

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1360 OF 2013
WITH
CROSS OBJECTION (ST.) NO.10147 OF 2017**

The State of Maharashtra
(Through the Special Land Acquisition
Officer, Metro Centre No.1,
Uran, District Raigad and Anr. .. Appellants

vs.

Shri Vitthal Shankar Gharat and Ors. .. Respondents

Mr.A.R.Patil, A.G.P For the appellants in First Appeal No.1360 of 2013
and Cross-objection for the State

Mr.Sanghraj D. Rupawate i/b Mr.Aniket Bhagwanrao Deshkar for the
respondent nos.4/1 to 4/4 in First Appeal and claimants in Cross-
objections

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

**RESERVED ON : FEBRUARY 16, 2018
PRONOUNCED ON : MARCH 09, 2018**

JUDGMENT (Per K.K.Tated, J.) :

1. Heard the learned counsel for the parties.
2. This First Appeal is preferred by the State of Maharashtra challenging the judgment and award dated 21.12.2012 passed by Civil Judge, Senior Division, Raigad at Alibag in L.A.R. No.634 of 2000 (Old

L.A.R.No.280 of 1990) on the ground that Reference court awarded enhanced compensation in respect of the acquired land though the respondent claimants failed to produce any cogent evidence to that effect.

3. Respondents original claimants preferred Cross Objection Stamp No.10147 of 2017 for additional compensation in respect of acquired land @ Rs.1500 per sq.mtr.

4. In the present proceedings, initially the Special Land Acquisition Officer issued notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) dated 03.02.1970 for acquiring the claimants' land from Village Dongari, Post Bokadvira, Taluka Uran, District Raigad admeasuring 29,550 sq.mtrs. for New Bombay Project. However, the said notification lapsed because the Government did not complete the land acquisition proceeding within the stipulated period. Thereafter, the Government issued fresh notification under section 4 of the said Act on 24.9.1986 for the same lands as under:

Survey No.	Hissa No.	Admeasuring Area H.R.	(Sq.mtr.)
8	4P	0-78-0 <i>Varkas</i> 1-76-0	25400
9	3	0-04-5	450
9	1	0-01-5	150
11	1	0-01-0	100
11	4	0-34-0	3400

3	1P	0-00-5	50
		Total	29550

5. After following due process of law, Special Land Acquisition Officer declared the award dated 25.09.1989 holding that claimants are entitled for compensation in respect of this acquired land as under:

S.No.	H.No.	Area						
		Cultivable	P.K.	Varkas or other	Total Hectare	Asstt. Rs.	Rate per Hectare	Total value Rs.
1	2	3a	3b	3c	4	5	6	7
8	4P	0-78-0	1	1-76-0	2-54-0	16-89	43321	33790
							200	350
9	3	0-4-5	-	-	0-4-5	0-91	53727	2417-7
9	1	0-1-5	-	-	0-1-5	0-30	53573	803-6
11	1	0-1-0	-	-	0-1-0	0-06	42821	428-2
11	4	0-32-0	0-2-0	-	0-34-0	6.12	52882	16922-25
3	1p	0-0-5	-	-	0-0-5	0-02	39749	198-75
					2-95-5			54912.9
					Deduct conversion =			20-00
					charges at 10% S.No.3/1			
					Net Market value			54892-90

6. Being aggrieved by the said award, the claimants preferred the Reference under section 18 of the Land Acquisition Act 1894 dated 24.12.1989 claiming compensation in respect of acquired land @ Rs.150 per sq.mtr. Subsequently, the said Reference was amended by the claimants and claimed compensation @ Rs.1500 per sq.mtrs. State of Maharashtra filed their written statement dated 25.11.1991 opposing any enhancement in favour of the claimants. The Reference Court after considering the submissions of both the parties framed following issues:

	<i>ISSUES</i>	<i>FINDINGS</i>
1	Does the claimant prove that compensation awarded by the Special Land Acquisition Officer is inadequate ?	Affirmative
2	What is the adequate market price of acquired land on the date of notification ?	@ Rs.500/-PSM
3	What order and award ?	As per final order

7. For fixing market value of the acquired land, the Reference Court mainly relied on the previous judgment in L.A.R.No.633 of 2000 and valuation report. Reference Court held that claimants are entitled for compensation in respect of acquired land @ Rs.500/- per sq.mtr instead of Rs.3.38 ps. to Rs.5.38 ps. per sq.mtr awarded by Land Acquisition Officer in his award. (Special Land Acquisition Officer awarded compensation @ Rs.39,749 to Rs.53,727 per hectare). Being aggrieved by the said Judgment of the trial court, the State of Maharashtra preferred First Appeal No.1360 of 2013 and the claimants preferred Cross Objection Stamp No.10147 of 2017.

8. The learned A.G.P. for the State submits that the Reference Court erred in coming to the conclusion that the claimants are entitled for compensation in respect of the acquired land @ Rs.500 per sq.mtr. He submits that the Reference Court failed to consider the fact that claimants failed to produce on record any cogent evidence to show that claimants are entitled enhanced compensation in respect of the acquired land.

9. The learned A.G.P. submits that the claimants Vitthal Shankar Gharat filed his affidavit of evidence dated 02.08.2012, Exhibit 32. He submits that bare reading of the said affidavit shows that claimants failed to disclose any cogent evidence for enhanced compensation. He submits that claimants in his cross-examination in paragraph 10 admitted that in the year 1986 National Highway No.4B was not in existence. He further submits that the claimants in cross-examination specifically admitted that in the year 1986 there was no development in their Village Dongari Post Bokadvira, Taluka Uran, District Raigad. Claimant also admitted in his cross-examination that on the date of notification under section 4 of the Land Acquisition Act, they were using acquired land for cultivating rice. He also specifically stated in paragraph 15 of the cross-examination that surrounding lands were in use only for cultivating rice.

10. The learned A.G.P. submits that considering the affidavit of evidence of claimants and cross-examination, it is crystal clear that on the date of issuing notification under section 4 of the Land Acquisition Act, 1894 acquiring land was in use as agricultural land. There was no development in the village Dongari or nearabout the acquired land and inspite of that the Reference Court awarded compensation in respect of acquired land @ Rs.500 per sq.mtr. He submits that the Reference court ought to have awarded compensation in terms of acre and hectare instead of sq.mtr. He submits that considering the compensation awarded by the Reference Court it comes to @ Rs.50 lacs per hectare (1 Hectare = 10,000 sq.mtrs.)

11. The learned A.G.P submits that the claimants mainly relied on the evidence of Vikrant Manohar Vaidya valuer who filed his affidavit of evidence dated 6th August, 2012 Exhibit 33. He submits that in paragraph 2 of the evidence, Valuer specifically stated that he visited the acquired land situated at Dongari along with claimants Vitthal Shankar Gharat on 20.07.2011 whereas notification under section 4 of the said Act was issued on 24.09.1986. He submits that bare reading of the affidavit of evidence dated 06.08.2012 Exhibit 33 filed by the Valuer shows that instead of relying on any sale instance, he mainly relied on earlier judgments in land acquisition references. He relied on award in L.A.R. No.633 of 2000 in which land from Village Kaladhonda Taluka Alibag District Raigad was acquired for New Bombay Project itself. In that L.A.R., Reference Court awarded sum of Rs.500 per sq.mtr. He submits that though the valuer in his affidavit of evidence stated that all amenities such as Auto Rickshaw, State Transport Bus facility, Telephone, small market, primary and high school, hospital, college, water supply, electricity were available but failed to place on record any documentary evidence to that effect. He submits that valuer submitted his valuation report Exhibit 34. He submits that the valuer in his Valuation Report relied on sale instance for determining the market value of acquired land which are as under:

- a) Lease deed between CIDCO of Maharashtra Ltd. And Shri Vinod Kumar R. Sharma, for land bearing Plot No.W-3 at Kalamboli for 420 sq.mtrs of Rs.1873.28 per sq.mtr dated 16.10.1984.
- b) Lease deed between CIDCO of Maharashtra Ltd. and

M/s.Premraj Developers Pvt.Ltd. for land bearing plot no.38, Sector No.15, CBD-Belapur for 4000 sq.mtrs is of Rs.3025/- P.S.M. Dated 7.12.87.

- c) Lease Deed between CIDCO of Maharashtra Ltd. and M/s.Shakti Construction, for land bearing Plot No.5, for 1466.38 sq.meters is of Rs.2775.75 P.S.M. dated 1987. He stated that all these lease instances were from Panvel, Kalamboli and C.B.D.

12. The learned A.G.P further submitted that the valuer relied on earlier judgment and award of court in different L.A.R.'s in his report which are as under :

1. L.A.R. No.633/2000 in which land from village Kaledhonda was acquired by CIDCO by notification u/s.4 of the said Act dated 14.10.1987 for New Bombay Project. Reference Court awarded compensation Rs.500 per sq. mtr.
2. L.A.R. Nos.700/2000, 697/2000, 708/2000 from village Bokadvira. Notification under section 4 of the said Act was issued on 24.09.1986 for New Bombay Project. Reference Court awarded compensation @ Rs.500/- per sq.mtr.
3. L.A.R. Nos.473/2000 from village Karal. Notification under section 4 of the said Act was issued on 24.09.1986 for New Bombay Project. Reference Court awarded compensation @ Rs.600/- per sq.mtr.
4. L.A.R. Nos.255/2000 for land from village Dhutum. Hon'ble Civil Judge, S.D. Alibag awarded compensation @ Rs.600/- per

sq.mtr. Land under these references was acquired for CIDCO by notification under section 4 of the said Act dated 24.07.1987.

5. L.A.R. Nos.408/2000 for land from village KoliKopar. Notification under section 4 of the said Act was issued on 24.09.1986. Reference Court awarded compensation @ Rs.889/- per sq.mtr.
6. L.A.R. Nos.457/2000 for land from village Wadghar. Notification under section 4 of the said Act was issued on 24.09.1986. Reference Court awarded compensation @ Rs.889/- per sq.mtr.
7. First Appeal Nos.646/95, 781/95, 782/95, 783/95, 785/95, 786/95, 787/95, 789/95, 790/95 from lands at village Roadpali for New Bombay Project. Notification under section 4 of the said Act was issued on 24.09.1986. Bombay High Court awarded compensation @ Rs.1725/- per sq.mtr. by judgment dated 21/06/2007.

13. The learned A.G.P. submits that valuer at the time of calculating the market value of acquired land @ Rs.1,500/- per sq.mtr., relied on lease instances and considered the rise of 18% per year and deducted 33% for development cost and 20% for location.

14. The learned A.G.P. submits that valuer also placed on record the map Exhibit 35 showing the distance between the acquired land and land involved in other references.

15. The learned A.G.P. submits that though the valuer has submitted

his report stating that all facilities were available nearby the acquired land, he himself admitted in cross-examination that on the date of issuing notification under section 4 of the said Act, land was under cultivation. He further admitted in his cross-examination that land under reference was in Gram Panchayat area. Not only that, water supply and electricity was not readily available in the land under reference. The learned A.G.P. relies on paragraph 13, 15, 16 of cross-examination of valuer which reads thus:

“13. It is correct that revenue village Dongari is outside the limits of Uran Municipal Council. The land under reference is included in Gram Panchayat area. The land is agricultural land. There is no gaathan locality in Dongari. Acquired land is surrounded by other agricultural lands. I did not ascertain the fact whether the lands were without any cultivation or not at the time of acquisition. It is correct that water supply and electricity was not readily available in the land under reference. The land under reference were not covered under MIDC or alike reservation area. Nearest National Highway is only Pune-Mumbai N.H. The highway does not pass through Uran Taluka. Distance between the land and the NH 4 Highway may be about 25 kms. In 1986 now NH 4B was not in existence. Nearest railway track is in between Panvel in Uran leads to NAD. It is a single line mainly used for goods trains NO passengers service is available on this track till today. There is no platform or railway station nearby village even for loading and unloading goods.”

“15. It is correct that villagers in Dongari were availing civic amenities at Uran. I have ascertained soil strata of lands. I took trial pit test. It is correct that there is no document to show that I ascertained the soil quality by taking above tests. I did not mention this fact in my report. It is not true that lands were not suitable for construction. The lands were irregular in shape. It is not true that filling was necessary to bring the land under development. However, its leveling was necessary.”

“16. It is true that I adopted comparison method to ascertain the value. I referred three sale instances in my report. But none of the transaction is from village Dongari. I searched for sale instances prior to or near to 1986 in Sub Registrar's Office. I did not across any such sale instances prior to 1986. It is not true that I did not refer such sale instances because they were not suitable to form my opinion. Most of the instances which I relied are lease instances. I referred two lease instances which are prior to 1986. All lease instances relied on my be are pertaining to developed plots by CIDCO. It is true that in comparison with lands acquired, these lease were in respect of lands having small area. It is correct that none of the lease instances are from Dongari. It is true that method of lease adopted by CIDCO was to call tenders and allot the plot to highest bidder. These transactions took place on competitive basis. It is true that all lands were leased for commercial purposes. It is true that lease instances on which I rely, cannot be used for comparison to assess the market value of lands under the reference. The Court decisions on which I rely, pertains to acquisition of 1986. I do not know whether awards in said references are subject to appeal in High Court or not. It is not correct that the rate which I suggested is highly excessive and exorbitant. I have studied award passed by the SLAO. I am not agree with the contentions that when there is no suitable date available for comparison, in order to assess the market value income capitalization method is adopted. It is correct that SLAO has adopted same method applying particular formula. It is not correct that rate fixed by the SLAO is correct and proper. It is not correct that I have suggested exorbitant rate only to favour the claimants.”

16. The learned A.G.P. submits that bare reading of judgment of the Reference Court shows that the Reference Court mainly relied on the valuation report and decision in earlier reference. He submits that recently the Apex Court in the matter of **Babibai Bapu Patil vs. The State of Maharashtra and Ors. In Civil Appeal Nos.1564-1565 of**

2016 on 31st October, 2017 held that value of commercial plots cannot provide for a sale criteria for determination of compensation, that to without adequate deduction. He submits that in this authority, our High Court awarded compensation in respect of acquired land from Village Padaghe which was acquired for same project i.e. New Bombay Project and awarded compensation @ 400 and 500 per sq.mtr. on the basis of those lease deeds, as relied by valuer in his valuation report. He submits that Apex court by order dated 31.08.2017 remanded the matters for deciding the Appeal afresh. Paragraph 2, 3 and 5 of the said order reads thus:

“2. The question agitated in the appeals is to enhance the compensation awarded by the High Court. The High Court has awarded compensation at the rate of Rs.500/- per sq. mtr. and Rs.400/- per square meter for the village Padaghe. It was submitted that the High Court has not considered the evidence which had been placed on record with respect to the value of the property, and various other awards passed with respect to adjoining villages. It was submitted that the land owners were entitled for compensation in village Padaghe at the rate of Rs.1725/- per sq. Mtr.”

“3. We have perused the award of the village Rodpali. The State has questioned its correctness. It appears, that the same is required to be considered by the High Court, as the award cannot be said to be binding; and whether necessary deductions for development and smallness etc. have made while determination of amount was made in the said award, has also to be considered by the High Court. The appropriate deduction is required to be made particularly when, in the case of village Rodpali, two transactions pertaining to commercial/ industrial purposes

had been relied upon; one of which was with respect to grant of land on lease for 60 years, and other was for a weigh bridge. It was also required to be considered as to whether the value of those plots could have been taken into consideration only after appropriate deductions. Apart from that, the other evidence that has been adduced in the instant case was also required to be considered by the High Court for awarding appropriate compensation. Suffice it to observe, that value of commercial plots cannot provide for a safe criteria for determination of compensation, that too without adequate deduction. This Court has considered various decisions regarding the deductions to be made for development and also for smallness. In *Major General Kapil Mehra & Ors. vs. Union of India & Anr.* [(2015) 2 SCC 262] this Court has laid down that :

“33. In *Haryana State Agricultural Market Board v. Krishan Kumar*, (2011) 15 SCC 297 it was held as under: (SCC p. 299, para 10)

“10. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of levelling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines.”

34. Consistent view taken by this Court is that one-third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the

location of the acquired land and the development that has taken place around the area.

35. Reiterating the rule of one-third deduction towards development, in *Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer*, (2012) 7 SC 595 this Court in para 19 held as under: (SCC pp. 606-07)

“19. In fixing the market value of the acquired land, which is un-developed or underdeveloped, 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. In *Kasturi v. State of Haryana* (2003) 1 SCC 354 the Court held: (SCC pp. 359-60, para 7)

'7. It is well settled 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 road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also

varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.'

The rule of 1/3rd deduction was reiterated in *Tejumaal Bhojwani v. State of U.P.*, (2003) 10 SCC 525, *V. Hanumantha Reddy v. Land Acquisition Officer*,

(2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC and Kiran Tandon v. Allahabad Development Authority.

(emphasis in original)

36. While determining the market value of the acquired land, normally one-third deduction i.e. 33 1/3% towards development charges is allowed. One-third deduction towards development was allowed in Tehsildar (LA) v. A. Mangala Gowri, (1991) 4 SCC 218 Gulzara Singh v. State of Punjab, (1993) 4 SCC 245, Santosh Kumari v. State of Haryana, (1996) 10 SCC 631, Revenue Divl. Officer and LAO v. Sk. Azam. Saheb, (2009) 4 SCC 395, A.P. Housing Board v. K. Manohar Reddy, (2010) 12 SCC 707, Ashrafi v. State of Haryana, (2013) 5 SCC 527, and Kashmir Singh v. State of Haryana (2014) 2 SCC 165.

37. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board v. Krishan Kumar (2011) 15 SCC 297, Director, Land Acquisition v. Malla Atchinaidu (2006) 12 SCC 87, Mummididi Apparao v. Nagarjuna Fertilizers & Chemicals Ltd. (2009) 4 SCC 402 and Lal Chand v. Union of India (2009) 15 SCC 769.

38. In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in Basavva v. Land Acquisition Officer (1996) 9 SCC 640, this Court upheld the deduction of 65%. In Kanta Devi v. State of Haryana (2008) 15 SCC 201, deduction of 60% towards development charges was held to be legal. This Court in Subh Ram v. State of

Haryana, held that deduction of 67% amount was not improper. Similarly, in *Chandrashekar v. Land Acquisition Officer* (2012) 1 SCC 390, deduction of 70% was upheld.

39. We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewerage.

40. Rule of one-third deduction towards development appears to be the general rule. But so far as the Delhi Development Authority is concerned, or similar statutory authorities, where well-planned layouts are put in place, larger land area may be utilised for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this Court in *Lal Chand v. Union of India* (2009) 15 SCC 769 and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under: (SCC pp. 779-80)

“13. The percentage of 'deduction for development' to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots,

the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. 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. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. 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 water lines, electricity lines and developing parks and civic amenities, which would be about 35% of the value of the developed plot. 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.

16. On the other hand, if the residential plot is in an unauthorised private residential layout, the percentage of 'deduction for development' may be far less. This is because in an unauthorised layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorised layouts, would be only about 20%

plus 20% in all 40% as against 75% in regard to DDA plots.

17. The 'deduction for development' with reference to prices of plots in authorised private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary.)

20. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

21. Even among the layouts formed by DDA, the percentage of land utilised for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout"whether it is residential, residential-cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the 'deduction for development' factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%.

Lal Chand case deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilised for laying down of roads, drains, etc. Further deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, under-ground drainage, laying down water lines, electricity lines was made.

“5. In view of the aforesaid discussion, let the High Court decide the appeals afresh. The impugned judgment is set aside, and the cases are remitted to the High Court, High Court also to decide afresh on the amendment application, considering the decision in *Ambya Kalya Mhatre (Dead) Through Lrs. & Ors. v. State of Maharashtra*, (2011) 9 SCC 325.”

17. The learned A.G.P. submits that it is crystal clear from the Apex Court Judgment that value of commercial plots cannot be considered for determining the market value of agricultural land without proper deduction. He submits that in the case in hand, Reference Court mainly relied on previous judgment in L.A.R. No.633 of 2000 without giving any deduction.

18. The learned A.G.P. submits that the State acquired the land in the year 1986 for the purpose of New Bombay Project. While deciding the market value of acquired land, the topographical situation of the concerned village has to be taken into account. So also, it is pertinent to look into civil amenities available at the time of acquisition, topographical situation of acquired land and soil condition etc. So far as Village Dongari is concerned, said village is not abutting to any National Highway. The nearest National Highway i.e. NH No.4 Bombay-Pune Highway is situated at a distance of 20 kms. Railway line which passes nearby this village is from Panvel to Uran, but it is only for carriage of goods only. There is no Railway Station or Railway Platform near Village Dongari. The acquired land comes within the Gram Panchayat limits. There were no civil amenities like High-School, College, Hospital or market area in this village in the year 1986. The acquired land was an agricultural land. As the land was an agricultural land, yielding paddy crop, there were bunding to the acquired land, which shows that substantial expenses were required to be incurred for filling of this land for non-agricultural use.

19. The learned A.G.P. submits that the acquired land is away from

the Gaothan area. It is a Khar land. It has come on record that at the time of acquisition there was no building activity (construction beyond Gaothan area). The nearest prominent Industrial Area at the time of acquisition was Taloja, Jawahar and Panvel Industrial Estates and they are at a distance of 18 to 20 kms. away. He submits that the same cannot be considered for valuation of the acquired land. He submits that nearest Municipal limits i.e. Uran is at a distance of about 5 kms. He submits that, this shows that, at the time of acquisition, acquiring land was not having any importance for its non-agricultural use and therefore, the rate claimed by the claimants is not consistent with market value prevailing at the time of acquisition.

20. The learned A.G.P. submits that Special Land Acquisition Officer has adopted a proper method which is known as "INCOME CAPITALISATION METHOD". While passing the Award, the S.L.A.O. has taken into consideration the level, situation, location and income capitalization. The learned A.G.P. submits that comparison method adopted by the Valuer is not considerable for various reasons. It is brought on record in the cross-examination of valuer that data which was used for the purpose of valuation, was not considerable for comparison in the present references. No proper sale instances have been taken into account by the valuer. Thus, for want of proper data, the comparison method adopted by the valuer and the conclusions arrived cannot form the reasonable basis to arrive at a conclusion of market rate prevailing at the time of acquisition.

21. The learned A.G.P. submits that the claimants deposed before the

court and admitted in his cross-examination that there was no industry in the village in the year 1986. Excluding the Gaothan area, there was no construction activity in their village in the year 1986 and prior. There was no Primary Health Centre in their village. The acquired lands were under cultivation of rice, depending upon rain-fall. There were agricultural lands all side of their village. Inspite of all these facts on record the Reference Court erred in coming to the conclusion that claimants proved that they are entitled compensation in respect of acquired land @ Rs.500 per sq.mtr. He submits that judgment and award passed by Reference Court is against justice, equity and good conscience and same is required to be set aside with costs.

22. On the other hand, the learned counsel for the claimants submits that Reference court ought to have awarded compensation in respect of acquired land @ Rs.1,500/- per sq.mtr. instead of only Rs.500 per sq.mtr. He submits that initially these lands were notified for acquisition in the year 1970. That notification was lapsed and hence Special Land Acquisition Officer issued fresh notification dated 24.09.1986 under section 4 of the said Act. He submits that the purpose for acquiring land was New Bombay Project. He submits that thousands of lands were notified by the Government for New Bombay Project since 1960. He submits that because of earlier notification for acquisition of land from same village in 1970, sale instances were not available. Thereafter, sale instances from same village were not produced before Reference Court. He submits that the court below has failed to appreciate that there was a large scale industrialization and urbanization in the vicinity of the land acquired. Similarly ONGC gas

turbine, Bharat Petroleum, Mazgaon Dock, Nhava Sheva Port Trust has been set up in the vicinity of the acquired land. Therefore, Reference Court ought to have awarded compensation in respect of acquired land @ Rs.1,500/- per sq.mtr. He submits that the distance from Mumbai is hardly 10 nautical miles by sea route.

23. The learned counsel for the claimants submits that the court below failed to consider properly the evidence produced by the claimants by way of judgment and award in L.A.R. Nos.633 of 2000, 699 of 2000, 381 of 2000 and 369 of 2000. He submits that though the valuer in his evidence as well as valuation report pointed out several developments in the vicinity of acquired land, the Reference Court failed to consider those facts at the time of deciding the market value.

24. The learned counsel for the claimants submits that the valuer in his report specifically stated that the land under reference and the surrounding lands have been acquired for the same purpose. He relies on paragraph 7 of the said valuation report which reads thus:

“VII) BASIS OF VALUATION:-

The land under reference and the surrounding lands have been acquired for the purpose of planned development as stated in the notification for acquisition it self directly stated that there was demand for land in and around that area which the Government felt that a well thought plan was absolutely essential. A big piece of land can be economically developed for N.A. Purpose only by formation of well planned maximum number of smaller plots. Every plot in such a system will have similar amenities and therefore fixed rate for the area by comparing the land in this area prior to the date of notification

and after fixing the basic rate small plus or minus variation can be applied to individual plots depending upon its Area, Location, Situation, etc. The other land marks and important factors for deciding the market value area as under:-

- i) Level of plot in comparison with the surrounding area.
- ii) Probable cost of development.
- iii) Probable use of the plot.
- iv) Suitability as building site.

I observed the following things for fixing the market value of the land under reference:-

- a) The land under reference had N.A.potentiality due to inclusion in the sanctioned Regional plan for twin city.
- b) Market value is to be determined by taking this unique potentiality and hence, sale deeds of agricultural land are of no use.
- c) Due to rapid industrial development in an around the city, there was attractive demand for residential plots and industrial plots in and around Panvel town.

I examined some court decisions and comparing these lands with lands in question basic rate has been worked out for the entire area. Then individual piece of land are to be valued by giving the due allowance for situation, level cost of development, area suitability, as building site.

The land under reference was notified for acquisition in 1986 where as surrounding area was acquired long back in 1970 for purpose of development for twin city project.

Since this land had all potentials to get converted in to a non agricultural piece of land it can be directly comparable with the instances of lease in the surrounding area. Since the infrastructural facilities could be easily available on site the cost of development would also be much less.

Comparison method of valuation has been adopted here taking into consideration the sale instances and lease instances in the

adjoining area.

The lease instances from adjoining areas like Panvel, Kalamboli, Kalundra, C.B.D. Dronagiri etc. have been considered as the lands from all these villages except for gaothan, along with lands in Kaladhonda had been acquired by the CIDCO, and that the lands from Panvel, Kalamboli etc. were developed first as a strategy of phase wise planning. Here CIDCO was the only authority which could sell or lease out the lands. The lands in Kaladhonda have still not been developed by the Developing authority, and hence there are no lease instances from village Kaladhonda. Hence, the best available data for valuation is the lease instances in the adjoining nodes and the court awards.

As regards Uran area the I.O.T. Company has purchased certain lands for approach road from Dastan to Ransai Dam at Rs.600/- per square meter. The nature of the land was the same as was existing. At the time of acquisition the development of the road work was completed. The condition by C.I.D.C.O. Is said plot shall be used for Railway siding purpose only. No other construction of whatsoever nature wil be permitted on the said plot. All other taxes, charges, claims and outgoing chargeable against owner should be paid by the Indian Oil Tanking Limited.

The Government of Maharashtra agreed to pay Rs.30,000/- per acre as the land value for the land at Nava village which in Uran Tahasil with additional benefits. This rate is fixed for the lands notified in 1970.

In normal case a 10 percent per annum increase is reasonable in the common area where there is no authority developing the surrounding mass area where there is no huge project like J.N.P.T.”

25. The learned counsel for the claimants submits that even the valuer placed on record map Exhibit 35 showing the distance between the acquired land at Dongari and land involved in L.A.R.No.633 of

2000 from village Kaledhonda where the Reference Court awarded compensation @ Rs.500 per sq.mtr. He submits that the Reference court failed to consider that as the acquisition for New Bombay Project started in the year 1960 itself, no sale instance were available from same village. He submits that earlier Special Land Acquisition Officer issued notification under section 4 of the said Act for acquiring the land for said project in the year 1970. The said acquisition lapsed for non-compliance of provisions of the Act. Thereafter, again the Land Acquisition officer issued notification under section 4 of the said Act on 24.9.1986. Because of acquisition at large scale in the said area, sale instances were not available. He submits that these facts are also stated by the valuer in its deposition. He submits that considering all those facts and evidence on record, Reference Court ought to have awarded compensation in respect of acquired land @ Rs.1500 per sq.mtr.

26. The learned counsel for the claimants submits that our High Court in the matter of *State of Maharashtra vs. Shankar Vitthal Gulave and Anr. in First Appeal No.1310 of 2005 and connected matters by judgment July 2 and 6, 2015, MANU/MH/2035/2015* held that lands which were acquired from village Wadghar, Taluka Panvel, District Raigad by notification dated 24.09.1986 for New Bombay Project, claimants were entitled compensation @ Rs.1725/- per sq.mtr. He submits that in that oral judgment also the same issue was involved because sale instance were not available. Hence, Division Bench of this court relying on the earlier judgments and lease deed held that lands from village Wadghar should get compensation @

Rs.1725 per sq.mtr where the notification was issued on 24.09.1986.

Paragraph 23, 25, 26, 33 of that oral judgment reads thus:

“23. It will be necessary to consider the oral and documentary evidence on record as regards the location of the village Wadghar. On 3rd February 1970 and on 24th September 1986, the village Wadghar was not situated within the limits of the Panvel Municipal Council. However, the admitted position which was brought on record is that village Wadghar was separated from the Panvel Municipal limits only by a river.”

“25. It must be noted here that as on 3rd February 1970 and 24th September 1986, neither the village Roadpali nor the village Kalamboli were part of any municipal area. Whereas, as far as the village Wadghar is concerned, it was very close to municipal limits of Panvel Municipal Council. As compared to village Roadpali, the village Wadghar is much closer to Panval Municipal limits.”

“26. The Apex Court has repeatedly held that in determination of the market value of the acquired lands in accordance with section 23 of the said Act, some guess work is inevitable. However, the guess work is to be made on the basis of the well known tests and evidence on record.”

“33. In a normal course, the burden is always on the claimants in a Reference under section 18 of the said Act to prove that the market value offered by an Award under section 11 was inadequate. In this case, two sale instances in relation to the lands at Kalamboli were relied upon by the claimants on the basis of which enhancement in the market value has been granted by this Court in respect of the lands at village Roadpali which were notified on 24th September 1986. The burden has been discharged. Therefore, in the light of what is held by the Apex Court in the case of Ambaji Pardeshi, the market value

fixed for the acquired lands at village Roadpali will have to be fixed for the lands at village Wadghar.”

27. The learned counsel for the claimants also relies on the judgment of this court in the matter of ***Shri Dinkar Balu Bhopi vs. State of Maharashtra in First Appeal No.1082 of 2005 with Cross Objection Stamp No.9183 of 2009 dated 18.12.2012.*** He submit that in this matter also initially Special Land Acquisition Officer issued notification under section 4 of the said on 3rd February, 1970 for acquiring claimants land for New Bombay Project from village Jui-kamothe, Taluka Panvel, District Raigad. He submits that as the award under section 11 of the said Act could not be declared within time limit specified under the said Act, the notification under section 4(1) of the said Act lapsed. Therefore, a fresh notification under section 4(1) of the said Act was issued on 16th March, 1994. He submits that in this matter, the lands were situated at Village Jui-Kamothe, Taluka Panvel, District Raigad. He submits that this court considering the market value of lands at Panvel @ Rs.25 per sq.mtrs. fixed by the Division Bench in the matter of ***State of Maharashtra vs. Prakash Vasudeo Deodhar, (2008) 5 BLR 708*** in respect of notification under section 4 of the said Act dated 03.02.1970 and giving 10% rise per year held that claimants whose lands were acquired in the year 1994, were entitled compensation @ Rs.348 per sq.mtr. He relies on the paragraph 17, 18 and 19 which reads thus:

“17. In the facts of the case, the Apex Court after finding that the acquisition was as regards the land in rural areas, escalation of 7.5% per annum was taken. The Apex Court in Paragraphs 18 and 19 held that the logical and practical

appropriate method is to apply increase at a cumulative rate and not at a flat rate. We are conscious of the fact that in Paragraph 14 of the said decision, the Apex Court has made an observation that if the gap between the date on which earlier acquisitions have taken place and the date on which the current acquisitions have taken place is too long, the fixation of market value on the basis of escalation by percentage may not be very safe.”

“18. The Apex Court has repeatedly held that the fixation of market value under Section 23 of the said Act necessarily involves an element of guess work. In the peculiar facts of the present case, we cannot ignore that several decisions of this Court and even the decisions of the Apex Court have noted that there was acquisition of vast tracts of land in 96 villages of Thane and Raigad Districts right from the year 1970 onwards for setting up the satellite city of New Bombay. The Apex Court has noted that the development must have been started in a phase wise manner. In the present case, there is evidence that in the surrounding villages, in fact, the acquired lands were developed by the Special Planning Authority (CIDCO) and leases of developed plots were executed for 60 years at a premium at the rate of not less than Rs.3,000/per sq. meter. Thus, in case of developed plots of land in New Bombay, the market value has skyrocketed. Considering these peculiar facts, when there are no sale instances available of the same villages, the test adopted by the Apex Court will have to be applied though the gap between the two dates is wide. We may note here that similar test was applied by a learned Single Judge of this Court (Shri A.S. Oka, J) in First Appeal No.24 of 1995 (State of Maharashtra v. Shantaram Govind Tandel & Others) decided on 18th February 2011. This was a case where land acquired was situated in another village out of those 96 villages where the purpose was of setting up twin city of New Bombay . The date of Notification under Section 4(1) of the said Act was 24th September 1986. Based on the rate fixed in case of earlier acquisition of 3rd February 1970 for the same public purpose, this Court by taking escalation at 10% per annum on the cumulative basis fixed the market value as of 1986 on the basis of the price fixed as of 1970. This Court relied upon the

aforesaid decision of the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Limited (supra). When this Court specifically made a query to the learned AGP as to whether the State Government has accepted the said decision, on instructions, he This Court relied upon the aforesaid decision of the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Limited (supra). When this Court specifically made a query to the learned AGP as to whether the State Government has accepted the said decision, on instructions, he stated that the State Government has accepted the said decision."

"19. In the present case, as the acquisition is for setting up a satellite city of New Bombay, the rate of 10% per year which is the rate fixed by the Apex Court for semiurban areas can be safely adopted. Acquisition of most of the lands notified in the year 1970 was completed between the years 1982 to 1986. However, there is evidence on record to show that after the year 1986 onwards, in the surrounding areas, there was a large scale development as a result of which, the market value of the developed plots of land skyrocketed. Therefore, upto the year 1986, escalation can be taken at 10% per year on the cumulative basis. However, from 1987 onwards, the escalation will have to be taken at the rate applicable to urban areas i.e. 15% per annum. We had called upon the learned AGP to produce calculation made by taking escalation at the rate of 10% per annum from 1970 to 1986 and at the rate of 15% per annum from 1987 to 1994. As per the said calculation, the market value as of 1994 will be Rs.348/per sq. meter. The learned counsel appearing for the Appellant has checked the said calculation and has confirmed the correctness thereof. Therefore, we have no hesitation in holding that in the present case, the reasonable market value on the relevant date was Rs.348/per sq.meter."

28. The learned counsel for the claimants submits that the distance between the acquired land situated at Village: Dongari, Post-Bokadvira, Taluka Uran, District-Raigad and other important places is as under:

VILLAGE : DONGARI, POST-BOKADVIRA, TAL-URAN, DIST-RAIGAD

	LOCATION	DISTANCE
1	URAN MUNICIPAL COUNCIL	2.5 K.M.
2	MORA BUNDAR	4.5 K.M.
3	KARANJA BUNDAR	6 K.M.
4	GRAIDWEL NORTON LTD., INDIAN ABRESIVE O.N.G.C.	3.5 K.M.
5	M.S.E.B. GAS TERBINE PROJECT	2.5 K.M.
6	M.S.E.B. EMPLOYEE COLONY (WAYUSHAKTI NAGAR)	1.5 K.M.
7	J.N.PT. EMPLOYEE COLONY	2 K.M.
8	J.N.PT. PORT	7 K.M.

ALL THESE PROJECTS ARE BEFORE NOTIFICATION

1	ROADPALI	20 K.M.
2	PANVEL CITY	18 K.M.
3	C.B.D.BELAPUR	15 K.M.

29. The learned counsel for the claimants submits that recently the Apex Court in the matter of *Manoj Kumar vs. State of Maharashtra, (2017) 12 SCALE 731* lays down broad principles to be followed in the case of determination of the compensation. Paragraph 26 reads thus:

“26. This Court in *Chimanlal Hargovind Das v. Special Land Acquisition Officer, Poona and Anr.* : (1988) 3 SCC 751

has laid down broad principles to be followed in the case of determination of compensation thus:

“4. The following factors must be etched on the mental screen:

(1) A reference Under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

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

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

(5) The market value of land under acquisition has to be determined as on the crucial date of

publication of the notification Under Section 4 of the Land Acquisition Act (dates of notifications Under Sections 6 and 9 are irrelevant).

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

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

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

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

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

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be the as the norm and the market value of the land under acquisition may be

deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

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

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

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

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

30. On the basis of these facts and the law declared by the Apex Court, the learned counsel for the claimants submits that though the claimants have not brought on record sale instance from same village which were not available at that time, Reference Court ought to have decided market value on the basis of evidence given by valuer, valuation report and previous order in L.A.R from the same locality. Hence, judgment and award passed by Reference Court is required to be modified holding that the claimants are entitled compensation in respect of acquired land @ Rs.1,500/- sq.mtr. He submits that if cross-examination preferred by claimants is not allowed, irreparable loss will be caused to them.

31. On the basis of pleading and submissions made by both the counsel, following two points framed for determination in the present First Appeal.

<u>Points</u>	<u>Findings</u>
1) Whether State of Maharashtra has made out a case for interference in the judgment and award dated 21.12.2012 passed by Civil Judge Senior Division Alibag in L.A.R.No.634 of 2000 (Old L.A.R.No.280 of 1990).	Yes
2) Whether claimants have made out a case for No allowing their cross-examination holding that they are entitled compensation in respect of acquired land @ Rs.1500 per sq.mtr.	No

32. It is to be noted that in the present proceeding initially notification under section 4 of the said Act was issued on 3.2.1970 for acquiring claimants land for New Bombay Project to the extent of 29550 sq.mtrs as follows :

Survey No.	Hissa No.	Admeasuring Area H.R.	(Sq.mtr.)
8	4P	0-78-0 Varkas 1-76-0	25400
9	3	0-04-5	450
9	1	0-01-5	150
11	1	0-01-0	100
11	4	0-34-0	3400
3	1P	0-00-5	50
		Total	29550

33. The said notification was lapsed for non-compliance of supporting provisions i.e. declaration of award within time. Thereafter Special Land Acquisition Officer issued fresh notification under section 4 of the said Act on 24.09.1986. After following due process of law Special Land Acquisition Officer declared award under section 11 of the said Act on 24.09.1986 and awarded total compensation of Rs.90,024/- as under:

DETAILS OF VALUATION OF LAND AS UNDER:

1)	The Market Value of land	Rs.54,892.90
2)	Crops, Trees etc.	Rs. –
3)	Well and constructions	Rs. –

4)	Severance and damages	Rs. –
5)	Solatum at 30%	Rs.16,467.87
6)	Interest	Rs. –
7)	An additional component at the rate of 12% per annum from 25-11-86 to 24-9-89 i.e. 34 months	Rs.18,563.58
8)	Total amount of compensation payable	Rs.90,024.35
	i.e.	Rs.90,024.00
1)	Amount of advance already paid	Rs. Nil
	Net Payable	Rs.90,024.00

34. The claimants in support of his claim for enhancement entered into the witness box by filing affidavit of evidence (Exhibit 32). Though he stated that land is situated within the developed area, he specifically admitted in his cross-examination that on the date of issuing notification under section 4 of the said Act, he was cultivating the same. Not only that it is specifically stated by him in his cross-examination that even electricity and water was not available to the acquired land. He mainly relied on the evidence of Valuer in support of this contention for claiming compensation in respect of acquired land @Rs.1500 per sq.mtr.

35. The valuer Vikrant Manohar Vaidya filed his affidavit of evidence Exhibit 33. Though the valuer in his affidavit stated that land has tremendous potentiality, same is situated in developed area having all facilities, level piece of land, plain and well drained, surrounded by several developments, he failed to place on record any documentary evidence to that effect. In cross-examination, valuer specifically

admitted that revenue village Dongari was situated outside the limit of Uran Municipal Council. The same was included in the Gram Panchayat area. On the date of issuing notification, acquired land was in use as agricultural land. Water supply and electricity was not readily available to the land under reference. Distance between the land and the NH 4 Highway was about 25 kms. On the date of doing inspection in the year 1986 National Highway 4 was not in existence. Not only that valuer failed to place on record any supporting evidence for determining market value of acquired land @ Rs.1,500/- per sq.mtr. In valuation report, he relied on the previous awards in L.A.R. and also given important landmarks and its average distance which is as under:

Sr.No.	Imp Land marks	S.No.8	S.No.9	S.No.11	S.No.3
1	Uran city	1800M	1800M	1600M	2400M
2	Panvel town	1900M	1900M	1900M	1900M
3	J.N.P.T.	3200M	3000M	3000M	2400M
4	O.N.G.C.	2000M	2000M	2000M	2000M
5	Panvel Uran State highway	1400M	1400M	1400M	1200M
6	Kalamboli steel market	20000M	20000M	20000M	20000M
7	C.B.D.Belapur	16000M	16000M	16000M	16000M
8	Taloja Industrial Estate	26000M	26000M	26000M	26000M
9	Uran Industrial belt	2800M	2800M	2800M	2800M
10	Panvel Industrial Estate	18000M	18000M	18000M	18000M
11	Jawahar Industrial Estate	19000M	19000M	19000M	19000M
12	Panvel Uran Railway line	1600M	1600M	1600M	1400M

36. Valuer in its valuation report stated that in LAR No.633 of 2000, reference court awarded compensation @ Rs.500 per sq.mtr. for the land situated at Village Bokadvira in which notification under section 4 was issued on 14.10.1987, but he has not placed on record copy of the said award.

37. The valuer relied on common judgment dated 31.01.2011 passed by Reference Court in L.A.R. No.699 of 2000, 712 of 2000 and 779 of 2000. In that judgment notification under section 4 was issued on 24.09.1986 for acquiring the lands from Village Bokadvira, Taluka Uran, District Raigad. The Reference Court at the time of deciding those references relied on earlier references in L.A.R. No.700 of 2000, 711 of 2000, 588 of 2000, 408 of 2000 and 646 of 1995 from the same village. On the basis of previous judgment, the Reference Court decided in those LARs, holding that claimants in those L.A.R.'s are entitled compensation @ Rs.600 per sq.mtr. It is to be noted that the said judgment was passed only on the basis of earlier judgments. In similar way in another judgment and award being L.A.R.No.381 of 2000 Exhibit 39 and L.A.R.No.722 of 2000 Exhibit 40, Reference court decided matters on previous judgment. This shows that in both these matters, Reference Court decided market value of acquired lands only on the basis of previous references. Even in the case in hand, Reference Court has not discussed how the previous judgments in several references are applicable on the basis of quality, quantity situation and surrounding lands of the acquired lands.

38. It is to be noted that the Apex Court in the matter of *Manoj*

Kumar vs. State of Maharashtra (Supra), held that at the time of determining the market value of the acquired land on the basis of previous award, similarity and situation of the land is required to be considered. Paragraph 15, 18 and 20 reads thus:

“15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.”

“18. To base determination of compensation on a previous award/judgment, the evidence considered in the previous judgment/award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property.”

“20. In Printers House Pvt. Ltd. v. Mst. Saiyadan (dead) by L. Rs. and Ors. (1994) 2 SCC 133, A three-Judge Bench of this Court had considered the value of previous awards and sale exemplar to be similar. It observed:

“16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the 'price basis' for determination of the market value of the acquired land or the price fetched by the

nearest or closest of the comparable sales should alone form the 'price basis' for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. When several sale-deeds or previous awards are produced in court as evidence of comparable sales, court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefor.

17. If the sale is found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary notification under the Act in respect of the acquired land, the market value of which has to be determined, the court has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale or the market value determined for the land in the award could be taken by the court as the 'price basis' for determining the market value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason

that such 'price basis' may vary largely depending even on comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind, cannot be correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their acquired land, which are five in number, are not similar, in that, their location, size, shape vary greatly. One plot of land of one claimants and another plot of another claimants appear to be of one type. Another plot of land of one of them appears to be of a different type. Yet another plot of the second of them appears to be different. Insofar as third claimants's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of the claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their lands. The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration.

(emphasis supplied)

39. These facts are not considered by the Reference Court at the time of relying on the previous judgments and particularly LAR No.633 of 2000. Apart from the above mentioned facts Apex Court in the matter of ***Babibai Bapu Patil vs. The State of Maharashtra and Ors.*** (Supra), specifically held that the value of commercial plots cannot provide for a sale criteria for determination of compensation, that too without adequate deduction. In the case in hand, Reference Court

relied on the valuation report Exhibit 34 in which valuer relied on three lease instances for determining market value. Admittedly, the claimants failed to place on record any previous sale instances from Village Dongari, from where the land was acquired. Therefore, considering the guidelines and the broad principle laid down by the Apex Court in the matter of ***Chimanlal Hargovind Das v. Special Land Acquisition Officer, Poona and Anr. (Supra)***, we have to decide the market value of the acquired land, because initially notification was issued by the State Government in the year 1970 for acquiring the land in question. More than 45 years have passed and still litigation is pending for deciding the market value.

40. It is to be noted that judgment relied by the claimants in the matter of ***State of Maharashtra vs. Shankar Vitthal Gulave and Anr. (Supra)*** is not applicable in the facts and circumstances of the present case. In that case, lands were acquired from Village Wadghar and in the present case in hand from Village Dongari. There is no evidence on record about similarity between these two villages.

41. It is to be noted that Reference Court at the time of deciding the market value of acquired land mainly relied on the previous judgment in LAR No.633 of 2000 for land from village Kaledhonda in which notification under section 4 of the said Act was issued on 14.10.1987 and held that claimants are entitled compensation @ Rs.500 per sq.mtrs. Map Exhibit 35 shows that land in LAR No.633 of 2000 is from village Kaledhonda. Village Kaledhonda has railway facility as well as Panvel Uran State Highway and also has other amenities like

petrol pumps etc. whereas the Dongari village from where land in question is acquired does not have any facility of railway line and or highway and also, considering the distance on the basis of map Exhibit 35 being agricultural land, we are of the opinion that for determining the market value of the acquired land on the basis of previous judgment in LAR No.633 of 2000 reference court ought to have deducted some amount.

42. It is to be noted that admittedly, the acquired land was in use as agricultural. Not only that electricity and water supply was not available on that date. Same things were admitted by valuer as well as claimants in their deposition. Apart from that, claimants as well as valuer admitted in cross-examination that there was no development surrounding the acquired land.

43. It is to be noted that Apex Court in the matter of ***Chandrashekar v. Land Acquisition Officer (2012) 1 SCC 390*** held that upper limit of permissible deduction can be upto 75%. Considering the principle laid down by the Apex Court in the matter of ***Manoj Kumar vs. State of Maharashtra*** (Supra) and ***Chandrashekar v. Land Acquisition Officer*** (Supra), we are of the opinion that in the interest of Justice for determining market value of acquired land on the date of notification under section 4 of the said Act, in the case in hand, 60% deduction is required. Market value was determined by Civil Judge, Senior Division, Raigad at Alibag at the rate of Rs.500 p.s.m. in previous LAR No.633 of 2000 in which notification under section 4 was issued on 14.10.1987. Therefore, deducting 60% from Rs.500/- market value of acquired land

comes to Rs.200/- p.s.m. Hence, we pass following order:

- a) First Appeal is partly allowed.
- b) Cross-Objection is rejected.
- c) The impugned judgment and award passed by learned Civil Judge, Senior Division, Alibag in L.A.R.No.634 of 2000 (Old L.A.R.NO.280 of 1990) is modified holding that claimants will be entitled to the market value in respect of acquired land @ Rs.200/- p.s.m.
- d) In addition to market value of land, claimants are entitled to statutory benefits under section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894.
- e) Impugned judgment and award of reference court is modified on above terms.
- f) No order of cost in both the matters.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)