IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.1/2000
IN
LAQ/SR/533

The Special Land Acquisition Officer (2) … Applicant

V/s.

M/s. Tyabji Estate Pvt. Ltd. … Claimant

And

The Birhanmumbai Electric Supply and Transport Undertaking … Acquiring Body

Mr.H.B.Takke, A.G.P. for the Applicant

Mr.C.M.Korde, Sr.Advocate a/w Mr.Rajesh Shah, Mr.Shashi Kumar i/b Ms.Manisha Seth for original claimant i.e. Tyabji Estate P.Ltd.

Dr.Abhinav Chandrachud a/w Mr.S.D.Shetty and Ms.Kavita Anchan i/b M/s.M.V.Kini and Co. for the BEST, Acquiring Body

CORAM: K.K. TATED, J.
DATE: FEBRUARY 23, 2017

JUDGMENT :

Heard the learned counsel for the parties.

2 The Land Acquisition Reference filed by the claimants being aggrieved by the award dated 26.10.1999 passed by the Land Acquisition Officer u/s.11 of the Land Acquisition Act, 1894 (said Act)

awarding the sum of Rs.1,34,38,694/- towards the acquired land admeasuring 5133.6 sq.mtr. being Sy.No.33(pt) CTS No.14(pt) from village Majas, Tq. Andheri, Dist. Mumbai Suburban which forms part of large holding of claimants @ Rs.1678/- per sq.mtr. i.e. @ Rs. 156/- per sq.ft.

3 Few facts of the matter are as under:

The Bombay Electricity and Suburban Transport (BEST) an Undertaking of the Brihanmumbai Municipal Corporation (hereinafter referred to as the acquiring body), vide D.C.R.No.765 dated 16.01.1991 approved the proposal to acquire the additional land admeasuring 6000 sq.mtr. out of CTS No.14(pt) and 176(pt) of village Majas, Jogeshwari (E), for the purpose of Bus Depot.

4 Accordingly, the General Manager of the acquiring body vide letter dated 19.02.1991 sent a proposal to the Secretary, Government of Maharashtra, Revenue and Forest Department, Mantralaya, Mumbai – 400032 for taking appropriate action for the acquisition of the land. The said proposal was received by the Special Land Acquisition Officer (SLO) (2), Mumbai Suburban District, through Collector vide letter dated 05.05.1993.

5 The SLO issued Notification under sub section 4 of Section 126 of the Maharashtra Regional and MRTP Act Act, 1966 (MRTP Act) read with section 6 of the said Act for acquiring the land admeasuring 5133.6 sq.mtr. from Sy.No.33(pt) CTS NO.14(pt) of village Majas, Tq. Andheri,, Dist. Mumbai Suburban (hereinafter referred to as the acquired land). A Notification was published in the Maharashtra Government Gazette Part-1 dated 10.04.1997 at page No.313. Same

was published in Marathi daily news paper known as “Nava Kal” dated 31.07.1997 and in English Daily news paper “Free Press Journal” dated 29.03.1997. The substance of the publication of Notification u/s.6 of the said Act was displayed on the notice board of Collector office on 22.07.1991 and at Talathi Chawdi site on 27.08.1997.

6 After following due process of law, the SLO declared the award dated 26.10.1999 u/s11 of the said Act awarding compensation of Rs.1,34,38,694/- @ Rs.1678/- per sq.mtr. i.e. Rs.156/- per sq.ft. The market value has been arrived at by the SLO on the basis of ready reckoner for the relevant period prepared for the purpose of calculating the stamp duty. The SLO started with rate of Rs.4196/- per. sq.mtr. on the basis of ready reckoner rate for undeveloped land. Taking into consideration the development and other charges upto Rs.40%, the Land Acquisition Officer awarded compensation @ Rs.1678/- per sq.mtr. for acquired land. Compensation paid to claimants on 7.12.1999. Thereafter the Land Acquisition Officer on 08.12.1999 handed over possession of the acquired land u/s.16 of the said Act to the acquiring body.

7 The claimants were served with notice u/s.12(2) of the said Act on 20.11.1999. Thereafter the claimants filed Reference u/s.18 of the said Act on 31.12.1999. The claimants in the said Reference u/s.18 of the said Act claimed the additional market value of the acquired land Rs.9,41,60,491/- along with statutory benefits u/s.23(1A), 23(2) and Section 28 of the said Act. The claimants also claimed sum of Rs.12,61,54,200/- as damages suffered by them as the SLO acquired part of their land holding.

8 The SLO-2 Mumbai Suburban District forwarded the said Reference to this court for determination of market value of the acquired land.

9 Neither the SLO nor the acquiring body filed written statement and/or entered into witness box for justifying whether the compensation awarded in award dated 26.10.1999 was as per the prevailing market rate on the date of issuing Notification u/s.126(4) of the MRTP Act Act read with section 6 of the said Act.

10 Mr. Haresh Khiamal Nanwani, Director of the claimants filed affidavit in lieu of evidence dated 11.08.2005. The said witness placed on record the indenture of conveyance dated 13.06.1931 executed between Faiz Budruddin Tyabji & Ors. and Tyabji Estates Ltd. The claimants also examined Atul Madam Gulati, the Architect to place on record and to prove the map showing the acquired land. The claimant examined Harshad Maniar, Surveyor and Valuer to prove valuation report dated 25.2.2009 as well as sale instances.

11 Though the claimants in Reference u/s.18 of the said Act claimed compensation @ Rs.1860/- per sq.ft. i.e. Rs.20,020 per sq.mtr. however, in view of the evidence on record, the claimants through their senior counsel made a statement that the claimants are now restricting their claim for acquired land @ Rs.9,545/- per sq. mtr. i.e. 886 per sq.ft. The learned senior counsel also made a statement that though the claimant in application u/s.18 made claim for damages under section 23(1) of the said Act, the claimants are not pressing the same.

12 On the basis of the pleadings on record, following issues are

framed:

a) Whether the claimants filed the Reference was within limitation? .... Yes

b) Whether the applicants and Acquiring Body prove that the market value determined by the Special Land Acquisition Officer @ Rs.1675/- per sq.mtr. i.e. Rs.156/- per sq.ft. was according to market rate on the date of issuing notification under section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of the Land Acquisition Act, 1894? .... No

c) Whether the claimants prove that market value of acquired land on the date of issuing notification was Rs.9,545 per sq.mtr (equivalent to Rs.886/- per sq.ft.).... Partly Yes

13 Issue no.1 is about limitation. Special Land Acquisition Officer passed award on 26.10.1999 u/s 11 of the said Act. Notice u/s. 12(2) of the said Act was served on claimants on 20.11.1999. Claimants received payment on 7.12.1999. Thereafter, Special Land Acquisition Officer handed over possession of acquired land under section 16 of the said Act to the Acquiring body. Thereafter, claimants filed reference u/s.18 of the said Act on 31.12.1999 i.e. within 42 days from the notice u/s.12(2) of the said Act. Hence, claimants filed Reference within limitation period.

14 The learned Senior Counsel for the claimants submit that the Special Land Acquisition Officer erred in coming to the conclusion that the claimants are entitled to the market value of the acquired land admeasuring 5133.60 sq.mtrs. bearing Survey No.33 (pt) CTS 14 (pt) from Village Majas, Andheri, Mumbai @ 1678 per sq.mtr. @ 156 per sq.ft. only on the date of issuing notification under section 126(4) of

the MRTP Act read with section 6 of the said Act. He submits that the Land Acquisition Officer erred in coming to the conclusion that the market value of the acquired land required to be determined as being agricultural land. He submits that the Land Acquisition Officer in the Award dated 26.10.1999 described the description of the acquired land in paragraph 4 as under:

> "4) Situation and Description-
>
> The land under acquisition is abutting to the existing Majas Bus Depot and opposite to the Fantasy land. It has no direct access from the Jogeshwari – Vikhroli Link Road, since it is located in the interior side. It is stony and on a lower level from the surrounding lands. It is low lying and needs about two meters earth filling to bring it to the level of the adjacent bus depot. Some part of this land is rather high leveling and rocky requires cutting to bring it to the normal level. At present entire land is under acquisition is undeveloped and open. Natural shrubs and bushes are grown up on this land. There are no structures or construction on it. There is one Tad tree standing on the land. At West side of land is Majas Bus Depot. At south side S.No.34(pt.). At east side is Punam Nagar. At North side is Jogeshwari-Vikhroli Link Road is passing West-East. The land is situated on a distance of about 1.1/2 K.M. From Jogeshwari Railway Station on the Western Railway. Regular buses of the BEST ply in this locality. The lands near about are developed and many housing colonies are growing up."

15 The learned Senior Counsel for the claimants submits that in support of their claim, they examined claimant Mr.Haresh Khiamal Nanwani, Architect Mr.Atul Madan Gulati and Mr.Harshad Sunderlal Maniar, Surveyor and Registered Estate Valuer. He submits that they placed on record the sale instances as well as the valuation report duly proved through the valuer.

16 The learned senior counsel for the claimants submits that the claimant's witness Mr.Harshad Khaimal Nanwani described the situation of the land as under:

> “16. The land under acquisition is about 7 to 8 minutes walk from the Western Express Highway and 10 to 12 minutes walk from the Jogeshwari Railway Station. Considerable development had started in the surrounding area around 1982-83. The surrounding area was developed on the date of acquisition. Colonies known as Raheja Nagar, Poonam Nagar, Air India Colony etc. had already come up. These were at a distance about 200-300, metres from the acquired land. A colony known as Grenfields (R.N.A. Developers) had already come up around 1984-85. This colony was adjoining the Claimants' land and was about 80 metres from the acquired land. The amusement park known as “Fantasy Land” was very close to the land under acquisition. Fantasy Land had been constructed in or around 26.9.1992.
>
> 17. St.Xavier's School was within 5 minutes walking distance from the acquired land. Swami Samarth High School was also within 5 minutes walking distance. There were shops nearby. The market was within 15 minutes walking distance.
>
> 18. ONGC Quarters had been constructed well before August 1987. These were at a distance of about 300 metres from the acquired land.
>
> 19. The locality was a developed one on the date of acquisition. Water and Electricity were available right upto the plot joining our lands.”

17 The learned Senior Counsel for the claimants submits that there was no cross-examination at all with regard to the above statement contained in examination in chief of Mr.Haresh Khiamal Nanwani, and that those statements were uncontradictory. The learned Senior Counsel for the claimants further submits that even Valuer Mr.Harshad S. Maniar in his valuation report dated 25.2.2009 described the

situation and location of land which reads thus:

> "The land under acquisition abuts to the existing Majas BEST Bus Depot, and opposite to Fantasy Land. The acquired land is a part of larger holding belonging to claimant. The larger holding of claimant is shown on the plan at Annexure-A. Out of the larger holding of claimant, BEST acquired land admeasuring 18156.20 sq.mt. Shown coloured verge blue on plan, which abuts Jogeshwari-Vikhroli Link Road in the year 1987. The land under reference in present acquisition (LAQ/SR/533) admeasuring 5133.60 sq.mt. is shown as coloured verged green on the plan. Thus, it can be seen that the land under present acquisition is contiguous land of owners holding. The land was lying vacant. The land under acquisition is about 2.5 km. distance (by road) from Jogeshwari railway station and 1.5 km. Distance (by road) from Western Express Highway.
>
> On the east of the land under acquisition numbers of residential complexes were existing and they are:-
>
> 1) Green field Rock End having stilt plus seven upper floors.
> 2) R.N.A. Heighes having stilt plus seven upper floors.
> 3) Green field CHS Ltd. Having stilt plus seven upper floors.
> 4) Swagat having stilt plus six upper floors.
> 5) Green field Tower having stilt plus twelve upper floors.
> 6) Namaskar having stilt plus six upper and part seventh floor.
> 7) Ashirwad having stilt plus six upper floors.
> 8) St.Xavier High School.
> 9) ONGC buildings having stilt plus seven upper floors.
> 10) Buildings in Poonam Nagar having stilt and seven upper floors.
> 11) Brindaban having stilt plus twelve upper floors.
> 12) And various residential complexes in nearby locality.
>
> On the north of the BEST Bus Depot Jogeshwari-Vikhroli Link Road and Fantasy Land is situate."

18 The learned Senior Counsel for the claimants submits that advocate for acquiring body cross-examined Mr.Maniar on the point of situation and location of acquired land. He relies on following relevant portions which are as under:

> "Witness is shown valuation report dated 25.2.2009 on page 2 under the caption 'SITUATION AND LOCATION' and more particularly the last paragraph wherein twelve constructions or buildings have been mentioned."
>
> Q.45. Is it correct that the residential complexes mentioned in items 1 to 12 were as of 25.2.2009, when you made this Report?
>
> Ans. The buildings mentioned in my report, particularly at the last para of page 2 were in existence prior to 10th April 1997.
>
> Q.46. Have any of these buildings been referred in your inspection notes – Exhibit 'R-1'?
>
> Ans. Yes. In my inspection report, I have stated that the adjoining buildings are marked on the plan.
>
> Witness is shown the last paragraph on the same page.
> Q.47. Is there any reference in this paragraph where you enumerated the residential complex were existing at the time of acquisition in 1997?
>
> Ans. I have stated that the number of residential complexes were existing means, they were existing prior to 10th April, 1997.
>
> Q.48. Can you tell us why you could not obtain or you have not relied upon any sale instances in respect of either the sale instances of land or of flats in the residential complexes referred to in items 1 to 12 on pages 2 and 3 of your report?
>
> Ans. The sale instances of flats mentioned in item

nos.1 to 12 on pages 2 and 3 of my report were available, but they were prior to 1992-1993.

Witness is shown Exhibit 'C-3'. (Exhibit C-3 is the plan prepared by Mr.Gulati, Vol.II, p.26)

Q.49. Can you please indicate on plan Exhibit 'C-3', where these residential complexes are located?

Ans. The witness has marked as 'X' on Exhibit 'C-3' of his copy and on the copy of the Advocate for Acquiring Body as the record has not come the same will be marked on the next occasion on Exhibit 'C-3'.

Q.50. Could you tell us what was the distance of these residential complexes mentioned at page 2 from the land under acquisition, in the present case?

Ans. The residential complexes are situated on the East of acquired land, at a distance of about 250 meters to 900 meters.

Witness is shown in the same paragraph the sentence beginning with the words 'both the lands are situate in developed locality.'

Q.60. How do you explain that the land under acquisition was in a developed locality?

Ans. I have already mentioned in my Valuation Report, stating that number of residential complexes have been constructed all around the acquired land.

Q.76. Please turn to page 2 of your report, where you have mentioned the existing residential complexes, is it correct to say that all the details of the residential complexes, you have given are after the acquisition proceedings were commenced?

Ans. No. The buildings have come up during the period of the year 1986 to 1990."

19 The learned Senior Counsel for the claimants submits that Mr.Maniar's statement with regard to the development in the vicinity of the acquired land has proved the test of cross-examination. He submits that in cross-examination no case was put to Valuer Mr.Nanwani that there was no development in the vicinity of the acquired land on the relevant date or prior to the relevant date. He submits that in view of the statement contained in the award and the evidence of Mr.Nanwani and Mr.Maniar, it was fully established that there was considerable development in the vicinity of the acquired land prior to the relevant date i.e. 10.4.1997. He submits that to show the locality and the development near the acquired land, the claimants placed on record a copy of plan Exhibit-C-10. He submits that plan at Exhibit- C-10 shows that in the vicinity of the acquired land several developments had taken place. He submits that Exhibit-C-10 shows that acquired land is situated in a developed area. He submits that considering the description given by Land Acquisition Officer, the valuer in his valuation report, considering the deposition of claimant and Valuer, it is not proper to determine the market value of acquired land on the basis of agricultural land as shown in the property card.

20 The learned Senior Counsel for the claimants submits that there is no doubt that the land under acquisition had a good access on two roads which are mainly Jogeshwari Vikroli Road and 13.40 mtrs. wide D.P.Road. He submits that this position is abundantly clear from the plan prepared by Mr.Atul Gulati Exhibit- C-3. He further submits that even the access of the land is described by Mr.Haresh Nalwani as well as valuer Mr.Maniar in their oral evidence.

21 The learned Senior Counsel for the claimants submits that

Mr.Maniar described the sale instance dated 24.6.1996 by which Mr.Sunder Dayaram Ramchandani and another assigned the lease hold rights of the property bearing C.T.S. No.127 and 127/1 to 8 of village Majas (plot No.1) admeasuring about 731.30 sq.mtrs at a total consideration of Rs.63 lakhs to Smt.Kesharben Kunvarji Shah & another in his valuation report. He submits that the rate of land works out to be Rs.8614.79 per sq.mtrs on the date of agreement dated 24.6.1996. He submits that the valuer in his valuation report described about the sale instance no.1 dated 24.6.1996 and comparable sale instance for determining the market value of acquired land. The valuer arrived at market value of acquired land on the date of notification @ Rs.9545 per sq.mtr. in following manner :

“Details	**Land under acquisition**	**Land under sale instance**	**Allowance made on comparison**
Relevant date	10-4-1997	20-3-1995	+ 30.83 %
Size	5133.60 sq.mts.	731.60 sq.mts.	- 15 %
Location	Situate along 120ft. Jogeshwari-Vikroli Link Road. Middle class Residential locality	Situate along 60' Caves Road in middle class Residential locality	- 5 %
Situation	Land is undulated and require cutting / filling	Does not require any filling/cutting	- 5 %
Zone	Residential	Residential	NIL
Permissible F.S.I.	1.00	1.00	Nil
Encumberance	Vacant	Occupied by six tenants	+ 10 %

Means of communication	1750 mt.away (radial distance from Jogeshwari Railway Station. BEST Bus Depot is adjoining to the land	320 mt. Away from (radial distance) Jogeshwari Railway Station. BEST Buses are available from Jogeshwari Railway station.	- 15 %
Civic amenities	Available within approachable distance	Available within surrounding.	- 10 %
Tenure	Freehold	Leasehold	+ 20 %

Total **- 10.83 %**

- I have considered 15% rise in market value from year 1995 to 1997 i.e. from 20-3-1995 to 10-4-1997 (2 years and 20 days). The rise works out to 30.83%

Based on the above, the market value of acquired land works out as under:-

Rate of instance land = Rs.8614.79 p.s.mt.
To arrive at value of acquired land = Rs.8614.79 + 10.83% of 8614.79
= Rs.8614.79 + 932.98
= Rs.9547.77 p.s.mt.
Say Rs.9545/- p.s.mt."

22 The learned Senior Counsel for the claimants submits that considering the area in which the acquired land is situated, the development in its vicinity and the evidence of valuer along with sale instance no.1, the claimants are entitled market value of acquired land @ Rs.20,020/- per sq.mt. i.e. 1860 per sq.ft. He submits that he received instructions from claimants to restrict their claim in the present proceeding @ 9545 per sq.mtr. (@ Rs.886 per sq.ft.)only.

23 The learned Senior Counsel for the claimants submits that the

valuer also proved three sale instances as stated in narration report. He submits that on the basis of those sale instances, the market value of acquired land comes to more than Rs.13,250/- per sq.mtr in the year 1999. Those sale instance and analysis of the valuer in his valuation report is as under:

"S. NO.	Particulars	Area	Parties	Consideration /Rate	Agr.date & Case No.
1	Flat No.705, 7th floor, Ascent Residency, S.No.54(pt), CTS No.169.	431 sq.ft. Built up area	Ascent Associates to B.Jahengir N. Shethna	Rs.10,85,000/- Rs.2517/- p.s.ft.	Dt. of E – 13-5-1999 Dt. of R. -6-1-2000 Doc.No.+PBDS 744/99 Annexure 'F'
2	Flat No.405, 4th floor, Ascent Residency, S.No.54(pt.), CTS No.169	431 sq.ft. Carpet or 517.20 sq.ft. B.U.A.	Ascent Associates to Mohamed Hamid Ibrahim Shaikh	Rs.13,67,000/- Rs.3173/- p.s.ft. Carpet or Rs.2644.43 p.s.ft.(BUA)	Dt. of E – 23-10-1999 Dt. of R. -25-1-2000 Doc.No.= BPDR -1 1823/99 Annexure 'G'
3	Flat No.302, 3rd floor, S.No.54(pt.), CTS No.169	713 sq.ft. Carpet or 855.60 B.U.A.	Ascent Associates to Vilas Digambar Rao	Rs.21,00,000/- Rs.2945/- p.s.ft. Carpet or Rs.2454.41 p.s.ft.(BUA)	Dt. of E – 4-5-2001 Dt. of R. -15-5-2001 Doc.No.= PBDR -1 1196/2001 Annexure 'H'

NOTE: E = Date of Execution of Agreement
R = Date of Registration of Agreement

By adopting the rate of flat at Rs.2538/- p.s.ft.for the year 1999-2001, the residual rate of land works out as under:

Rate of flat	Rs.2538.00 p.s.ft.
Less:	
i) Cost of construction – 800.00 p.s.ft.	
ii) 20% Developers profit – 507.60 p.s.ft.	Rs.1307.60 p.s.ft.
Rate of F.S.I. -----------------------	Rs.1230.40 p.s.ft

Thus, the rate of land works out to Rs.13244/- p.s.mt. For year 1999. From the agreement to sale of residential flats it can be seen that the prevailing market value of land in this locality was approximately Rs.13250/- p.s.mt. or more in the year 1999.

> As far as the agreement to sale of flat at Sr.No.1, 2 and 3 above are concerned, the flats are sold on the land referred at sale instance No.2.”

24 The learned Senior Counsel for the claimants submits that, during the course of the argument, the applicants and acquiring body, though did not filed any written statement and or affidavit to oppose the claimants' reference for enhanced compensation, raised several objections. He submits that, counsel for the acquiring body, submitted that, on the date of issuing notification for acquiring claimant's land, matter under urban land ceiling was pending. Counsel for acquiring body also raised objection for determining market value of acquired land on the basis of sale instances which were in respect of small portion of land. He further submits that the counsel for the acquiring body resisted their claim on the ground that claimants have not pleaded their case before this court in their reference application.

25 The learned Senior Counsel for the claimants submits that the objection raised by the counsel for the acquiring body about urban land ceiling act is not maintainable at all. He submits that the Land Acquisition Officer before proceeding to acquire the land specifically informed to the acquiring body that proceeding under Urban Land Ceiling Act was pending before the authority. In reply to the said letter, acquiring body specifically authorised Land Acquisition Officer to proceed with the acquisition as they were ready to accept the same as it was. Hence, now there is no question of entertaining the acquired body's plea under the Urban Land Ceiling Act.

26 The learned senior counsel for the claimants submits that even

though the counsel for the acquiring body raised objection for determining the market value of the acquired land on the basis of sale instance relied on by the valuer in his valuation report in respect of small portion of land, same is not sustainable. The learned Senior counsel for the claimants submits that even the sale instance in respect of a small area can be considered for determining the market value of the acquired land by deducting certain portion of consideration and/or area of the land. He submits that same principle is applied by the valuer at the time of determining the market value of the acquired land. The learned Senior Counsel for the claimants in support of their contention on the factors for determining the market value of acquired land filed written submission and also relied on following authorities:

> *(A) Raghubans Narain Singh vs. The Uttar Pradesh Government Through Collector of Bijnor, AIR 1967 SC 465.* In this authority the Apex Court held that the market value on the basis of which the compensation is payable under Section 23 of the said Act means the price that is willing purchaser would pay to a willing seller for a property having due regard to its existing conditions. Paragraph 5 thereof, reads thus:
>
> > "The first contention raised on behalf of the appellant is that the High Court's Judgment suffered from an infirmity in that it failed to take into account the potential value of the land as a building site in view of the evidence as to the town's recent development. This contention, in our view, has no substance. Market value on the basis of which compensation is payable under s. 23 of the Act means the price that a willing purchaser would pay to a wilting seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possi- bilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired."

(B) P. Ram Reddy and Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors., 1995 (2) SCC 305. In this authority the Apex Court held that the market value of the acquired land has to be judged on material on record available. Paragraph 9, 10 and 11 reads thus:

> "9. Building Potentiality of acquired land - Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of Notification or giving of public notice of substance of such Notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the I.A Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its, value like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under

Section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now."

"10. An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under Section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building potentially, in that, under Clauses (4) of Section 24 of the LA Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged under Section 4(1) of the LA Act, of being used for putting up buildings either immediately or in the near future but not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as :

(i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purpose;

(v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centers, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few."

"11. The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality."

C) *U.P. Awas Evam Vikas Parishad, v. Gyan Devi (Dead) by L.Rs. And another, etc., AIR 1995 SC 724.* In this authority, the Apex Court held that the acquiring body have limited role in land acquisition reference and that to the extent of determining market value. Paragraph 49 reads thus:

> "ORDER OF THE COURT (PER MAJORITY)
>
> 49. Leave granted.
>
> 1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
>
> 2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.
>
> 3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article By this petition, under Article 226 of the Constitution of India, petitioner original .. challenges the order dated ... passed by .... in of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The Local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

> 10. The matters which stand finally concluded will, however, not be reopened."

D) *Iridium India Telecom Ltd. vs. Motorola Inc., AIR 2005 SC 514.* In this authority the Apex Court held that if there is conflict between the Civil Procedure Code, 1908 and High Court Rules on the Original Side, the later would prevail. Paragraph 46 reads thus:

> "46. Finally, it was argued by Mr. Jethmalani that the Letters Patent, and the rules made thereunder by the High Court for regulating its procedure on the Original Side, were subordinate legislation and, therefore, must give way to the superior legislation, namely, the substantive provisions of the Code of Civil Procedure. There are two difficulties in accepting this argument. In the first place, Section 2(18) of the CPC defines "rules" to mean "rules and forms contained in the First Schedule or made under section 122 or section 125". The conspicuous absence of reference to the rules regulating the procedure to be followed on the Original Side of a Chartered High Court makes it clear that those rules are not "rules" as defined in the Code of Civil Procedure, 1908. Secondly, it is not possible to accept the contention that the Letters Patent and rules made thereunder, which are recognized and specifically protected by section 129, are relegated to a subordinate status, as contended by the learned counsel. We might usefully refer to the observations of the Constitutional Bench of this Court in **P.S. Santhappan (Dead) by LRs. v. Andhra Bank Ltd. & Ors.,**AIR 2004 SC 5152. With reference to Letters Patent, this is what the Constitution Bench said:
>
> > "**148.** It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or

subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent but then which legislation is not subject to amendment or alteration. CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters patent. As has been held in **Vinita Khanolkar's** case, AIR 1997 SC 4415 and **Sharda Devi's** case, [2002] 2 SCR 404 a Letters Patent is the charter of the High Court. As held in **Shah Babulal Khimji's** case, [1982] 1 SCR 187 a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the concerned High Court. Civil Procedure Code is a general law applicable to all courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of Letters Patent would always prevail unless there was a specific exclusion. This is also

> clear from Section 4 Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 C.P.C. only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100A."

E) *Bhag Singh and others v. Union Territory of Chandigarh, AIR 1985 SC 1576*. In this authority, the Apex Court held that if reference court comes to the conclusion that claimants are entitled enhanced compensation over and above claimed by claimants in reference application, the court can award the same directing the claimant to pay the court fees on additional claim. Paragraph 3 reads thus:

> “3. We are of the view that when the learned Single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned Single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against

the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen We are, therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay up the deficit court fee and awarded to them compensation at the higher rate or rates determined by them."

F) *Bhimasha vs. Special Land Acquisition Officer and Another, (2008) 10 SCC 797.* In this authority the Apex Court held that on the basis of material on record, the court can award more compensation over and above claimed by the claimant.

G) *In Re: Raja Jagaveera Rama Muthu Kumara Venkateswara Ettappa Naicker Ayyan Avergal, Zamindar of Ettayapuram, AIR 1943 Mad 337*. In this authority Madras High Court held that in application under section 18 of the said Act, it is not necessary to plead in detail each and every point for claiming additional compensation on the basis of earlier judgment in the matter of Revenue Divisional Officer v. Sri Rajah Vyricheria Gajapathiraju Bahadur Garu, ILR 1938 Madras 479. The said portion of that judgment reads thus:

> "although Section 18 (2) of the Land Acquisition Act requires that the application for a reference to a Court shall state the grounds on which the objection is taken, there is a sufficient compliance with its provisions if the application states on which of the four heads of objection detailed in the Sub-section (1) the applicant proposed to rely. When an objection to the amount of compensation has been taken, the Court has jurisdiction to work out the amount of compensation in a manner and on a basis different from that which has been adopted either in the statement of claim before the Land Acquisition Officer or in the objections against the award.

> It is clear from these two decisions that not only the amended statement which the petitioner wished to file but also the statements which he filed before the Collector and the Subordinate Judge immediately after claiming a reference under Section 18 were all superfluous. All that he had to do was to state in his application that he objected to the amount of compensation awarded and it was not incumbent upon him to state whether he claimed compensation at the rate of twelve annas as originally demanded by him or whether he limited it to some lesser amount. The maximum and minimum which can be awarded by the Subordinate Judge are clearly indicated in Section 25 (1) of the Act, and, therefore, without any

> particulars of claim by him, it is open to the Subordinate Judge to award him compensation at the rate of twelve annas per square foot as originally claimed by him under Section 9 (2) of the Act or to dismiss his claim entirely. The Subordinate Judge is not limited in framing his award to any figures mentioned by the petitioner in his application under Section 18 of the Act. In view of this the amendment is clearly unnecessary and this petition is ordered to be dismissed."

27 The learned Senior Counsel for the claimants submits that the Land Acquisition Officer failed to consider the locality in which the acquired land was situated at the time of fixing the market value. He submits that the Land Acquisition Officer ought to have valued the acquired land @ Rs.20,020/- per sq.mtr. though the claimants restricted their claim in the present reference @ Rs.9545 per sq.mtr. He submits that on the basis of the evidence of valuer, the valuation report and sale instance no.1 which was duly proved, claimants are entitled compensation in respect of acquired land @ Rs.9545 per sq.mtr. (Rs.886 per sq.ft.)

28 On the other hand the learned counsel for the acquiring body vehemently opposed the present Land Acquisition application. He submits that the claimants failed to plead their case at the time of filing application under section 18 of the said Act for making reference to this court. Therefore, on the ground of insufficiency of pleading, claimants are not entitled to any enhanced compensation.

29 The learned counsel for the acquiring body submits that claimants do not have title to the acquired land and as such it would be unjust unfair and unequitable to permit the claimants to ask for

enhanced compensation for the acquired land.

30 The learned counsel for the acquiring body submits that the Land Acquisition Officer rightly observed in the award that acquired land do not have direct access to the main road. He further submits that though the claimants examined the valuer Mr.Maniar and placed on record valuation report, the claimants failed to prove their case for additional compensation in respect of acquired land. He submits that even the report prepared by valuer Mr.Maniar was not according to law and/or practice.

31 The learned Counsel for the acquiring body submits that the acquired land does not abut the road. Therefore, at the time of determining the market value, same was considered by the Land Acquisition Officer and awarded compensation @ Rs.1678 per sq.mtr. He submits that actually the said valuation is also on higher side.

32 The learned Counsel for the acquiring body submits that though the claimant relied on valuation report of valuer Mr.Maniar, same cannot be considered for fixing the market value of the acquired land because the same was not prepared considering the factual situation of the acquired land. He submits that the distance of acquired land from Jogeshwari Station is near about 1.4 km and inspite of that valuer stated that same is near to Jogeshwari Railway Station. The valuer Mr.Maniar has not properly made the allowance for the distance between the acquired land and sale instance. He submits that sale instance no.1 relied by the claimants as well as the valuer dated 20.3.1995 was near to Jogeshwari Railway Station and at a distance of 1.4 kms. from the acquired land. Therefore, the said sale instance

cannot be considered for determining the market value of the acquired land. Even the valuer at the time of determining the market value of the acquired land failed to give proper deduction. He objects the valuer's valuation and report on following points:

a) Radial Distance of 1.4 km in Mumbai makes an enormous difference.

b) 15% rise per year unjustified

c) Mr.Maniar's valuation report is biased in favour of claimants

d) Mr.Maniar's allowance for acquired land's "undulated" situation was inaccurate.

e) Mr.Maniar failed to account for the fact that the acquired land was agricultural land.

f) Mr.Maniar has relied only on one sale instance.

g) The acquired land was potentially surplus vacant land.

h) An adverse inference must be drawn against the claimant for failing to produce the full certified copy of Indenture dated 24th June, 1996.

33 The learned Counsel for the acquiring body elaborated his argument on insufficiency of pleading as under. He submits that claimants' entire case in their pleading in Reference u/s.18 of the said Act proceeds on the basis that Land Acquisition Officer ought to have awarded the compensation on the basis of Ready Reckoner Rate @ Rs.1860 per sq.ft. i.e. Rs.20,020 per sq.mtr. He submits that at the time of filing letter dated 22.9.1998 with the Special Land Acquisition Officer for determining the market value of acquired land prior to the award, the claimants sought compensation @ Rs.1860 per sq.ft. on the basis of ready reckoner rate. The claimants did not produce sale

instance or comparable sale before the Special Land Acquisition Officer. He submits that the claimants in his application dated 31.12.1999 addressed to the Collector under section 18 of the said Act and sought compensation on the basis of Ready Reckoner Rate. This application is required to be treated as a plaint at the time of determining market value of the acquired land. He submits that bare reading of the application under section 18 of the said Act shows that the claimants have not based its case on comparable sale instance and or any other material. Hence, acquiring body is not precluded from arguing the case which is inconsistent with or not supported by its pleading. In support of his submission the learned Counsel for the acquiring body relies on the provisions of Order VII Rule 14 of the Civil Procedure Code, 1908. He submits that on this point itself there is no substance in the present case and same be dismissed with costs.

34 The learned Counsel for the acquiring body submits that the claimants do not have title to the acquired land and as such it would be unjust and inequitable to permit the claimants to claim enhanced compensation for acquired land. He submits that the claimants relied on 7/12 extract in support of their contention, as the landlord of the acquired land. He submits that it is well established that the revenue record does not establish the title. He submits that this proposition laid down by the Supreme Court in the matter of *Parag Construction vs. State of Maharashtra, (2008) 16 SCC 198*. Paragraph 37 reads thus:

> "37. Shri Divan also, very heavily relied on the property cards maintained by the City Survey Office, which were amended by a mutation entry dt. 23.1.1986, which showed the name of the petitioners/appellants as the holders in place of the Velkars. We have no difficulty in accepting that the

> property cards were indeed amended, but that by itself, will not give any benefit to the petitioners/appellants, for the simple reason that a mere amendment in the property cards of City Survey Office cannot and could not create a title in favour of the petitioners/appellants. The entries may have a presumptive value, however, that would not be sufficient. We have already shown that the Velkar Family had lost the possession way back in 1980 itself and the concerned plot was included in the Draft Scheme. Under the circumstances, there was no question of the ownership and/or possession being transferred to the petitioners/appellants by the court receiver. If that is so, the amended property cards of City Survey Office loose all the significance. It is needless to mention that this contradiction stands explained by the affidavits of city survey department and the Corporation and the officers of Corporation."

35 The learned Counsel for the acquiring body further submits that similar view taken by the Apex Court in the matter of *Narasamma and Others vs. State of Karnataka and others, (2009) 5 SCC 591*. Paragraph 27 reads thus:

> "In view of our discussions made hereinabove, we do not find any support to rely on the decision of this Court in the case of Jattu Ram v. Hakam Singh and Ors. AIR 1994 SC 1653 that since the appellants had failed to prove their status of tenancy in respect of the land in dispute, they were not entitled to any relief. It is true that the entries in the revenue record cannot create any title in respect of the land in dispute, but it certainly reflects as to who was in possession of the land in dispute on the date the name of that person had been entered in the revenue record. That apart, in that decision of this Court, on which reliance was placed by the learned Counsel for the respondent, it was admitted that the landlord did not receive any rent from the person in possession. Relying on this admission of the person from whom no rent was received, it was found that the plea of tenancy was a false one."

36 Hence, Special Land Acquisition Officer was wrong in admitting the claimants as owner of the acquired land simply on the basis of the entries in land revenue record.

37 The learned Counsel for the acquiring body submits that even during the course of the cross-examination, claimants witness Mr.Nanwani on being asked question no.9 about Memorandum of Understanding between the claimants and M/s.Habitat, Mr.Nanwani answered that these were all internal arrangements between Habitat and the Claimant. He submits that this itself shows that the claimants are not owners of the acquired land. He submits that in other words it is admitted that the Memorandum of Understanding was internal family arrangement / settlement which does not require registration under the provisions of the Registration Act. He submits that the Apex Court in the matter of *Kale and Others vs. Deputy Director of Consolidation and Others, (1976) 3 SCC 119* held that family settlement does not require registration nor does not affect the ownership of the immovable property. He relies on paragraph 9 and 10 of this authority which reads thus:

> "9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in Order to buy peace or mind and bring about complete harmony and good will (sic) the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this

connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

> The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs But even those persons who may have some " sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the Rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

> A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.
>
> The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.
>
> Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

"10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed into the form of the following propositions:

> (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
>
> (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
>
> (3) The family arrangements may be even oral in which case no registration is necessary;
>
> (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;
>
> (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him

> to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;
>
> (6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

38 On the basis of these submissions and the law, the learned Counsel for the acquiring body submits that the claimants are not owner of the acquired land and therefore, they are not entitled to any relief in the present proceeding.

39 These points have been raised by the counsel for the acquiring body in their written submission dated 6.2.2017. In support of his contention, he relied on following authorities:

a) *Sudhir Engineering Company vs. Nitco Roadways Ltd., 1995 (34) DRJ* on the point of admissibility of documents.

b) *H. Siddiqui (Dead) by lrs. vs. A. Ramalingam, (2011) 4 SCC 240* on the point of admissibility of indenture 24.6.1996 produced by claimants.

40 On the basis of these submissions and the authorities the learned Counsel for the acquiring body submit that the claimants failed to make out any case for additional compensation in respect of acquired land and same is required to be dismissed with costs.

41 The learned A.G.P. for the State submits that Special Land Acquisition Officer after considering the evidence on record and sale instance determined the fair market value @ 1678 per sq.mtr. on the date of issuing notification under section 126(4) of the MRTP Act and hence, there is no question of granting any additional compensation to the claimants in the present reference and same is required to be dismissed with costs.

42 In the present proceeding, the claimants filed affidavit of evidence of Haresh K. Nanwani along with compilation of documents. They also filed affidavit of evidence of Atul Madan Gulati, Architect and affidavit in evidence of Harshad Maniar, Surveyor and valuer who submitted valuation report dated 25.2.2009. The claimants relied on following documents and placed the same on record :

I Exhibit- C-1

Certified true copy of Indenture of conveyance dated 13.6.1931 executed between Faiz Budruddin Tyabji & Ors. And Tyabji Estate Ltd.

II Exhibit- C-2

Photocopy of order dated 14.12.1999 passed by Shri S.S.Zende, Additional Collector and Competent Authority (ULC)

III Exhibit- C-3

Plan prepared by Architet Mr.Atul Gulati

IV Exhibit- C-4

Valuation report dated 25.2.2009 prepared by Harshad Maniar

V Exhibit- C-5

Certified copy of Indenture 24.6.1996 executed between Bhagwan Dayaram Ramchadani and Sunder Dayaram Ramchandani and Ors. And certified by Sub-Registrar Bombay under No.BBJ/2291 of 1996.

VI Exhibit- C-6

Certifiied copy of Agreement dated 13.5.1999 executed between M/s.Ascent Associates and Jehangir N.Sethna and certified by Sub-Registrar for Agreement of Sale of Flat under No.P/BDC/744/99.

VII Exhibit- C-7

Certified copy of Agreement dated 23.10.1999 executed between M/s.Ascent Associates and Mohd.Hanif Ibrahim Shaikh and certified by Sub-Registrar for agreement to sale Flat under No. BPDR-1/1823 of 1999

VIII Exhibit- C-8

Certified copy of Agreement dated 4.5.2001 executed between M/s.Ascent associates and Vilas Digamber Rao and certified by Sub-Registrar for Agreement to Sale of Flat no.BPDR-1/1196 of 2001.

IX Exhibit- C-9

Development Plan Sheet W/39

X Exhibit- C-10

Plan showing land under acquisition and sale instances.

XI Exhibit- C-11

Xerox copy of Memorandum of Understanding dated 17.7.1991 executed between M/s.Gupta Enterprises and M/s.Acme Investments and Others. Same was marked by Commissioner subject to objection.

XII Exhibit- C-12

Xerox copy of Indenture of Partnership dt.31.3.1993 executed between M/s.Acme Favourites and Acme Management to M/s.Acme Associates Same was marked by Commissioner subject to objection)

XIII Exhibit -R-1

Copy of Deed of Partnership dated 27.6.1986 executed between Tayabji Estate Pvt.Ltd. and Sharad Mofatraj Munot & Ors. for Development of land.

XIV Exhibit- R-2

Notes prepared by Mr.Harshad Maniar at the time of Inspection of land on 14.4.2007.

43 It is to be noted that neither the acquiring body nor the Special Land Acquisition Officer filed any affidavit of evidence nor entered into witness box to prove their case. Though the Land Acquisition Officer has placed on record copy of award dated 26.10.1999, same was not proved by examining any officer from their office. Therefore, on the basis of documents produced by claimant and evidence of three witnesses market value of land in question is required to be decided on the date of issuing notification under section 126(4)of the MRTP Act and section 6 of the said Act.

44 Before considering the evidence on record, the law laid down by the Apex Court for determining the market value under the said Act is

required to be considered.

45 The Apex Court in the matter of Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Another (1988) 3 SCC 751 held that the Reference is not an Appeal. Material relied on by the acquisition officer in his award can be relied upon unless same is produced and proved. The market value of land under acquisition has to be determined as on the crucial date of publication of the notification. If the agricultural land is acquired, how to determine the market value of the same on the basis of sale deed of the plots of land situated in developed area i.e. by providing deduction towards development, area, locality and demand in that area. Paragraph 4 and 7 of the said authority reads thus:

> "4. The following factors must be etched on the mental screen:
>
> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning,

or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act(dates of Notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

	Plus factors	*Minus factors*
1.	Smallness of size	Largeness of area
2.	Proximity to a road	Situation in the interior at a distance from the road
3.	Frontage on a road	Narrow strip of land with very small frontage compared to depth
4.	Nearness to developed area	Lower level requiring the depressed portion to be filled up
5.	Regular shape	Remoteness from developed locality
6.	Level vis-a-vis land under acquisition	Some special disadvantageous factor which would deter a purchaser
7.	Special value for an owner of an adjoining property to whom it may have some very special advantage	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be

set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

"7. The appellant's land, which was agricultural land albeit with future potential for development as building site, was situated far far in the interior in the midst of blocks of undeveloped land. The formula for evaluation involved taking of three steps:

(1) The High Court formed the opinion that allowance for largeness of block deserved to be made at 25% instead of 20% as done by the Trial Court.

(2) The High Court formed the opinion that the development would take about 12 years to reach the appellant's land. On these premises the High Court formed the opinion that the land of the appellant could be valued at Rs. 7000 per acre as a block.

(3) The High Court directed that the market value so ascertained should be further depressed to account for the factor as regards the waiting period of 12 years which was the estimated period for development reaching the

> appellant's land. The 'present value' of the land was accordingly deduced by depressing the valuation of Rs. 7000 per acre by reference to Miram's Tables on the basis of discount rate of 5% per annum to account for the factor that approximately 12 years would elapse before development could reach the appellant's land.

> That is how the total compensation payable to the appellant for the block of land admeasuring 13 acres 7 gunthas was determined at Rs. 63,846 which works out at approximately Rs. 4,845.87 per acre."

46 The Apex Court in the matter of *Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P., (2003) 12 SCC 334* laid down the principle for determining the market value of agricultural land compare to rate of sale instance in which the smaller plots were sold. How much deduction be made for fixing market value. Paragraph 6, 7 and 12 reads thus:

> "6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to few decisions of this Court in Collector of Lakhimpur v. Bhuban Chandra Dutta AIR 1971 SC 2015; Prithvi Raj Taneja (dead) by L. Rs. v. State of Madhya Pradesh and Anr. AIR 1977 SC 1560 and Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr. AIR 1984 SC 892."

> "7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices

> paid for small plots of land. However, in such cases, necessary deductions/adjustments have to be made while determining the prices."
>
> "12. In K. S. Shivadevamma and Ors. v. Assistant Commissioner and Land Acquisition Officer and Anr. 1996 (2) SCC 62, this Court held as follows :
>
> > "10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned Counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity, etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, ordered by the High Court, was not illegal."

47 The Apex Court in the matter of *Special Land Acquisition Officer and Another v. M.K.Rafiq Saheb, (2011) 7 SCC 714* laid down the principle for determination of market value, Acquisition of large tract of

land on the basis of sale instance pertaining to small plots and how much deduction be made for deciding the market value. In this case large tract of land i.e. 34 gunthas were acquired and the market value was decided on the basis of sale deed of small plot admeasuring 30' x 40' only. The Apex Court given 60% deduction and decided the market value of acquired land. Paragraph 19 and 24 reads thus:

> "19. The judgment of the High Court is well reasoned and well considered. We find no perversity in its reasoning. The only issue is that Ex. P-5, which was relied upon by the High Court, relates to a small piece of land, whereas the acquisition is of a larger piece of land. It is not an absolute rule that when the acquired land is a large tract of land, sale instances relating to smaller pieces of land cannot be considered. There are certain circumstances when sale deeds of small pieces of land can be used to determine the value of acquired land which is comparatively large in area, as can be seen from the judicial pronouncements mentioned hereunder."
>
> "24. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracks of land. The sale of land containing large tracks are generally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction."

48 The Apex Court in the matter of *State of Maharashtra v. Babu Govind Gavate etc., AIR 1996 SCC 904* held that State has no right to deduct 1/3rd of market value of land towards interest of the Government under section 43 of the Bombay Tenancy 1948. Paragraph 4 reads thus:

> "4. The sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee etc. as envisaged under Section 43(1). But when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise. Section 23(2) of the Act off sets the unwillingness on the part of the owner paying time scheme. The question, therefore, is whether the Government under the aforestated notification is entitled to deduct 1/3rd from the compensation determined under Section 23(1) of the Act. We have seen the notification and we are unable to accept the validity of the said notification. When the Collector exercises the power to grant sanction under Section 43(1), he does it as a statutory authority to protect right, title and interest of the erstwhile tenant who subsequently became the owner to see that he remains to be the owner and continues to be in possession and enjoyment of the same. But that condition to grant sanction is not hedged with any right to the Government to deduct 1/3 when it exercises its power of eminent domain for a public purpose. The owner under Section 23(1) is entitled to the full compensation of the market value prevailing as on the date of publication of the notification under Section 4(1). Therefore, the circular relied on is clearly ultra vires of the power of Section 43 or any other power."

49 It is to be noted that in the case in hand, the counsel for acquiring body raised objection that the claimants are not owner of the suit property. They have no clear title and they failed to prove the ownership of the acquired land and hence, at the time of determining the market value those factors are required to be considered. It is to be noted that the question of title to the land acquired is not relevant in a reference application under section 18 of the said Act. Only the question of amount of compensation is relevant. It does not involve determination of the ownership right.

50 Section 21 of the said Act expressly restricts the inquiry by the court to a consideration of the interests of the person affected by the acquisition. Any subject-matter foreign to the matter before the Collector cannot be raised by any party or third person.

51 The expression “all persons interested in the objection” in section 20(b) of the said Act does not include the local authority or company on whose behalf acquisition is made by the State. It includes only the persons as defined in section 3(b). Under section 21 of the said Act, the scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

52 Section 50(2) of the said Act lays down that in any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation, provided that no such local authority or Company shall be entitled to demand reference under section 18.

53 Thus, on perusal of sections 18, 20, 21 and 50, it would be clear that the company / acquiring body is not entitled to demand reference under section 18. Under section 21 of the said Act, the Company can adduce evidence for determination of market value which is going to affect their rights. This is why opportunity is given to company under section 50(2) of the said Act for appearance and adducing evidence.

54 Considering the above mentioned authorities and the provisions of the said Act, the market value of the acquired land in the case in

hand is required to be determined.

55 In the present proceeding, Land Acquisition Officer in its award specifically stated under the caption "Situation and Description" that the land under acquisition land was situated where many housing colonies were grown up near about area and also developed. Therefore, though the property card shows that the acquired land on the date of issuing notification under section 126(4) of the MRTP Act was agricultural land, but for the purpose of determining the market value other factors just like near about development, utility of acquired land, expenses requires to be considered.

56 The claimant filed affidavit of evidence of Mr.Nanwani. The said witness Mr.Nanwani specifically stated in his affidavit of evidence in paragraph 10 that the acquired land had proper access to the main road. Paragraph 10 of his evidence reads thus:

> "10. The holding which remained with us after the aforesaid acquisitions had a direct access from Jogeshwari-Vikhroli Link Road. The said road was in existence several years prior to 10th April, 1997. Our holding as on 10th April, 1997 had a direct frontage of 83 mtrs. On Jogeshwari-Vikhroli Link Road. There was another road passing through our holding being 13.40 mtrs. wide D.P.Road. This D.P.Road was in existence prior to the present acquisition that is 10th April 1997. The portions of the D.P.Road falling in our holding are shown hatches on the said plan."

57 The said witness Mr.Nanwani further stated that land under acquisition was about 7-8 minutes walk from Western Express Highway and 10-12 minutes walk from Jogeshwari Railway Station. Paragraph 16 of his affidavit in evidence reads thus:

> "16. The land under acquisition is about 7 to 8 minutes walk from the Western Express Highway and 10 to 12 minutes walk from the Jogeshwari Railway Station. Considerable development had started in the surrounding area about 1982-83. The surrounding area was developed on the date of acquisition. Colonies known as Raheja Nagar, Poonam Nagar, Air India Colony etc. had already come up. These were at a distance about 200-300 metres from the acquired land. A colony known as Greenfields (R.N.A.Developers) had already come up around 1984-85. This colony was adjoining the Claimants' land. A colony was adjoining the Claimants' land and was about 80 metres from the acquired land. The amusement park known as "Fantasy Land" was very close to the land under acquisition. Fantasy Land had been constructed in or around 26.9.1992."

58 Though acquiring body cross-examined this witness at length, nothing came out from the same. Bare reading of the evidence of Mr.Nanwani shows that though the land was shown as agricultural land in property card, same was situated in developed area surrounded by several constructions, near to DP road, Jogeshwari Vikhroli Link Road and Jogeshwari Railway Station. His evidence is required to be considered for determining the market value on the basis of developed land by deducting some amount towards development charges and other expenses.

59 The claimant also filed affidavit of evidence of Mr.Atul Madan Gulati the Architect who prepared map showing the location of the land. He specifically stated in his deposition that the said map was prepared by him from the extract of the sanctioned developed plan which came into force on 31.1.1994.

60 The claimants also filed affidavit of evidence of Harshad S. Maniar. He is working as Civil Engineer, Surveyor and Registered Estate Valuer. His qualification is B.E. (Civil), M.I.E., F.I.V., F.I.S. In his evidence, he stated that he visited the suit property and prepared valuation report dated 25.2.2009. At the time of preparing valuation report, he considered the following documents for ascertaining the market value of the land in acquisition.

> "i. Annexure 'A' – Plan prepared by Shri Atul Gulati, Architect
>
> ii. Annexure 'B' – Certified copy, certified by Sub-Registrar Bombay under No.BBJ/2291 of 1996.
>
> iii. Annexure 'C' – Photocopy of Agreement between M/s.Gupta Enterprises and M/s.Acme Investments and others alongwith the photocopy of the Order passed by Appropriate Authority under No.BOM/7735/91-92 under section 269 UD (3) of the Income Tax Act, 1961.
>
> iv. Annexure 'D' – Photocopy of Agreement between M/s.Acme Favouritise and Acme Management alongwith the photocopy of the Order passed by Competent Authority under section 269 UL (3) of the Income Tax Act, 1961.
>
> v. Annexure 'E' – Plan showing land under acquisition and sale instances.
>
> vi. Annexure 'F' – Certified copy certified by Sub Registrar for Agreement to Sale of Flat under No.P/BDC/744/99.
>
> vii. Annexure 'G' – Certified copy, certified by Sub Registrar for Agreement to Sale of Flat under No.BPDR-1/1823/99.
>
> viii. Annexure 'H' – Certified copy, certified by Sub Registrar for Agreement to Sale of Flat under No.PBDR-1/1196/2001."

61 Harshad S. Maniar, valuer in his report relied on the sale instance

no.1 i.e. agreement executed and registered on 24.6.1996 with Sub-Registrar of Bombay under No.BBJ/2291/1996. In this sale instance, plot no.1 admeasuring 731.30 sq.mtr. was sold for total consideration of 63 lakhs by Mr.Sunder Dayaram Ramchandrani and another. The rate of land works out to Rs.8614.79 per sq.mt. The distance of the said plot and the acquired land is 1.4 kms. He has given his comparative table for determining the market value of acquired land on the date of issuing notification which comes to Rs.9545 sq.mtrs. At the time of deciding market value of acquired land, he has considered relevant date, size, location, situation, zone, permissible FSI, encumberance, means of communication and civic amenities. He also considered 15% rise in the market value from the year 1995 to 1997 i.e. from 20.3.1995 to 10.4.1997 (2 years and 20 days). He worked out rise to 30.83%. This sale instance was proved and marked as Exhibit.

62 The valuer also recorded sale instance no.2 i.e. Memorandum of Understanding dated 17.7.1991 in respect of land bearing S.No.54, CTS No.169 Survey No.81, CTS No.168 of Village Majas admeasuring 33260 sq.mtrs for total consideration of Rs.4,88,25,000/-. But copy of the same was not proved. Hence, that cannot be considered for determining the market value in question.

63 The valuer also relied on 3 sale instances in respect of flat no.705, 405 and 302. The sale instance of those flats were placed on record and were marked as Exhibits.

64 Considering the evidence of valuer and the cross-examination taken by acquiring body I am satisfied that the valuation report as well

as sale instance dated 24.6.1996 can be considered for determining the market value of acquired land in the case in hand.

65 It is to be noted that in the present proceeding, the learned Counsel for the acquiring body raised several objections about the claimants rights for compensation, consideration of Urban Land Ceiling Act, question of pleading on record etc. It is to be noted that in the land acquisition reference under section 18, acquiring body can justify the market value awarded by Special Land Acquisition Officer. They cannot object for entitlement of compensation to the claimants. In any case, in the present proceeding, Special Land Acquisition Officer after considering the revenue records and evidence of claimants held that the claimants are the owners of acquired land and they are only entitled compensation. Hence, though the counsel for acquiring body made several submissions on those points, filed written submissions and relied on several authorities, those can not be considered for determining the market value of acquired land.

66 Acquiring body's counsel in his written submission dated 6.2.2017 raised objection for granting additional compensation to the claimant on several grounds as under:

a) No direct access to road
b) Flaws in the valuation of Mr.Maniar
c) Radial distance of 1.4 km. in Mumbai makes a enormous difference
d) 15% rise per year unjustified
e) Mr.Maniar's valuation report is biased in favour of claimants
f) Mr.Maniar's allowance for a acquired land's "undulated" situation was in accurate.
g) Mr.Maniar failed to account for the fact that the acquired land was agricultural land.

h) Mr.Maniar has relied only one sale instance
i) The acquired land was potentially surplus vacant land.
j) An adverse inference must be drawn against the claimant failing to produce the full certified copy of the Indenture dated 24.6.1996.

67 Though the claimants claimed compensation in respect of acquired land to the tune of 9,41,60,491 with benefits under section 23(1A), 23(2) and section 28 of the said Act, @ 20,020 per sq.mtr. i.e. 1860 per sq.ft. but at the time of argument the learned senior Counsel for the claimants made a statement that they are restricting their claim @ 9545 per sq.mtr. i.e. 886 per sq.ft. on the basis of sale instance no.1 dated 24.6.1996.

68 The learned Counsel for the claimants relied on authorities to show how to determine the market value of acquired land. How much deduction is required to be done if the acquired land is agriculture. The counsel for the claimants also relied on several authorities to show the rights of local authority and or acquiring body at the time of determining the market value of acquired land.

69 It is to be noted that the acquiring body acquired claimants land 27,449.7 sq.mtrs. from some survey number in the year 1967 for construction of bus depot. At that time, land acquisition officer awarded compensation @ Rs.130 per sq.mtr. Thereafter, acquiring body constructed bus depot which was in function as on the date of issuing Notification for acquisition in the case in hand. The acquiring body sent their proposal to the government for acquiring the land admeasuring 5133.6 sq.mtrs which was just next to the bus depot,. This itself shows that the land in the present case was the most

convenient, suitable and useful to the acquiring body. Not only that, having full knowledge about the situation and other amenities in the acquired land, which was just adjacent to bus depot owned by acquiring body, they sent their proposal for acquisition. Apart from that, valuer as well as claimants specifically stated in their evidence that the acquired land had proper access. Therefore, the objection raised by the acquiring body on the ground of no direct access to the road is not maintainable.

70 Bare reading of the valuer Mr.Maniar's affidavit of evidence and the valuation report shows that considering the principle for fixing the market value, the gap between the sale instance dated 20.3.1995, the valuer has arrived market rate of acquired land @ Rs.9,545/- per sq.mtr. At the time of working out the market value, the valuer considered the relevant date, size, location, situation, zone, permissible FSI, encumbrance, means of communication and civic amenities and tenure between the sale instance dated 20.3.1995 and the date of acquisition. Therefore, the objection raised by the acquiring body in their submission as well as in written submission for determination of additional market value has no substance.

71 Considering the law laid down by the Apex Court in the matter of Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Another (Supra), at the time of deciding the market value of acquired land if it is agricultural the same deduction is required to be done.

72 In the present proceeding, the Special Land Acquisition Officer at the time of deciding the market value of acquired land on the basis of

sale instance of flats which were situated more than 1 ½ km. from the land under acquisition deducted 40%. In the case in hand, the valuer stated that the market value of acquired land should be Rs.9,545/- per sq.mtr. on the date of acquisition. Though he considered all the relevant factors to arrive at market value of acquired land on the date of issuing notification under section 126(4) of the MRTP Act, in the interest of justice additional 20% is required to be deducted from Rs.9,545/- per sq.mtr. on the ground of agricultural land, distance from sale instance dated 20.3.1995 and development expenses. After deducting 20% (i.e. 1909) from Rs.9,545/- per sq.mtr. it comes to Rs.7,636/- per sq.mtr. (9545-1909). Hence, in the above mentioned facts and circumstances and the law declared by the Apex Court as stated hereinabove, claimants are entitled compensation in respect of acquired land @ Rs.7,636/- per sq.mtr. along with other statutory benefits as per amended provisions of the said Act i.e. 30% solatium, 12% Component, interest etc. of the said Act. Hence, reference is partly allowed as under:

a) Claimants are entitled market value of acquired land admeasuring 5,133.6 sq.mtr. @ Rs.7,636/- per sq.mtr. instead of Rs.1,678/- per sq.mtr. as awarded by Special Land Acquisition Officer.

b) Claimants are also entitled all benefits as per the 1984 amended provisions of the said Act i.e. 12% component 30% solatium under section 23(2) and interest.

c) Payment already made to the claimants to be adjusted at the time of calculating the amount due and payable to the claimants.

d) Special Land Acquisition Officer is directed to calculate the amount due and payable to the claimants @ Rs.7,636/- per. sq. mtr. within three months from today and pay the same to the claimants or deposit in the Registry of this court.

e) If amount is deposited in the Registry of this court, claimants are entitled to withdraw the same without any security after the Appeal period is over.

f) LAR is partly allowed as above with costs.

(K.K. TATED, J.)