

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

FIRST APPEAL NO.1448 OF 2013

Shri Ramesh Baburao Bharvikar
since deceased Through his Legal
Heirs and Representatives:
1-A Smt.Meera Ramesh Bharvikar and Ors. .. Appellants

vs.

The State of Maharashtra and Anr. .. Respondents

WITH

FIRST APPEAL NO.503 OF 2014

The Commissioner,
Nashik Municipal Corporation, Nashik .. Appellant

vs.

Shri Ramesh Baburao Bharvikar
since deceased Through his Legal
Heirs and Representatives:
1-A Smt.Meera Ramesh Bharvikar and Ors. .. Respondents

Mr.P. N. Joshi with Ms.Rukmini Khairnar for the appellants in First Appeal No.1448 of 2013 and for respondent nos.1A to 1C in First Appeal No.503 of 2014

Mr.Murlidhar L. Patil for the appellant in First Appeal No.503 of 2014 and for respondent no.2 in First Appeal No.1448 of 2013

Mr.A.R.Patil, A.G.P for the respondent no.1 in First Appeal No.1448 of 2013 and for respondent no.2 in First Appeal No.503 of 2014

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

**RESERVED ON : JANUARY 16, 2018
PRONOUNCED ON : JANUARY 29, 2018**

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

1. Heard the learned counsel for the parties.
2. First Appeal No.1448 of 2013 is filed by the claimants challenging the judgment and award dated 18.04.2013 passed by 3rd Joint Civil Judge, Senior Division, Nashik in L.A.R. No.478 of 2010 holding that the claimants are entitled compensation in respect of acquired land @ Rs.4,400/- per sq.mtr. only.
3. First Appeal No.503 of 2013 is filed by the acquiring body challenging the same judgment and award passed by Reference Court for setting aside the same on the ground that Reference Court erred in coming to the conclusion that the respondents original claimants are entitled enhanced compensation in respect of acquired land @ Rs.4,400/- per sq.mtrs.
4. In the present proceeding, Special Land Acquisition Officer issued notification under section 126 (4) of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of the Land Acquisition Act for acquiring claimants land admeasuring 1H. 41R (14100 sq.mtrs) out of land Survey No.21/1 situated at Wadala within the limits of

Nashik Municipal Corporation for the purpose of Hospital, park / play ground, high school and D.P. Road. The said notification was published in the Government Gazette on Maharashtra 26.11.2009, in two local newspapers on 30.11.2009 and 28.11.2009 and on the notice board in the office of Talathi and Tahsildar on 14.12.2009.

5. After following due process of law, Special Land Acquisition Officer issued notices under section 9 of the Land Acquisition Act to the interested persons, but nobody had put forth any objection. The Special Land Acquisition Officer in LAQ Case No.51 of 2004, on 25.3.2010 declared the award. The Special Land Acquisition Officer considered that the acquired land is situated in developed residential zone, and has Non-Agricultural potentiality. The Special Land Acquisition Officer considered as many as 10 sale instances. As per sale deed 6.2.2008 in respect of plot no.3 admeasuring 211.50 sq.mtrs. out of adjoining land survey no.20/1, has been sold @ 3995/- per sq.mtr, and relying on the said sale-deed by applying hypothetical lay out method, and after considering the expenses requires for development fixed the land value @ Rs.1480/- sq.mtr. for the acquired land. The Special Land Acquisition Officer also awarded additional compensation in respect of acquired land as per amended provisions of Land Acquisition Act 1994 (Amended as per Act 68 of 1984 w.e.f. 24.09.1984)

6. Being aggrieved by the said award, the claimants preferred reference under section 18 of the Land Acquisition Act for enhanced compensation in respect of the land @ Rs.6000/- per sq.mtrs. The claimants also claimed sum of Rs.43,20,000/- on account of severance

and injurious affection for remaining land admeasuring 720 sq.mtr. As the said reference was within time, Special Land Acquisition Officer forwarded the same to the Reference Court for deciding on its own merits. Special Land Acquisition Officer filed its written statement at Exhibit-6 and resisted the claimants reference application under section 18 of the said Act for additional compensation. They also raised several objections in the written statement about maintainability of the reference on the ground that the claimants accepted the compensation without any protest. They further objected to the compensation claimed by the claimants @ Rs.6000 per sq.mtr. on the ground that claimants failed and neglected to place on record any documentary evidence before the Special Land Acquisition Officer at the time of passing the award under section 11 of the said Act.

7. The acquiring body also filed their written statement at Exhibit-8 and denied that the claimants are entitled for compensation @ Rs.6000 per sq.mtr and additional compensation amount of Rs.43,20,000/- for severance and injurious affection for 720 sq.mtrs. According to the acquiring body, Special Land Acquisition Officer has made reasonable deductions on account of sale instance being in respect of small and developed plot as compared with the acquired undeveloped and large tract of land. The acquiring body also denied that the claimants carried out development in the acquired land. They also denied that the acquired land was already developed and surrounded by various residential commercial and educational buildings.

8. On the basis of these grounds, acquiring body as well as the state

opposed the application filed by the claimants under section 18 of the said Act for enhancement in compensation in respect of acquired land.

9. Claimant no.1A, Meera Ramesh Bharvikar examined herself as P.W.No.1 at Exhibit-15. The claimants filed copy of the award passed in LAQ case No.51/2004 at Exhibit-64, map of development at Exhibit-44, 45, 7/2 extract of the acquired land at Exhibit-67, 7/12 extract of other lands situated in the locality of acquired land at Exhibit-18 to 42, sale instances dated 1.9.2005 in respect of plot no.1 out of land survey no.15/4 at Exhibit-46, sale instance dated 6.9.2008 of plot no.3 out of survey no.20/1 at Exhibit-47, sale instance dated 28.7.2008 of plot no.7, out of survey no.21/2 at Exhibit-48, sale instance dated 19.6.2009 of plot no.21 out of land survey no.33/1, 32/1 and 32/2 at Exhibit-49, sale instance dated 1.10.2009 of plot no.13, 14 and 15 out of survey no.29/4/3+4+5+6 at Exhibit-50, sanctioned lay out plan Exhibit-58, 62, 59 in respect of land survey no.20/1, 21/2, 29/4/3+4+5+6, hypothetical unapproved lay out at Exhibit-54, copy of joint measurement plan Exhibit-57 and sale- instance dated 6.8.2012 at Exhibit-43 to show the increased trend.

10. The Special Land Acquisition Officer and acquiring body filed pursis Exhibit-61 and 63 and informed that they do not want to lead any evidence. Reference Court considering the evidence on record framed following issues for its determination.

<u>Sr.No.</u>	<u>Issues</u>	<u>Findings</u>
1.	Whether present claim petition is preferred within the period of limitation?	Yes

2.	Does the claimant prove that, the compensation amount awarded by the Special Land Acquisition Officer, is inadequate?	Yes
3.	Is the claimant entitled for enhanced compensation amount? If yes, what is the quantum?	Yes, as per final order.
4.	What order and award?	As per final order.

11. After considering the evidence on record, the Reference Court relied on the sale instance of land survey no.21/2 Exhibit-48 dated 28.7.2008 in respect of plot no.7 area 173.5 sq.mtrs. out of remaining portion of acquired land survey no.21/2 sold for a consideration of Rs.9,00,000/- i.e. @ 5187/- per sq.mtrs. After giving 20% increase from 28/07/2008 till 14.12.2009 (for one year and four months total increase 26.66%) held that claimants are entitled additional compensation in respect of acquired land @Rs.6,570/- per sq.mtrs. after deductions of development charges i.e. @ Rs.4,400/- per sq.mtrs. with additional benefit as per amended provisions of the said Act.

12. The Reference Court rejected claimants claim to the tune of Rs.43,20,000/- towards severance and injurious affection in respect of remaining land admeasuring 720 sq.mtrs. on the ground that the said plot of land was sold by the claimants on 6.8.2012 @ Rs.12500 per sqm.trsr. (Exhibit-43).

13. Being aggrieved by the the Judgment and Decree passed by the Reference Court as stated hereinabove, the claimants preferred the present First Appeal No.1448 of 2013 for additional compensation in

respect of acquired land @ Rs.1600 per sq.mtrs. i.e. total compensation @ Rs.6000 per sq.mtrs. on the ground that the Reference Court failed to consider the evidence on record and sale instance particularly at Exhibit-46 dated 1.9.2005, Exhibit-47 sale deed dated 6.9.2008 Exhibit-49 sale deed dated 19.6.2009, Exhibit-50 sale deed dated 1.10.2009 and Exhibit-43 sale deed dated 6.8.2012 at the time of fixing the market value.

14. The learned Counsel for the claimants submits that the learned Judge having accepted and held that the land under acquisition was situated in highly developed area and having observed that it has tremendous non agricultural potentiality and also having observed that there was a rising trend of land price, in respect of the land in that area has committed error in not granting entire claim of Rs.6000 per sq.mtr. as claimed by the claimants. He further submits that the Reference Court was in error in considering the judgment reported in ***Uddho Das vs. State of Haryana, 2010 (LAC) - 742*** which considered as to how much rise for land revenue to be granted every year in respect of non-agricultural potentiality in urbanised and commercial area. He submits that there was an error on the part of Reference Court to grant only 20% of the rise when admittedly there was high commercial potential in the land which was situated in commercial area in developed city like Nashik having Municipal Corporation. He submits that the amount of percentage of rise should have been much more than 20%. He further submits that the learned Judge having accepted sale instance at Exhibit-48 has committed serious legal error in making huge deduction at the time of fixing market value of the acquired land to the extent of

33% and awarded only @ Rs.4400 per sq.mtrs. He submits that the Reference Court ought to have held that the lands were situated in developed area and that the other facilities were also available in acquired land. Therefore, even nominal development charges and or deduction on account of smaller plots as against larger plots should have been done by the learned Judge.

15. The learned Counsel for the claimant submits that considering the evidence on record, the Reference Court erred in rejecting the claimants claim to the extent of Rs.43,20,000/- in respect of remaining 720 sq.mtrs. land for severance and injurious affection under section 23(fourthly) of the said Act. He submits that the Reference Court failed to consider the material fact that acquiring body acquired large portion of land from Serial No.21/1 i.e. to the extent of 1H 41R i.e. 14100 sq.mtrs. leaving small portion of land to the extent of 720 sq.mtrs. He further submits that in respect of severance and injurious affection for 720 sq.mtrs. claimants specifically brought on record evidence, that, it is not possible for them to develop the said plot of land independently and same is not going to fetch the market value. Hence, Reference Court ought to have awarded compensation of Rs.43,20,000/- to the claimants in respect of 720 sq.mtrs. plot of land towards severance and injurious affection.

16. The learned Counsel for the claimants relied on the judgment of the Apex Court in the matter of *Bhagwathula Samanna Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, 1991(4) SCC 506* in which the Apex Court held that in

fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the large tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. Even in applying the principle of deduction it is necessary to consider all relevant facts. It is also held in this authority that it is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed land with amenities of road, electricity etc. the deduction in the value of the comparable land is not warranted. He submits that in the case in hand, the acquired body acquired 3700 sq.mtrs. land for hospital, 4700 sq.mtrs. of land for play ground, 4800 sq.mtrs for high school and 900 sq.mtrs. for D.P road. He submits that on the basis of the Supreme Court decision in the matter of ***Bhagwathula Samanna Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*** (Supra) the Reference Court erred in coming to the conclusion that 33% is required to be deducted even from land which was acquired for play ground and D.P. road. He submits that there is no question of any development charges in respect of the land acquired for play ground and D.P. road. Not only that the acquired land was situated within the developed area and same is admitted even by Special Land Acquisition Officer in its award. The Reference Court erred in coming to the conclusion that the deduction to the extent of 33% is required for determining the market value of acquired land. Hence, to that extent, the judgment and award passed by Reference Court in respect of deduction is required to be set aside. In support of this principle, the learned Counsel for the claimants also

relied on the judgment in the matter of ***Viluben Jhalejar Contractor (D) by Lrs. vs. State of Gujarat, 2005(4) SCC 789***. Paragraph 32 of the said authority reads thus:

“32. We have noticed hereinabove that the purpose for which the land is acquired must also be taken into consideration. In the instant case, the lands were acquired because they were to be submerged underwater. The land would not have any potential value. The development of area where the land was situated had stopped. On the other hand, the development began on the other side of River Suki. The parties were aware of the consequences of the project undertaken by the Government of Gujarat. The sale instances, for comparison, having regard to the nature and area of the land carves out a distinction, inasmuch as the area sold under Ext.145 is 46.30 square metres while two plots under acquisition measures 18,528 metres and 10,993 square metres respectively. We, therefore, are of the opinion, having regard to the entire facts and circumstances of this case that interest of justice would be subserved if compensation is determined at the rate of Rs.160 per square metre for the large plots and Rs.175 per square metre for the small plots.”

17. The learned Counsel for the claimants also relied on the unreported judgment of this court in the group of matters i.e. ***First Appeal No.486 of 2000 along with other connected matters State of Maharashtra vs. Dnyaneshwar Disanrao Phadtare dated 8.10.2008 (Coram: Swatanter Kumar, C.J. and A.P.Deshpande, JJ.)***. Paragraph 12 and 13 of the judgment reads thus:

“12. Equally true is the principle that it is not always necessary for the Court to apply certain deductions to the compensation awarded to the Claimants of the land. It is undisputed that all

the Claimants are owners of small pieces of land and they are to be compensated on the basis of the price of their land and the mere fact that the State Government has chosen to acquire larger chunk of land be per se would not diminish the value of the respective lands.

13. It is a matter of common knowledge that there are hardly money transactions relating to sell of larger piece of land at villages. Normally, the lands bought and sold are of comparatively small sizes. The rights of the Claimants have to be determined vis-à-vis the lands that they own and possess. In the absence of evidence to the contrary, the claim put forward by the Claimants appear to be reasonable and it may not be necessary to apply deductions to the price indicated in the sale instances. A reference can be also be made to a judgment of the Division Bench of this Court in the case of The State of Maharashtra vs Santaram Mahadu Pingle and others, 2008 (3) Bom. C.R. 715, where the Court observed :

“The Supreme Court has consistently held that the Court should apply principle of deduction on the basis of the sale instances of small piece of lands. Reference can be made to the judgment of the Supreme Court in the cases of (i) Krishi Utpadan Mandi Samiti Sahaswan, District Badaun vs Bipin Kumar and another, (2004) 2 SCC 283, and (ii) Lucknow Development Authority vs Krishna Gopal Lahoti and others, 2007 (12) SCALE 685. Element of discretion has been vested in the Courts while determining the extent of deduction that could be applied in such cases. In the case of Atma Singh vs State of Haryana, (2008) (2)SCC 568, the Supreme Court held that it is not mandatory to apply deduction on the ground of sale instances being of small plots but it will have to be determined on the facts of each case.”

18. On the basis of these submissions and the authority, the learned Counsel for the claimants submits that the impugned judgment and award passed by the Reference Court is required to be modified to the

extent that the claimants are entitled compensation in respect of acquired land @Rs.6,000/- per sq.mtrs.

19. The acquiring body filed First Appeal No.503 of 2014 challenging the additional compensation awarded by Reference Court in respect of acquired land. The learned Counsel for the acquiring body submits that the Reference Court erred in awarding additional compensation to the claimants in respect of acquired land though the claimants failed and neglected to place on record any relevant documents, sale deed to that effect. He submits that learned Judge failed to consider that the compensation awarded by the Special Land Acquisition Officer was just and proper and was awarded after considering the relevant sale instances. He submits that at the time of awarding enhanced compensation in respect of the acquired land, Reference Court erred in relying upon the sale instance Exhibit-48 dated 28.07.2008 which was in respect of small plot of land admeasuring 173.50 sq.mtrs being plot number 7 out of survey no.21/2 which was fully developed plot and was part and parcel of sanctioned lay out. He submits that the Reference Court erred in holding that the market rate of acquired land was 6570 per sq.mtr relying upon the sale instance Exhibit-48 wherein sale price was 5187 per sq.mtr. only. He further submits that Reference Court erred in making only 33% deduction from the market rate of 6570 per sq.mtr. in respect of sale instance at Exhibit-48, which should have been on higher side. He submits that Reference Court ought to have made deduction at 40% initially towards the compulsory open space, colony roads etc. and further towards the expenses of development such as architect fees, advertisement expenses, cost of

construction of internal colony roads, drainage lines and installation charge for electricity board transformers.

20. The learned Counsel for the acquiring body submits that Reference Court failed to consider that the acquired land was about 14,100 sq.mtrs. and therefore the sale instance in respect of very small developed plot in a sanction layout and developed land cannot be the basis for arriving at the market rate in respect large area of land. He submits that the Reference Court having held that the claimants had not produced any sale instances of the large pieces of land comparable to the acquired land, ought to have dismissed the reference application. He submits that Reference Court failed to consider the fact that at the time of deciding the market value of larger plot of land, sale instance in respect of small plot land cannot be considered and if it is considered, there shall be deduction not less than 40% of the total area. In support of this contention, he relies on the judgment of the apex court in the matter of ***Vithal Rao and Ors. vs. Special Land Acquisition Officer, 2017 (8) SCC 558***. In this authority, the Apex Court held that the percentage of deduction would operate from 10% to 86% and therefore, deduction should be made keeping in mind the nature of land, area under acquisition, whether the land is developed or not and if so, to what extent, purpose of acquisition etc. while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands, when sale deeds of larger parcel of land are not available. Paragraph 29 and 30 of this authority reads thus:

“29. In addition to these principles, this Court in several cases have also laid down that while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified Under Section 23 of the Act. (See Trishala Jain and Anr. v. State of Uttaranchal and Anr., (2011) 6 SCC 47.”

“30. Keeping the aforementioned principles in mind when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (30 acres approx.); Secondly, the purpose of acquisition is "Establishment of Rehabilitation Centre"; Thirdly, it is situated within the municipal limits; Fourthly, its one side is abutting the main district road (MDR); Fifthly, it is not fully developed; Sixthly, some buildings have come up in its near proximity; Seventhly, the Appellants (land owners) have not filed any exemplar's sale deeds relating to large piece of land sold in acres to prove the market value of the acquired land; Eighthly, all sale deeds relied on by the Appellants pertain to very small piece of land such as, 25x55ft., 40x20ft., 40x40ft, 12x45ft, 30x40ft., 12x45ft, 60x60ft, 10x65ft, 50x65ft., 40x65ft. and 29x49ft. whereas the

land acquired, as mentioned above, is quite large (30 acres) and, the price at which these small plots were sold is Rs. 85/- per sq. ft., Rs. 70/- per sq. ft., Rs. 80/- per sq. ft., Rs. 69/- per sq. ft., Rs. 55/- per sq. ft., Rs. 64/- per sq. ft., Rs. 65 per sq. ft., Rs. 100/- per sq. ft., and Rs. 218/- per sq. ft.,; Ninthly, these eleven plots were sold prior to the date of acquisition (2000, 2001 and 2002) whereas the acquisition was in the year 2003; Tenthly, the small parcel of lands sold under these sale deeds are situated in near proximity of the acquired land and some were part of the acquired land; Eleventhly, all the eleven sale deeds are held bona fide and proper and lastly, these sale deeds, therefore, can be relied on for determining the proper market value of the acquired land.

21. On the basis of these submissions and the authority, the learned Counsel for the acquiring body submits that the judgment and award passed by the Reference Court granting enhanced compensation in respect of acquired land in favour of claimants is required to be set aside and the award passed by Special Land Acquisition Officer is required to be upheld. He submits that if First Appeal filed by the acquiring body is not allowed, irreparable loss will be caused to them as they acquired the land for public purpose only.

22. The learned A.G.P. for the State of Maharashtra in both the matters submits that Reference Court failed to consider the fact that claimants failed and neglected to place on record any relevant documents to show that they are entitled enhanced compensation in respect of acquired land @ Rs.4400/- per sq.mtr. He further submits that though the Reference Court at the time of deciding the market value of land relied on the sale instance in respect of sale deed dated 28.07.2008 Exhibit-48, failed to deduct at least 30% towards smallness of plot involved in sale instance for determining the market value of

acquired land. He further submits that Reference Court ought to have deducted additional to the extent of 1/3rd towards development charges. He further submits that acquired land was reserved for public purpose. Hence claimants are not entitled market value under the Land Acquisition Act. He submits that these facts were not considered by the Reference Court at the time of passing impugned judgment and award. Hence, same is required to be set aside and upheld the award passed by Special Land Acquisition Officer.

23. We have heard both the sides at length. We have gone through the record and proceeding in both the matters. We have gone through the evidence produced by claimants, sale instance and other documents on record. Considering the submission made by both the sides at length, the point arise before us is “whether the claimants and acquiring body made out a case for interference in judgment and award passed by Reference Court?”

24. Special Land Acquisition Officer in its award dated 25.3.2010 given a description of the acquired property in paragraph 9. It is specifically stated in that award that surrounding was partly developed. Before the Reference Court, claimants produced following sale instance for additional compensation in respect of acquired land.

S. No.	Block No.	Date	Rate on Sale Deed	Rate on Notification adding 20% p.m.	Exhibit	Increasing Trend
1.	15/4	09/02/2005	905/-	1,810/-	46	
2.	20/1	06/02/2008 (Sale Deed) 08/05/2007 (Agreement)	3,995/-	6,059/-	47	150%

3.	21/2	28/07/2008	5,187/-	6,570/-	48	20%
4.	32/2	19/05/2009	6,114/-	6,725/-	49	35%
5.	29/4	01/10/2009	6,818/-	6,818/-	50	40%
6.	21/1	06/08/2012	12,500/-	12,500/-	43	30%

25. Bare reading of this chart shows that the best relevant sale instance for determining the market value of acquired land is Exhibit-48 i.e. sale deed dated 28.7.2008 from S.No.21/2. This sale instance is in respect of land which was part and parcel of acquired survey number. Therefore, this can be treated as best sale instance for deciding the market value of acquired land. It is to be noted that the Apex Court in the matter of ***Shakuntalabai (Smt.) and Others vs. State of Maharashtra (1996) 2 SCC 152*** held that in a case where evidence of the value of the acquired land itself is available on record, it is necessary to travel beyond that evidence for fixing valuation of land. Paragraph 4 and 5 of this authority reads thus:

“4. The question, therefore, is whether the High Court has committed any manifest error of law or had applied any wrong principle of law in determining the compensation and whether its failure to consider Ex.38 and 44 does make any difference. Having given our consideration to the contention of Shri Mohta, We think that the High Court had not committed any manifest error of law omitted to apply any correct principle of law. It is seen that if there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated. The need to take into consideration the value of the lands adjacent to the acquired land or near about the area which possessed same potentiality to work out the prices fetched therein for determination of market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where evidence of the value of the acquired land itself is available on

record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands. As stated earlier, though Ex.38 and 44 might command different market value to the land situated in approved lay-outs, since the appellant himself had purchased the self-same acquired lands in 1957 at Rs. 10,000 for the entire 20 acres of land, the High Court was right in its view to consider the very same evidence to determine the compensation to the acquired land. On the assessment of the increase in the value by 10 times, the High Court had accepted that assessment of the appellant himself as PW-9 and upheld the award of the Land Acquisition Collector since it reflects the same price as granted in the award under Section 11.”

“5. It is seen that the Reference Court blissfully overlooked the admission of the owner surmise that it is an estimate made by the claimant and the evidence of the sale deeds under ex. 38 and 44 being prevailing prices, it acted thereon and determined the compensation. The approach of the Reference Court is clearly illegal and that of the High Court is quite correct and it was the only way in which the market value could be determined on the face of the evidence on record. The Reference Court committed manifest error in determining the compensation on the basis of sq. ft. When lands of an extent of 20 acres are offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider the valuation sitting on the arm chair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feats of imagination is necessary to reach the conclusion. The answer is obviously No. This aspect of the matter was totally ignored by the Reference Court and mechanically accepted the two sale deeds to enhance the compensation at a value of nearly Rs. 35,000 per acre. In *State of M.P. v. Santabai and Ors.* 1995 Supp (2) SCC 28 and *V.M.Salgoankar & Brother Ltd. v. Union of India* (1995) 2 SCC 302, this Court had accepted the principle that when the owner himself has purchased the land under acquisition, the consideration mentioned in the sale deed would form the basis

to determine the market value. Though the High Court has relied on the sale deeds under Ex.65 and 66 relating to the lands in Nityanand Nagar Colony, it is also necessary to go into that aspect of the matter in the view we have stated above.

26. Our High Court in the matter of ***Gleitleger (India) Private Ltd. Bombay v. Special Land Acquisition Officer, Thane, (1979) Mah. L.J. 494*** held that for determination of market value of the acquired land recent sale of property in question itself is best evidence if there is no appreciable rise or fall since then and nothing done in interval to raise the value. Paragraph 25 reads thus:

“25. The learned Government Pleader referred to (Gulam Hussein Ahmed Somaji and others vs. Land Acquisition Officer, South Salsettle Bandra, AIR 1928 P.C. 305, K.P. Frenchman v. The Assistant Collector Haveli, 24 BLR 782, N.C. John's Trust Alleopay v. State of Kerala and others, AIR 1958, Ker. 166. An unreported decision of this Court in F.A.No.655 of 1964, decided on 29-4-1976, to which my brother Vaidya J. was a party) to show that in any event the claimants cannot receive more than what they had paid for the acquired lands. It is not necessary to refer to these authorities as statement of law is lucidly pronounced by Their Lordships of the Supreme Court in the Dollar Company, Madras v. Collector of Madras, AIR 1975 SC 1670 wherein it is said :

“An actual transaction with respect to the specific land of recent date is a guidebook that Courts may not neglect when called upon to fix the precise compensation. The best evidence of the value of property is the sale of the very property to which the claimant is a party. If the sale was of recent date, then all that need normally be proved is that the sale was between a willing purchaser and a willing seller, that there has not been any appreciable rise or fall since and that nothing has been done on the land during the short interval to raise its value. Price paid by

the owner recently represents an expression of market value, a bonafide evidence of value, subject to such matters as (a) the relationship of the parties: (b) the market condition and the terms of sale and (c) the date of sale. It may not end the enquiry but goes a long way to solve the problem.”

Applying these principles to the case before us it is true that the instance of sale of November 1964 was of more recent time in view of the acquisition of the land in April 1965 and therefore it would have gone a long way to assist us in fixing the fair compensation. For the reasons indicated before we are unable to place reliance on these transactions. Therefore, the claimants are not entitled to be paid at the rate of Rs.5 per square yard.”

27. The Trial Court at the time of deciding the market value of acquired land gave 20% increase per year for considering sale deed dated 28.7.2008 (Exhibit-48). On the basis of 20% per year increase, the Reference Court gave total increase of 26.66% for one year and four months i.e. from 28.7.2008 till 14.12.2009. Hence, Reference Court held that market value of acquired land, to be Rs.6,570 per sq.mtr. Reference Court gave deduction on the basis of large tract of land and towards development charges. Actually the Reference Court has given only 23% deductions on account of open space, internal colony road and M.S.E.B Transformer and additional 10% increase for development charges @ 100 per sq.mtr. It is to be noted that if market value is determined on the basis of developed plot of land then we have to consider the deduction which is required to compare with the developed plot of land, though the land was situated in developed area. Special Land Acquisition Officer specifically stated in its award in paragraph 9 that land was not fully developed. That means for

comparing the sale instance of fully developed area, it required some deduction and also development charges. The acquired land is to the extent of 14100 sq.mtrs. whereas the sale instance at Exhibit-48 is in respect of 173.50 sq.mtrs. only. But the said sale instance Exhibit-48 was from the same survey number. Therefore, that is the best sale instance to consider at the time of fixing the market value. The Trial Court has already given 20% increase of market value per year. It is to be noted that the Apex Court in the matter of *Land Acquisition Officer vs. Nookala Rajamallu and Ors., 2003(12) SCC 334* held that deduction of development charges can be made upto 53%. Even in the matter of *Kasturi and Ors. vs. State of Haryana, 2003(1) SCC 354* held that 1/3rd deduction is required to be made towards development charges. The Apex Court in the matter of *Special Land Acquisition Officer and Anr. vs. M.K. Rafiq Sahe, 2011(7) SCC 714* allowed deduction to the extent of 50% though the acquired land was surrounded by developed area.

28. Considering the evidence on record and the law declared by the court from time to time, we are of the opinion that Reference Court rightly relied on sale instance Exhibit-48 for determining the market value of acquired land by giving only 33% deduction and held that claimants are entitled compensation in respect of acquired land @ 4400 per sq.mtrs.

29. Though the learned Counsel for the claimants vehemently argued that Reference Court ought to have taken into account the rise in the market value at the time of deciding the compensation payable

to the claimants in respect of acquired land, but claimant failed to place on record any relevant documents and or evidence to that effect. The claimants in their evidence just stated that in the locality from which the land was acquired, pricing were increasing from day to day. They failed to place on record any documentary evidence to that effect. Actually the prices were increased after the acquisition only. It is clear from Exhibit-43 i.e. the sale instance dated 6.8.2012 from plot no.21/1 (from acquired survey number) price were increased tremendously. In 2012 claimant sold remaining plot of land @ Rs.12,500 per sq.mtr. Claimant has not placed on record any cogent evidence to show the increase of price in that locality upto the date of issuing notification for acquisition of land. Therefore, there was no error on the part of Reference Court not to consider sale deed at Exhibit-43 in determining the market value of acquired land.

30. Considering the principle laid down by the courts from time to time, we are of the opinion that the Reference Court after considering the evidence on record correctly held that claimants are entitled compensation in respect of acquired land @ 4400 per sq.mtrs.

31. Apart from this even the acquired body failed to enter into witness box to show the market value of acquired land on the date of issuing notification for acquisition. They failed to place on record any sale instance and or documents to justify the market value awarded by Special Land Acquisition Officer as per its award under section 11 of the land acquisition Act. Hence, acquiring body failed to justify for setting aside the impugned judgment and award passed by reference

court.

32. In view of the above mentioned facts and the authorities, we are of the opinion that First Appeal preferred by claimants as well as acquiring body is required to be dismissed with no order as to costs. Hence, following order is passed:

- a) First Appeal No.1448 of 2013 preferred by claimants as well as First Appeal No.503 of 2014 preferred by acquiring body stands dismissed.
- b) No order as to costs.
- c) Interim relief, granted earlier stands vacated and the claimants are entitled to withdraw entire amount without furnishing any security after the appeal period is over.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)