimants herein are also not aggrieved by the said rate of compensation, as fixed by the trial Court and have not challenged the impugned judgment and order of the trial Court, which makes it clear that they also found the said amount to be reasonable and appropriate. Therefore, so far as first challenge to the judgment and order of the trial Court, relating to the amount of compensation at the rate of Rs.1400/- per sq. meter needs to be rejected outrightly.

25. The next ground on which learned counsel for the appellant has challenged the impugned judgment and order of the trial Court is relating to the award of interest from the date of possession i.e. 17.2.1990 and there appears to be much substance in this contention.

26. It is pertinent to note that the trial Court while awarding the

interest from the date of handing over possession has not given any reason. Only in the last paragraph No.25 of the judgment and order, the trial Court has made such order, but without there being any discussion as to why trial Court found it fit to award interest from the date of possession, when as per law and settled legal position and having regard to provisions of Land Acquisition Act itself, cause for the interest accrues from the date of Notification under Section 4 of the L.A. Act and not from the date of possession. If at all any authority is required for this legal proposition, learned counsel for appellant herein has rightly placed reliance on two decisions of the Apex Court. First is **Siddhappa Vasappa Kuri and anr -vs- Special Land Acquisition officer and anr** ¹ wherein after taking review to all provisions of Land Acquisition Act, the Apex Court was pleased to observe in paragraph No.6 of it's judgment as follows :-

“It is, as we see it, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error

¹ (202) 1 SCC 142,

in holding that the appellants were entitled to the additional compensation under Section 23(1-A) for the period 8-3-1991 to 6-2-1993”.

27. It was further held in this authority that section 23 (1-A) of the L. A. Act admits of no other meaning than that the interest is required to be calculated from the date of notification, even if possession of the land is taken prior to the publication of section 4 Notification.

28. In the second judgment of the Apex Court, in case of **R.L. Jain (d) by Lrs. -vs- DDA and ors,**² also similar question was raised before Apex Court as to, “whether in a case where possession is taken before issuance of notification under Section 4(1) of the L.A. Act, the claimant is entitled to interest for such anterior period in accordance with Section 34 of the said Act?” The Apex Court, in this case was dealing with two conflicting decisions of the Division Benches, namely **Shree Vijay Cotton & Oil Mills Ltd v. State of Gujarat**³ and **Union of India -vs- Budh Singh**⁴. In the case of *Shree Vijay Cotton Mills* (supra), the Division Bench of the Supreme Court has awarded interest from the date of possession in view of Section 34 of the Act; whereas in case of *Budh Singh* (supra) such claim for the interest from the date of possession was rejected.

2 (2004) 4 SCC 79,

3 (1991) 1 SCC 363

4 (1995) 6 SCC 233

29. In this judgment of *R. L. Jain (supra)*, while resolving the conflict between these two decisions, the Hon'ble Supreme Court once again analyzed the provisions of the L. A. Act and held that "Land Acquisition Act" is a complete Code covering entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when the land is taken over. It was, therefore, held that Court has no power to impose any condition to pay interest in excess of the rate and the manner prescribed by the statute as well as for a period anterior to the publication of notification under Section 4(1) of the Act. According to the Hon'ble Supreme Court, the parameter for initiation of proceedings is the publication of the notification under Section 4(1) of the Act, which would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Hence, any possession taken otherwise, would not be considered to be possession taken under the L. A. Act. It was also held that the Land Acquisition Act being self contained code, the common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute.

30. In this respect it would be useful to reproduce relevant portion of paragraph No.11 as under:-

"11. The Scheme of the Act does not

contemplate taking over of possession prior to the issuance of the notification under section 4(1) of the Act and if possession is taken prior to said notification, it will be de hors the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification under Section 4(1) is the sine qua non for any proceedings under the Act.

31. In the paragraph No.12, it was held that :-

"The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation " and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under Sub-section (1-A) and solatium under Sub-section (2) of Section 23. The heading of Part II of the Act is **Acquisition** and there is a sub-heading **"Taking Possession"** which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Sections 16 or 17 of the Act. These are the only two Sections in the Act which specifically deal with the subject of

taking possession of the acquired land. Clearly the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Sections 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For the parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Sections 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is de hors the provisions of the Act".

32. Thus, ultimately, Apex Court in this decision upheld the view taken in the case of *Budh Singh (supra)* and categorically held that even on equitable grounds, the interest cannot be awarded from the date of possession.

33. In the instant case though it is true that the possession of the land was handed over voluntarily by the respondents, in the year 1990 itself that is before publication of the award, as such possession does not amount to acquisition of possession under the provisions of the L. A. Act; in view of the legal position, as crystallized and laid

down by the Apex Court in the above said two authorities, the impugned order passed by the trial Court granting interest from the date of possession i.e. 7.2.1990 is required to be quashed and set aside. Needless to state that, respondents are entitled to the interest at the rate as awarded by the trial Court only from the date of Notification under Section 4 of the Act ON 8.8.2000. Hence following order.

Order

- i. All the above appeals are accordingly allowed partly, with proportionate costs.
- ii. The impugned judgment and order of the trial Court, enhancing the compensation to the tune of Rs.1400/- per sq. meter, is hereby confirmed.
- iii. However, the impugned order of the trial Court awarding interest from the date of possession i.e. 7.2.1990 is quashed and set aside. It is directed that the respondent/claimants are entitled to the interest at the rate as awarded by the trial Court, from the date of Notification under Section 4 of the Land Acquisition Act i.e. 8.8.2000.
- iii) The trial Court is directed to pay the compensation amount to respondents with interest as directed by this Court and refund the balance amount of interest to the appellant.
- iv) Considering the fact that the possession of the land was

handed over to the appellant by the claimants, way back in the year 1990, the trial Court is directed to do the needful as expeditiously as possible and preferably within one month from the receipt of this order.

v) Accordingly all the appeals are disposed off finally.

[DR. SHALINI PHANSALKAR-JOSHI, J.]