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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.416 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Appellant

....Versus....

1). Sunil s/o Ratanlal Jethliya,)
Age 34 years, Occupation Business,)
& Managing Partner, "Land Mark)
Developers, Aurangabad",)
R/o Station Road, Aurangabad)
2). The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Special Unit Aurangabad.) ...Respondents

WITH
CIVIL APPLICATION NO.4789 OF 2005
IN
FIRST APPEAL NO.416 OF 2000

Sunil s/o Ratanlal Jethliya,)
Age 30 years, Occupation Business,)
& Managing Partner, "Land Mark)
Developers, Aurangabad",)
R/o Station Road, Aurangabad.) ...Applicant

....Versus....

1). City Industrial & Development)
Corporation, Through its Administrator)
CIDCO, New Aurangabad.)
2). The State of Maharashtra,)
Through Special Land Acquisition)

Officer, Special Unit Aurangabad.) ...Respondents

WITH
CIVIL APPLICATION NO.6098 OF 2015
IN
CIVIL APPLICATION NO.6925 OF 2011
IN
FIRST APPEAL NO.416 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Applicant

....Versus....

- 1). Sunil s/o Ratanlal Jethliya,)
Age 34 years, Occupation Business,)
& Managing Partner, "Land Mark)
Developers, Aurangabad",)
R/o Station Road, Aurangabad)
)
2). The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Special Unit Aurangabad.) ...Respondents

WITH
CIVIL APPLICATION NO.13900 OF 2016
IN
FIRST APPEAL NO.416 OF 2000

M/s.Landmark Developers,)
A partnership Firm, Registered Under)
The provisions of Partnerships Act, 1932,)
Through -

- 1). Sunil Ratanlal Jethlia,)
Age 48 years, Occupation Business,)
R/o A-7, Pride Plaza, Vedant Nagar,)
Railway Station Road,)
Railway Station Road,)
Aurangabad – 431 005.)
)

- 2). Mrs.Lata Arunkumar Jethlia,)
Age 56 years, Occupation Business /)
Household, R/o A1/9, Bhosale)
Paradise, Range Hill Road,)
Pune - 431 020.)
)
3). Madhur Arunkumar Jethlia,)
Age 32 Years, Occupation Business)
R/o A1/9, Bhosale Paradise,)
Range Hill Road, Pune – 431 020.)
- ...Applicants

....Versus....

- 1). City Industrial & Development)
Corporation, Through its Administrator)
CIDCO, New Aurangabad.)
)
2). The State of Maharashtra,)
Through Collector, Aurangabad.)
)
(Copy for Respdt.No.2 to be served)
On The Office of Govt. Pleader,)
High Court of Bombay,)
Bench at Aurangabad.)
- ...Respondents

WITH
CIVIL APPLICATION NO.11021 OF 2017
IN
CROSS OBJECTION (ST.) NO.28630 OF 2017
IN
FIRST APPEAL NO.416 OF 2000

M/s.Landmark Developers,)
A partnership Firm, Registered Under)
The provisions of Partnerships Act, 1932,)
Through -)

- 1). Sunil Ratanlal Jethlia,)
Age 48 years, Occupation Business,)
R/o A-7, Pride Plaza, Vedant Nagar,)
Railway Station Road,)
Railway Station Road,)

- Aurangabad – 431 005.)
)
2). Mrs.Lata Arunkumar Jethlia,)
Age 56 years, Occupation Business /)
Household, R/o A1/9, Bhosale)
Paradise, Range Hill Road,)
Pune - 431 020.)
)
3). Madhur Arunkumar Jethlia,)
Age 32 Years, Occupation Business)
R/o A1/9, Bhosale Paradise,)
Range Hill Road, Pune – 431 020.)
- ...Applicants

....Versus....

- 1). City Industrial & Development)
Corporation, Through its Administrator)
CIDCO, New Aurangabad.)
)
2). The State of Maharashtra,)
Through Collector, Aurangabad.)
)
(Copy for Respdt.No.2 to be served)
On The Office of Govt. Pleader,)
High Court of Bombay,)
Bench at Aurangabad.)
- ...Respondents

WITH
CIVIL APPLICATION NO.12517 OF 2017
IN
FIRST APPEAL NO.416 OF 2000

- City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.)
- ...Applicant

....Versus....

- 1). Sunil s/o Ratanlal Jethliya,)
Age 51 years, Occupation Business,)
& Managing Partner, “Land Mark)
Developers, Aurangabad”,)

R/o Station Road, Aurangabad)
)
2). The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Special Unit Aurangabad.) ...Respondents

Mr.A.S. Bajaj for the Appellant.
Mr.A.P.Bhandari for the Respondent No.1 in F.A. No.416 of 2000 and
for the Appellants in Cross Objection (St.) No.28630 of 2017.

Mrs.M.A. Deshpande, A.G.P. for the State – Respondent No.2.

WITH
FIRST APPEAL NO.419 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Appellant

....Versus....

1). Vijaykumar Nilkanthrao Salunke,)
Age 42 years, Occupation Business)
& Agriculture, R/o Majalgaon, Tq.)
Majalgaon, Dist. Beed, Chief Promoter))
Proposed "Subhamangal Co-Op.)
Housing Society Ltd., Aurangabad.)
)
2). The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Special Unit Aurangabad.) ...Respondents

WITH
CROSS OBJECTION (STAMP) NO.1102 OF 2001
WITH
CIVIL APPLICATION NO.12515 OF 2017
IN
FIRST APPEAL NO.419 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Applicant

....Versus....

Vijaykumar Nilkanthrao Salunke,)
Age 42 years, Occupation Business)
& Agriculture, R/o Majalgaon, Tq.)
Majalgaon, Dist. Beed, Chief Promoter)
Proposed "Subhamangal Co-Op.)
Housing Society Ltd., Aurangabad.) ...Respondent

Mr.A.S. Bajaj for the Appellant.
Mrs.M.A. Deshpande, A.G.P. for the State – Respondent.
Mr.A.B. Kale for the Respondent No.1 in F.A. No.419 of 2000 and for
the Appellant in Cross Objection (Stamp) No.1102 of 2001.

WITH
FIRST APPEAL NO.420 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Appellant

....Versus....

- 1). Girish Ramakant Kharosekar,)
Age 29 years, Occupation Service,)
Chief Promoter,"Proposed)
Subhankaroti Co-Opeative Housing)
Society Ltd.", Aurangabad, R/o)
Himali Co-operative Housing Society)
Building – C, Flat No.344, Near)
Mhatre Bridge, Erandwana, Pune – 4.)
)
- 2). The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Special Unit Aurangabad.) ...Respondents

WITH
CROSS OBJECTION (STAMP) NO.1100 OF 2001

WITH
CIVIL APPLICATION NO.12516 OF 2017
IN
FIRST APPEAL NO.420 OF 2000

City Industrial & Development Corporation)
Through its Administrator, CIDCO,)
New Aurangabad.) ...Applicant

....Versus....

Girish Ramakant Kharosekar,)
Age 29 years, Occupation Service,)
Chief Promoter,"Proposed)
Subhankaroti Co-Opeative Housing)
Society Ltd.", Aurangabad, R/o)
Himali Co-operative Housing Society)
Building – C, Flat No.344, Near)
Mhatre Bridge, Erandwana, Pune – 4.) ...Respondent

Mr.A.S. Bajaj for the Appellant.

Mr.A.B. Kale for the Respondent No.1 in F.A. No.420 of 2000 and for
the Appellant in Cross Objection (Stamp) No.1100 of 2001.

Mrs.M.A. Deshpande, A.G.P. for the State – Respondent No.2.

CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.
RESERVED ON : 5TH OCTOBER, 2017
PRONOUNCED ON : 13TH FEBRUARY, 2018

JUDGMENT (Per R.D. Dhanuka, J.) :-

1. By consent of parties, all three appeals were heard together and are being disposed of by a common order in view of the facts being identical and there being a common order passed by the Reference Court. Some of the relevant facts for the purpose of deciding these three appeals are arising out of the reference petition

filed under section 18 of the Land Acquisition Act, 1894 are as under :

2. Insofar as First Appeal No.416 of 2000 is concerned, the same is filed against the order passed in Land Reference Application No.40 of 1997 before the learned Civil Judge, Senior Division at Aurangabad. It was the case of the respondent no.1, who was the original claimant that he was the owner and possessor of the land bearing survey no.15 at Garkheda to the extent of 2 Hectares and 49 R equivalent to 6 acres and 6 gunthas. The claimant was the Managing Partner of the "Land Mark Developers. Aurangabad". It was the case of the claimant that the land in question which was owned by him was forming part and parcel of CIDCO area (New Aurangabad) and was within the local limits of Municipal Corporation, Aurangabad. The land in question was situated abutting Jalna Road in between old Aurangabad city and Chikalthana.

3. In the year 1986, part of survey no.15 came to be acquired for the purpose of development of new Aurangabad city. It is the case of the claimant that at that time the land in question was dropped and was not acquired. The appellant was appointed as Special Planning Authority in respect of Aurangabad Municipal Corporation. The claimant had submitted an application to CIDCO Administration, Aurangabad for approving the lay out for proper and full utilization of the area on 12th October, 1989. After acquisition proceedings of the land in question were dropped in the year 1986-87 in respect of the portion of land bearing survey no.15 of Garkheda, Aurangabad, said lay out plan was not approved by CIDCO by a communication dated 7th December, 1989. The claimant was informed by CIDCO that the acquisition proceedings were already in progress with the Collector,

Aurangabad and thus the lay out plan should not be approved.

4. It is the case of the claimant that on 5th December, 1991, actual notification under section 126(4) of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") was issued by the District Collector, Aurangabad. It is the case of the claimant that to the North and adjacent to this area is the new High Court building along with its campus, abutting Jalna road, the developed area is known as N-3 and N-4, which is also just adjacent to approximate vicinity and entire area of N-3 and N-4 is fully developed. It is the case of the claimant that the acquired portion of survey no.15 in 1986 is also fully developed consisting of constructed houses. Survey no.16 to the West and survey nos.20 and 22 to the South of survey no.15 are also fully developed where thousands of houses have been constructed. It was the case of the claimant that the entire adjoining area of the land under acquisition has been fully developed, thickly populated and thus nothing remains for the purpose of making any other efforts to develop the acquired area from the land survey no.15 in question.

5. The said notification under section 126(4) of the MRTP Act was published in the Maharashtra Government Gazette, Aurangabad Division, Supplement Part-I on 10th December, 1991 and was also published in local newspapers (1) Daily Ajantha, Aurangabad dated 6th January, 1992 and (2) Daily Citizen, Aurangabad dated 7th January, 1992. The substance of the above notification was published on site by drawing a panchanama dated 13th February, 1993.

6. The appellant had been appointed as Special Planning

Authority for New Aurangabad notified area under section 40(i)(b) of MRTP Act by Government Notification dated 30th October, 1972, amended by Notification dated 3rd February, 1973. CIDCO had carried out survey and prepared a draft plan proposal for the purpose of development of lands within its jurisdiction by publishing a notice in the Maharashtra Government Gazette dated 24th May, 1973. The said planning proposal was approved by the Government vide notification dated 3rd July, 1973.

7. Insofar as First Appeal No.416 of 2000 arising out of Land Acquisition Reference No.861 of 1997 is concerned, the Special Land Acquisition Officer awarded the compensation at the rate of Rs.3.50 lacs per hectare equivalent to Rs.3.25 per sq.ft. approximately. The appellant filed reference under section 18 of the Land Acquisition Act on 12th February, 1997 bearing Land Reference Application No.40 of 1997 in the Court of Civil Judge, Senior Division at Aurangabad *inter-alia* praying for enhanced compensation in respect of the acquired area upto 2.49 hectare from Survey No. 15 of Garkheda, Aurangabad at the rate of Rs.200/- per sq.ft. along with solatium on the enhanced compensation amount along with all statutory benefits payable in law. The said land reference application was resisted by the CIDCO by filing written statement on 16th September, 1997 before the learned Civil Judge, Senior Division at Aurangabad.

8. Insofar as First Appeal No.419 of 2000 is concerned, the same is arising out of the Land Acquisition Reference No.862 of 1997 and arising out of the order passed by the learned Civil Judge, Senior Division, Aurangabad partly allowing reference filed by the respondent no.1 Vijaykumar Nilkanthrao Salunke under section 18 of

the Land Acquisition Act, 1894. The respondent no.1 was the chief promoter of the proposed Subhmangal Co-operative Housing Society Ltd. and was the owner of the land bearing Survey No. 15, admeasuring 40.5 R equivalent to 43,560 sq.ft.

9. Insofar as First Appeal No.420 of 2000 is concerned, the said appeal is arising out of the Land Acquisition Reference No.863 of 1997 in respect of the acquired land bearing Survey No.15 admeasuring 40.5 R equivalent to 43560 sq.ft.

The respondent no.1 (original claimant) examined PW-1, Aun Ratanlal Jethlia, PW-2 i.e. Sanjay Dattatraya Ambekar, PW-3, i.e. Jamalsing Raising Deore and PW-4 i.e. Dattatraya Gopalrao Kulkarni in L.A.R. No.861 of 1997. State Government examined DW-1 Bhaskar Narayanrao Deo in the said L.A.R. No.861 of 1997. CIDCO however did not adduce any oral evidence in support of its defence in any of the reference. Respondent no.1 (original claimant) in L.A.R. No.863 of 1997 examined Vijaykumar Nilkanthrao Salunke.

10. Learned Civil Judge, Senior Division framed following issues on 11th December, 1998 :-

ISSUES

- (1) Whether the claimant proves that the market valuation made by the L.A.D. is improper and inadequate and not as per market value ?
- (2) Whether the claim petition is in limitation ?
- (3) Whether the claimant proves that he accepted compensation amount under protest ? If

not, what is it's effect ?

(4) Whether the claimant is entitled to additional amount of compensation claimed ?

(5) What order ?

11. By a common order dated 3rd August, 2000 passed by the learned Civil Judge, Senior Division, Aurangabad, the Reference Court partly decreed L.A.R. No.861 of 1997, L.A.R. No. 862 of 1997 and L.A.R. No.863 of 1997. Insofar as Reference No.861 of 1997 is concerned, the Reference Court directed the acquiring body to pay Rs.95,92,500/- to the claimant. The Reference Court directed the acquiring body to pay Rs.15,59,850/- to the claimant in L.A.R. No.862 of 1997 and directed the acquiring body to pay a sum of Rs.15,59,850/- to the claimant in L.A.R. No.863 of 1997. The Reference Court directed the acquiring body to pay to the claimant further amount at the rate of 12% per annum from the date of notification under section 4(a) of the Land Acquisition Act till the date of award on the amount of enhanced compensation under section 23(a) of the Land Acquisition Act and to pay 30% more amount on enhanced compensation under section 23(2) of the Land Acquisition Act. The Reference Court also directed the acquiring body to pay to the claimant interest at the rate of 9% per annum for one year from the date of possession on the enhanced compensation under section 28 of the Land Acquisition Act. The Reference Court also directed the acquiring body to pay to the claimant the interest on the enhanced compensation at the rate of 15% per annum after expiry of one year from the date of possession till the realization of the total amount under section 28 of the Act.

12. Being aggrieved by the said common order and judgment dated 3rd August, 2000 allowing three separate references filed by the respondent no.1 (original claimant) the acquiring body filed these three appeals in this Court. The original claimant also filed three separate cross objections in these three appeals. Insofar as First Appeal No.416 of 2000 is concerned, M/s.Land Mark Developers through its partners have filed Civil Application No.11021 of 2017 *inter-alia* praying for condonation of delay of 22053 days in filing cross objection. In the First Appeal No.416 of 2000, the respondent no.1 has filed a Civil Application No.4798 of 2005, *inter-alia* praying for referring the subject matter of First Appeal No.416 of 2000 to be referred to arbitration, conciliation or mediation as per section 89 of the Code of Civil Procedure. The said civil application is pending. The appellant has filed Civil Application No.6098 of 2015 in First Appeal No.416 of 2000 *inter-alia* praying for four weeks time for compliance of the order dated 13th November, 2014 for substitute service by way of paper publication. The said civil application is also pending.

13. The respondent no.1 has filed Civil Application No.13900 of 2016 *inter-alia* praying that the applicant nos. 2 and 3 as shown in the title cause of the said civil application, be substituted as respondents in place of applicant no.1 to represent the partnership firm by name "Land Mark Developers". The said application is also pending. The applicant has filed Civil Application No.12517 of 2017 in First Appeal No.416 of 2000 *inter-alia* praying for allowing the applicant (original appellant) to lead additional evidence i.e. to produce a copy of the agreement dated 17th April, 1991 in respect of a land which was allegedly entered into between M/s.Land Mark

Developers and Mr.Padmakar H. Mulay.

14. Insofar as First Appeal No.419 of 2000 is concerned, the appellant has filed civil application bearing no.12515 of 2017 *inter-alia* praying for permission to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure and more particularly the agreement dated 17th April, 1991 between M/s.Land Mark Developers and Mr.Padmakar H. Mulay. The original claimant has also filed cross objection in the said appeal bearing stamp no.1102 of 2001 *inter-alia* praying for enhancement of the compensation which was partly rejected by the learned Civil Judge, Senior Division in the reference filed under section 18 of the Land Acquisition Act, 1894.

15. Insofar as First Appeal No.420 of 2000 is concerned, the appellant has filed a civil application bearing no.12516 of 2017 *inter-alia* praying for permission to lead additional evidence i.e. alleged agreement dated 17th April, 1991 entered into between M/s.Land Mark Developers and Mr.Padmakar H. Mulay under Order 41 Rule 27 of the Code of Civil Procedure, 1908. The original claimant has also filed a cross objection bearing stamp no.1100 of 2001 *inter-alia* challenging a part of the order passed by the learned Civil Judge, Senior Division rejecting part of the claim made by the original claimant in the reference filed under section 18 of the Land Acquisition Act, 1894.

16. Mr.Anil Bajaj, learned counsel for the appellant in the aforesaid matters invited our attention to the copy of the award made by the Special Land Acquisition Officer, copy of the reference application filed by the original claimant, notes of evidence before the

Reference Court, the pleadings filed by the appellant and also various documents from the record and proceedings filed before this court of the proceedings before the Reference Court and also various findings recorded by the Reference Court.

17. It is submitted by the learned counsel for the appellant that the acquired lands were not abutting the Jalna Road but were situated towards south of Jalna Road and were part of CIDCO notified area and were within the limits of Aurangabad Municipal Corporation, Aurangabad. The total area of land bearing Survey No.16 of Village Garkheda was 13.59 hectare, out of which 10.18 hectare were acquired by award dated 23rd September, 1986. The land under acquisition was notified under notification which was published in Government Gazette on 12th December, 1991. The land acquired was situated about 1 km away towards south to Jalna Road and was useful for residential purpose. The land was connecting to Gajanan Maharaj Road which was accessible by internal road developed by CIDCO. He submits that the Special Land Acquisition Officer was right in considering the acquired land as agricultural land and rightly granted compensation on the basis of agricultural land. He submits that since the ready reckoner was not prepared for CIDCO notified area, the special Land Acquisition Officer rightly did not award any compensation to the claimant at the ready reckoner rate for the acquired land.

18. It is submitted that though the acquired land was situated in the developing locality, bulk of land was in undeveloped stage. He submits that the Special Land Acquisition Officer has rightly rejected the sale instance produced by the respondent no.1 and fixed price of

the lands on the basis of the material on record. He submits that possession of the acquired land was taken on 10th January, 1997 by the acquiring body and the payment of compensation amount was accepted by the claimant under protest. He submits that the claimant had no right to receive 12.5% of the acquired lands on the basis of the Government policy decision appeared in the newspaper.

19. It is submitted by the learned counsel that the entire order passed by the Reference Court is based on the mere assumption and presumption and without considering the oral and documentary evidence on record in proper and the Reference Court totally overlooked the admitted fact that the claimant themselves had purchased the land under acquisition at the rate of Rs.24,000/- per acre in the year 1987. He submits that when the large tracts of land was acquired by the acquiring body, the manner and method to assist the market value were different and the rate applicable to small size of land would not apply to the large tracts of land acquired by the acquiring body. He submits that the land under acquisition was not at all converted into a non agricultural land and thus method adopted by the Reference Court while granting higher rate of compensation was totally erroneous. The learned Reference Court failed to consider the instance relied upon by the Special Land Acquisition Officer in the impugned award and did not record any reason as to why the sale instances which were relied upon by the special land officer were to be rejected.

20. It is submitted that the Reference Court could not have granted benefit under section 23A to the original claimants. He submits that the land under acquisition was under the provisions of

the Maharashtra Regional Town Planning Act, 1966 and thus the provisions of the Land Acquisition Act could not have been applied by the Reference Court to the lands under acquisition except for limited purposes.

21. It is submitted by the learned counsel that in the impugned land acquisition award, the Special Land Acquisition Officer had awarded compensation at the rate of Rs.3.50 lacs per hectare equivalent to Rs.3.25 per sq.ft. whereas the Reference Court has awarded the compensation at the rate of Rs.600/- per sq.mtr. equivalent to Rs.56/- per sq.ft. which is absolutely exorbitant and without any basis and ignoring the evidence on record.

22. It is submitted by the learned counsel that two of the claimants had themselves acquired the lands in question on 13th October, 1987 at the rate of Rs.49,000/- per acre equivalent to Rs.1,23,000/- per hectare four years prior to the date of notification issued under section 126(4) of the MRTP Act. The acquired land was far away from the High Court though land bearing survey no.15 was touching the building of the High Court. There was slum on the south and west of the land in question. Higher tension electric line was passing from the land in question. He submits that these facts were admitted by the witnesses examined by the claimant. He submits that the witnesses examined by the claimant also admitted that there was slum area adjacent to plot bearing survey no.15.

23. It is submitted by the learned counsel that there is kaccha road and that also partly undulated and partly levelled one. There was development of unauthorized construction near the plot in question.

The Reference Court however has considered the land in question as developed by the CIDCO and with all facilities which finding of the Reference Court is factually incorrect and perverse. He also placed reliance on the cross examination of the witness examined by the claimant including the cross examination of the Town Planning Officer. He submits that the land under acquisition did not fall under CIDCO but are in non-CIDCO area. He submits that even if the ready reckoner rates would have been applied by the Reference Court though were not applicable, still the rates as per ready reckoner as per the witnesses examined by the claimant were only Rs.300/- per sq.mtrs for the properties on internal road. He also placed reliance on the cross examination of the bond writer i.e. Mr.D.G. Kulkarni. He submits that the Reference Court has allowed the same rates to all the claimants erroneously.

24. Learned counsel for the appellant placed reliance on sections 40, 115, 116, 117, 124A, 126 of the MRTP Act, 1966 and also on sections 6, 9, 11, 12, 19, 20, 23, 24, 25, 28, 34, 51A and 54 of the Land Acquisition Act.

25. Learned counsel for the appellant placed reliance on the following judgments :-

(1) **State of Maharashtra And Others vs. Digamber Bhimashankar Tandale, (1996) 2 SCC 583,**

(2) **Land Acquisition Officer & Others vs. Smt.Sreelatha Bhoopal & Another, (1997) 9 SCC 628,**

(3) **Special Deputy Collector & Another**

vs. Kura Sambasiva, (1997) 6 SCC 41,

(4) UP Jal Nigam, Lucknow vs. Karla Properties Pvt. Ltd., (1996) 1 SCC 124,

(5) Food Corporation of India vs. Makhan Singh & Another, (1992) 3 SCC 67,

(6) State of Maharashtra vs. Bhausaheb Dadasaheb Misal (Deceased) through L.Rs., Mah.L.R. 1996(1) 296,

(7) Spl.Tehsildar, Land Acquisition Vishakhapatnam vs. Smt.A. Mangala Gowri, (1991) 4 SCC 218,

(8) P.Rajan And Another vs. Kerala State Electricity Board, (1997) 9 SCC 330,

(9) Union of India vs. Ibrahim Uddin & another, (2012) 8 SCC 148,

(10) Lal Chand vs. Union of India, (2009) 15 SCC 769,

(11) A. Andisamy Chettiar vs. A. Subburaj Chettiar, AIR 2016 SC 79,

(12) Special Land Acquisition Officer and another vs. M.K. Rafique Saheb, (2011) 7 SCC 714,

(13) Basavva (Smt.) And Others vs. Special Land Acquisition Officer and others, (1996) 9 SCC 640,

(14) Chimanlal Hargovindas vs. Special Land Acquisition Officer Pune And Another, (1988) 33 SCC 751.

26. Unreported judgment delivered by the Division Bench of this Court Bench at Aurangabad on 11th March, 2014 in case of

Vijaykumar s/o. Nilkanthrao Salunke vs. State of Maharashtra in Writ Petition No.3982 of 1999 in support of various submissions made aforesaid and more particularly in support of the submission that deduction considered by the Reference Court was not in accordance with the principles of law laid down by the Supreme Court and this court in the aforesaid judgment.

27. Insofar as the application filed by the appellant under Order 41 Rule 27 of the Code of Civil Procedure is concerned, it is submitted by the learned counsel for the appellant that the appellant while preparing the brief notes to be considered before this court took inspection of the record and came across an application filed by Mr.Padmakar H. Mulay bearing Civil Application No.2239 of 2001 and the annexures produced along with it, i.e. copy of the agreement dated 17th April, 1991 executed by and on behalf of M/s.Land Mark Developers i.e. the original claimant in his favour to the extent of three acre in the sum of Rs.6 lacs i.e. Rs.2 lacs per acre. It is submitted that the original claimants have claimed that the market value of the land acquired was minimum Rs.200/- per sq.ft. and equivalent to Rs.87,12,000/- per acre. He submits that in the interest of justice it would be necessary to bring the said documents on record in this appeal at this stage by invoking the provisions of Order 41 Rule 27 of the Code of Civil Procedure. He submits that the delay in filing this application is not intentional but is due to the reasons beyond the control of the appellant. He submits that no prejudice would be caused to the claimant if this civil application is allowed by this Court and permission is granted to the appellant to rely upon the said additional documents before this court at this stage. Insofar as other submissions of the appellant to the civil application filed by the

claimants as well as the respondents are concerned, the same would be dealt with by this court in the later part of this order.

28. Mr.A.B. Kale, learned counsel for the respondent no.1 in First Appeal Nos.419 of 2000 and 420 of 2000 instructed by Mr.A.P. Bhandari, advocates submits that the lands in question were acquired by the CIDCO for residential as well as for commercial purposes. CIDCO was appointed as a planning authority of the State Government on 4th May, 1973. The draft development plan of the said area was prepared on 24th May, 1973. The plan was approved by the State Government on 3rd July, 1973. It was the aims and objects of CIDCO to develop the City of Aurangabad for residential and non-residential purposes. The notification under section 126(4) of the MRTP Act was issued on 5th December, 1991. He submits that the last date of the declaration under section 6 of the Land Acquisition Act ought to have been considered as market price for the purpose of awarding compensation to the claimants. He submits that the date of 13th February, 1993 ought to have been considered as the date of valuation by the Special Land Acquisition Officer as well as by the Reference Court.

29. It is submitted that since the respondent no.1 had produced various appropriate sale instances before the Special Land Acquisition Officer, he could not have considered the lease transaction while awarding compensation to the respondent no.1. The Special Land Acquisition Officer ought to have considered higher valuation while awarding the compensation so as to compensate the owner of the land under acquisition. The Special Land Acquisition Officer was required to consider the future prospect of the land in

view of the fact that the land was acquired for residential and commercial purpose.

30. It is submitted by the learned counsel that the finding of the Special Land Acquisition Officer that the CIDCO rates could not be considered is contrary to the admitted facts on record. The plots in question were situated near CIDCO plots. He submits that the finding of the Special Land Acquisition Officer that no ready reckoner rates were available for CIDCO notified area is factually incorrect.

31. Insofar as civil application for permission to rely upon additional documents filed by the appellant is concerned, it is submitted by the learned counsel for the respondent no.1 that the appellant has not explained as to why the appellant could not produce these documents in past 17 years inspite of due diligence. He submits that the condition prescribed under Order 41 Rule 27 (aa) are not at all satisfied by the appellant.

32. It is submitted by the learned counsel that the lands in question were notified for acquisition in the year 1973 and as a result thereof, there was a restriction on the development of the lands in question from the date of such notification. The Special Land Acquisition Officer thus ought to have granted compensation to the respondent no.1 from the date of land having notified for acquisition in the year 1973 itself where the respondent no.1 was restricted from developing the acquired land. He submits that the Special Land Acquisition Officer has not allowed any statutory benefit except solatium. He submits that he ought to have allowed various statutory benefits permissible under the provisions of Land Acquisition Act,

1894.

33. Learned counsel for the respondent no.1 placed reliance on Exhibit-27 and would submit that the terms and conditions of the bungalow plots fixed by the CIDCO was in the month of October, 1991 i.e. before issuing a notification under section 6 of the Land Acquisition Act. The CIDCO was to provide housing at the cheaper rate under the said terms and conditions for lease of bungalow plots and the same was not in any commercial activity. CIDCO have agreed to develop the area in a plan manner. There was no transaction of ownership under the said terms and conditions for lease and the CIDCO continued to be the owner. He submits that though Special Land Acquisition Officer had discarded the said document, the Reference Court considered the said document and applied the rate universally to the entire area.

34. Learned counsel placed reliance on clause (5) of the said terms and conditions for granting the plots of lease and would submit that these premium proposed to be charged by CIDCO were excluding water charges. He submits that Annexure-1 annexed to the said terms and conditions would indicate that there were different rates prescribed for different types of plots such as plots having odd shape, having nala on the plot. The maximum lease period was 90 years and the lands offered on lease were on 'as is where is basis'. He submits that though the Reference Court considered the lease deed, various additional charges were payable by the lessee and were required to be added in the lease rent have not been considered by the Reference Court. The Reference Court gave deduction of the area on the plot which is not permissible. The deduction could be at

the most from the market price arrived at and not from the land area. The ratio of the deduction applied by the Reference Court is not in accordance with the principles of law laid down by the Supreme Court and this Court. He submits that the lands of the respondent no.1 were already developed and thus the development charges could not have been deducted by the Special Land Acquisition Officer. Future prospect of the land was required to be considered.

35. It is submitted that though various sale instances were produced on record by the respondent no.1 which were relevant and were to be considered while considering the compensation in respect of the lands of the respondent no.1, the Reference Court has rejected all the sale instances produced by the respondent no.1 on erroneous grounds.

36. Learned counsel for the respondent no.1 placed reliance on the judgment of Supreme Court in case of **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona & Ors. AIR 1988 SC 1652** and in particular paragraph 4 in support of his submission that the factors which are required to be considered while awarding the compensation by the Land Acquisition Officer and by the Reference Court are not considered either by the Special Land Acquisition Officer or by the Reference Court. He submits that the Reference Court could not have overlooked or discarded the sale instance (Exhibit- 44) in *toto* but at the most could have deducted some amount from the consideration mentioned therein while awarding the compensation to the respondent no.1. It is submitted that the Reference Court has totally overlooked the evidence of the Town Planning Officer who was examined by the respondent no.1,

who had deposed that the entire area of the land under acquisition was under the range of 1 and ½ km from the High Court. He submits that the land under acquisition was also in the business locality. Even if the leasehold land of CIDCO could not have been considered by the Special Land Acquisition Officer, atleast 50% deduction from the valuation ought to have been granted by the Reference Court.

37. It is submitted that the interest on enhanced compensation payable under section 20A of the Land Acquisition Act also ought to have been considered from the date of possession till the date of payment of such enhanced amount to the respondent no.1. Learned counsel for the respondent no.1 placed reliance on sections 40, 44, 46, 113A, 114, 115 and 126 of the MRTP Act.

38. Learned counsel for the respondent no.1 placed reliance on the cross examination of the Special Land Acquisition Officer and would submit that the said officer had admitted that acquired land was adjacent to CIDCO kaccha land and that there was facility of electricity. He submits that no further development was required on the acquired land. The documents relied upon by the acquiring body did not reflect the true market price.

39. Insofar as the issue as to whether there was high tension line passing through the land in question is concerned, it is submitted that the respondent no.1 in his cross examination had not admitted that any such high tension line was passing through the land in question. He submits that the CIDCO did not lead any evidence to show that the land in question was not a plain land. He submits that the land under acquisition was adjacent to Mitra Nagar and there was

hardly any distance between the land in question and the Mitra Nagar.

40. Learned counsel for the respondent no.1 placed reliance on the judgment of Supreme Court in case of **Bhagwathula Samana & Ors. vs. Special Tahsildar & Land Acquisition Officer, Visakhapatnam, Municipality AIR 1992 SC 2298** and in particular paragraphs 7, 12 and 13 and would submit that since the lands in question were already developed a land with amenities of road amenities, deduction etc., no deduction were warranted from the valuation of such lands while awarding the compensation. He also placed reliance on the judgment of Supreme Court in case of **Sharadamma vs. Special Land Acquisition Officer & Anr. (2007) AIR SCW 1109** and in particular paragraphs 10, 12 and 13.

41. Mr.Bhandari, learned counsel for the claimants in First Appeal No.416 of 2000 and in Cross Objection (Stamp) No.28630 of 2017 invited our attention to the evidence led by both the parties forming part of the record, pleadings filed by the parties, copy of the award and also to the findings recorded by the Reference Court. He submits that part of the property was already acquired by the appellant in 1986. The property was still included in the development plan. Though the claimants had filed the application for the NA permission, the same was rejected by the Planning Authority. The suit property is surrounded by developed area having thick population and is having high potential for construction. The suit property is abutting the Aurangabad – Jalna State High Way. The High Court premises is adjoining the suit property and section N-3 and N-4 is adjacent to the suit land. The suit property is freehold property and

not a leasehold property. The Land Acquisition Officer did not award the correct compensation and ought to have awarded compensation as per the ready reckoner.

42. It is submitted that the witness examined by the State Government admitted that the acquired land was useful for residential purpose and having non-agriculture potentiality. The appellant had not granted compensation as per non-agriculture potentiality. There was electricity and road facility in N-3 and N-4 sectors.

43. It is submitted by the learned counsel that the witness Mr.Arun Ratanlal Jethaliya, who was examined by the claimants as witness no.1 had produced various sale instances supported by various documents. He submits that in the year 1991-1992, the appellant itself had issued tender for auction of plots from the area N-4 Sector at Rs.600/- per sq. mtr. The said witness had also produced a sale deed executed by Mr.Shanta Champaklal Khivansara in favour of Mr.Pratapsing Narayanising Rajput in respect of the land bearing CTS no.15735 which land was sold at the rate of Rs.215.56 sq. mtrs. He submits that the land bearing CTS no.15229 was sold by Mr.Vasant Sheshrao Danare in favour of Mrs.Nabha Swamidas Chobey at the rate of Rs.50/- per sq. ft. He also placed reliance on the evidence of the Town Planning Officer (PW 2) examined by his clients. He submits that the said witness had deposed that Government of Maharashtra had issued a circular in the year 1989 for formation of zones and fixing the price of the lands in those zones. Mitra Nagar is in zone 21. The rate of land in Mitra Nagar was Rs.800/- per sq. mtrs adjacent to road and Rs.500/- per sq. mtr. in the remote area. The Government had thereafter

increased the rate by 20% on the rates of Rs.800/- per sq. mtr. and Rs.500/- sq. mtr. respectively to the leasehold since 31st May, 1991 and 14th May, 1992.

44. It is submitted that the said witness had further deposed that in Vidya Nagar, which in zone 127 of the revised map, the rate was Rs.1500/- per sq. mtr. for the relevant period and Rs.1000/- and Rs.700/- per sq. mtr. was awarded in respect of the internal area. It is submitted by the learned counsel that the acquired properties are situated in the Municipal limits of city and was abutting the Aurangabad – Jalna road, which is State High Way. The acquired property is surrounded by 5 Star Hotel, High Court premises and developed residential locality which provides for the special advantage to the suit property. The appellant has also admitted that the property is having potential for commercial and residential purpose. The market value of the lands adjacent to the suit property is much higher. He placed reliance on the judgment of the Supreme Court in case of **Sabhia Mohammed Yunus Abdul Hamid Mulla (D) by L.Rs. & Ors. vs. Special Land Acquisition Officer and Ors. (2012) 7 SCC 595** and in particular paragraphs 16, 22 and 23.

45. It is submitted by the learned counsel that the witnesses examined by the claimants clearly prove that the sale instances relied upon by the claimants were of the relevant period. The appellant had neither challenged the genuineness nor had questioned the genuineness of the sale transactions produced by the claimants. The properties under the sale instances were situated nearby the acquired property and posted similar or less advantage. He submits that the suit property is in fact more valuable than the sale instances

relied upon by the claimants since the suit property is abutting to the High Way and surrounded by High Court premises and 5 Star Hotel.

46. It is submitted that the Reference Court ought to have considered the price index at the relevant time proved by the Town Planning Officer which clearly depicted that the valuation of the suit property at the relevant time was Rs.200/- per sq. ft. or more. Learned counsel placed reliance on the judgment of the Supreme Court in case of **Union of India vs. Raj Kumar Baghal Singh (2014) 10 SCC 422** and in particular paragraphs 10 and 11 and also in case of **Radha Mudaliyar vs. Special Tahsildar (Land Acquisition) T NH Board, AIR 2011 SC 54** and in particular paragraphs 11 and 12.

47. It is submitted by the learned counsel that the Reference Court has committed grave error while applying the principles of deductions in awarding compensation. The Reference Court has wrongly deducted the area of the acquired property itself which is illegal and against the provisions of law and the principles laid down by the Supreme Court. The deductions ought to have been from the market value of the property determined and not from the property itself. He submits that in any event 30% deductions considered by the Reference Court is absolutely excessive and unreasonable in view of the fact that the property in question is situated in the midst of the developed area surrounded by commercial and residential premises, and thus did not require much development and already had drainage, electricity etc. in the surrounded area. Learned counsel for the claimants placed reliance on the judgment of the Supreme Court in case of **Mohinder Singh vs. State of Haryana, (2014) 8 SCC 897** and in particular paragraphs 5 to 10 and also the judgment of the

Supreme Court in case of **Trishala Jain & Anr. vs. State of Uttaranchal & Anr., (2011) 6 SCC 47** and in particular paragraphs 42, 43(11), 52, 53 and 80.

48. Learned counsel submits that though admittedly the suit property was freehold land and possesses high potential, the Reference Court has granted compensation at the rate of Rs.600/- per sq. mtr. by placing reliance on the lease deed in respect of the leasehold lands, which was not a comparable situation. The premium should have been granted to the claimants while calculating the amount of compensation. He submits that the leasehold properties required various permission for sale and thus the expenses incurred for the same may decrease the value of such leasehold properties and thus such leasehold land was not comparable with the freehold land. He submits that the Reference Court totally overlooked the fact that the prices given in the lease deed relied upon by the appellant were for the purpose of lease out only and not for sale. The claimants were entitled to recover the market value of the property which the purchaser would have paid in the open market if sold out by the owner. He submits that various additions were thus required to be made to the lease land even if such transaction was required to be compared with the freehold land while determining the compensation in respect thereof. There was no encumbrances on the freehold property of the claimants and thus the claims made by the claimants for Rs.200/- per sq. ft. was fully justified. He placed reliance on the judgment of the Supreme Court in case of **Major General Kapil Mehra & Ors. vs. Union of India, (2015) 2 SC 262** and in particular paragraphs 21 to 24.

49. Insofar as the issue as to whether there was high tension lines passing through the suit land is concerned, it is submitted by the learned counsel that even if such high tension lines were passing through the suit land, those lands could easily be shifted to some other land on payment of minimum charges. This factor was not considered by the Reference Court at all in the impugned order.

50. Learned counsel placed reliance on the Government Resolution date 31st October, 1994 and would submit that the ready reckoner rates should have been considered by the Special Land Acquisition Officer while passing an award. He placed reliance on the judgment of this Court in case of **Shalini Vaman Godbole vs. Special Land Acquisition Officer & Ors. (2009) 5 Bom. C.R. 731** and in particular paragraphs 9, 11 and 15. He submits that the award made by the Special Land Acquisition Officer does not refer to the Government Resolution dated 31st October, 1994. It is submitted that the acquiring body did not examine any witness before the Reference Court. The Special Land Acquisition Officer who was examined by the Statement Government made various admissions in favour of the claimants. It is submitted that Vidya Nagar area was more developed when the land was acquired. The internal roads did not vest with the acquiring body automatically. The claimants could claim F.S.I., T.D.R. etc.

51. Insofar as the delay in filing cross objection in First Appeal No.416 of 2000 is concerned, it is submitted by the learned counsel for the claimant that delay in filing cross objection was not intentional. The Court has to take a liberal approach while considering the application for condonation of delay and more

particularly in case of cross objection. He submits that no prejudice of any nature whatsoever would be caused to the appellant if the delay is condoned by this Court and cross objection filed by the claimant is also heard on merit. In support of this submission, learned counsel placed reliance on the judgment of this Court in the case of **State of Maharashtra vs. Kalu Ladku Mhatre, (2011) 6 ALL M.R. 242**. Learned counsel placed reliance on section 28A of the Land Acquisition Act, 1894 and submits that even if this Court dismisses the cross objection on the ground that the applicant has not satisfactorily explained the delay in filing the cross objection, the claimant is entitled to the same rate for the land in question what would be paid to the adjoining land owners in whose case, there is no delay in filing the cross objection, by applying the same analogy.

52. Insofar as the prayer sought by the applicant in Civil Application No.13900 of 2016 is concerned, it is submitted by the learned counsel for the applicant (original claimant) in the said civil application that the relief as prayed in the said civil application for substitution of the parties be allowed for the reasons recorded in the civil application. No prejudice of any nature whatsoever would be caused to the appellant if the relief as prayed in the civil application is allowed.

53. Mr.Kale and Mr.Bhandari, learned counsel appearing for the claimants would submit that the appellant was not even necessary party to the reference application in view of the fact that the appellant was only acting as an agent of the State Government and thus these first appeals are not maintainable on that ground

itself.

54. It is submitted by the learned counsel that in Writ Petition Nos.3982 of 1999 and 5084 of 1999, two of the claimants out of three claimants have not been granted plots under allotment of 12.5% of plots. They submit that in any event, the claimants have to pay premium on the land allotted under the 12.5% scheme to the State Government.

55. Learned counsel placed reliance on the judgment of the Supreme Court in the case of **Digamber & Ors. vs. State of Maharashtra & Ors., 2013 ALL SCR 2860** and in particular paragraphs 18 and 19 in support of the submission that issue of future prospects and potential possibility have to be considered by the Land Acquisition Officer as well as by the Reference Court while determining the market value of the land under acquisition. They submit that the sale instance showing highest rate has to be considered by the SLAO as well as by the Reference Court. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in the case of **Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. vs. State of Punjab & Ors., AIR 2012 SC 2721.**

56. It is submitted that since the appellant is not a profit making organization, the lease rent prescribed in the terms and conditions of granting lease by the acquiring body could not be considered as correct for the purpose of determining market value. The Reference Court thus could not have considered those documents issued by the appellant for granting various plots on

lease. It is submitted that for the purpose of filing reference under section 18 of the Land Acquisition Act, strict rules of pleadings are not required. The claimants have to apply to the Collector for making a reference to the Reference Court under section 18 of the Land Acquisition Act. It is submitted that even if the claimants did not make any specific claim demanding compensation from a particular date, the same can be made across the bar even at this stage in these first appeals.

57. Mr.Kale, learned counsel for some of the claimants placed reliance on the judgment of this Court in the case of **Ambya Kalya Mhatre (dead) through L.Rs. and Ors. vs. State of Maharashtra, 2012 (1) Mh.L.J. 9** in support of the submission that the scope of section 18 of the Land Acquisition Act is very wide and demand for additional claim even if not made before reference Court, the same can be claimed across the bar even at this stage.

58. It is submitted by the learned counsel for the claimants that even in case of development land, the Court has permitted deduction @ 20%. In support of this submission, learned counsel placed reliance on the judgment of this Court in the case of **State of Maharashtra vs. Sat Dev Prakash, 2007 (5) All MR 272** and in particular paragraphs 5, 7 and 8 thereof. He also placed reliance on the judgment of the Supreme Court in the case of **Valliyammal And Anr. Etc. vs. Special Tahsildar (Land Acquisition) And Anr. Etc., (2011) 8 SCC 91** and in particular paragraph 25 on the issue of development cost. It is submitted that since the claimants have not been paid with any enhanced amount till date, the issue that the land in question is smaller in size cannot be considered by this

Court. It is submitted by the learned counsel in First Appeal No.416 of 2000 that the claimants has already deposited the amount under 12.5% land allotment with the appellant.

59. Mr.Bajaj, learned counsel for the appellant in rejoinder submits that section 28A of the Land Acquisition Act will apply to the original proceedings i.e. the proceedings before the Special Land Acquisition Officer (SLAO) and not in this first appeal filed by the appellant. He submits that the benefit of allotment of 12.5% land has been given by the State Government to all the claimants and the same has also been accepted by each of the claimants in view of the acquisition of their lands. Under the said scheme pronounced by the State Government, the claimants who had availed of the benefit of 12.5% land are required with a condition to return 25% of the developed land as per the scheme to the acquiring body.

60. Learned counsel for the appellant placed reliance on section 40(3)(b) of the MRTP Act and would submit that by virtue of the said provision, section 113A of the MRTP Act stands omitted. section 126 of the MRTP Act would apply and not section 113A. He submits that the procedure prescribed under section 126 will apply to the facts of this case including proviso to section 126(2). He submits that the claimant thus would be entitled to the compensation based on the notification of 1991. He also referred to the judgment of the Supreme Court in the case of Girnar (3) which has held that the market value has to be considered on the date of notification issued under section 126(2) of the MRTP Act. In so far as the argument advanced across the bar by Mr.Kale, learned counsel for

some of the claimants that the market value should be considered prevailing in the year 1973 and not on the date of notification is concerned, it is submitted by the learned counsel that the said demand is neither pleaded at any stage including in the present proceedings nor there is any such provision under the provisions of the Land Acquisition Act or MRTP Act. He submits that this submission on the part of the claimant is *ex-facie* contrary to the pleadings filed before the Reference Court by the claimant.

61. Insofar as the document marked as Exhibit-44 relied upon by the learned counsel for the claimant is concerned, it is submitted that the sale instance after the date of notification cannot be considered in view of section 24 of the Land Acquisition Act. It is submitted that even if the sale instance marked as Exhibit-44 is concerned, the Reference Court has awarded much more than what could have been awarded as and by way of compensation in favour of the claimant. He made a similar submission in respect of the sale instance marked as Exhibit-40.

62. Insofar as the applicability of ready recknor rates is concerned, learned counsel also placed reliance on the judgment of the Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Ors.** (supra) and more particularly paragraphs 16 and 17 thereof.

63. Learned counsel for the appellant placed reliance on section 24 of the Land Acquisition Act and would submit that the said provision specifically bars from considering the future prospects of the land under acquisition. He also placed reliance on paragraphs

18 and 19 of the said judgment of the Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. And Ors.** (supra) on this issue.

64. Insofar as the land which was purchased by the claimant is concerned, it is submitted by the learned counsel that internal road has to be handed over by the claimant to the Government and thus appropriate deduction is required to be made in respect of the said internal road. There was also an area required to be left open. He placed reliance on the judgment of the Supreme Court in the case of **Union of India vs. Raj Kumar Baghal Singh, (2014) 10 SCC 422** and in particular paragraph 28 in support of this submission. Learned counsel also placed reliance on the judgment of the Supreme Court in the case of **Lalchand vs. Union of India & Ors., (2009) 15 SCC 769** and in particular paragraphs 12 to 17 to demonstrate the factors which are required to be taken into consideration by a Court while deriving the compensation or market value in respect of the land under acquisition. He also placed reliance on the judgment of the Supreme Court in the case of **Major General Kapil Mehra and Ors. vs. Union of India & Anr., (2015) 2 SCC 262** and in particular paragraph 24 thereof.

65. It is submitted by the learned counsel that even if the sale instance of post notification is considered, the rates would be much less than Rs.600/- per sq.mtr. and that also would be subject to further deduction. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of **Special Deputy Collector & Anr. vs. Kura Sambasiva, (1997) 6 SCC 41** and in particular paragraphs 6 and 7 thereof. He submits that

Supreme Court has also considered as to when the value of the plot has to be increased and in what circumstances. He submits that even if rate increase from 10% to 12% is granted, rate awarded to the claimant would be granted as awarded by the SLAO. Burden was to be discharged by the claimant and not by the authority.

66. Insofar as the oral evidence of Town Planning Officer who was examined by the claimant and placed reliance by the learned counsel for the claimant is concerned, it is submitted that the evidence has to be read as a whole and not only any part of the examination in chief. He submits that even if the ready recknor would have been considered, according to the ready recknor, rate of land in question was not more than Rs.300/- per sq.mtr. which was far below the rate considered by the Reference Court.

67. Insofar as the booklet issued by the appellant for allotment of land on lease setting out the terms and conditions of the lease in the month of October, 1991 is concerned, it is submitted by the learned counsel that the land offered on lease by CIDCO was on 'as is where is' basis. Various facilities were already provided by the appellant on those lands which were offered by way of lease. The rate mentioned therein did not include water connection charges, power connection charges etc. as the same are always required to be borne by the lessee or purchaser of the plots. He submits that those conditions would not thus affect the price of the leasehold land and no increase therefore on the rate provided for leasehold land in the said booklet was contemplated.

68. It is submitted that even in case of outright sale,

connection of water and electricity on the plot has to be borne by the purchaser of the said land. CIDCO always provides water connection upto the plot and not beyond that. He submits that even under those terms and conditions, the residential plots were offered on lease. CIDCO had already carried out all peripheral development upto the land. The land acquisition officer has rightly rendered a finding that the land in question was partly undulated and partly levelled.

69. Learned counsel placed reliance on various portions of the award made by SLAO. He tendered a copy of the order in Writ Petition No.3982 of 1999 dated 11th March, 2014 to show that the claimants were already allotted plots under 12.5% scheme. He submits that the development charges are statutory charges payable to the authority independently under section 124A of the MRTP Act.

70. Insofar as the reply of the claimants to the Civil Application No.12517 of 2017 filed by the appellant under Order XLI Rule 27 (1) (aa) of the Code of Civil Procedure, 1908 is concerned, Mr.Bajaj, learned counsel for the appellant in rejoinder submits that the appellant came to know about the said unregistered documents recently which documents are crucial and relevant for the purpose of deciding these appeals and thus the reliefs claimed in the Civil Application No.12517 of 2017 be granted by this Court. No prejudice of any nature whatsoever would be caused to the claimant if the said documents are allowed to be relied upon by the appellant at this stage. He submits that registration of the said documents was not necessary. He submits that there is no dispute that the transaction exists. The appellant is entitled to even rely upon secondary evidence

under section 65 of the Indian Evidence Act, 1872.

71. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in the case of **Union of India vs. Ibrahim Uddin & Anr., (2012) 8 SCC 148** and in particular paragraphs 47 and 49 thereof. He submits that the appellant has already deposited 50% of the enhanced amount allowed by the Reference Court under all the heads under interim order passed by this Court which amounts are allowed to be withdrawn in favour of the claimant by this Court subject to adjustment as per the final order as may be passed by this Court.

72. Learned counsel for the appellant also placed reliance on some of the judgments which were relied upon by the learned counsel for the claimant such as **Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Ors.** (supra) and in particular paragraphs 17 to 21 in support of his submission that the said judgment lays down guidelines on the percentage of deduction while computing compensation, factors to be considered to find out what is the developed area.

73. Learned counsel for the appellant also placed reliance on the judgment of the Supreme Court in the case of **Radha Mudaliyar vs. Spl. Tahsildar (Land Acquisition) T.N.H. Board, AIR 2011 SC 54** which has been relied upon by the learned counsel for the claimant and in particular paragraphs 18 to 22 on the issue of deduction made by the Reference Court while determining the compensation. He also placed reliance on the judgment of the Supreme Court in the case of **Trishala Jain & Anr. vs. State of**

Uttaranchal & Anr. (supra) which was relied upon by the learned counsel for the claimant and more particularly paragraphs 39 to 41, 43, 45 to 48, 51 to 53 and 82 on various issues such as the percentage of deduction, the valuation in case of developed area etc.

74. Learned counsel for the appellant also placed reliance on the judgment of the Supreme Court in the case of **Major General Kapil Mehra** (supra) which was relied upon by the learned counsel for the claimant and in particular paragraphs 10, 11, 13, 17, 29, 32, 34, 37, 38 and 41 on the issue of deduction, valuation on the date of notification under section 4(1) etc. He distinguishes the other judgments referred to and relied upon by the learned counsel for the claimant.

75. Mr. Bajaj, learned counsel for the appellant distinguishes the judgment of this Court in the case of **City and Industrial Development Corporation vs. Percival Joseph Pereira & Ors., 2013 (4) Mh.L.J. 762** on the ground that the appellant was appointed as a special planning authority. section 126(4) of the MRTP Act applies to the parties herein and not section 113A. It is submitted by the learned counsel that even though the Reference Court has considered deduction @ 30% from the area of land, there is no prejudice or effect thereof to the claimants because of such deduction from the area of land instead of deduction from the value of land.

REASONS AND CONCLUSIONS :

76. A perusal of the impugned common order passed by the

Reference Court indicates that a finding is rendered that the respondent no.1 (original claimant) has accepted the compensation paid by the petitioner under protest. The appellants have also accepted in its written statement filed before the Reference Court that the claimant had accepted the compensation under protest. The Reference Court accordingly answered issue no.3 in affirmative.

77. Insofar as issue no.2 as to whether the claim petition was filed within the period of limitation or not is concerned, the Reference Court has rendered a finding that the notice under section 12(2) of the Land Acquisition Act, 1894 was served on the claimant on 1st January, 1997. The claimant had filed a references on 12th February, 1997 i.e. within the period of six weeks from the date of service of the notice under section 12(2) of the Act. It is accordingly held that all the references were filed by the claimant within the time prescribed under section 12(2) of the Land Acquisition Act, 1894 and were not barred by limitation. The issue no.2 has been answered by the Reference Court accordingly in affirmative.

78. Insofar as issue nos.1 and 4 as to whether the claimant proves that the market valuation made by the Land Acquisition Officer was improper and inadequate and not as per market value and whether the claimants were entitled to additional amount of compensation or not is concerned, the Reference Court observed that the claimant had stated on oath that towards North west corner of the acquired land, there was a compound wall of High Court building of the Aurangabad. The lands under acquisition are situated in N-4 Sector of CIDCO, Aurangabad. High Court building was mostly completed and houses in the vicinity of the N-4 sector were

constructed. The claimant during the cross examination have disclosed boundaries of the acquired land on East land Survey No.23 and towards remaining three directions remaining portion of Survey No.15.

79. The Reference Court also considered that the appellant herein had contended that the land bearing survey no.15 of Garkheda admeasuring 13.59 hector, out of which 10.19 hector was acquired previously declared by the Special Land Acquisition Officer, B & C Project Aurangabad on 23rd September, 1986. The remaining land admeasuring 3 Hector 40 Aar has been acquired under these References. It is held that it would mean that the remaining land survey no.15, admeasuring 10 hector 19 aar was acquired in the year 1986 for Development of City and Industrial Corporation Aurangabad and number of buildings were constructed since after 23rd September, 1986 till today acquired land. The land under acquisition were acquired on 5th December, 1991 and thus it is obvious that the land around the acquired land was fully developed by residential localities. It is held that the situation narrated by the claimant of the acquired land is not disputed by the appellant.

80. It is further held that the acquired land was not adjacent to Aurangabad Jalna Road but they are adjacent to compound wall of the High Court building towards north-east side of the acquired land where the compound wall of the High Court building is situated. The Reference Court has rendered a finding that the acquired lands were situated in the fully developed corporation area of Aurangabad City. The appellant has admitted that the acquired lands have non-agricultural potentiality, but has not granted compensation on the

basis of non-agricultural potentiality. It is held by the Reference Court that the claimants are entitled to get the compensation of the acquired land on the basis of the non-agricultural potentiality.

81. It is held by the Reference Court that in the year 1991 and 1992, the appellant had received a tender for auction of plots from the area of N-4 sector at the rate of Rs.600/- per sq.mtrs. which rates were excluding development charges, water charges and MSEB charges. The lease period was 99 years. It is held by the Reference Court that the acquired lands were adjacent to N-3 and N-4 sectors of CIDCO which sectors were fully developed prior to the acquisition of the land and thus he has no hesitation to grant the rates of the acquired land at the lease rate of N-4 sector. The Reference Court then considered the lease deed filed by the claimants in which the terms and conditions for lease of bungalow plot of N-4 sector were mentioned. The year of the lease deed is of 1991. As per the said lease deed, the plots of N-4 sector were given on lease at the rate of Rs.600/- per sq.mtrs. The said land under acquisition was adjacent to N-4 sector.

82. The Reference Court held that the claimants were thus entitled to get the compensation of their acquired lands at the rate of Rs.600/- per sq.mtrs. subject to deduction of 30% area which would be towards wastage for roads and open lands. The Reference Court accordingly held that the compensation granted by the Special Land Acquisition Officer of the acquired land at the rate of Rs.3,50,000/- per hector i.e. Rs.3.25 paise per sq.ft. was inadequate and thus the claimants were entitled to get enhanced compensation of their acquired land. The Reference Court accordingly answered the issue

nos. 1 and 4 in affirmative.

83. Insofar as the rate of compensation is concerned, the Reference Court considered the evidence of PW-3 Mr.Jalamsing Raising Deore in LAR No.861 of 1997 who stated on oath that Mr.Pratapsing Narayansing Rajput had purchased a plot near Ulka Nagari from Shantabai Champalal Khiwansara. The said Shantabai Champalal Khiwansara had signed on the sale deed before him. In his cross examination, the said Mr.Jalamsing Raising Deore disclosed that the plot under sale was adjacent to Ulkanagari which is a developed area. The High Court building is about 3 to 3 and half km away from Ulkanagari. The lands under acquisition are adjacent to N-4 sector and towards west-north side, there is a compound wall of High Court building. The Reference Court gave a finding insofar as the said sale instance is concerned that the land under sale was not of the land which was in the vicinity of the acquired land and thus discarded the said sale instance.

84. The Reference Court thereafter considered the evidence of PW-4 Dattatraya Gopalrao Kulkarni, examined by the claimants who had worked as bond writer since 1961 till 1996 at Sub-Registrar Office at Aurangabad. He had scribed the sale deed dated 23rd October, 1992. The said witness admitted the contents of the sale deed and produced the true certified photocopy of the sale deed in his cross examination. The said PW-4 disclosed that the plot no.10 was of Vidyanagar which was adjacent to Aurangabad-Jalna Road. Hotel Aangethy is towards north side of the plot under sale. The plots of Vidyanagar are commercial plots. There are roads towards these sides of the plots under sale. The Reference Court accordingly held

that the plot under sale has benefit of three road towards its three directions and therefore it was not potential commercial plot and thus could not be considered for fixing of the price of the acquired lands due to its situations and its commercial value. The Reference Court accordingly discarded the said instance.

85. The Reference Court thereafter considered the evidence of PW-2 Sanjay Dattatraya Ambekar who was a Town Planner in the Office of the Assistant Director of Town Planning (Valuation), Aurangabad. The said witness in his examination in chief deposed for registration purposes of lands of Aurangabad Town the Office had prepared zones of Aurangabad city. He further stated on oath that towards east to High Court of compound wall there was N-3 and N-4 sector of CIDCO. Towards west of CIDCO border, there is Mitranagar which is in zone no.21 and the said Mitranagar is situated in serial no.7. The price of the land adjacent to Aurangabad Jalna Road under Zone no.21 of Mitranagar is at the rate of Rs.800/- per sq.mtrs. The rates of lands in the same zone adjacent to interior road of 12 meter width are at the rate of Rs.500/- per sq.mtrs. Those rates were prevailing since 16th June, 1989 till 31st May, 1991. The Government had thereafter given increase at the rate of 20% on those rates of lands since 31st May, 1991 till 14th May, 1992.

86. During his cross examination, the said witness disclosed that the High Court premises was about half kilometer to one kilometer from Mitranagar towards east. Mitranagar is adjacent to Jalna Aurangabad Road. Mitranagar and Vidyanagar are high standard locality of Aurangabad city. The rates of lands of Vidyanagar and Mitranagar are high due to their situation adjacent to Aurangabad

Jalna Road. The Reference Court accordingly held that the Vidyanagar and Mitranagar are away from the acquired land and are situated in commercial area and the rates of lands of both the colony were high due to their situation. The Reference Court accordingly held that the price index of Vidyanagar and Mitranagar cannot be accepted to fix the price of the acquired land. The acquired lands are situated at the interior side towards south of Aurangabad Jalna Road. The Reference Court thus discarded the evidence of Sanjay Dattatraya Ambekar (PW-4).

87. The Reference Court thereafter computed the claim for compensation and held that insofar as the claimant Sunil Ratanlal Jethaliya in LAR No.861 of 1997 is concerned, he is entitled to get the compensation of his acquired land, Survey No.15, admeasuring 2 hector 49 Aar at the rate of Rs.600/- per sq.mtrs. The Reference Court deducted 30% area from it which is wasted for road and open spaces and after deducting 30% area of land admeasuring 2,67,894 sq.ft. equivalent to 2 hector 49 Aar, the Reference Court derived area of 1,87,525.8 sq.ft. equivalent to 17,440 sq.mtrs. for payment of compensation. The Reference Court awarded the total compensation at the rate of Rs.600/- per sq.mtrs. and computed the compensation at Rs.1,04,64,000/-. The Reference Court gave deduction of the amounts already received by the said claimant Sunil Ratanlal Jethaliya in the sum of Rs.8,71,500/- and declared that the said claimant was entitled to get balance enhanced compensation of Rs.95,92,500/- with various other benefits.

88. Insofar as claimant Vijaykumar Nilkanthrao Salunke is concerned, the total area of acquired land was 43,560 sq.ft. The

Reference Court deducted 30% area from the said area on the similar basis and awarded compensation at the rate of 600 per sq.mtrs. and arrived at the compensation amount of Rs.17,01,600/- and after giving credit of the amount already received in the sum of Rs.1,41,750/-, the balance compensation awarded is arrived at Rs.15,59,850/- with various benefits thereon.

89. Insofar as the claimant Girish Ramakant Kharosekar is concerned, the total area of land acquired was 43,560 sq.ft. out of which the Reference Court deducted 30% area and derived the area of 30,492 sq.ft. equivalent to 2,836 sq.mtrs. and awarded the compensation at the rate of 600/- per sq.mtrs. amounting to Rs.17,01,600/-. After giving credit of Rs.1,41,750/- in respect of the amount already received by the said claimant, the Reference Court allowed the balance compensation of Rs.15,59,850/-. The Reference Court thereafter allowed the various other benefits thereon.

90. The claimants and the respondents examined witnesses. Insofar as the evidence of Mr.Arun Ratanlal Jethlia (PW-1) examined in L.A.R. No.861 of 1997 is concerned, he deposed that in the year 1986, some part out of Survey No.15 was acquired by the appellant. The land purchased by the said claimant was not acquired by the appellant when the claimant had purchased plot admeasuring 2-H 49-R. Two proposed Societies namely Subhamangal Griha Nirman Society and Shubhamkaroti Society had purchased 1 Acre land each out Survey No.15. In the year 1989, the claimant had filed lay out plan with CIDCO along with 7/12 extracts which was rejected by the appellant on the ground that the acquisition proceedings of the land of the claimant was pending

with Collectorate, Aurangabad. He deposed that towards North-West corner of the lands, there was compound wall of the High Court building at Aurangabad. The land under acquisition is in N-4 sector of CIDCO.

91. He deposed that the High Court building was mostly completed and houses in the vicinity of N-4 sector were constructed. He further deposed in the examination-in-chief that an area of about 6-7 kms. around the acquired land is of CIDCO. In the year 1991 & 1992, the CIDCO had issued tender for auction of plots from the area of N-4 sector @ Rs.600/- per sq.mtr. The above rates were excluding development charges, water charges & M.S.E.B. charges and the lease period was of 99 years. He further deposed that if the lay out of the claimant would have been sanctioned then about 70% land would have been plotted and 30% would have been wasted for road and drainage. The claimant claimed compensation of the acquired land @ Rs.200/- per sq.ft.

92. The said witness also placed reliance on the sale instance in the case of the land sold by Mr.Shanta Champalal Khiwansara to one Pratapsing Narayansing Rajput from Survey No.15/1/1/2. He deposed that the CTS No.15735 is situated in Garkheda area, Aurangabad about 2 ½ kms. from the acquired land. The said land was sold @ Rs.215.56 per sq.mtr. The land under sale is in front of spinning mills and adjacent to Aurangabad-Kachiguda Railway line. He deposed that the land owned by the claimant was nearer to Aurangabad-Jalna road. It was better than the land under sale.

93. The said witness also placed reliance on the sale instance in case of the land sold by one Sau. Nabha Swamidas Chobe at Rs.1,80,000/- admeasuring 50' x 72' i.e. @ Rs.50 per sq.ft. He deposed that the said land is about 2 furlong away from the acquired land and away from Aurangabad-Jalna road.

94. The said claimant however in his cross-examination deposed that in the year 1987, he had deposed that the claimant had purchased the acquired land @ Rs.40,000/- per Acre. The land was an agricultural land when the claimant had purchased it. Even in the 7/12 extracts (Exhibit-25) which pertains to the year 1988-89, the land was mentioned as agricultural land and there were standing crops on the said land at that time. The first notification under MRTP Act was issued prior to purchase of the acquired land by the claimant. The Government had not de-notified the land. Actual possession of purchased land from the claimant was not taken by the appellant. He deposed that no separate permission to purchase a land was required when the land was notified. He admitted that the development process in N-4 sector was in speed and N-3 sector was fully developed. He admitted that the land under acquisition was about 1 ½ kms. away from railway line towards North side of Aurangabad-Jalna road. The claimant did not raise any objection thereby claiming compensation at a particular rate of the acquired land.

95. The said witness admitted that the sale deed of the plot which was situated at Khiwansara park produced by him was fully developed area. The plot under sale was non-agricultural plot with lay out sanction. In so far as the second sale deed produced by him

is concerned, the witness admitted that the said plot is situated at Vidya Nagar which was partly developed. He admitted that the sale transaction of the plot by Sou.Nabha Chobe dated 24th October, 1992 was after the date of notification. The said witness could not say the date since when CIDCO started auctioning plots from N-3 & N-4 sectors. He admitted that the appellant had auctioned plots from N-3 & N-4 sectors prior to the year 1987, however could not say the rates of that period.

96. The said witness admitted that he had no idea about the sale transactions mentioned in the award. He did not know if sale and purchase transactions of lands in the vicinity of the acquired land were going on in the year 1991. He admitted that the sale transaction of land purchased by him was the last sale instance of Survey No.15. He admitted that notice under section 12(2) of the Land Acquisition Act was received by him on 1st January 1997. He did not claim compensation at any rate in Exhibit-26 or prior to it.

97. In his cross-examination by the respondent no.2, the said witness admitted that CIDCO has to develop Garden, Hospitals, Roads, etc. in its area. Development of amenities are carried out by CIDCO or through Charitable trust. He admitted that developments are carried out on concessional rates. CIDCO scheme came in existence in the year 1970-71 at Aurangabad. He did not know if the first scheme of CIDCO of allotment of plots started in the year 1980. He admitted that the acquired land of CIDCO was not of the claimant. The witness denied the suggestion that there was no slum area adjacent to the acquired land. He deposed that there was slum area in the survey numbers which is adjacent to the survey no.15.

He denied the suggestion that the development in his acquired land was not possible due to slum area in the vicinity of his acquired land.

98. Insofar as the question as to whether high tension electric line was passing through the acquired land is concerned, the said witness admitted that electric line of 11 KV was passing through the acquired land. The witness had not seen village map showing situation of the acquired land. The witness admitted that the appellant might be incurring expenses on development of Garden, Community Hall etc.

99. The claimant had examined Mr.Sanjay Dattatraya Ambekar, Town Planner working in the office of Assistant Director of Town Planning (Valuation), Aurangabad. In his examination in chief, the said town planner deposed that while registration of sale deed of lands of Aurangabad city, people were showing less value of the lands in order to exempt payment of registration fees and stamp duty. Consequence thereof, the State Government has been put great loss. The State Government issued a Circular in the year 1989 for formation of zones and fixing price of the lands in those zones. High Court premises is situated towards southern side of Aurangabad-Jalna Road opposite to Rama International Hotel. Towards West adjacent to High Court premises, there is 'Nayyamurti Nagar'. Towards East of High Court compound wall, there was N-3 & N-4 Sectors of CIDCO. Towards west of CIDCO border, there is 'Mitranagar' which is in zone No.21. Rates of lands in the same zone adjacent to interior road of 12 M. width are @ Rs.500/- per sq. M. which were prevailing since 16th June, 1989 to 31st May, 1991.

The State Government had given increase @ 20% on the above rates of the lands since 31st May, 1991 till 14th May, 1992.

100. The said Town Planner in his examination in chief deposed that towards west adjacent to Mitranagar, there is 'Vidyanagar'. Vidyanagar is situated in between the Convent school and Mitranagar. Prices of lands adjacent to Aurangabad-Jalna Road of Vidyanagar were Rs.1500/- per sq.mtr. during the said period. Prices of lands adjacent to interior road of 12 mtr. widths were @ Rs.1000/- per sq. mtr. and @ Rs.700/- per Sq. mtr.

101. The said town planner, however in his cross-examination, admitted that he could not tell location of survey number or gat number which was under acquisition and was the subject matter in this reference. Red/parallel lines on Exhibit-35 i.e. photocopy of zone no.21 was not put by him. The witness admitted that on perusal of the original map brought by him before the Court, he could not locate the acquired land. He also could not locate any land acquired by CIDCO on the basis of the map prepared by his office. He admitted that High Court building is exactly opposite side of Rama International Hotel towards south. However, he could not tell area of land acquired for High Court. High Court premises is about ½ km. to 1 km. from Mitranagar towards east. Mitranagar is adjacent to Aurangabad-Jalna road. There are big hotels adjacent to Aurangabad-Jalna road.

102. The said witness deposed that Mitranagar and Vidyanagar are high standard locality of Aurangabad city. Rates of lands of Vidyanagar & Mitranagar are high due to their situation adjacent to

Aurangabad-Jalna road. Zone No.126 is towards south adjacent to Zone No.127. Rates of lands of Zone No.126 are at Rs.500/- per sq.mtr. adjacent to main road and @ Rs.300/- per sq.mtr. which are adjacent to internal road. He deposed that Zone No.126 is towards west adjacent to High Court compound wall. Zone No.128 is towards south of Aurangabad-Jalna road upto 1 ½ km. Area. Two sides of CIDCO are adjacent to Zone No.128. Rates of lands of Zone No.128 are @ Rs.500/- per sq.mtr. and @ Rs.300/- per sq. mtr. Towards south of Mitranagar, there is Garkheda area. Mukundwadi area is about 1 km. away from High Court.

103. In his cross-examination by the original respondent no.2, he deposed that zones were prepared on the basis of old sale transaction, local enquiry and survey of the zone area. Besides this, his officer also has to consider the sanctioned development plan of Aurangabad city. Zones are prepared by taking into consideration commercial area and residential area. It is not separately mentioned in the map. He admitted that there was no record of local enquiry made by the office of Town Planning (Valuation). He admitted that there was no record on the basis of which the valuation was fixed. He further admitted that there was no sale deed and record to that effect on the basis of which zones are formed. He denied the suggestion that the valuation was made arbitrarily.

104. Claimant had also examined Mr.Jalamsing Raising Deore as one of the witnesses. The said witness in his examination-in-chief deposed that he knew Pratapsing Narayansing Rajput and Shantabai Champalal Khiwansara. Pratapsing had purchased a plot near Ulkanagari. The area in which the plot is situated is locally

known as 'Garkheda Khiwansara Park.' He deposed that he was personally present to the execution of the sale deed executed by Shantabai Champalal Khiwansara. He was the attesting witness to the said sale deed. He deposed that he had personally seen the said plot at the time of sale deed. The said plot is adjacent to a road which is a East-West in direction towards North. The plot under sale is about 3 to 3 ½ km. away from Aurangabad to Jalna State high way.

105. The said witness in the cross-examination admitted that the document at Exhibit-40 was true certified xerox copy of the sale deed. The contents of the sale deed were already typed and he simply signed on it. He did not remember if he had put the date below his signature on the sale deed. He deposed that the plot under sale is adjacent to Ulkanagari which is a developed area. High Court building is about 3 to 3 ½ kms. away from Ulkanagari. The witness has not seen Nyayamurtinagar and also did not know Hanumannagar. He did not know if agreement of sale was prepared prior to the date of sale deed. The amount of price of the plot was paid in cash.

106. The said witness admitted that he could not tell about boundaries of the plot under sale. There were bungalows in front of Khiwansara Park. He did not know the name of the colony, in which the bungalows were situated. He could not tell width of the road to which adjacent to the plot in question is situated. He could not tell anything about the sale transaction of other plots of that locality. He admitted that he could not tell if the sale transaction is of highest price in the locality of Khiwansara park. He could not tell

rate per sq. mtr. of the plot under sale.

107. The claimant had examined Mr.Dattatraya Gopalrao Kulkarni as one of the witnesses. The said witness deposed that since 1969 till 1996, he worked as a Bond Writer at the Sub Registrar's office, Aurangabad. He could identify the documents which were scribed by him if it would be shown to him. The witness was shown photocopy of the sale deed dated 23rd October, 1992. The said document was scribed in his handwriting and it bears his signature. The contents in the said document are scribed at the instance of the executor Mr.Vasant Sheshrao Dandare.

108. The said witness, in his cross-examination, admitted that Vendor and Vendee of the sale transaction referred by him in his cross-examination were alive. The said witness had not personally seen the plot under sale. Vidyanagar is adjacent to Aurangabad-Jalna road. Hotel Angethi is towards northern side of plot under sale. Plots of Vidynagar adjacent to Aurangabad-Jalna road are commercial plots. There are roads towards three sides of the plot under sale. He admitted that prices of commercial plots are higher than the residential plots. The witness did not know when the contract of sale of the plot took place prior to the execution of sale deed.

109. SLAO had examined Mr.Bhaskar Narayanrao Deo as one of the witnesses. In his examination-in-chief, he deposed that since June, 1996 till September, 1998, he worked at Aurangabad as Special Land Acquisition Officer, Special Unit, Aurangabad. He had acquired land survey no.15/P of Village Garkheda. First notification was published on 12th December, 1991 in Maharashtra Government

Gazette. The said land was notified for planned development of CIDCO, Aurangabad. CIDCO had submitted a Development Plan with Government for sanction and it was sanctioned by the Government on 3rd July, 1973. The claimant did not raise any objection or submitted any claim after publication of the notification under section 9(3)(4) of the Land Acquisition Act. The witness deposed that at the time of acquisition of the land, the land was not a non-agricultured, but it had non-agricultural potentiality. The witness has collected sale instances of land of non-agriculture potentiality.

110. The said witness deposed that the sale instance discussed by him at serial no.4 in the award was of the land of which lay out plan was sanctioned. On the basis of the sale instances, he had fixed the price of the acquired land @ Rs.3,50,000/- per hector. The witness had annexed map of the lands of which sale instances are taken into consideration by him along with the award. He deposed that on 13th October 1987, land survey no.15 adm. 1 acre was sold at Rs.49,000/-. In his examination in chief, the said witness deposed that Khinwansara park area is about 3 kms. away from the acquired land and it is in developed locality. Vidyanagar was well developed locality situated towards west about 2 kms. away from the acquired land.

111. The said witness however in his cross-examination deposed that when he took charge at Aurangabad, the draft award was sent to the Government for approval. He had submitted some clarification which was sought by the Government from him and thereafter the draft award was sanctioned on 5th December, 1996. He had not sent the award by making valuation on the basis of

hypothetical method. He was not knowing the actual situation of the acquired land which was prevailing in the year 1991 i.e. at the time of publication of notification under section 126 of the MRTP Act. He deposed that he had mentioned in the award that N-3 and N-4 sectors which are adjacent to the acquired land, were developed. The acquired land is adjacent to CIDCO Kacha road. At that time, there was facility of electricity and road to N-3 and N-4 sectors of CIDCO. The acquired land was within Municipal Corporation limit of Aurangabad at the time of its acquisition.

112. The said witness deposed that belting system for making valuation of a land cannot be applied even though the land is having N.A. potentiality. He admitted that adjoining lands were provided with electricity facility and road facility and the land is within Municipal Corporation limit. He deposed that the valuation of the acquired land may or may not increase if hypothetical lay out was used. He admitted that he had not compared the rates of CIDCO of the adjoining lands for making valuation of the acquired land.

113. Insofar as the question as to whether High Tension line of electricity was passing through the acquired land is concerned, the witness admitted that high tension line of electricity was passing through the acquired land and could be shifted to other site for making development of the acquired land. He had called for the sale deeds of the various lands and after making scrutiny of them, had fixed value of the acquired land. The witness denied that he had taken into consideration sale instances of agricultural lands without taking into consideration N.A. potentiality and situation of the

acquired land with intent to show less valuation of the acquired land. The witness deposed that he could not tell if the rates of acquired land would be increased due to non acquisition of partial land. The witness denied the suggestion that the entire award was prepared by his predecessor and he had simply signed on it and therefore he did not know anything about the award.

114. Insofar as the gross delay in filing objection by the claimant in one of the first appeals is concerned, reliance is placed by the learned counsel for the claimant on the judgment delivered by the learned Single Judge of this Court in the case of **State of Maharashtra vs. Kalu Ladku Mhatre, 2011 (6) All MR 242.** Learned Single Judge of this Court has held that under Sub Rule 1 of Rule 22 of Order XLI of the said Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The said provision does not lay down that sufficient cause is required to be shown by the respondent. Sub Rule 1 of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. A wide power to extend the time to file Cross Objection has been vested in appellate Court. The power to extend time under Sub Rule 1 of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a Cross-Objection is sought to be filed before the Appeal is heard for final hearing. Learned Single Judge of this Court condoned the delay of several years in filing cross objection.

115. Insofar as the submission of the learned counsel for the claimant that CIDCO being an agent of the State Government and the acquisition of land was for CIDCO, CIDCO was not a necessary

party or proper party in the reference proceedings is concerned, reliance is placed by the learned counsel for the claimant on the judgment of this Court in the case of **City And Industrial Development Corporation vs. Percival Joseph Pareira & Ors., 2013 (4) Mh.L.J. 762** and in particular paragraphs 11 to 13 and 17 thereof. This judgment of the Division Bench of this Court is distinguished by Mr.Bajaj, learned counsel for the appellant.

116. The Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Ors.** (supra) has laid down the guidelines to be considered while fixing the market value of the acquired land by the Land Acquisition Officer such as (i) existing geographical situation of the land, (ii) existing use of the land, (iii) already available advantages, like proximity to National or State High Way or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near the acquired land. Supreme Court also adverted to the earlier judgment in the case of **Viluben Jhalejar Contractor vs. State of Gujarat, 2005 (4) SCC 577** in which it was held that market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. It is held that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle.

117. It is held that for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors *vis-a-vis* the land under

acquisition by placing the two in juxtaposition. Supreme Court also spell out the positive factors and negative factors while calculating the amount of compensation. It is held that a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price. It is further held that for ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is held that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration.

118. Insofar as quantum of deduction is concerned, it is held by the Supreme Court that in fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. Supreme Court adverted to the earlier judgment in the case of **Kasturi vs. State of Haryana, 2003 (1) SCC 354** in which it was held that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes,

normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes.

119. In the said judgment, Supreme Court also considered the judgment in the case of **Lal Chand vs. Union of India, 2009 (15) SCC 769** in which it was held that percentage of deduction for development to be made for arriving at market value of large tracts of undeveloped agricultural land with potential for development can vary between 20 and 75 per cent of the price of developed plots and observed that the deduction for development consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works.

120. The Supreme Court in the case of **Radha Mudaliyar** (supra) has held that the annual increase of 10% to 15% is normally allowed by the court where the record reflects increasing trend in the sale price of the land. In that matter, Supreme Court applied the minimum increase possible because of the short intervening period between the execution of the sale deed and issuance of notification under section 4. It is held by the Supreme Court that if the size of the plot is very small and the same has to be taken into consideration for non-availability of other evidence and where the land acquired is a large chunk of land, then it would be advisable to apply some deduction on that score. Deduction can also be applied on account of

wastage of land and development charges. The Supreme Court considered the fact that the land under acquisition in that matter was an agricultural land at the time of acquisition and the land was acquired to carry out the development scheme.

121. The Supreme Court considered that the development purpose, being in public interest, is bound to result in utilisation of part of the land for the purposes of roads, by-links, water and electricity lines and other infrastructural amenities of the project. Supreme Court held that as a general rule that for laying the roads and other amenities 33 1/3% is required to be deducted. However, if the development has already taken place, appropriate deduction needs to be made.

122. The Supreme Court also considered the fact that though the land possessed potential value, but no development had taken place as on the date under section 4(1) of the Land Acquisition Act. Supreme Court did not interfere with the order passed by the Reference Court holding that it was an 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." The Supreme Court adverted to the earlier judgment in the case of **V. Hanumantha Reddy vs. Land Acquisition Officer, 2003 12 SCC 642** in which it was held that neither its high potentiality nor its proximity to a developed land can be a ground for not deducting the development charges and that normally 1/3rd deduction could be allowed.

123. A perusal of the impugned order passed by the Reference Court indicates that the Reference Court has considered the 30% area from the total area of land under acquisition towards wastage for roads and open space. In our view, deduction of 30% considered by the Reference Court is in conformity with the principles of law laid down by the Supreme Court in catena of decisions. In this case also, the lands in question were acquired by CIDCO for public purpose. We do not find any infirmity with the order passed by the Reference Court considering the 30% deduction while computing the claim for compensation.

124. Insofar as the submission of the learned counsel for the claimant that the Reference Court could not have considered the deduction @ 30% from the area of land under acquisition but ought to have considered the deductions, if any, from the total gross amount of compensation is concerned, the claimant could not point out any hardship caused to the claimant in view of deductions of 30% made by the Reference Court out of total area acquired by the acquiring body. In our view, there was no prejudice of any nature whatsoever caused to the claimant in view of the Reference Court having considered the deductions of 30% from the total area of land under acquisition and not from gross amount of compensation determined by the Reference Court. In our view, there was no monetary loss of any nature whatsoever to the claimant on account of Reference Court having deducted the 30% of total area of land under acquisition and not on gross amount of compensation as canvassed by the learned counsel for the claimant.

125. The Supreme Court in the case of **Trishala Jain & Anr. vs. State of Uttarakhand & Anr.** (supra) has considered the norms to be considered by the SLAO while computing compensation for the land under acquisition including the issue of deductions to be made. It is held by the Supreme Court that where the evidence led by the parties is of such instances where the compensation paid is comparable, i.e. exemplar lands have all the features comparable to the proposed acquired land, including that of size, is another category of cases where principle of 'no deduction' may be applied. Such cases are exceptional and/or rare as normally the lands which are proposed to be acquired for development purposes would be agricultural lands and/or semi or haphazardly developed lands at the time of issuance of notification under section 4(1) of the Act, which is the relevant time to be taken into consideration for all purposes and intents for determining the market value of the land in question.

126. The Supreme Court held that depending on the facts and circumstances of each given case, the Court has taken a view that deduction on account of expenses of development of the sites could vary from 10% to 86.33% depending on the nature of the land, its situation, the purpose and stage of development. It is held that a fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area

in order to compare with the small plots dealt with under the sale transaction. The Supreme Court also considered in the facts of that case that there was no evidence to show the acquired land itself was developed and was having all the required facilities and amenities.

127. The Supreme Court in the case of **Major General Kapil Mehra** (supra) has held that the standard method of determination of the market value of any acquired land is by the valuer, evaluating the land on the date of publication of notification Under section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. In our view, the principles of law laid down by the Supreme Court in the case of **Major General Kapil Mehra** (supra) would squarely apply to the facts of this case. We are not inclined to accept the submission of the learned counsel for the claimant that the Reference Court ought to have considered the claim for compensation on any other date and not on the date of notification under section 12 (4) of the MRTP Act. The submission made by the learned counsel for the claimant is not only contrary to the well settled principle of law laid down by the Supreme Court but also contrary to their own case before the Reference Court and also before this Court.

128. The Supreme Court in the case of **Land Acquisition Officer & Sub-Collector, Gadwal vs. Smt. Sreelatha Bhoopal & Anr.** (supra) has held that the burden is on the claimant to prove by adducing cogent and acceptable evidence for higher compensation. Similar view was also taken by the Supreme Court in the case of

Special Deputy Collector & Anr. vs. Kurra Sambasiva Rao & Ors., (1997) 6 SCC 41. Though some guess work is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. It is the paramount duty of the Courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. It is held that even in the absence of oral evidence adduced by the land acquisition officer or the beneficiaries, the judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes.

129. It is held by the Supreme Court in the said judgment that the best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; nature of the consideration and the manner in which the transaction came to be brought out. These factors are relevant and in absence of such sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land can be considered.

130. The Supreme Court in the case of **Food Corporation of India through its District Manager, Faridkot, Punjab and Ors. vs. Makhan Singh and Anr., (1992) 3 SCC 67** has held that

proximity of time of sale with the date of notification under section 4, closeness between the lands sold and the land acquired, comparative size of the lands, potential value of the acquired land having regard to the location and surroundings to be kept in mind by the Land Acquisition Officer as well as by the reference Court while determining the compensation. The Court of appeal would not ordinarily interfere with the assessment of compensation unless there is wrong application or misapplication of the relevant factors or principles of compensation. A question thus arises for consideration of this Court is whether the Reference Court while passing an order of enhancement of compensation has applied any wrong application or misapplication of the relevant factors or principles of compensation in favour of the claimant or while not allowing the entire claim of compensation as prayed by the claimant while hearing these first three appeals.

131. The Supreme Court in the case of **Special Tehsildar Land Acquisition, Vishakapatnam vs. Smt. A.Mangala Gowri, (1991) 4 SCC 218** has held that price received or paid in sale or purchase of the same land under acquisition within the period proximate to the date of acquisition is a vital evidence. Exclusion of that evidence and instead reliance on award of compensation made in respect of some other land is erroneous. In the said judgment, Supreme Court also held that in a developed area, deduction of 1/3 of the market value is proper.

132. The Division Bench of this Court in the case of **State of Maharashtra vs. Bhausaheb Dadasaheb Misal (deceased) through L.Rs.** decided on 14th February, 1995 in First Appeal

No.1013 of 1987 has held that sale instances ten years prior to notification relating to rates prevalent may form basis for determination of compensation. Ten percent of increase for every year may be allowed towards increase in the price. A lump sum is to be added further to agricultural land having building potentiality.

133. The Supreme Court in the case of **P. Rajan and Anr. vs. Kerala State Electricity Board and Anr., (1997) 9 SCC 330** has held that determination of compensation on the basis of square feet would be confined only to highly developed commercial land or land situated at a place in the heart of a city.

134. The Supreme Court in the case of **Lalchand vs. Union of India & Ors.** (supra) has held that allotment rates of plots adopted by Development Authorities like DDA cannot form the basis for award of compensation for acquisition of undeveloped lands for several reasons. It is held that DDA and other statutory authorities adopt different rates for plots in the same area with reference to the economic capacity of the buyer, making it difficult to ascertain the real market value, whereas market value determination for acquisitions is uniform and does not depend upon the economic status of the land loser. Supreme Court also considered that the land in question was a freehold land whereas the allotment "rates" in the DDA Brochure refer to the initial premium payable on allotment of plots on leasehold basis. The Development Authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying waterlines, electricity lines and developing parks and civil amenities, which would

be about 35% of the value of the developed plot.

135. It is held by the Supreme Court that the two factors taken together would be the 'deduction for development' and can account for as much as 75% of the cost of the developed plot. The 'deduction for development' with references to prices of plots in authorised private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

136. The Division Bench of this Court in the case of **State of Maharashtra vs. Sat Dev Prakash, 2007 (5) All MR 272** has held that future potential of the acquired land cannot *per se* be equated to a developed land and thus being granted similar compensation.

137. The Supreme Court in the case of **Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. vs. State of Punjab & Ors., AIR 2012 SC 2721** has held that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction has to be considered and accepted. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.

138. The Supreme Court in the case of **Valliyammal and Anr. Etc. vs. Special Tahsildar (Land Acquisition) and Anr. Etc., (2011) 8 SCC 91** has dealt with several judgments of the Supreme Court and has laid guidelines for determination of the market value in case of acquisition of land under the provisions of the Land Acquisition Act, 1894.

139. The Supreme Court in the case of **Ambya Kalya Mhatre (dead) through Lrs. And Ors. vs. State of Maharashtra, 2012 (1) Mh.L.J. 9** has held that section 18 does not require a land owner objecting to the amount of compensation, to make a claim for any specific amount as compensation, nor does it require him to state whether the increase in compensation is sought only in regard to the land, or land and building, or land, building and trees. A land owner can seek reference to civil court, with reference to any one or more of the four types of objections permissible under section 18 of the Act, with reference to the award. His objection can either be in regard to the measurement of the acquired land or in regard to the compensation offered by the Collector or in regard to persons to whom it is shown as payable or the apportionment of compensation among several claimants. Once the land owner states that he has objection to the amount of compensation, and seeks reference to the civil court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation, with reference to the principles in section 23 of the Act.

140. The Supreme Court in the case of **Sharadamma vs. Special Land Acquisition Officer and Anr., 2007 AIR SCW 1109**, in the case of **Bhagwathula Samanna & Ors. vs. Special Tahsildar & Land Acquisition Officer, Visakhapatnam Municipality, AIR 1992 SC 2298**, in the case of **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona, 1988 (3) SCC 751**, in the case of

Digamber Bhimashankar Tandale vs. State of Maharashtra, 2013 ALL SCR 2860, and Division Bench of this Court in the case of **Shalini Vaman Godbole vs. Special Land Acquisition Officer & Ors., 2009 (5) Bom.C.R. 731** have laid down similar guidelines which are already laid down by the Supreme Court and this Court in several of such judgments referred to aforesaid.

141. Insofar as the gross delay in filing Civil Application No.12517 of 2017 by the appellant *inter-alia* praying for leave to file additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908 by the appellant is concerned, reliance is placed by the learned counsel for the appellant in the case of **Union of India vs. Ibrahim Uddin And Anr., (2012) 8 SCC 148**. The Supreme Court in the said judgment has held that where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed. It is further held that an application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is held that the true test, therefore is, whether the Appellate Court is

able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

142. Insofar as the submission of the learned counsel for the appellant that the Reference Court has not considered the oral and documentary evidence in proper perspective is concerned, a perusal of the impugned order passed by the Reference Court and more particularly the findings and part of the evidence referred to aforesaid clearly indicates that, the Reference Court has considered the oral evidence as well as documentary evidence in the impugned order in right perspective and has enhanced the claim for compensation made by the claimants. The learned counsel appearing for the appellant however is right in his submission that the ready reckoner was not prepared for CIDCO notified area and thus the Special Land Acquisition Officer rightly did not award any compensation to the claimant based on the ready reckoner rate for the acquired land.

143. Insofar as the submission of the learned counsel for the claimants that since the lands in question were notified for acquisition in the year 1973 and as a result thereof, there was a restriction on the development of those lands and thus the compensation ought to have been considered from the date of the land having notified for acquisition is concerned, in our view this submission of the learned counsel for the claimants is without any basis and contrary to the provisions of section 126(2) of the MRTP Act and also submissions made by the claimants before the Reference Court itself. The market value has to be considered on the date of notification issued under section 126(2) of the MRTP Act and not on the basis of the rates prevailing on the date, when the land was notified for acquisition for

the first time on the premise that a restriction was made on the development of land in question or otherwise. The claimants have not disputed that no such claim had even been raised by the claimants before the Reference Court at any point of time and such arguments is advanced for the first time in this Court.

144. Insofar as the submission of the learned counsel for the claimants that the CIDCO was under an obligation to provide housing at a cheaper rate and was not involved in any commercial activity, and the rights of the bungalows fixed by the appellant in the month of October, 1991 before issuing a notification under section 6 of the Land Acquisition Act, did not even consider the true and correct market value is concerned, in our view there is no merit in this submission. The instance considered by the Reference Court in our view was right and proper while enhancing the claim of compensation made by the claimants. The Reference Court rightly considered deduction of 30% after determining market price.

145. In our view, there is no substance in the submission of learned counsel for the claimants that Reference Court has erroneously rejected all the sale instance relied upon by the claimants and ought to have granted compensation at the rate of Rs.200 per sq. ft. The Reference Court has rightly rejected those sale instance produced by the claimant which were not the comparable sale instance required to be considered while determining the market price under section 18 of the Land Acquisition Act. The Reference Court has rightly not considered the claim for interest on enhanced compensation under section 20-A of the Land Acquisition Act from the date of possession till the date of payment of such enhanced

amount as sought to be urged by the learned counsel for the claimants.

146. Insofar as the submission of Mr.Bhandari, learned counsel for the appellant in Appeal No.416 of 2000 and Cross Objection (Stamp) No. 28630 of 2017 that the land in question was surrounded by developed area having thick population and was having high potential for construction is concerned, the Reference Court has rightly considered the evidence of both the parties. The Town Planning Official examined by the claimants and the other witness could not prove this allegations fully. The Reference Court was thus justified in having a reasonable view by partly allowing the claims for higher compensation made by the claimants in the impugned order and judgment and by rejecting the claims of compensation at the rate of Rs. 200 per sq. ft.

147. In our view, the Reference Court has considered the fact that the lands in question were freehold lands and thus while considering the enhanced compensation has considered those facts. The Reference Court has not awarded the same compensation which was awarded by the Land Acquisition Officer but has substantially increased the compensation considering the oral and documentary evidence led by both the parties.

148. Insofar as the question, as to whether valuation of the property was affected due to passing of high tension lines through the lands in question is concerned, the Reference Court has rightly considered the evidence on this issue in the impugned order and judgment. The appellant has not disputed that such lines could have

been shifted by incurring some expenses to some other plot.

149. Insofar as the submission of learned counsel for the claimants that the appellant at the first instance was not a necessary party to the reference filed under section 18 is concerned, in our view this submission is totally without any merit and is baseless. CIDCO was admittedly an acquiring body and was thus a necessary party to the reference petition filed under section 18 of the Land Acquisition Act. It is not in dispute that the claimants had impleaded the appellant as a party. The appellant had participated in the said reference petition all throughout. The claimants never raised any objection. The claimants have neither raised any such objection of the appellant participating in the said proceeding nor could raise any such objection. This appeals thus filed by the appellant were acquiring body is maintainable. The submission of the learned counsel for the claimants is contrary to the judgment of Supreme Court holding that the acquiring body can be a party to acquisition proceedings and can participate and even oppose the order of Reference Court. The appellant was appointed as a Special Planning Authority. In our view, section 126(4) of the MRTP Act was itself applicable to the parties and not section 113-A. Mr. Bajaj, learned counsel for the appellant rightly distinguished the judgment of this Court in the Case of **Cidco vs. Verse Joseph Parela and Ors.** (supra).

150. Insofar as the submission of learned counsel for the claimants that the claimants were not allotted land under 12.5 schemes is concerned, this submission on the part of learned counsel for the claimants is contrary to the admitted facts on record. A perusal of the record indicates that all the claimants had accepted the benefit

of allotment of 12.5% of land in view of the acquisition of the lands subject to the conditions of such allotment.

151. Insofar as the submissions of the learned counsel for the claimants that the Reference Court ought to have considered the future prospects of the land acquisition is concerned, in our view this submission is contrary to section 24 of the Land Acquisition Act and also contrary to the principles of law laid down by the Supreme Court in case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla** (supra) and is thus rejected. In our view, the Reference Court is right in rejecting the sale instances relied upon by the claimants for the transaction post notification. In our view this part of the order and judgment is in conformity with the principles of law laid down by the Supreme Court in case of **Special Deputy Collector and Anr vs. Kurra Sambasiva & Ors.** (supra).

152. A perusal of the terms and conditions of lease issued by the appellant in the month of 1991 clearly indicates that the lands were offered by the appellant at lease on as is where is basis. All facilities were already provided by the appellant on those lands which was acquired by the lessee. In our view Mr. Bajaj learned counsel for the appellant is right in his submission that the rate mentioned in the said document did not include the water connection charges and the power connection charges as the same were always required to be borne by the lessee or the purchaser of the plots.

153. We have minutely perused the oral and documentary evidence led by both the parties and also various findings rendered by the Reference Court. In our view after considering the oral and

documentary evidence, the Reference Court has rightly enhanced the compensation amount partly and has rejected the substantial and exaggerated claim made by the claimants. In our view, the Reference Court while deciding the claim for enhancement of compensation cannot decide the exact amount of compensation payable by the acquiring body but has to consider the valuation on the basis of the material produced by both the parties and after considering the deduction there from based on the law laid down by the Supreme Court and this Court. In our view, the Appeal Court cannot ordinarily interfere with the assessment of compensation by the Reference Court unless there is wrong application or misapplication of relevant factors or principles of compensation. None of the parties could point out any such wrong application of relevant factors or principles of compensation in the impugned order and judgment.

154. Insofar as the Civil Application No.12516 of 2017 filed by the appellant under Order 41 Rule 27 of the Civil Procedure Code for seeking permission to place reliance on the additional evidence annexed to the civil application is concerned, in our view, the appellant has not satisfied the test and requirement under Order 41 Rule 27 of the Civil Procedure Code. There is gross unexplained delay on the part of the appellant in seeking permission to place reliance on these additional documents. These additional documents were to the knowledge of the appellant long back. The reasons recorded in the civil application are totally unsatisfactory. Both the parties in this case had produced the documents and had led oral evidence in support of their rival pleas. In our view, even otherwise the material sought to be produced by the appellant at this stage is not necessary for proper adjudication of the rival pleas of both the

parties. The appellant has placed reliance upon a photo copy of the alleged agreement which is even otherwise disputed by the claimants. We are thus not inclined to grant any relief in the said Civil Application No.12516 of 2017 in favour of the appellant.

155. Insofar as the Civil Application No.11021 of 2017 for condonation of delay filed by the claimants in Cross Objection is concerned, in our view, learned counsel for the claimant has rightly placed reliance on the judgment of this Court in case of **State of Maharashtra vs. Kalu L. Mhatre** (supra) holding that Court has to take liberal approach while considering delay in filing cross-objection and shall hear the appeal on merits. The said judgment applies to the facts of this case. We therefore, condone the delay in filing cross-objection. We have heard the parties on merits. Civil application for condonation of delay in filing cross objection thus deserves to be allowed.

156. We are however of the view that since Reference Court has passed a detailed order and judgment considering the oral and documentary evidence led by both the parties and have taken a balanced view, we are not inclined to interfere with the impugned order and judgment in the appeals filed by the appellant and also in the cross objection filed by the claimants.

157. In our view, there is no merit in the Civil Application No.4789 of 2005 filed by one of the claimants in First Appeal No.416 of 2000 for an order and direction for referring the dispute for arbitration and conciliation or mediation. Since both the parties have made the rival submissions on the merits of the order passed by the

Reference Court, this civil application has become infructuous and thus deserves to be dismissed. Similarly, Civil Application No.6098 of 2015 filed in First Appeal No.416 of 2000 praying for four weeks time for complying order dated 13th November, 2014 for substitute service has also become infructuous and thus deserves to be dismissed.

158. Insofar as Civil Application No.13900 of 2016 filed by the claimants for substitution of the claimant no.1 is concerned, in our view, the appellant has rightly opposed the reliefs prayed in this civil application. The applicant in this civil application had never applied for such reliefs before the Reference Court. No case is made out for substitution of the parties as prayed in the said civil application and the same thus deserves to be rejected.

159. We therefore pass the following order:

a). First Appeal Nos.416 of 2000, 419 of 2000 and First Appeal No.420 of 2000 are dismissed.

b). Cross Objection (Stamp) No.28630 of 2017, Cross Objection (Stamp) No.1102 of 2001 and Cross Objection (Stamp) No.1100 of 2001 are dismissed.

c). Civil Application No.11021 of 2017 is allowed and Civil Application Nos.4789 of 2005, 6098 of 2015, 13900 of 2016, 12517 of 2017, 12515 of 2017 and Civil Application No.12516 of 2017 are dismissed. No order as to costs.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)