IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1218 OF 2010

The General Secretary,
Deccan Gymkhana, Pune … Appellant

V/s.

The Special Land Acquisition
Officer – 16, PMC Building,
3rd Floor, Above State Bank of India,
Tilak Road, Pune & Ors. … Respondents

Mr. Shriram S. Kulkarni i/b. Shri R. M. Pethe for the Appellant
Mr. A. R. Patil, AGP for Respondent No.1
Mr. Bharat H. Mehta a/w. Ms. Devangi Mehta for Respondent No.2.

CORAM: K.K. TATED &
SARANG V. KOTWAL, JJ.

JUDGMENT RESERVED ON : FEBRUARY 24, 2018
JUDGMENT PRONOUNCED ON : MARCH 23, 2018

JUDGMENT (PER : K. K. TATED,J.)

1. Heard the learned counsel for the parties.

2. Liberty was granted to the Appellant to file their written submission within two weeks. Same was filed within stipulated time.

3. By this appeal the Appellant original claimants challenges the judgment and award dated 29.04.2009 passed by the Adhoc District Judge – 3, Pune in LAR No.442/2002 partly allowing their Reference u/s.18 of the Land Acquisition Act, 1894 (said Act) awarding

compensation in respect of the acquired land admeasuring 832.30 sq.mtr. @ Rs.9000/- PSM and land admeasuring 365.60 sq. mtr. @ Rs.3600/- PSM. from CTS No.759 (final plot No.626/5)(P) of Shivaji Nagar, Pune.

4. In the present proceedings, the Special Land Acquisition Officer had issued Notification dated 07.01.1998 u/s.4 of the said Act for acquisition of the land admeasuring 1197.90 sq. mtr. out of CTS No.759/2005 (final plot No.262/5)(P) of village Shivaji Nagar, Pune City for the vegetable market and lastly published on 25.06.1998. Thereafter the Special Land Acquisition Officer issued Notification u/s.6 of the said Act which was published on 12.04.1999. The Special Land Acquisition Officer issued Notices u/s. 9 of the said Act which were duly served on all the interested persons of the said land. Pursuant to the said notices, the claimant claimed compensation by their statement of claim dated 08.06.1999 @ Rs.11,570/- PSM with additional benefit under the provisions of the said Act.

5. Considering the claim made by the claimants and the documents on record the Special Land Acquisition Officer by his award dated 31.03.2001 awarded the sum of Rs.69,93,920/- towards the land value and other benefits. The Special Land Acquisition Officer has awarded compensation @ Rs.7330/- PSM for an area of 832.30 sq.mtrs. and Rs.2,443/- PSM for land admeasuring 365.60 sq.mtr. The Special Land Acquisition Officer has also awarded 12% component from 25.06.1998 to 31.03.2001 along with 30% solatium. In all the Special Land Acquisition Officer has awarded sum of Rs.1,14,80,077/- for the land including additional components as per the amendment of the said Act.

6. Being aggrieved by the said award the claimants filed Reference u/s.18 of the said Act claiming additional compensation in respect of the acquired land to the extent of Rs.2,36,62,736/- with other benefits. The said Reference was registered by the Reference Court and numbered as LAR No.442/2002.

7. The Reference Court, after considering the evidence on record passed the impugned judgment and award dated 29.04.2009 partly allowing the claimant's Reference u/s.18 of the said Act.

8. Hence, the present appeal.

9. The learned counsel for the claimant submits that the judgment and award passed by the Reference court is against the justice, equity and good conscience and same is liable to be set aside on several grounds amongst following as stated in the appeal memo.

> *"6. The lower court ought to have considered the fact that the acquired land situated in close proximity to Jangli Maharaj Road, Sambhaji Bridge, Karvge Road and Garware Flyover, all of which form commercial hub."*
>
> *7. The Lower Court ought to have considered the fact that the ready reckoner published in 1998/99, the rate of open land is declared at Rs.11570/- per sq.mtr.*
>
> *8. The Lower Court ought to have considered the fact that the sale instances referred by the SLAO of CTS 666, Shivaji Nagar is at inner side as compared to the acquired land and is away from Main Road and is situated near the river bed and is not easily accessible and the acquired land is on main road having commercial potentiality.*
>
> *9 ....*

10 ....

11. The Lower Court ought to have held that the rate claimed by the Appellant at Rs.19720/- per sqa.mtr. for first 1000 sq.mtr. and Rs.11832/- per sq.mtr. for remaining 197.9 sq.mtr. is legal and proper

12. The Lower Court ought to have directed the Respondents for payment of interest u/s.34 of the Act from 22.10.1999 when the vegetable vendors encroached on the land with force.

13. The Lower Court completely misunderstood the concept of market value.

14. The Lower Court ought to have relied upon the documents produced by the Appellant in support of their case and ought to have fixed the market value at Rs.19720/- per sq.mtr. as claimed by the Appellant.

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17. The Lower Court ought to have held that the Appellant is entitled to compensation under head "severance and injurious affected".

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19 ....

20. The Lower Court ought to have relied upon the valuation report submitted by the valuer on behalf of the Appellant – claimant as the data and material on the basis of which the report was produced was authentic and the method of valuation adopted was correct.

21. The Lower Court failed to appreciate the well established principle of law that the court must value by applying the statutory *guidelines. Land lying away from the acquired land, in respect of which sale deed is produced by way of evidence, cannot have the same value. The value of such lands may be more or less depending upon their potentiality and location and having regard to other relevant considerations which the court has to keep in mind under the provisions of the Act. The lower court, therefore, ought to have fixed the compensation as submitted by the claimant which is fair and proper.*

22. The Lower Court failed to appreciate that the market value is the price that a willing purchaser would pay to a willing seller for a prperty having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, and therefore ought to have accepted the value as claimed and proved by the claimant - Appellant .

23 ....

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25. The Lower Court ought to have held that the acquired land is in closed proximity to Sambhaji Bridge, Karve Road and Garware Flyover all of which form commercial hub. Considering the same the Lower Court ought to have enhanced the compensation to Rs.19,720/- sq.mtr. as claimed by the Appellant – Claimant, which is fair and proper.

26. The Lower Court ought to have held that the acquired land is in possession of the vegetable vendors since 1999 as encroachers and hence ought to have granted rent from that period till the plot was handed over the SLAO in 2001 at the rate Rs.300/- p.m. per sq.mtr.

10. The learned counsel for the claimant submits that the Reference Court has failed to consider the evidence on record at the time of fixing the market value. He submits that in support of their claim, the claimant has examined Mr. Vishwas Dattatraya Lokare, Honourary

General Secretary of the Club (Exhibit-13). He submits that Mr.Lokare has specifically stated in his evidence that the said land is situated in the developed area. He submits that the said witness has specifically stated in his evidence that the claimants are entitled to compensation of the acquired land @ Rs.11,570/- PSM on the basis of even Government Ready Reckoner for the year 1998-1999. He submits that their prospect for development of the remaining land also affected because of acquisition of portion of the land. He submits that he has specifically stated in his deposition that if they want to develop the remaining property, then they had to keep open space as per the Development Rules. Therefore, the claimants are also entitled to compensation in respect of the remaining land as per Section 23 of the said Act.

11. The learned counsel for the claimants submits that bare perusal of impugned Judgment shows that the court below has relied upon the sale instances produced by the Claimant below Exh.43 and 44 and also relied upon the valuation determined by Mr. Lele. It appears from the Judgment that the Trial Court has accepted the two sale instances below Exh.43 and 44 produced by the Claimant, however the Trial Court after discussing the evidence recorded a finding in para 12 that the transaction had been entered into below Exh.43 and 44 by M/s.Paranjape Scheme (Construction) Pvt. Ltd., a well known group of construction and therefore he must have paid more price. Secondly, Trial Court has also observed that the construction i.e. the bungalow on the said instance cannot be termed as salvage and therefore, cannot be ruled out that consideration has been paid on higher side.

12. The learned counsel for the claimants submits that, it is evident from para 15 of the judgment that the trial court has made deductions and determined the market value at Rs.11500/- per sq. mtr. and thereafter relied upon three different rates reflected in the Award and then has taken the average price from three different rates and has arrived at Rs.9000/-per sq.mtr.

13. The learned counsel for the claimants submits that the acquired land and the instances are part and parcel of the same layout. The bare comparison of the location shows that the acquired land is situated at the junction of the main road and in the heart of the city having access from two marginal spaces amongst the 3 buildings from the main road and further the open spaces abutting to the colony road and across the cricket ground. It has also come on record that the post office is adjoining and all commercial user is already available in the plot and the Open space is more than 1000 sq. mtrs having access from the main road and directly from the colony road. Therefore, the same can be commercially exploited by construction of mal1, showroom, commercial offices, shops etc. whereas the Flat No.23 which is subject matter of the sale instance is situated in the same layout on internal side and it is available for residential purpose. Similarly for the purpose of comparison, the area of the Flat No.23 which is the subject matter of Exh.43 and 44 and acquired land is similarly situated because same FSI is available. Therefore the acquired land should fetch more price than what is received according to what is covered in Exh.43 and 44.

14. The learned counsel for the claimants submits that Flat No.23

admeasuring 759.90 sq.mtrs. comprises a bungalow which is owned by Mr.Vasaant Sathe, who died leaving behind his son Vishwas Sathe and a daughter, Ms. Anuradha D. Vaishampain. It is evident from the registered Development Agreement dated 18.06.1998 below Exh.44 that on 07.04.1997, Ms. Nidhi A. Jain who is described as original Developer has availed development right from Mr.Vishwas Sathe of his 50% share for a consideration of Rs.20 lakhs plus Flat admeasuring 1800 sq.ft. built up with garden area of 1500 sq. ft. The construction cost of the flat is Rs.760/- per sq.ft of 1800 sq.ft flat.

15. The learned counsel for the claimants submits Ms. Anuradha Vaishampai has received Rs.52,50,000/- lump sum price for conveying development rights to M/s. Paranjape Scheme (Construction) Pvt. Ltd. on 23.10.1997. Therefore the Appellant has prepared the calculation and has suggested two methods for calculating market rate as on 25.06.1998.

16. The learned counsel for the claimants submits the Trial Court has not discussed as to for what purposes the learned Judge has given deduction while arriving at the figure of 11,500/- per sq. mtr. It was obligatory upon the Trial Court to discuss as to why he has given deduction for arriving the said figure.

17. The learned counsel for the claimants submits similarly the Trial Court has committed serious error of law in relying upon the sale instance referred in the Award made by the Collector without same being produced and proved by the SLAO.

18. The learned counsel for the claimants submits once the sale

instances below Exh.43 and 44 from the same layout were produced before the Trial Court, there was no occasion to refer two instance out of three, when SLAO has discarded the two. Even the judgment does not show that out of three instances referred in the Award which two instances he intends to rely upon. Admittedly, the SLAO has not relied upon any instance, because he determined the market value on the basis of ready reckoner. Therefore the finding is vague and ex-facie illegal, erroneous and perverse. Similarly the court below has unnecessarily taken the average of non existing two instances and the third one produced by the Claimant for deriving the market price at Rs.9000/- per sq.mtr. In fact, the trial court ought to have taken into account ratio of Himmat Singh & Ors. Vs. State of M.P. & Anr. reported (2013) 16 SCC 392.

19. The learned counsel for the claimants submits that the Trial Court has also committed serious error in giving different rate for area admeasuring 365.60 sq. mtrs. on the ground that FSI is consumed. The court ought to have taken into account that the Claimant is permanently deprived from utilising the FSI in future and the FSI which is used in the building, that part of the building is rendered without any FSI. In fact the Government has acquired the remaining open space of the building on the remaining part of the plot and therefore the Government is bound to pay the entire price of the entire land and the bifurcation made on the basis of FSl consumption is illegal. Similarly, the Court has granted 40% deduction i.e. more than SLAO has granted. Therefore the entire approach is illegal and the Claimant must be paid the entire compensation in full with respect to the entire acquired land.

20. On the basis of these submissions, the learned counsel for the claimant submits that in fact the market value of the acquired land comes to Rs.25,006.62 PSM as under:

MARKET RATE CALCULATION

1. Development agreement :
1800 sq.ft. flat = 167.22 sq.mtrs.
167.22 sq.mtrs. x Rs.17200 per sq.mtr. = Rs.28,76,254/-
- Rs. 6,84,000/-

Rs.21,92,254/-
==========

Rs.20,00,000/- cash consideration
+ Rs.21,92,254/- cost of flat

Rs.41,92,254/- x 2 = Rs.83,84,508/-
Rs.83,84,508/- / 759.90 sq.mtrs. = Rs.11033.69 per sq. mtrs.
1997 – Residential rate Rs.11033.69 per sq.mtr.
1998 - Rs.11033.69 per sq. mtrs. x 15% =
Rs.12688.74 Residential potential rate
Rs.12688.74 x 75% = 22,205.29 per sq.mtrs.
1998 commercial potential rate Rs.22,205.29 per sq.mtr.

Rs.41,92,254 Mr. Sathe
+ Rs.52,50,000 Mrs. Vaishampayan

Rs.94,42,254

Rs.94,42,254/- / 759.90 sq.mtrs. = 12425.65 per sq.mtrs.
1997- Residential rate Rs.12425.65 per sq.mtrs.
1998- Rs.12425.65 per sq.mtrs. x 15% =
Rs.14289.50 per sq.mtr – Residential potential rate
Rs.14289.50 x 75% = 25006.62 per sq.mtr.
1998 commercial potential rate Rs.25006.62 per sq. mtr.

21. The learned counsel for the claimants submits that though the claimants, in their Reference has specifically raised the issue about the severance and injury affection in respect of the remaining land, same

was not considered by the Reference Court at the time of passing the impugned judgment and award. He submits that even the Reference Court has not framed any issue on this point. Hence, the judgment and award passed by the Reference Court is required to be set aside and matter is required to be remanded for fresh consideration on this point.

22. The learned counsel for the claimant submits that though on paper it is shown that the possession was taken on 25.05.2001 i.e. after passing the award by the Special Land Acquisition Officer, in fact the Respondent had indirectly taken possession forcibly. He submits that the Respondent has allowed the vegetable vendors to use the said land. Hence, the Reference Court ought to have held that the possession was taken by the acquiring body before passing the award u/s. 11 of the said Act and therefore, the claimants are entitled to interest u/s.34 of the said Act. He submits that by the notice dated 16.11.1999 the claimant has placed on record the position of the acquired land taken by them without following due process of law. Moreover, they have permitted the vegetables vendors to start their shops. He further submits that to that effect there was a news in news paper known as "Samna" (Exhibit-48).

23. The learned counsel for the claimant submits that the acquiring body has indirectly permitted the vegetable vendors to occupy the acquired land before taking possession as per the said Act, therefore, the claimants are entitled to rent and/or damages for that period. These facts are not considered by the Reference Court at the time of deciding the Reference u/s.18 of the said Act.

24. The learned counsel for the claimant further submits that even the Reference Court has failed to consider the compensation towards severance and injurious affected by the claimant because of part acquisition of the suit land. He submits that because of acquisition of the land, remaining land is divided into three parts, each admeasuring less than 350 sq.mtr. He submits that in future, if the claimants want to develop the remaining part of the land, they will have to keep the land admeasuring more than 390 sq.mtr. as open land as per the Development Control Rules. These facts are not considered by the Reference Court for granting compensation as per section 23, thirdly and fourthly of the said Act which read thus:

> **"23.** ***Matters to be considered in determining compensation :***
>
> *(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -*
>
> *first,* ....
>
> *secondly,* ....
>
> *thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*
>
> *fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;"*

25. The learned counsel for the claimant further submits that even the claimants' Valuer Mr. Lele (Exhibit- 36) filed valuation report dated 04.11.2008 (Exhibit- 37) and explained the compensation towards the

severance and injurious which reads thus :

> ***"Severance & Injurious Affection :***
>
> *The land owned by Claimant, Deccan Gymkhana, remaining after acquisition is injuriously affected due to acquisition. This is because of acquiring pieces of land from J.M.Road, F.C. Road, & Karve Road for the purpose of access by P.M.C., the owner of said Deccan Gymkhana will have to keep 3 Km marginal distance from this and rear side also of the acquired area. The remaining land is divided into 3 parts each less than 350 sqm in area. Thus, it can be used for shops, show rooms etc. Thus about 390 sqm of land will be lost for observing side margins as per D.C. rules. There is a loss of sale of commercial shopping area on ground floor which will be used for residential potency. The difference in market rates between shopping and residential rates is the real loss. Even if we consider Govt. Rate of ready reckoner, we can get the apparent loss amount."*

26. The learned counsel for the claimant further submits that as per the valuation report (Exhibit- 37) the claimants are entitled to compensation of Rs.2,20,61,553/-. as per thirdly and fourthly of Section 23 of the said Act. On the basis of these submissions, the learned counsel for the claimant submits that this Hon'ble Court be pleased to allow the claimant's Application u/s.18 of the said Act awarding compensation in respect of the acquired land @ Rs.19720/- PSM and also towards severance and damages. He submits that if the First Appeal is not allowed irreparable loss and injury will be caused to them.

27. On the other hand the learned AGP for Respondent No.1 Special Land Acquisition Officer has vehemently opposed the present First Appeal. He submits that bare reading of the judgment and award passed by the Reference Court shows that the Reference Court has awarded compensation in respect of the acquired land on higher side.

Therefore, there is no question of entertaining the present First Appeal.

28. The learned AGP submits that the Reference Court has erred in coming to the conclusion that the Reference u/s.18 of the said Act filed by the claimant was within limitation. He submits that the Reference Court ought to have decided the issue No.1 about limitation in the negative. He submits that admittedly, in the present proceedings, the Special Land Acquisition Officer has passed the award on 31.03.2001 and thereafter Notice u/s.12(2) was duly served on the claimant on 07.04.2001. The Reference Application u/s.18 of the said Act was filed on 25.05.2001. Therefore, the Reference Appeal preferred by the claimant was barred by law of limitation.

29. The learned AGP submits that the claimant has failed and neglected to place on record any relevant sale deeds and documentary evidence to show that they were entitled to compensation in respect of the acquired land @ Rs.19720/- PSM. He submits that the claimant has filed affidavit of evidence (Exhibit- 13) and mainly relied on the evidence of the Valuer Mr. Lele. The learned AGP submits that the Valuer, in his valuation report Exhibit- 37 has placed on record only two sale instances. The learned AGP submits that the Valuer has relied on the document in respect of Flat No.23. It is crystal clear from the location map that Flat No.23 has several advantages. Same is abutting to Prof. Deodhar Road. That sale instance is in respect of a flat. Hence, that cannot be considered for fixing the market value of the acquired open plot of land. He further submits that even the Valuer has relied on development agreement dated 18.06.1998 Exhibit- 44 and development agreement dated 23.10.1997. He submits that both these

documents cannot be considered for fixing the market value of the acquired land because as per the development agreement the developer has agreed to provide several facilities to the owner. Moreover, the said development agreement was in respect of the plot of land having bungalow etc.

30. The learned AGP submits that they have also examined Smt.Madhuri Praful Chaugule, Special Land Acquisition Officer (Exhibit-20) and Mr. Shripad Chaugule (Exhibit- 41), Special Land Acquisition Officer. He submits that the Special Land Acquisition Officer, at the time of preparing the award, relied on the ready reckoner for the Pune City. He submits that the land under acquisition i.e. CTS No.756/5 (final plot No.262/5) Shivaji Nagar comes under Zone 18/4. He submits that as per the ready reckoner, the land rate for Zone 18/4 was Rs.9940/- PSM upto 10000/- PSM. He submits that as per the ready reckoner, rate in respect of the acquired land comes to Rs.7330/- PSM. In spite of that the Reference Court has awarded compensation on higher side. Therefore, there is no question of entertaining the present First Appeal.

31. The learned AGP submits that the claimant has failed to make out any case for severance and damages as per clauses thirdly and fourthly of section 23 (1) of the said Act. He submits that because of acquisition, the claimant has not suffered any loss in respect of the remaining property. Therefore, there is no question of entertaining the claimant's claim in respect of the severance and damages.

32. The learned AGP further submits that admittedly, the possession

of the acquired land was taken after passing the award u/s.11 of the said Act. He submits that it is specifically stated in the award that the possession was not handed over by the claimant till the date of passing the award. In view of these facts, there is no question of granting any interest u/s.34 of the said Act. Therefore, there is no substance in the First Appeal. Same is liable to be dismissed with costs.

33. The learned counsel for the Respondent No.2 acquiring body has also vehemently opposed the First Appeal. At the outset, he submits that he adopts the submissions made by the learned AGP to oppose the First Appeal. In addition to those submissions, he submits that the Appellant claimant has failed and neglected to place on record any documentary evidence to show that the possession of the land was taken by them directly and/or indirectly before passing the Award u/s.11 of the said Act. He further submits that admittedly, the claimant has failed and neglected to place on record any documentary evidence to show that they are entitled to compensation in respect of the acquired land over and above the compensation awarded by the Reference Court. He further submits that even the claimants are not entitled to any benefit under clauses thirdly and fourthly of section 23 (1) of the said Act. On the basis of these submissions, the learned counsel for the acquiring body submits that there is no substance in the First Appeal. Same is liable to be dismissed with costs.

34. On the basis of the submissions made by the learned counsel for the parties and the pleadings on record, following points arise for our consideration:

Sr.	Points	Findings
1	Whether the Refrence Application made by the Appellant u/s.18 of the Land Acquisition Act, 1894 was within limitation ?	Yes
2	Whether the claimants are entitled to compensation for severance and damages as per Section 23 thirdly and fourthly of the said Act.	No
3	Whether the possession of the acquired land was taken by the acquiring body before passing the Award u/s.11 of the said Act ?	No
4	Whether the claimants have made out any case for additional compensation in respect of the acquired land ?	No

35. **Point no.1 :** The Special Land Acquisition Officer has passed the Award on 31.03.2001. Thereafter he has served notice u/s.12(2) of the said Act on 17.04.2001 on the claimants. As the notice was not having all information about acquisition of the land and rate awarded by them etc., the claimants made an Application for certified copies of the award on 27.04.2001. Immediately after receipt of the certified copies of the Award, he has filed Reference u/s.18 of the said Act. These facts are considered by the Reference Court in paragraph 5 of the impugned order. The Reference Court has specifically recorded that the notice u/s.12(2) did not disclose the entire facts of the Award i.e. how much area is acquired and the rate awarded by the Special Land Acquisition Officer etc. Hence, the time taken for obtaining certified copies is required to be excluded at the time of calculating the limitation for filing Reference u/s.18 of the said Act. It is to be noted that the Apex Court, in the matter of ***Premji Nathu Vs. State of Gujarat and Anr.***

(2012) 5 SCC 250 held that if the notice u/s.12(2) of the said Act do not contain entire details, in that case, the period taken for obtaining certified copies is required to be excluded at the time of calculating the limitation period. Hence, we hold that the Reference Application filed by the claimant was within limitation.

36. **Point No.2:** The claim of the Appellant in respect of the severance and damages cannot be considered for the following reasons.

Clauses thirdly and fourthly of section 23 (1) of the said Act state that, the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of acquisition injuriously affecting his other property, movable or immovable in any other manner or his earnings, in that case only he can claim compensation. The claimant has not placed on record any evidence to the effect that they sustain any damages because of acquisition of the part land. It is to be noted that in the present proceedings admittedly, the Respondent has acquired open plot of land. Moreover, on the date of acquisition the remaining land was in possession of the claimant's tenant. Because of acquisition, neither the tenancy and/or revenue out of the remaining property is affected. The claimant has claimed the damages in respect of the future development. The question of future development cannot be considered in the present case because as per the Development Control Rules, at the time of development, the developer has to keep open space of land compulsorily. The claimant has not placed on record any documentary evidence to show that they were supposed to develop the remaining plot of land immediately.

37. It is to be noted that the Apex Court in the matter of ***Balammal Vs. State of Madras (1969) 1 SCR 90*** held that where there is nothing to prove that the owner had sustained any loss by reason of severance of the land from their other lands nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owner were affected nor is there any evidence to show that there was any damage resulting further diminution of the profits of the land between the time of publication of the declaration and the time of taking possession of the land, the owners cannot claim compensation in respect of the damages due to the severance of their land. Paragraph 22 of the said judgment reads thus:

> *"22. Mr. Thiagarajan appearing on behalf of the appellants in Appeals Nos. 650 & 651 of 1954 contended that no adequate compensation was awarded to the owners in respect of charges for severance. Counsel submitted that a part of the compound of a cinema Theatre was acquired compulsorily and that deprived the owner of the land of the facility of providing additional amenities to the patrons of the theatre and also of making constructions on the land expanding the business, and on that account the owners were entitled to compensation either under "Thirdly" or (1) [1965] 1 S.C.R. 614. "Fourthly" or "Sixthly" of S. 23(1) of the Land Acquisition Act. Under these clauses the damage sustained by the person interested by reason of severing such land from his other land, or by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings, or the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under s.6 and the time of the Collectors taking possession of the land may be awarded to the owners. But there is no evidence on the record to which our attention was invited which supported the case of the appellants to compensation under any of the clauses. There is nothing to prove that the owners had sustained*

any loss by reason of the severance of the land from ,their other lands, nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession of the land. The High Court has awarded Rs. 2,500 as compensation for severance, and we see no reason to interfere with that order"

38. Hence, the claim made by the claimant towards the severance and damages is required to be rejected.

39. **Point No.3**: The learned counsel for the claimant submitted that the acquiring body has directed the vegetables vendors to occupy the acquired land and start their business and therefore the claimants are entitled to interest u/s.34 of the said Act. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***R. L. Jain Vs. DDA & Ors. 2004 (4) SCC P.79.*** It is to be noted that there is no dispute that if the possession is taken prior to passing of award, then the claimants are entitled to interest u/s.34 of the said Act. But in the case in hand, after following due process of law the Special Land Acquisition Officer has taken possession of the acquired land after passing the Award dated 31.03.2001. The possession receipt shows that same was taken on 25.05.2001. It was also signed by the General Secretary of the claimant. Interest u/.34 of the said Act is applicable when the amount of compensation is not paid or deposited on or before taking possession of the land. Therefore, the claimants are not entitled to any interest u/s.34 of the said Act.

40. **Point No.4:** It is to be noted that admittedly, neither the claimant nor the valuer Mr. Lele (Exhibit- 36) has placed on record any relevant sale instance for determining the market value of the acquired land. In valuation report (Exhibit- 37), the Valuer has relied on development agreement. Bare reading of the development agreement shows that, that cannot be considered as relevant sale instance and/or document to determine the market value of the acquired land. Even the document in respect of Flat No.23 is also not comparable document for determining the market value of the acquired land because Flat No.23 has several other benefits like frontage of road (Prof. Devdhar Road) etc. In such circumstances, the market value can be determined on the basis of the ready reckoner rate.

41. In the present proceedings, the Land Acquisition Officer has specifically stated that the market value of the acquired land as per the ready reckoner as on 25.06.1998 (date of Notification u/s.4 of the said Act) comes to Rs.7330/- PSM. It is to be noted that the State of Maharashtra has issued Government Resolution dated 31.10.1994 for fixing the market value of the acquired land, wherein it is specifically stated that the claimant must be given compensation in respect of the acquired land either as per ready reckoner rate and/or on the basis of the sale instance whichever is higher. Said Government Resolution reads thus:

"(Translation of Government Resolution in Marathi.)

Regarding valuation of the lands acquired under Land Acquisition Act, 1894

Government of Maharashtra
Revenue and Forest Department

Government Resolution No. LQN 1894/M. No. 446/A-2, Mantralaya, Mumbai – 400 032, 31st October, 1994.

Read :-1) Government Circular, Revenue and Forest Department No.LQN 1890/(4746)/A-2, dated 26th September, 1990.

2) Government Resolution, Revenue and Forest Department, No. LQN 4769/(1856)/A-2, dated 27th May, 1980.

Government Resolution

1. In order to prepare award under Land Acquisition Act, 1894, generally valuation of the land is fixed by way of sale-purchase method. Taking into account the recommendations of Paranjape Committee, vide Government Resolution, Revenue and Forest Department, No. LQN 4769/(1856)/A-2, dated 27th May, 1980 orders have been issued that if the land is acquired for a large and medium size project or 75% of the land of any village is acquired for other projects then the valuation of the agricultural land acquired should be determined by income capitalization method as well as by sale-purchase transaction method and out of which whichever would be beneficial to the landlord, the award may be declared accordingly.

2. An issue as to whether the ready reckoner should be used or else, while preparing the awards of the land under acquisition, was under the reconsideration of the Government. In this regard, upon making the inquiry from the legal view point following things have become clear :

A) Ready reckoner has been prepared in a scientific manner by obtaining the information about the geographical condition of each area, big roads, railways etc. and by making inspection (visiting site) in that regard and by collecting the sale-purchase transaction information.

B) The rates in the ready reckoner have been prepared (determined) by considering Taluka as a component (unit) in the *rural area and by dividing into different parts of the city in the case of urban area. Therefore, the valuation being determined as per ready reckoner of a particular becomes the market value of the said land from the comprehensive view point.*

3. Considering the status in the aforesaid para 2, the Government has taken following decision :

A) On the date of notification under Section 4 of the Land Acquisition Act, the valuation of the land, by way of sale-purchase transaction method, income capitalization method, wherever necessary, and the valuation being determined as per ready reckoner, out of which, whichever is greater, such market valueshould be held valid, while preparing the award.

B) On the date of publication of notification under Section 4 of the Land Acquisition Act, a copy of the ready reckoner, being required for valuation of the land in accordance with the ready reckoner, should be made available by the Land Acquisition Officer from the concerned Assistant Director, Town Planning (Valuation),

C) Orders in the Government Circular, Revenue and Forest Department, No. LQN 1890/(4746))/A-2, dated 26/9/1990 have been withdrawn.

4. The orders in para 3 shall come into effect from the date of the present order.

5. These orders are issued with the concurrence of the Finance Department (under its unofficial reference No. M. No. 1051 / Expenditure-9), dated 20.10.1994.

By order and in the name of the Governor of Maharashtra.

Sd/-
(Nasima M. Shaikh)
Sectiion Officer
Revenue and Forest Department"

42. It is to be noted that this court, in the matter of ***Shalini Vaman Godbole Vs. Special Land Acquisition Officer, Special Unit, Solapur & Ors. 2009 (5) Mh.L.J. 884*** held that the ready reckoner can be considered for fixing the market value of the acquired land. Moreover, essentially, this court (Coram : Smt. Manjula Chellur, C.J. and N. M. Jamdar, J), in the matter of Municipal Corporation, City of Thane through the Commissioner Vs. The Special Land Acquisition Officer and Others in ***Writ Petition No.6180/2002 (High Court Appellate Side) vide judgment dated 14.08.2017*** held that the ready reckoner shall be considered for fixing the market value of the acquired land. A reference can be made to paragraph 12 to 15 of the said judgment which read thus:

> *"12. The SLAO noted the letter from Joint District Registrar dated 23 February 2001 communicating the rates of Ready Reckoner which indicated that the rate for the concerned City Survey number was Rs.2,900/- per sq. metre. Thereafter SLAO took into account that the land was 'khar' land and development activity was not allowed without prior approval of Ministry of Environment and Forest. Considering the restrictions on the development of the land, SLAO computed 30 percent of the Ready Reckoner rate i.e. 30 percent of Rs.2,900/- amounting to Rs.870/- per sq. metre. The SLAO relied upon the G.R. No.LQN/1894/PR-446/A-2, dated 31 October 1994 issued by the State of Maharashtra which directed that the Ready Reckoner rate has to be taken into consideration while computing the compensation."*

> *"13. In view of the Government Resolution dated 31 October 1994, the SLAO took into consideration the rates from the Ready Reckoner. In a reply affidavit filed by the State, the resolution dated 31 October 1994, issued by Revenue & Forest Department, Mumbai is relied upon stating that the rates more beneficial out of sale instances method and Ready Reckoner have to be considered by the SLAO. Thus the SLAO, had to consider the Ready Reckoner in view*

of the policy of the State Government in resolution dated 31 October 1994. It is clear that the resolution dated 31 October 1994 states that compensation for acquired land by way of sale and purchase and the valuation as per Ready Reckoner whichever is higher is to be offered. The resolution clearly emphasizes State's intention to offer a better price which is acquired for a public purpose."

"14. Mr.Apte advanced an absolute proposition that the Ready Reckoner cannot be taken into consideration at all and the reliance on the Ready Reckoner itself vitiates the award on account of impropriety and illegality. He relied upon the decision of the Apex Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P and others (1994) 4 SCC 595 to contend that Ready Reckoner cannot be taken into consideration. This issue is no longer res-integra. An identical argument was advanced by a local authority before the Division bench of this Court in the case of Shalini Vaman Godbole Vs. Special Land Acquisition Officer (2009) 5 BCR 7321. In this case the Division bench was considering the challenge of Solapur Municipal Corporation in the Appeal filed under section 54 of the Land Acquisition Act, to the award passed by the learned Civil Judge. An argument was advanced on behalf of the Municipal Corporation in that case, relying on the decision of the Apex Court in the case of Jawajee Nagnatham that the Ready Reckoner could not have been taken into consideration by the Collector. The Division Bench took note of the very same resolution dated 31 October 1994 and observed that the Government of Maharashtra in its wisdom has laid down a policy for offering compensation to the owners of the land. The argument of the Municipal Corporation that by adopting such fixed methodology, the Court would be abdicating its duty to determine the market value as far as the parameters of the Act, was negatived. The Division bench held that the judgment of the Apex Court in the case of Jawajee Nagnatham could not be read as prohibiting the government from making an offer on such terms and conditions as the government desires and the policy in the resolution dated 31 October 1994 is itself an offer. An award can be based on the policy of the government."

"15. No reason is shown as to why we should take a different view

from the view taken by the Division bench in the case of Shalini Vaman. Thus when the SLAO relied upon the policy of the State Government itself, by no stretch of imagination it can be held to be a gross illegality. The contention advanced by Mr.Apte therefore cannot be accepted."

43. Therefore, in the case in hand as the claimant has failed to place on record any relevant sale instances and/or evidence to show the market value of the acquired land, we can safely rely on the ready reckoner rate of the relevant year. As per the ready reckoner for the relevant year the market value comes to Rs.11,570/- PSM. Apart from that we have to deduct 1/3rd towards the development charges as held by the Apex Court in the matter of ***Valliyammal and Anr. Vs. Special Tahsildar (Land Acquisition) and Anr. 2011 8 SCC 91.*** Paragraph 21, 26 and 27 thereof read thus:

"21. The first error committed by the High Court relates to deduction of 40% towards development charges. While doing so, the High Court ignored its own finding that the acquired land was situated in the vicinity of the residential colonies developed by the Board and other establishments as also the fact that the respondents had not produced any evidence to show that they will have to start the development work from scratch. Therefore, the High Court could have, at best, applied 1/3rd deduction towards development cost. The second error committed by the High Court is that while fixing market value, it did not take into account the escalation in land prices."

"26. In the result, the appeals are allowed and market value of the acquired land is fixed as under:

(i) For the acquisition made vide notification dated 9.10.1990, the base document will be sale deed dated 4.9.1990 vide which land was sold at the rate of Rs.20/- per square feet. One-third of Rs.20/- comes to Rs.6.6 per square feet. After deducting Rs.6.6 from Rs.20/-, market value of the

acquired land will be Rs.13.4 per square feet which is rounded off to Rs.14/- per square feet.

(ii) For the acquisitions made by the notifications issued on 15.4.1991, 16.4.1991 and 27.5.1991, the base document will be sale deed dated 8.2.1991 vide which land was sold at the rate of Rs.30/- per square feet. One-third of Rs.30/- is equal to Rs.10/- per square feet. After deducting Rs.10/- from Rs.30/-, market value will be Rs.20/- per square feet.

(iii) For the acquisition made vide notification dated 08.4.1992, the base document will be sale deed dated 8.2.1991 vide which land was sold at the rate of Rs.30/- per square feet. By adding 10% per annum in lieu of escalation in the land prices and deducting 1/3rd towards development cost, market value of the acquired land will be Rs.29.2 per square feet which is rounded off to Rs.30/- per square feet.

(iv) For the acquisition made vide notification dated 15.3.1995, the base document will be sale deed dated 8.2.1991 vide which land was sold at the rate of Rs.30/- per square feet. By adding 10% per annum in lieu of escalation in the land prices and deducting 1/3rd towards development cost, market value of the acquired land will be Rs.29.2 per square feet which is rounded off to Rs.30/- per square feet.

(v) For the acquisitions made by the notifications issued on 17.1.1997 and 19.3.1997, the base document will be sale deed dated 8.2.1991 vide which land was sold at the rate of Rs.30/- per square feet. If 10% per annum is added in lieu of escalation in the land prices and 1/3rd is deducted towards development charges, market value of the acquired land will be Rs.35.3 per square feet which is rounded off to Rs.36/- per square feet.

The appellants shall get solatium, interest and other statutory benefits in accordance with the provisions of the Act."

"27. With a view to ensure that the landowners are not fleeced by the middleman, we deem it proper to issue the following further directions:

(i) Within one month from the date of receipt of copy of this judgment, the Land Acquisition Officer shall depute an officer subordinate to him not below the rank of Naib

> *Tehsildar or an equivalent rank, who shall get in touch with the landowners and/or their legal representatives and inform them about their entitlement to receive enhanced compensation.*
>
> *(ii) The concerned officers shall instruct the landowners and/or their legal representatives to open savings bank account in a nationalized or scheduled bank, in case they already do not have such account.*
>
> *(iii) The account numbers of the landowners and/or their legal representatives should be furnished by the concerned officer to the Land Acquisition Officer within a period of two months.*
>
> *(iv) Within next one month, the Land Acquisition Officer shall deposit the amount of compensation along with other statutory benefits in the bank accounts of the landowners and/or their legal representatives by way of cheques."*

44. It is to be noted that for determining the compensation in respect of the acquired land the Appellant claimant has placed on record development agreements and valuation report (Exhibit-37). Apart from that they have not placed any other document and/or sale instance of the similar land from the same locality. In any case, in development agreement the developer has agreed to provide other special amenities to the other side therefore, both the development agreements cannot be considered for fixing the market value of the acquired land. Not only that even the Valuer in his valuation report (Exhibit-37) failed to disclose any sale instance of the comparative land for determining the market value of the acquired land. Therefore, in view of the Government Resolution dated 31.10.1994, judgment in the matter of Shalini Vaman Godbole (supra) and the judgment in the matter of Municipal Corporation of City of Thane (supra), safely we

can rely on the ready reckoner of the relevant year for determining the market value of the acquired land. In the Award the Special Land Acquisition Officer has considered the ready reckoner of the relevant year and stated that the market value of the acquired land comes to Rs.9440/- PSM on the material date of notification. If we deduct 1/3rd towards the development charges, then the market rate comes to Rs.6294/- (Rs.9440 – 3146 i.e. 1/3rd) PSM. Whereas the Reference Court has awarded @ Rs.9000/- PSM for 832.30 sq.mtr. and @ Rs.3600/- for 365.60 sq.mtr. i.e. average cost of Rs.7351.91 PSM which is higher than the ready reckoner rate.

45. Considering the above mentioned facts and the law declared by this court as well as the Apex Court, we are of the opinion that the claimant has failed to make out any case to interfere with the well reasoned judgment and award passed by the Reference Court.

46. Hence, the First Appeal stands dismissed. No order as to costs.

(SARANG V. KOTWAL, J.) **(K.K. TATED, J.)**