

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 601 OF 1997
WITH
CIVIL APPLICATION NO. 1034 OF 2014

1. The State of Maharashtra,
(through District Collector,
Aurangabad).
 2. Special Land Acquisition Officer
Aurangabad
- ...Appellants

versus

1. Gajanan s/o Daulatrao Patil,
Age major, Occ. Agricultural
R/o. 15, L.I.C. Colony, Jalgaon
Tq. and District Jalgaon
 2. Sajan s/o Daulatrao Patil,
Age 46 years, Occ. And
R/o. As above
 3. Yadavrao s/o Daulatrao Patil
Age 43 years, Occ. And R/o.
As above
- All partners of M/s. Patil
Brothers and Co. Khandsari
Sugar Mills, Mhasekota,
Tq. Soyegaon, District Aurangabad
- ...Respondents

.....
Mr. A.M. Phule, A.G.P. for the appellants
Mr. A.B. Kale, advocate for the respondents
.....

WITH
CROSS OBJECTION ST. NO. 22145 OF 1997
IN
FIRST APPEAL NO. 601 OF 1997

1. Gajanan s/o Daulatrao Patil,
Age 56 years, Occ. Agriculture
2. Yadavrao s/o Daulatrao Patil
Age 54 years, Occ. Agriculture
3. Sajjan s/o Daulatrao Patil,
Age 56 years, Agriculture

All R/o. B-2, Datta Colony,
Near Railway Gate Jalgaon
All partners of M/s. Patil
Brothers and Co. Khandsari
Sugar Mill, Mhasekota,
Tq. Soyegaon, District Aurangabad

Ori. Claimants
(Respondents in F.A.)

versus

The State of Maharashtra
Through Special Land Acquisition
Officer, Aurangabad
(Copy to be served through the
Government Pleader, High Court
of Judicature at Bombay,
bench at Aurangabad)

...Respondent
(Appellant in F.A.)

.....
Mr. A.B. Kale, advocate for the applicants-claimants
Mr. A.M. Phule, A.G.P. for respondent State.
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment: 29.06.2017**

**Date of pronouncing
the Judgment: 21.08.2017**

JUDGMENT:-

1. Being aggrieved by the judgment and award dated 24.04.1996, passed by the learned Civil Judge, Senior Division, Aurangabad, in L.A.R. No.229 of 1994, the original respondent State

has preferred first appeal No. 601 of 1997 and the claimants have preferred cross objection (St.) No. 22145 of 1997.

2. Brief facts giving rise to the present appeal and cross objection, are as follows:-

a) The land Gat No. 85, admeasuring 6 acres, situated at Mhasekota in Soygaon Tahsil of Aurangabad district, owned by the claimants came to be acquired by the Government for construction of Hiwra medium project. The land Gat No. 85 admeasuring 2 H 40 R came to be acquired including 0.16 Hectare Potkharaba land. Out of this area, land admeasuring 0.80 Hectare has been converted into non agriculture (N.A.) purpose for installation of Khandsari factory. Rest of the area admeasuring 1.44 hectare is left for cultivation. Though the claimants had asked for N.A. permission for the land admeasuring 1.44 Hectare out of the land Gat No.85, the same was not granted by the concerned authority. The S.L.A.O. on 29.3.1982 has published the notification under Section 4 of the Land Acquisition Act and on 1.9.1986 awarded the compensation for the acquired land admeasuring 0.80 R, since converted into the non agriculture land, at the rate of Rs.2.00 per sq. meter i.e. Rs.20,000/- per hectare. The S.L.A.O. has awarded the compensation to the agricultural land admeasuring 1.44 R at the rate of Rs.9500/- per hectare. So far as

Potkharaba land, which is 0.16 hectare is concerned, the S.L.A.O. has awarded the compensation at the rate of Rs.200/- per hectare. The S.L.A.O. has awarded total compensation at Rs.29,712/- as the costs of the land, as detailed above. Apart from the costs of the land, the S.L.A.O. has also fixed the valuation of structure under three heads i.e. (I) civil part Rs.3,67,100, (ii) Electrical installation (now to be demolished) Rs.1,06,000/- and (ii) Mechanical machinery (dismantling and transportation) Rs.1,05,000/-, total Rs.5,78,100/-.

b) Being dissatisfied with the inadequate compensation awarded by the S.L.A.O., the claimants had preferred land acquisition reference for compensation of land as well as structure of Khandsari project at the enhanced rate. It has been contended in the claim petition that the award passed by the S.L.A.O. was inadequate and compensation awarded was too low and it does not reflect true market value. It has been contended that the acquired land was surrounded by the villages, tar roads, metal roads and location was growing fast, as a center of business, education, industries, cultural activities. It has also been contended that the acquired land is situated at a distance of 2 kilometers from Pachora and development plan for industries also came to be sanctioned. The acquired land was well levelled, well drained and well shaped too. Initially, it was barren land, however, the claimants had invested huge amount to

make entire land fertile and useful. Further, the claimants had started Khandsari sugar mills by making necessary level by incurring huge expenses thereon. The claimants also incurred huge expenses for installing water and electricity connections. The claimants thus claimed market value of the land at the enhanced rate of Rs.150/- per sq. meter. In addition to this, the claimants claimed the compensation towards civil structure, foundation of factory, electrical and mechanical installations. It has also been contended in the claim petition that the claimants incurred huge loss due to closure of their Khandsari unit, however, the S.L.A.O,. has not considered the loss sustained by the claimants to the tune of Rs.5,00,000/- per year since 1981. It has also been contended that the claimants were not allowed to shift the machinery and as such incurred huge loss. However, the S.L.A.O. has not awarded any compensation under all these heads.

c) Original respondent State has strongly resisted the claim petition by filing written statement. It has been contended that the S.L.A.O. after considering entire aspects, awarded just and reasonable compensation. The S.L.A.O. has collected relevant evidence and rightly carried out valuation of the acquired land.

d) The claimants and the respondent State have adduced oral

and documentary evidence in support of their rival contentions. Learned C.J.S.D. Aurangabad, by its impugned judgment and award dated 24.4.1996 awarded the compensation at the enhanced rate of Rs.6/- per sq. ft. for the entire acquired land by treating it as land meant for non agricultural use, Rs.3,86,867/- towards demolishing and dismantling charges of electrical, mechanical and machinery installation, Rs.5,00,000/- for loss of earning for the period from 1981 to 1986, Rs.91,000/- towards damages and dismantling charges and Rs.15,000/- towards transportation, loading and unloading alongwith the statutory benefits.

e) Being aggrieved by the same, the respondent State has preferred first appeal No. 601 of 1997, in this Court and the claimants have preferred cross objection. The Division Bench of this Court by judgment and order dated 17.10.2003 in first appeal No. 601 of 1997 partly allowed the appeal. The order of reference court granting market value of Rs.6/- per sq. ft. for acquired land was quashed and set aside and the Division Bench of this Court held that the claimants are entitled to receive the market value for the acquired land as determined by the S.L.A.O. in his award. The order of the reference Court awarding an amount of Rs.3,86,867/- to the claimants towards demolition and dismantling charges in respect of electrical, mechanical and machinery charges is quashed and set aside. The Division Bench of this Court further held that the claimants are

entitled to receive Rs.1,00,000/- for the loss of earning for one year instead of Rs.5,00,000/-. Further, the order of the reference court granting Rs.91,000/- towards damages and dismantling charges and Rs.15,000/- towards transportation was also quashed and set aside. The appellant State is permitted to recover the excess payment, if made to the claimant.

f) So far as the cross objection is concerned, it was dismissed for non removal of objections. The application for restoration of cross objection was filed on 18.9.2003. The Division Bench of this Court has observed that the first appeal was heard on merits and on 16.9.2003 and it was reserved for judgment and as such by order dated 17.10.2003 observed that there is an inordinate delay in filing restoration application and accordingly rejected the same.

g) Being aggrieved by the said judgment and order passed by the Division Bench of this court, as detailed above, the claimants have filed Civil Appeal No. 2432 of 2005 in the Supreme Court. By order dated 20.4.2011, the Supreme Court, quashed and set aside the judgment and order passed by the Division Bench of this Court and remitted the matter to this Court for fresh disposal. Meanwhile, the claimants have filed review application No. 140 of 2014 in the aforesaid cross objection and by order dated 31.7.2014, this Court restored the cross objection on the ground that the appeal is directed

to be reheard by the Supreme court and as such, the cross objection will have to be heard alongwith the appeal itself. The cross objection is restored subject to condition of the claimants to deposit the court fees.

3. Learned A.G.P. for the appellant State submits that the S.L.A.O. has awarded just and reasonable compensation in accordance with law. Learned A.G.P. submits that as on the date of section 4 notification, the land admeasuring 1 H 44 R out of the acquired land Gat No. 85 was being used for agricultural purpose. Though the land admeasuring 80 R out of the acquired land Gat No. 85 converted into N.A. use, it is a part of record that the claimants have sought permission for use of remaining land admeasuring 1 H 44 R., as mentioned above, for N.A. use and the authority has refused to accord the permission. Learned A.G.P. submits that as on the date of notification, the said Khandsari project was not in operation and there was no development at all in that area. Thus, on the date of notification, there was no potential value of acquired land as non agricultural land. However, the reference court has considered entire acquired land, as land meant for non agriculture use. The reference court has committed grave error in determining the compensation on sq. meter basis for the entire acquired land.

4. Learned AG.P. submits that no prudent purchaser would come forward to purchase the large area of land admeasuring 1 H 44 R on sq. ft. basis. Learned A.G.P. submits that the reference Court has awarded the compensation at the enhanced rate of Rs.6/- per sq. ft. for the acquired land, admeasuring 2 H 34 R by converting it into sq. meter and for that purpose the reference court has relied upon the sale instance pertains to the small portion of the plots and those plots are from the villages which are at a distance of 2 to 11 kilometers from the acquired land. The reference court has committed grave error by considering the market value of the fully developed plot and compared the same with undeveloped land. The learned A.G.P. submits that the said village Mhasekota is small village, having population of 1000, situated in remote area, without any development potentials. It is a part of record that the rest of the area admeasuring 1.44 Hectare out of the acquired land Gat No.85 left for cultivation and S.L.A.O. has therefore, rightly proposed the above stated land to be valued as agriculture land. The S.L.A.O. has considered the land admeasuring 0.80 Hectare out of the acquired land Gat No. 85 to be valued on the basis of sale of open plots from village Mhasekota and its vicinity, and accordingly awarded just and reasonable compensation. Learned A.G.P. submits that the valuation of the structure has been determined on the basis of the valuation made by the Executive Engineer, Jalgaon medium project.

5. The learned A.G.P. submits that the said factory was not in operation and machinery was lying idle. The appellant State has examined the Land Acquisition Officer as well as Sub Divisional Engineer, working at Hiwra medium project. The witness Dilip Gudwe, the Sub Divisional Engineer had visited the site and the factory premises and submitted a report which is at Exh.54. The learned A.G.P. submits that the reference court has granted highly exorbitant market value for the acquired land. The reference Court has also awarded Rs.5,00,000/- towards loss of earning, without any basis. The learned A.G.P. submits that the reference court has granted double benefits to the claimants under the head of same damages and dismantling. Learned A.G.P. submits that there is no evidence at all to show that the said Khandsari sugar factory was running till 1986. There is also no evidence in respect of damages cause to the machinery.

6. Learned A.G.P. submits that the reference Court has given more weightage to the evidence of witness No.2 Dharashivkar, who happened to be the Government approved valuer and his report Exh.21, compare to oral evidence of S.L.A.O. and the Sub Divisional Engineer, examined by the State, as its witnesses to substantiate its contentions. The reference court has also not considered the

admission given by said witness Dharashivkar in respect of stop production of said factory in the year 1978-79 i.e. prior to section 4 notification published for the acquired land. Learned A.G.P. submits that the judgment and award passed by the reference Court is thus liable to be quashed and set aside and the L.A.R. No. 229 of 1994 may be dismissed and as also cross objection.

7. Learned A.G.P. in order to substantiate his contentions, placed reliance on the following judgments:-

- i) Shaikh Rasheed Shaikh Latif (dead) through L.Rs. vs. State of Maharashtra and others, reported in 2004 (3) All MR 183,
- ii) State of Maharashtra and others vs. Digamber Bhimashankar Tandale and others, reported in (1996) 2 SCC 583
- iii) Ranvir Singh and Anr. vs. Union of India (UOI), reported in AIR 2005 SC 3467

8. Learned counsel for the claimants submits that at the time of issuance of notification under Section 4 of the Land Acquisition Act, 1894, no sale transaction had taken place in village Mhasekota. The land was acquired for Hiwra medium project and the villages Mhasekota and Dongargaon were to be rehabilitated. Thus, the sale instance of village Mauje Gondegaon was placed on record.

Learned counsel submits that in order to establish the sugar factory, the claimants had purchased the land bearing survey No.35/2, (new Gat No. 85) admeasuring 2 H 44 R, out of which 16 R land was potkharaba. The entire project report of factory was prepared by witness Mukund Dharashivkar of Dhule, who happened to be Architect. Original project report was placed on record at Exh.42. The claimants got permission and no objection certificate from Tahsildar, Soygaon for N.A. use in respect of two acres of land out of the said land. Accordingly, the factory was installed on 2 acres of land. The said land was acquired for Hiwra medium project. Likewise, the lands situated at villages Khadak Deora (kd), Khadak Deora (Bk), Dongargaon, Mhasekota, Gondegaon, Nimbhore, respectively were acquired by the government. The claimants had claimed compensation at the enhanced rate of Rs.150/- per sq. meter and in order to substantiate the said claim, the claimants have relied upon the sale instance of village Gondegaon. The said sale deed is at Exh.23. As per the consideration shown in the said sale deed, rate comes to Rs.100/- per sq. meters for the open plot. The said sale deed Exh.23 is dated 3.6.1976 which is six years prior to issuance of section 4 notification in respect of acquired land. Furthermore, the claimants have also placed on record the certified copy of the sale deed of open plot dated 3.9.1982 marked at Exh.35. A plot admeasuring 5000 sq. ft. was sold for consideration of Rs.35,000/-

situated at Jargaon, which is at a distance of two kilometers from village Mhasekota and it is only intervened by river Hiwra. Learned counsel submits that the claimants had filed an application for grant of N.A. permission with the revenue authorities regarding remaining land, however, they were not communicated any decision. The remaining land was used for parking of the vehicles and keeping the raw material. Village Pachora is at a distance of 11 kilometers from the acquired land and the villages Gondegaon, Khadakdeora, Mhasekota, having their business connections with village Pachora. There is State Highway going to Sillod and Aurangabad. The claimants had therefore, rightly claimed the compensation at Rs.150/- per sq. meter for entire acquired land. However, the reference court has awarded very meager amount for the acquired land. Reference Court has not considered above aspects and awarded the cost of land at the rate of Rs.6/- per sq. ft. only.

9. Learned counsel for the claimants submits that the original map of factory is placed on record and the same is marked at Exh.26. Likewise, the map of installation of factory is also placed on record at Exh.27 which bears the signature of witness Architect Mukund Dharashivkar. Learned counsel submits that production capacity of sugar factory was 100 MT per day when the factory was started functioning initially. The claimants have also got audited the

accounts of the sugar factory in respect of expenses incurred for establishing the factory, installation of machinery etc.. The details in the form of balance sheets placed on record signed by the Chartered accountant and the same are marked Exh.33 and 34, respectively.

10. Learned counsel for the claimants submits that the work of Hiwra medium project was started in the year 1981 and due to construction work undertaken for the project, the work of the factory was paralyzed due to digging and/or excavation and as such roads from all sides were blocked. Even the claimants were not allowed to remove the entire machinery installed in the factory as the State authority wanted to evaluate entire machinery. Entire machinery has therefore, gone rusted after its removal from the spot of the factory. Likewise, the electrical goods, such as electrical instruments, cables, transformers, switch boards etc., also got damaged and become valueless. The claimants had sustained huge loss due to dismantling. The claimants had carried out the valuation of civil work by land and building method by applying the suitable depreciation through the government approved valuer's services of Shri Dharashivkar. On the other hand, the State had not undertaken such exercise and on the contrary relied upon the report submitted by Mr. Dharashivkar Exh.21 to estimate the loss sustained by the claimants with regard to civil work, machinery, electrification etc. learned counsel submits that

however, reference court has awarded meager amount under the head of civil work. Learned counsel submits that entire machinery became scrapped and electrical installation become valueless. The claimants are entitled for substantial amount of civil work, loss of foundation, towards plants and machinery and also loss of electrification. Though the reference court has considered report Exh.21 and given weightage to the evidence of witness Shri Dharashivkar, has awarded very meager amount of compensation for all these losses.

11. Learned counsel for the claimants submits that there were as many as 250 employees in the factory on contract basis seasonally. Learned counsel submits that due to acquisition of the land by the State, the claimants who are partners lost their business. Initially, the production of the factory was started in the year 1976 and due to notification issued by the Government the year 1981, and since the Government started operation through the contractors, the approach roads were closed and it had become impossible for the claimants to run the factory. The claimants used to earn Rs.2,00,000/- per annum. The operation of the said factory could have been continued up to 40 to 50 years had it not been closed. The said amount of Rs.2,00,000/- p.a. was the net income by deducting all expenditure. However, the reference Court has awarded Rs.5,00,000/- by considering the period

of five years on account of severance of business. The claimants are entitled for the loss of business at the rate of Rs.5,00,000/- per year from the date of possession till the date of award. Learned counsel submits that even the State is liable to pay the erection charges of new industry, however, the reference court has ignored the same and has not awarded any amount of compensation under this head. Even the reference court has not awarded compensation for staff quarter, shade of the sugar factory, godown, sugar platform, boiling pan, Bhattis, molasses tank, weigh bridge, crusher towers, crystallizers etc.

12. Learned counsel for the claimants, in order to substantiate his contentions, placed reliance on the following cases:-

- i) Atma Singh (Died) through L.Rs. and Ors. vs. State of Haryana and another, reported in AIR 2008 SC 709,
- ii) Thakarsibhai Devjibhai and others, vs. Executive Engineer, Gujarat and another, reported in AIR 2001 SC 2424,
- iii) Viluben Jhalejar Contractor (D) by L.Rs. vs. State of Gujarat, reported in AIR 2005 SC 2214
- iv) Subh Ram and others vs. Haryana State and Anr, reported in ARI 2010 SC (Supp) 241,
- v) Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs.

and ors. vs. Special Land Acquisition Officer and others, reported in 2013 LAC 626 (SC),

vi) Trambak Balaji Sangale and Ors. vs. The State of Maharashtra and Anr. reported in 2013 LAC 258 (Bom)

13. I have gone through the pleadings, evidence and the impugned judgment and award passed by the Reference court. The land Gat No. 85, admeasuring 2.40 Hectare corresponds to 6 acres, situated at village Mhasekota, Tq. Soygaon, District Aurangabad came to be acquired by the State for Hiwra medium project. Notification under section 4 for acquisition of the land was published in the year 1982. It appears from the record that out of total acquired land, the claimants had used 0.80 Hectare in the year 1976 for establishing Khandsari sugar factory. It is also not disputed that due to acquisition of the said land, the claimants had to close the said sugar factory.

14. So far as the cost of land is concerned, the S.L.A.O. has awarded compensation at the rate of Rs.2/-per sq. meter i.e. Rs.20,000/- per hectare for 0.80 hectare of land on which Khandsari sugar factory was established. It is not out of place to mention here that the claimants had obtained non agriculture (N.A.) permission from the authority concern for the aforesaid land admeasuring 0.80

Hectare out of land Gat No. 85, to establish the said sugar factory. The S.L.A.O. has awarded compensation at the rate of Rs.9500/- per hectare for the acquired land admeasuring 1 H 44 R by treating the said land as an agricultural land and awarded Rs.200/- per hectare for potkharaba land admeasuring 0.16 R.

15. The learned Judge of the reference Court has considered that the entire acquired land, was being used by the claimants for the purpose of production of sugar and its allied purposes. The reference court has held that entire acquired land was utilized for non agriculture purposes. Consequently, the reference court has converted the entire acquired land admeasuring 2 H 40 R into sq. ft. and by deducting 10% of the land towards development cost, awarded compensation at the rate of Rs.6/- per sq. ft as a cost of land.

16. One of the claimant Yadavrao Daulatrao Patil, has examined himself on behalf of the claimants. He has deposed that said Khandsari sugar factory was situated at Mhasekota Tq. Soygaon, District Aurangabad. He himself and two others have registered a partnership firm Exh.19 and in order to establish the said sugar factory, purchased the land bearing survey No.35/2 (Gat No. 85) admeasuring about 2 H 40 R. He had also obtained non agriculture

(N.A.) permission from concerned authority as per letter of permission placed on record at Exh.22. He has further made it clear that said N.A. permission of the land was granted only in respect of two acres of land out of the aforesaid land and accordingly factory was established/installed on the said 2 acres of land. According to him, he has submitted an application for grant of N.A. permission with the concerned authority in respect of remaining land. However, the concerned authority has not communicated any decision. He has further deposed that remaining 4 acres of land was used for parking of the vehicles, keeping stock and raw material. The claimants have claimed compensation at the enhanced rate of Rs.150/- per sq. meters as a cost of land, besides the compensation under other heads. However, the claimants have not adduced satisfactory evidence to substantiate their claim at the rate of Rs.150/- per sq. meters as a cost of land.

17. The claimants have placed their reliance on the sale instance dated 3.6.1976 Exh.23. The said sale deed Exh.23 is of open plot admeasuring 30x32 ft. The plot under sale deed Exh.23 was sold for consideration of Rs.3000/- i.e. at the rate of Rs.3.12 per sq. ft. The claimants have further placed their reliance on sale deed dated 3.2.1982 Exh.35 wherein plot admeasuring 5023 sq. ft. was sold for Rs.35000/- i.e. Rs.6.9 per sq. ft. It is not disputed that both these

plots are situated at different villages, far away from the acquired land. The reference court has considered the sale instance Exh.23 of the year 1976 and by giving 10% increase every years, worked out the rate of Rs.6/- per sq. ft. for entire acquired land. It has been further explained that at time of issuance of notification under Section 4 of Land Acquisition Act, no sale transaction had taken place at village Mhasekota.

18. The question therefore, arises whether the reference court is justified in treating entire acquired land as non agriculture land. The S.L.A.O. has considered the rest of the area admeasuring 1 H 44 R as an area having no N.A. potentiality and as such, proposed to be valued as an agricultural land. As per the copy of project report at Exh.42, scheme of the factory was approved by the Small Scale Industries, Aurangabad. In the production flow sheets, detail procedure of production of sugar from sugarcane is mentioned. The main raw material requires for the sugar factory is sugarcane which according to the project report, is available in the vicinity of village Mhasekota. Besides the above production flow sheet, certain part of the land would also be utilized for office building, workshop, staff quarters etc. It is also needless to say that the part of the land would also be utilized for parking, non manufacturing activities and also for various other purposes. The State has also not adduced any

evidence to the effect that the land admeasuring 1 H 44 R out of the acquired land was used mainly for agriculture purpose and not for the non agriculture purpose.

19. In the case of Shaikh ***Rasheed Shaikh Latif (dead) through L.Rs. vs. State of Maharashtra (supra)*** relied upon by learned A.G.P. the Division Bench of this court held that the non agriculture permission cannot be the sole basis to treat the entire land as non agriculture land or being used for commercial purposes. In para 12 of the judgment, the Division Bench of this Court has made the following observations:-

*“12. Now coming to the main issue of market value of the subject land and the status of the said land as non-agricultural or agricultural, we have documents at Exhibits 41, 42 and 43. The non-agriculture permission at Exhibit 41 cannot be the sole basis to treat the entire land as non-agricultural or being used for commercial purposes. The non-agricultural permission was based on certain conditions and one of the conditions was that the grantee shall commence the N.A. use of the land within the period of one year from the date of this order unless the period is extended from time to time failing which the permission shall be deemed to have been cancelled. The construction of the hotel for which compensation has been granted is located on an area of 2400 sq. ft. and this by itself would not make the entire remaining land as non-agricultural or used for commercial purposes. We may in this regard usefully refer to the case of **Smt. Kamlabai Jageshwar Joshi and others vs. State of Maharashtra and others (AIR 1996 SC 981)**. Same is the*

*view taken in the case of the **State of Maharashtra and others vs. Digamber Bhimashankar Tandale and others (1996) (2) SCC 583.***"

20. In the case of State of Maharashtra and others vs. Digambar Bhimashankar Tandale, (supra) relied upon by learned A.G.P., the Apex Court has observed that there was development on the subject land on the date when Section 4 notification was issued and even within a distance of 3 to 4 kilometers, there was no development except some illegal construction made on the adjoining land. Under those circumstances, the Apex Court held that as on the date of Section 4 notification, there was no potential value of the lands though converted into non agriculture land.

21. In the instant case, however, the acquired land was not used for any agriculture purpose. The claimant Yadavrao Patil has deposed that close to his Khandsari sugar factory, there was State Highway going to Sillod and Aurangabad and nearer Railway Station for village Mhasekota is Pachora, which is at a distance of 11 kilometers. It also appears from map at Exh. 26 and 27, prepared in respect of aforesaid Khandsari sugar factory and its location and also from project report Exh.42, that site of said Khandsari sugar factory is situated between two rivers viz. river Hiwra and river Nimbhora and

within a short distance of Jalgaon - Aurangabad highway via Pachora. I do not think that N.A. permission granted for two acres of land on which said Khandsari sugar factory was established, is the sole basis to treat entire land as non-agriculture land. There was potential value for the entire acquired land as non-agriculture land. Thus the learned Judge of the reference court has rightly considered entire acquired land as non agriculture land.

22. In the case of ***Chandrashekhar (D) by L.Rs. And others vs. Land Acquisition Officer and another, reported in 2012 AIR (SC) 446***, the Apex Court has considered the determination of quantum of deductions to be applied to the market value assessed on the basis of exemplar sale transaction. The Supreme Court in para 15 of the judgment has made the following observations:-

“15. The present controversy calls for our determination on the quantum of the deductions to be applied, to the market value assessed on the basis of the exemplar sale transaction, so as to ascertain the fair compensation payable to the land loser. The only factual parameters to be kept in mind are, the factual inferences drawn in the foregoing paragraph. On the issue in hand, we shall endeavor to draw our conclusions from past precedent. In the process of consideration hereinafter, we have referred to all the judgments relied upon by the learned counsel for the appellants, as well as, some recent judgments on the issue concerned:

(i) In Brigadier Sahib Singh Kalha & Ors. v. Amritsar Improvement

Trust & Ors., (1982) 1 SCC 419, this Court opined, that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly it was held, that a deduction of 20 percent of the total acquired land should be made for land over which infrastructure has to be raised (space for roads etc.). Apart from the aforesaid, it was also held, that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) need also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20 percent to 33 percent. Commutatively viewed, it was held, that deductions would range between 40 and 53 percent.

(ii) Noticing the determination rendered by this Court in Brigadier Sahib Singh Kalha's case (supra), this Court in Administrator General of West Bengal vs. Collector, Varanasi, (1988) 2 SCC 150, upheld deduction of 40 percent (from the acquired land) as had been applied by the High Court.

(iii) In Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona & Anr., (1988) 3 SCC 751, while referring to the factors which ought to be taken into consideration while determining the market value of acquired land, it was observed, that a smaller plot was within the reach of many, whereas for a larger block of land there was implicit disadvantages. As a matter of illustration it was mentioned, that a large block of land would first have to be developed by preparing its lay out plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate, ranging

from 20 percent to 50 percent. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified, that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iv) In Land Acquisition Officer Revenue Divisional Officer, Chottor vs. L. Kamamma (Smt.) Dead by LRs. & Ors., (1998) 2 SCC 385, this Court arrived at the conclusion, that a deduction of 40 percent as developmental cost from the market value determined by the Reference Court would be just and proper for ascertaining the compensation payable to the landowner.

(v) In Kasturi and others vs. State of Haryana, (2003) 1 SCC 354, this court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft and hard, the acquired land may have a hillock or may be low lying or may have deep ditches. Accordingly, it was pointed out, that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi's case (supra) it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

(vi) Following the decision rendered by this Court in Brigadier Sahib Singh Kalha's case, this Court in Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. vs. Nookala Rajamallu & Ors., (2003) 12 SCC 334, applied a deduction of 53 percent, to determine the compensation payable to the landowners.

(vii) In V. Hanumantha Reddy (Dead) by LRs. vs. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642, this Court examined the propriety of compensation determined as payable to the land loser by the High Court. The Reference Court had determined the market value of developed land at Rs.78 per sq. yard. The Reference Court then applied a deduction of 1/4th to arrive at Rs.58 per sq. yard as the compensation payable. The High Court however concluded, that compensation at Rs.30 per sq. yard would be appropriate (this would mean a deduction of approximately 37 percent, as against market value of developed land at Rs.78 per sq. yard). This Court having made a reference to Kasturi's case (supra) did not find any infirmity in the order passed by the High Court. In other words, deduction of 37 percent was approved by this Court.

(viii) In para 21 of the judgment in Viluben Jhalejar Contractor (Dead) by LRs. vs. State of Gujarat, (2005) 4 SCC 789, it was held that for development, i.e., preparation of lay out plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers, and on account of other hazards of an entrepreneur, the deduction could range between 20 percent and 50 percent of the total market price of the exemplar land.

(ix) In Atma Singh (Dead) through LRs & Ors. vs. State of Haryana and Anr., (2008) 2 SCC 568, this Court after making a reference to a number of decisions on the point, and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land concluded, that deductions of 20

percent onwards, depending on the facts and circumstances of each case could be made.

(x) In *Lal Chand vs. Union of India & Anr.*, (2009) 15 SCC 769, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20 percent to 75 percent of the price of such developed plot(s) could be made.

(xi) In *Subh Ram & Ors. vs. State of Haryana & Anr.*, (2010) 1 SCC 444, this Court opined, that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructural developmental costs (costs for raising infrastructure), i.e., in all 2/3rd (or 67 percent).

(xii) In *Andhra Pradesh Housing Board vs. K. Manohar Reddy & Ors.*, (2010) 12 SCC 707, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20 percent to 75 percent. In the peculiar facts of the case a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(xiii) In *Special Land Acquisition Officer & Anr. vs. M.K. Rafiq Sahib*, (2011) 7 SCC 714, this Court after having concluded, that the land which was subject matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50 percent, ought to be increased to 60 percent."

23. In para 16 of the said judgment, the Supreme Court, based on the precedents on the issue referred to above, has considered two components. Para 16 is reproduced herein below:-

“16. Based on the precedents on the issue referred to above it is seen, that as the legal proposition on the point crystallized, this Court divided the quantum of deductions (to be made from the market value determined on the basis of the developed exemplar transaction) on account of development into two components.

Firstly, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. This "first component", may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure.

Secondly, deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like. This "second component" may conveniently be referred to as

deductions for developmental expenditure/expense.”

24. The Apex Court has treated 67% of deduction as upper Bench mark and further held that the aforesaid two components under the head of development could put together should not exceed upper bench mark. The apex Court in the above cited case has also held that for the remaining deduction, which is in the form of waiting period for sale of developed plots and or built-up areas etc. the permissible range would be up to 8% and the same depends upon the facts and circumstances of each case.

25. In the instant case, the reference court has considered the sale deed Exh.23 and Exh.35. The plots under those sale instances are located in village itself and those plots are surrounded by developed residential locality with all basic facilities, like roads, water, electricity connections etc. So far as the acquired land is concerned, the same is situated at some distance of village Mhasekota. However, the entire acquired land is also having advantage of access to highway and permanent water source of river from three sides. It has also come on record that in order to establish said Khandsari sugar factory, internal roads have been constructed and facilities, like electricity and permanent water sources are also made available.

26. On careful perusal of sale instance Exh.23, I do not find that very high price has been paid for purchasing the plot under said sale instance. Though the reference court has rightly considered 10% rise for every year, but failed to work out the proper deduction. The reference court has considered the deduction to the extent of 10% only. Thus, considering entire evidence on record, the deduction of 40% towards development of land, out of the market value determined on the basis of exemplar sale deed Exh.23, would be just and proper. Thus, the costs of the land would come to Rs.9,40,896/-. The original claimants have also filed cross objection and claimed the compensation at the enhanced rate of Rs.150/- per sq. meter. However, except those two sale instances, Exh.23 and 35 respectively, the claimants have not adduced any other evidence to substantiate their claim in respect of the cost of land.

27. On the issue of valuation of structure of the factory (civil part), dismantling and transportation costs of electrical installation so also the loss in machinery and mechanical installation, the S.L.A.O. has awarded Rs.3,67,100/- as valuation of structure (civil part), Rs.1,06,000/- for electrical installation and Rs.1,05,000/- for mechanical machinery, dismantling and transportation, the total amounting to Rs.5,78,100/-. The claimants rely upon the valuation

certificate given by P.W.2 Dharashivkar, marked at Exh.21 whereas the State relies upon the oral evidence of witness Dilip Vyankatrao Gudwe, Sub Divisional Engineer and his valuation report Exh.54..

28. On careful perusal of contents of valuation report Exh.21 and the oral evidence of P.W.2 Mukund Dharashivkar, it appears that witness P.W.3 Dharavhivkar has considered the valuation of civil work and foundation under four heads i.e. (i) reproduction costs, (ii) market value as on today, (iii) dismantling costs & damages and (iv) transportation costs of good materials. The reproduction costs has been shown as Rs.9,55,020/- whereas the market value as of today has been shown at Rs.5,26,575/- and Rs.4,09,565/- has been shown under the head of dismantling costs and damages and further Rs.17,325/- has been shown as transportation costs of good materials. P.W.2 Mukund Dharashivkar, a private valuer, has deposed that the valuation of civil work is Rs.5,26,575/- and it also includes valuation of foundation embedded in the earth. P.W.2 Mukund Dharashivkar has considered civil work and foundation with regard to powerhouse, office and workshop, temple, drying platform, crystallizer, staff quarter, double storied shed, water storage tank, U.C.R. masonry compound, borbed wire compound, M.S. structural gate, Rab storage tank, Gur Rab tanks, Transformer, weigh bridge cabin and P.T., mechanical crushers, bels, weigh bridge,

centrifugals, crystallizers, setting tanks, siruber, electric motor, juice pipe line, water supply pipe line, chambers 16 in numbers, etc. P.W.2 Mukund Dharavhivkar has considered almost all items with size, specifications and the number of items.

29. Witness No.3 for State, Sub Divisional Engineer Mr. Dilip Gudwe has however, carried out the valuation of civil work comprises with excavation and civil items, amounting to Rs.3,67,100/-. According to witness Sub Divisional Engineers, Dilip Gudwe, the valuation in respect of civil work was personally undertaken by him. He has admitted that he had gone through the report Exh.21 prepared by P.W.2 Mukund Dharashivkar. As per the report submitted by witness Gudwe Exh.54, he has almost considered the same civil work items and foundation, except foundation base machinery. In para 5 of his cross examination, he has admitted that before giving his report, he had gone through the report given by the Government approved valuer Mukund Dharashivkar and it was considered by him. Though he has denied that he has not worked out the foundation base machinery, explained that valuation in respect of foundation quoted by item No.12 Exh.54. I do not find such valuation in respect of the foundation at item No.12 Exh.54.

30. In para 62 of the judgment, the reference court has observed

as follows:-

“62. The valuation certificate given by PW-2 Mr. Dharashivkar is placed at Exh-21. Thus, it appears from the record that as per the project report that was initially prepared in the year, 1976 the cost of factory installation was given at Rs. 6,98,677/- and as per the award it has been given Rs. 5,78,100/-. The plaintiff-petitioner has claimed Rs. 91,000/- towards dismantling costs and damages and Rs. 15000/- towards transportation and loading and unloading. Eventhough the costs of Rs. 6,98,677/- was initially claimed in the project report, the project report is dated 1974-75. Thus, by the time the award was pronounced, there would have been depreciation of 10% in the valuation of the machineries. Thus, the value recorded by the S.L.A.O. Regarding these machineries to the tune of Rs. 5,78,100/- which has also been admitted by the executive engineer needs to be accepted as there was no vital dispute on this point. As a matter of fact, whatever entire claim made by the petitioner on the basis of purchase made by him does not sustain in law, the same was properly assessed by the State as per project report but it only mentions about the building valuation and damages and shifting charges, but does not mention about the demliting and dismentaling charges in respect of electrical mechanical and machinery installation which come to Rs. 1,29,267/-, 1,25,300/- and 1,32,300/- respectively. Thus, cumulatively, the petitioner is entitled to get Rs. 3,86,867/-.

31. In the light of the evidence led by the parties, as discussed

above, and the observations made by the reference court, it appears that the reference court has not considered the claim under the head of civil part separately. I do not find any propriety in referring the project report. So far as the loss in civil work is concerned, instead of considering the market value as of today, the dismantling costs and damages in respect of civil work is most significant and the same is required to be considered. On perusal of report Exh.21, P.W.2 Mukund Dharashivkar has worked out the dismantling costs and damages of civil work and foundation to the tune of Rs.4,09,565/- and Rs.17,325/- for transportation costs of good materials. It appears that witness Sub Divisional Engineer, Dilip Gudwe has not correctly shown the same in his report Exh.54 compared to the report prepared by P.W.2 Mukund Dharashivkar, Exh.21. The claimants are entitled for the said amount of Rs.4,09,565/- and Rs.17,325/- i.e. total amount of Rs.4,26,890/-.

32. P.W.2 Mukund Dharashivkar has worked out dismantling costs and damages of electrical installation at Rs.91,000/- and Rs.15,000/- for transpiration, loading and unloading. There is no question to consider the market value of electrical installation so also full replacement value, as detailed in the report Exh.21. Sub Divisional Engineer, Dilip Gudwe has admitted in his cross examination that he had only undertaken the valuation of the civil

work and no valuation in respect of electrical and mechanical items was done. According to him, he is not an expert in mechanical and electrical engineering. He has further admitted in his cross examination that valuation has been shown by him in respect of electrical and mechanical from report of P.W.2 Mukund Dharashivkar. The S.L.A.O. has also considered the same valuation and accordingly awarded the compensation.

33. P.W.2 Mukund Dharashivkar and witness Sub Divisional Engineer, Dilip Gudwe both had visited the factory in the year 1984. So far as the machinery and mechanical installation are concerned, the claimant Yadavrao Patil has deposed that possession of the acquired land was taken by the Executive Engineer in the year 1981 and the work of Hiwra medium project was also started in the year 1981. Due to construction of the project, the work of factory was paralyzed due to digging, excavation as well as the roads from sides were blocked. He has further deposed that he was not allowed to take entire machinery, as the State authority wanted to evaluate entire machinery and at no point of time, he was informed by the State to take back entire machinery till today. Thus, due to lying idle, entire machinery went rusted. Likewise, the position of electrical goods, which comprise the electrical instruments, cables, transformers, switchboard etc., it had become valueless. Witness

Sub Divisional Engineer Dilip Gudwe has admitted in para 7 of his cross examination that in case the machines are not operating, they become useless and got rusted. He has also admitted that he did not give specific valuation of the machinery lying in the premises of the factory and no details are given in respect of valuation of machinery then standing in the premises and so also electrical equipments.

34. Witness Dilip Gudwe, Sub Divisional Engineer has admitted in para 6 of his cross examination that some instruments of the factory or belonging to the factory were lying scattered in the premises when he had visited the factory. He has stated in his examination in chief that he had visited the factory in the month of August, 1984. I find much substance in the evidence of claimant Yadavrao Patil that he was not allowed to take entire machinery, as the State authority wanted to evaluate entire machinery and at no point of time, he was informed by the State to take back entire machinery. He has also explained that due to lying idle, entire machinery got rusted. Likewise, the position of electrical goods also. P.W.2 Mukund Dharashivkar in his report at Exh.21 has worked out the valuation of machinery, mechanical installation and also electrical installation under the head of full replacement value, dismantling costs, damages and transportation. Even witness Sub Divisional Engineer

Dilip Gudwe has also relied upon the report Exh.21 prepared by said witness P.W.2 Mukund Dharashivkar so far as the loss caused to the machinery and electrical installation. Thus, the claimants are entitled for amount of Rs.2,39,000/- towards depreciated market value of the electrical installation and also depreciated market value of machinery and mechanical installation to the tune of Rs.6,62,000/-. Since the replacement value of the aforesaid items considered at depreciated market value, there is no question of granting separately the transportation, loading, unloading charges, dismantling costs and damages.

35. As regards the loss in business, the claimants have claimed the compensation of Rs.2,00,000/- per year as net income for a period of 40 to 50 years. The reference court has considered the loss of income due to severance of business to the tune of Rs.5,00,000/- at the rate of Rs.1,00,000/- per year for a period of five years. In para 68 of the judgment, the reference court has observed that no statement of income has been produced on record. The reference court has also given reference to the balance sheet to the of the year 1975-76. As per balance sheet Exh. 33, the reference court in para 69 has observed that factory was running in loss for initial period of the year 1975-76. However, considering the purpose behind installation of Khandsari sugar factory, the availability of raw

material and also labour at cheap rate, the reference court has considered the loss of Rs.1,00,000/- per year instead of Rs.2,00,000/- per year. It also appears that the said period of five years was considered from the date of taking possession and the compensation paid in the year 1986. I do not find any substance in the claim under the head of severance of business to the tune of Rs.2,00,000/- per year for a span of 40 to 50 years. It cannot be ignored that the Khandsari sugar factory was a small unit comparing to the Co-operative sugar factories, which are also situated at village Kasoda and other adjoining villages. I do not find any fault in the observations made by the learned Judge of the reference court awarding compensation of Rs.5,00,000/- under the head of loss of business. I do not find any error in the observations made by the reference court that the compensation under the head of loss of business cannot be awarded for indefinite period.

36. In view of above discussion, the break up of compensation under various heads awardable to the claimants by way of compensation, which can be broadly categorized as under:-

- I) Cost of the land @ Rs.6/- per sq.ft. Rs. 9,40,896.00
(with deduction to the extent of
40% towards development costs
etc.)

ii)	Civil work	Rs. 4,26,890.00
iii)	Replacement costs of electrical installation at depreciated market value	Rs. 2,39,000.00
iv)	Replacement cost of machinery and mechanical installation at depreciated market value	Rs. 6,62,000.00
v)	Loss of business	Rs. 5,00,000.00

	Total	Rs.27,68,786.00
	Less- the amount awarded by S.L.A.O.	Rs. 6,07,812.00
		=====
		Rs.21,60.974.00

(Rupees Twenty one lacs sixty thousand nine hundred seventy four only).

37. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal as well as cross objection are hereby partly allowed. No costs.

- II. The judgment and award dated 24.4.1996 passed by the learned Civil Judge, Senior Division, Aurangabad in L.A.R. No. 229 of 1994 is hereby modified in the following manner:-

- a) The claimants are entitled for additional compensation of Rs.21,60,974,786/- (Rupees Twenty one lacs sixty thousand nine hundred seventy four only) and the respondent -State shall pay the said amount with all statutory benefits as awarded by the reference court.
- b) Award be drawn up as per the above modification.
- c) If any amount is paid as per the judgment and award passed by the reference court, the same shall be the part of modified award. The amount in excess, if any, shall be refunded to the State.
- III) First appeal as well as the cross objections are disposed of.
- IV) All pending civil application/s, is/are also disposed of.

(V. K. JADHAV, J.)

rlj/