IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.21 OF 2013

Shri Ashwin Ramaniklal Gosalia (Deceased)
Through Legal Heirs :
Smt. Sheela Ashwin Gosalia & Ors. … Appellants

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. Rajesh S. Patil for the Appellant
Mr. G. S. Hegde with C. M. Lokesh i/b. G. S. Hegde & Associates for Respondent No.3.
Mr. A. R. Patil, AGP for Respondent Nos.1 and 2.

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

JUDGMENT RESERVED ON : FEBRUARY 21, 2018
JUDGMENT PRONOUNCED ON : MARCH 1, 2018

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

1. Heard the learned counsel for the parties. By this appeal, the claimants are challenging the judgment and award dated 12.09.2012 passed by the Civil Judge, Senior Division Palghar in LAR No.1/2012 (Old LAR No.5/1988) awarding compensation in respect of the acquired land @ Rs.36 per sq.mtr. for 4500 sq.mtr. land, Rs.24/- per sq.mtr. for 13200 sq.mtr. land and Rs.18/- per sq.mtr. for 32150 sq.mtr. land instead of @ Rs.300/- per sq.mtr. as claimed by the claimant in Reference u/s.18 of the Land Acquisition Act, 1894 (said Act).

2. In the present proceedings, the Special Land Acquisition Officer issued Notification u/s.4 of the said Act for acquiring claimants' land admeasuring 5H 20R from Sy.No.102 Hissa No.A/1 of village Bosiar Tq. Palghar, Dist. Thane for Bus Station and Depot. The said Notification u/s.4 was published in official gazette on 16.09.1682. In 1985 individual notices were issued to the claimants. In the meanwhile the claimants made representation to the State Government for releasing their property from acquisition. On their representation the Government released 1H 1.5R from the acquisition. The Government had decided to acquire total area of 49850 sq.mtr. only. Pursuant to the Notice u/s.9(3)(4) of the said Act, the claimants submitted their claim by letter dated 07.07.1986 before the Land Acquisition Officer, Thane and claimed compensation @ Rs.300/- per sq. yard aggregating to Rs.1,92,48,000/-, Rs.2,49,44,708/- towards loss which they suffered and for road development along with 30% solatium and component. In aggregate the claimants made their claim before the Special Land Acquisition Officer to the tune of Rs.3,74,94,754/-.

3. After considering the evidence on record the Special Land Acquisition Officer declared the award dated 10.09.1987 and awarded sum of Rs.8,81,250/- towards the land value and Rs.56,795/- for structure. The Land Acquisition Officer in his award dated 10.09.1987 (Exhibit-104) described the land as under:

> ***"4. Situation and Description:***
>
> *The land under acquisition has been inspected by me on 11.11.1986. The land is situated in the north side of Boisar –*

Tarapur Road. it is very near from Boisar Railway Station on western Railway Line. The same is also near Tarapur MIDC estate and this area is developing very fast. There are two pacca construction, three huts and one latrine in the land under acquisition and the Executive Engineer has valued these constructions for Rs.56795.00"

4. The Special Land Acquisition Officer at the time of determining the value of the acquired land relied upon five sale instances and fixed the market value of the acquired land on the basis of the belting system. Paragraph 8 of the award reads thus:

8. Valuation *: The sale statistics have been obtained from Talathi Bosiar on 20.02.86 and again on 11.11.86. There are only five sales of 1980 which are noted in the sales statistics as under:*

<table>
<tr><th>M.E.No.</th><th>Date of Transaction</th><th>S.No. H.No.</th><th>Area in sq.mtrs.</th><th>Cost of lands Rs.</th><th>Average rate per sq.mtr. Rs.</th></tr>
<tr><td>1) 1613</td><td>29/09/80</td><td>138 pt</td><td>76</td><td>18499/-</td><td>243.40</td></tr>
<tr><td>2) 1623</td><td>11/07/80</td><td>53 pt</td><td>158</td><td>9000/-</td><td>57.00</td></tr>
<tr><td>3) 1647</td><td>28/10/80</td><td>142/3pt</td><td>76</td><td>11000/-</td><td>144.00</td></tr>
<tr><td>4) 1688</td><td>28/10/80</td><td>108 pt</td><td rowspan="2">1568</td><td>20000/-</td><td>33.60</td></tr>
<tr><td>5) 1758</td><td>28/12/80</td><td>25/2
26/4</td><td>120000/-</td><td>76.53</td></tr>
</table>

Sales of 1981 to 1983 are not appearing in the said sale statistics. The sales of lands of this village are noted on the village map of Boisar and the said map is kept in this file. The above five sales are the sale of N.A. lands of village Boisar which are very high. The purchase rate of land under acquisition by the trust from Mrs. Irani comes to Rs.37.33 per sq.mtr. This land is situated in the heart of village Boisar and is very near to Boisar Railway Station as well as near the MIDC area of this village. This land is having normal level and is plane and can be utilized for any work immediately.

Though the land is touching to Tarapur Boisar Road, the frontage of the site is small one. The land is spread over from east to west. The frontage of the land is only nearly 30 mtr. Though the trust had purchased this land at Rs.37.33 per sq.mtr., the vlaue of the land has been reduced due to less frontage. I therefore consider that value of the land should have been considered as per belt from frontage to west side of land which are as under:

a) Belt No.I. - 4500 sq.mtr.
b) Belt No.II – 13200 sq.mtr.
c) belt No.III – 32150 sq.mtr.

The sale of land bearing S.No.108 for 595 sq.mtr. was on 28.10.80 at Rs.33.60 which land is near the land under acquisition but it is less in area than area of belt No.I. I therefore consider that land admeasuring 4500 sq.mtr. in belt No.I should be valued at Rs.30/- per sq.mtr.

Smt. Irani has made an agreement to sell 3 acres land to M/s. Gosalia Trust at Rs.17/- per sq.mtr. The area of the land mentioned in belt No.III is nearly thrice the area of this agreement of sale.

I therefore fix the value of the land as under:

Belt	*Area Sq.mtr.*	*Rate Rs.*	*Value Rs.*
1. Belt NO.I	*4500*	*30/-*	*135000/-*
1. Belt NO.II	*13200*	*20/-*	*264000/-*
1. Belt NO.III	*32150*	*15/-*	*482250/-*
		Total	*881250/-*

5. Thereafter the Special Land Acquisition Officer taken possession of the acquired land on 11.12.1987 and prepared the possession receipt to that effect. Thereafter the Special Land Acquisition Officer issued Notification u/s.12(2) of the said Act and duly served on the claimants on 13.12.1987.

6. Being aggrieved by the award passed by the Special Land Acquisition Officer, the claimants preferred Reference u/s.18 of the said Act dated 21.01.1988. The claimants in their claim Application u/s.18 of the said Act made several grievances about the valuation done by the Special Land Acquisition Officer. They submitted that the Special Land Acquisition Officer, without considering the potentiality of the land, fixed market value of the land at the time of passing the award u/s.11 of the said Act. The claimants made averments in their Application u/s.18 of the said Act that the said land was purchased by them in the year 1981 with a view to develop it into a housing colony with a shopping complex therein. They commenced preparations in that direction in the year 1980 by surveying the land, preparing layout through Architect M/s. R. M. Parekh & Co. comprising of two buildings for a shopping center and 22 buildings for residential flats. The said plan was duly submitted for approval to the concerned authority like Collector, Architect of Town Planning, Village Panchayat, Boisar. Thereafter they made an Application for N.A. Permission with the Collector of Thane on 21.01.1980. As the collector had failed to pass final order on their Application within stipulated time, as per the Maharashtra Land Revenue Code, the said permission was deemed to have been granted on 21.03.1980 i.e. after lapse of 2 months from the date of making the Application. On the basis of the deemed permission the claimant commenced their building activities by mobilizing the resources for starting the work, like marking the plots on the land, alignment of road etc. and also commenced the work of internal road. The Appellant claimant constructed water macadam road to the extent

of 325 ft which was required for the first phase of the development of the property. They also constructed two large sheds of permanent type to be used as a partial godown for storing valuable materials like cement, steel, etc. and partly to be used as residential quarters for supervisory staff and workers. In due course, the formal N.A. Order dated 22.10.1982 was sent to the Additional Collector, Thane.

7. It was the contention of the claimants in their Application u/s.18 of the said Act that though they placed all these facts on record, the State of Maharashtra, without considering these facts decided to proceed with acquisition of land to the extent of 49850 sq.mtr. leaving small portion for the claimant. On the basis of these facts, the claimants claimed compensation in respect of the acquired land @ 300/- per sq.mtr. Following are the prayers of the Application under section 18 of the said Act.

> *"a) The sum of Rs.3,74,94,754/- minus Rs.8,51,250/- awarded Rs.3,66,13,504/- inclusive of cost of road development and all permissible heads of compensation under Sec. 23 of the Land Acquisition Act be paid to the claimants by way of enhancement.*
>
> *b) The claimants be awarded statutory compensation at the rate of 12% p.m. from the date of the Notification under Sect.4 of the Act in terms of 8.23 of Land Acquisition Act.*
>
> *c) The claimants be awarded 30% solatium as per S.23(2) of the Act.*
>
> *d) The claimants be awarded interest on the amount awarded as per S.8.28 of the Act."*

8. Said Reference was registered as Reference Application No.1/2012 (Old No.5/1988) in the court of the Civil Judge, Senior Division at Palghar.

9. In trial court, the claimant filed his affidavit of evidence dated 23.02.2004 (Exhibit- 64), affidavit dated 24.02.2005 of PW.2 Prashant Waman Malawade, Architect and Valuer under Order XVIII Rule 4 of the Code of Civil Procedure, 1908. The claimants also placed on record following documents:

Sr. No.	**Exhibits**	**Particulars**
1	EXHIBIT 81	Permission letter dated 30/07/1981 granted by Assistant Secretary to Government, Revenue and Forest Department for sale of certain part of Sy. No.102 H. No.1/2 at village Boisar Taluka Palghar District Thane which was reserved under Maharashtra Re-settlement of Project Displaced Persons Act, 1976
2	EXHIBIT 84	Sale Deed dated 24.12.1981 between Homai Kaikhushroo Irani (Tafti) vendor and Shri Ashwin Ramniklal Gosalia and Kaushik Ramniklal Gosalia, Trustees of A.K. Gosalia Trust in respect of area admeasuring 11660 sq.mtrs from Sy.No.102 H.No. 1/2 part (from acquired land)
3	EXHIBIT 86	Conveyance Deed dated 21/12/1981 Ashwin Ramnikalal Gosalia and Kaushik Ramniklal Gosalia, Trustees of A.K. Gosalia Trust and Homi Kaikhushroo Irani (Tafti) in respect of land admeasuring 41986 sq.mtrs. from Sy. No.102 H. No.102 part (from acquired land)

4	EXHIBIT 116	Valuation Report prepared by N.M.Mulye Government approved valuer relying on: a) Sy. No. 114 agricultural land area 377.88 sq.mtrs Rs.5000 rate p.s.m. 13.23 sq.mtrs. 16/05/89 b) Sy. No. 100/A/1/1 agricultural land area 23000 sq.mtrs Rs.36000 Rate PSM 1.56 sq.mtrs. 21/07/80 c) Survey No.84/A agricultural land area 1325 sq.mtrs Rs.25,000 Rate PSM 18.86 sq.mtrs. 04/05/89
5	EXHIBIT 121	SALE DEED DATED 08/05/77
6	EXHIBIT 124	SALE DEED DATED 15/03/79
7	EXHIBIT 125	SALE DEED DATED 22/11/79
8	EXHIBIT 126	SALE DEED DATED 07/12/79
9	EXHIBIT 127	SALE DEED DATED 07/12/79
10	EXHIBIT 119	CONVEYANCE DEED REGISTER AT SR.NO.16
11	EXHIBIT 120	CONVEYANCE DEED REGISTER AT SR.NO.37
12	EXHIBIT 128	SALE DEED DATED 11/01/80
13	EXHIBIT 130	SALE DEED DATED 12/05/80
14	EXHIBIT 129	SALE DEED DATED 28/01/80
15	EXHIBIT 122	SALE DEED DATED 30/03/1978
16	EXHIBIT 121	SALE DEED DATED 23/03/1978
17	EXHIBIT 123	SALE DEED DATED 19/02/1979

18	EXHIBIT 132	7/12 EXTRACT OF S.NO.102/1 H.A NO.1/2
19	EXHIBIT 133	7/12 EXTRACT OF S. NO.102/1 HISSA NO.1/2
20	EXHIBIT 134	Extract from Register No. 8 in respect of acquired land (land reference register)
21	EXHIBIT 137	Order dated 22/10/82 passed by Additional Commissioner, Thane on application dated 27/03/1982 from A. K. Gosalia Trust of Boisar for N.A. permission in respect of area admeasuring 41741.90 sq.mtrs. out of Survey No.102/1 Hissa No.1/2 of Boisar Taluka Palghar
22	EXHIBIT 143	Copy of Decree dated 23/12/81 passed by High Court of Bombay (Original Side) in Suit No.2023 of 1981 between Ashwin Ramniklal Gosalia and Anr. Vs. Homi Kaishushroo Tafti alias Irani (in respect of the acquired land)
23	EXHIBIT 146	Copy of MAP showing the acquired land from village Boisar

10. Similarly, the Respondent also filed their written statement. The Respondent No.2 Maharashtra State Road Transport Corporation (Corporation) filed their written statement dated 29.03.2004. The Special Land Acquisition Officer Sushma Waman Satpute filed affidavit of evidence (Exhibit- 100). The Respondent No.3 Corporation filed affidavit of Naresh Narayan Mulye, Government approved Valuer (Exhibit- 115) and also placed on record valuation report dated 10.03.2006 prepared by Mr. Naresh N. Mulye (Exhibit- 116).

11. Considering the submissions made by the learned counsel for both the parties and the evidence on record, the Reference Court held that the claimants are entitled to total compensation to the tune of

Rs.10,57,500/- in respect of the acquired land @ 18 per sq.mtr. for an area of 32150 sq. mtr. @ Rs.24/- per sq.mtr. for an area of 13200 sq.mtr. and @ Rs.36/- per sq.mtr. for the land admeasuring 4500 sq.mtr. Hence, the present First Appeal for balance amount of Rs.3,64,37,254/-.

12. The learned counsel for the claimant submits that the impugned judgment and award passed by the Trial Court dated 12.09.2012 is against the justice, equity and good conscience and same is liable to be set aside. He submits that the Reference Court has failed to consider the fact that the land was having NA potentiality at the time of deciding the market value of the acquired land. Not only that the NA permission was granted by the authority for carrying out construction. He further submits that the Trial Court has not considered the valuation report submitted by them at the time of deciding the market value of the acquired land.

13. The learned counsel for the claimants submits that prior to 1980 the claimant No.2 Smt. Homai Kaikhushroo Irani (Tafti) agreed to sell the Appellant an area of 41986 sq.mtr. for lump sum consideration of Rs.18 lacs. He submits that as the Vendor denied to execute the sale deed in their favour, they filed suit No.2023/1981 on the original side of this court for specific performance of agreement. Thereafter the said suit was settled between the parties and they filed Consent Terms dated 29.01.1981. As per the said Consent Terms the owner (Vendor) has executed the conveyance deed dated 21.12.1981 (Exhibit- 86) in favour of the claimant for land admeasuring 41986 sq.mtr. from

Sy.No.102 Hissa No.1/2 (Part) and same was duly registered with the Sub Registrar. Immediately thereafter the owner also executed sale deed dated 24.12.1981 (Exhibit- 84) in respect of the remaining area of 11660 sq.mtr. He submits that by sale deed dated 21.12.1981 they purchased 41986 sq.mtr. land for 18 lacs i.e. @ Rs.42.87 per sq.mtr. and by sale deed dated 24.12.1981 (Exhibit- 84) area of 11660 sq.mtr. @ 17.15 per sq.mtr. He submits that though these sale deeds were on record, the Reference Court has failed and neglected to consider the same. He submits that *prima facie* in the year 1981 the claimants purchased the suit property admeasuring 41986 sq.mtr. @ Rs.42.87 per sq.mtr. Whereas the Reference Court has awarded the compensation in respect of the acquired land on an average Rs.21.21 per sq.mtr. (total compensation of Rs.10,57,500 ÷ 49850 sq.mtr.). He submits that the Reference Court ought to have decided the market value in respect of the acquired land on the basis of the sale deed dated 21.12.1981. He submits that the Reference Court has erred in determining the market value of the acquired land on the basis of the belting system. He submits that the belting system can be used only if a large chunk of land is acquired. Hence, the judgment and award passed by the Reference Court is required to be modified holding that the claimants are entitled to compensation in respect of the acquired land @ Rs.300/- per sq.mtr..

14. The learned counsel for the claimant further submits that the Reference Court has erred in coming to the conclusion that the claimants are not entitled to interest u/s.34 of the said Act. He submits that as per section 34 of the said Act the claimants are entitled to

interest when the amount awarded by the Land Acquisition Officer is not paid or deposited on or before taking possession of the land. He submits that in the present proceedings the Special Land Acquisition Officer has taken possession of the land on 11.12.1987. Therefore, they are entitled to interest as per section 34 till the date of payment and/or depositing the same.

15. The learned AGP for the State vehemently opposed the First Appeal. He submits that the Reference Court, considering the evidence on record rightly decided the market value of the acquired land as on the date of issuing Notification u/s.4 of the said Act. He submits that bare perusal of the evidence of the claimants as well as the Valuer Mr. Narayan N. Mulye shows that they failed to produce any cogent evidence to show that the claimants are entitled to compensation in respect of the acquired land @ Rs.300/- per sq.mtr. He submits that admittedly on the date of issuing Notification u/s.4 of the said Act, the land was in use as agricultural land. Same thing is admitted by the claimant himself in his cross-examination. He submits that the claimant has specifically stated in his cross-examination that *"it is true that till 1982 the land was used for cultivating grass as per the entry in 7/12 extract"*. Therefore, there is no question of deciding the market value of the acquired land on the basis of the square feet or square meter. It ought to have been decided on the basis of Acre and Hector.

16. The learned AGP further submits that though the claimant relied on several sale instances at Exhibit- 121, 124, 125, 126, 127, 119, 120, 128, 130, 129, 122, 131, 123 they failed and neglected to examine

either purchaser or seller. He further submits that all those sale instances were in respect of the land with structure and/or house. All those sale instances were in respect of the small plot of lands admeasuring 58 sq.mtr. to 152 sq.mtr. only. Therefore, there is no question of interfering with the well reasoned judgment and award passed by the Reference Court.

17. The learned counsel for Respondent No.3 corporation vehemently opposed the First Appeal. He submits that the Reference Court, on the basis of the evidence on record has rightly decided the market value of the acquired land as on the date of issuing Notification u/s.4 of the said Act dated 30.08.1982. He submits that they examined the valuer Mr. Narayan N. Mulye (Exhibit- 115 and 115A). He submits that the valuer has submitted his report dated 10.03.2006 (Exhibit- 116) stating that the valuation of the acquired land should not be more than Rs.7,51,900/-. He submits that the Valuer Mr. Narayan N. Mulye, at the time of preparing the valuation report (Exhibit- 116) relied upon the following sale instances:

INSTANCES OF SALE AT MOUJE BOISER, TALUKA PALGHAR, DISTRICT THANE

Sr. No.	Sy. No.	Area in Sq. Mt.	Purchase Price in Rs.	Rate per Sq.Mtr.	Date of Registration	Sr. No. and Page No.
1	Agricultural land 32/3 (pt)	15000.00	468000.00	31.20	22/3/89	4615/135, 114 to 121
2	Agricultural land 114	108.64	4000.00	36.81	13/12/89	5542/155, 59 to 63
3	107/1	250.00	10000.00	40.00	-	18/87
4	105 & 106	100.00	2000.00	20.00	13/12/89	5753/155, 298/ to 300

5	Agricultural land 114A	500.00	20000.00	40.00	05/10/89	5107/146, 99 to 103
6	61/3(P) N.A.	200.00	2000.00	10.00	29/09/87	1029/87
7	31/1 N.A.	1200.00	9000.00	7.50	03/06/84	612/87

ENCLOSURE III

SALE DEED AT MOUJE BOISER, TALUKA PALGHAR, DISTRICT THANE

Sr. No.	Sy. No.	Particulars	Area in Sq. Mtr.	Amount Rs.	Rate per Sq. Mtr.	Year
1	114	Vacant agricultural land	377.88	5000.00	13.23	16/5/1989
2	100/A/1/1	Vacant agricultural land	23000.00	36000.00	1.56	21/07/1980
3	84A	Vacant agricultural land	1325.00	25000.00	18.86	04/05/89

18. The learned counsel for the Respondent No.3 submits that the market value decided by the Reference Court was as per the prevailing market value of the acquired land on the date of issuing Notification u/s.4 of the said Act. He further submits that admittedly on the date of issuing Notification u/s.4 of the said Act, the land was being used as agricultural land for growing grass. Therefore, there is no question of deciding the market value of the acquired land on the basis of the square feet and square meter.

19. The learned counsel for Respondent No.3 acquiring body submits that though the claimants relied on Exhibit- 86 sale deed dated 21.12.1981 in respect of the land admeasuring 41986 sq.mtr. from the same survey number No.102, that cannot be considered for fixing the market value of the acquired land. He submits that said sale deed was

executed by the owner of that land as per the Consent Terms filed in the High Court Suit No.2023/1981 (O.S.). He submits that a copy of the plaint in the High Court Suit No.2023/1981 (O.S.) was not placed on record by the claimant. Therefore, it is very difficult to understand on what basis they purchased the property @ Rs.42.82 per sq.mtr. He submits that immediately after three days the claimant purchased remaining land admeasuring 11660 sq.mtr. from the same survey number 102 by sale deed Exhibit- 84 @ Rs.17.15 per sq.mtr. from the same land owner. Therefore, it is very difficult to rely on both these sale instances Exhibit- 84 and 85 for deciding the market value of the acquired land.

20. The learned counsel for Respondent No.3 acquiring body submits that initially the Government had decided to acquire 5H. 20R. land. In spite of Notification u/s.4 of the said Act the claimant had started development on certain portion of the land. Thereafter he approached the Government for releasing the land from acquisition. He submits that at the time of releasing 1H. 18.5R. from the acquisition more than 75% frontage was taken by the claimant and thereafter he developed the same and sold the flats @ 330 to 350 per sq.ft. Therefore the sale instances placed on record by the claimants in respect of those flats were rightly rejected by the Reference Court.

21. The learned counsel for Respondent No.3 acquiring body submits that the Reference Court, in paragraph 17 of the impugned award specifically recorded that the claimants have restricted their claims to the extent of Rs.27,64,681/- as enhanced compensation (vide written

argument Exhibit- 168).

22. On the basis of these submissions the learned counsel for the acquiring body submits that there is no substance in the present appeal and same is liable to be dismissed with costs.

23. On the basis of the pleadings, submissions and the documents on record, the following point arises for our consideration :

a)	*"whether the claimants have made out a case for interference in the impugned award dated 12.09.2012 passed by the Civil Judge, Senior Division, Palghar in LAR No.1/2012? "*	Yes
b)	*"If yes, at what rate the claimants are entitled to compensation in respect of the acquired land?"*	@ Rs.32.17 PSM for the acquired land

24. For deciding the present appeal some of the following authorities of the Supreme Court are required to be kept in mind, which are as under:

i) Shakuntalabai (Smt) and Ors. Vs. State of Maharashtra (1996) 2 SCC 152, wherein the Apex Court has held that evidence of market value of the acquired land available and admitted by the claimant, market value of the adjacent lands cannot then be taken into consideration. Where the owner himself had purchased the land a few years earlier, the same would from the basis to determine the market value. Paragraph 4 and 5 of the judgment read 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 or 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 head of 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 on the 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. vs. Santabai & Ors., (C.A. No.2844/34) and Salgoankar vs. Union of India (C.A. No.3800/89) decided on 11.1.1990), 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."

ii) This court in the matter of ***Gleitleger (India) Pvt. Ltd. Bombay Vs. Special Land Acquisition Officer, Thane 1979 Mh.L.J. 494*** held that at the time of deciding the market value of the acquired land u/s.23 of the said Act the recent sale of the property in question itself is best evidence if there is no appreciable rise or fall since then and nothing done in interval to raise value. Paragraph 25 thereof 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 Vs. The Assistant Collector Haveli 24 BLR 782, N. C. John's Trust Alleopay Vs. 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 Lordsh of the Supreme Court in the Dollar Company, Madras v. Collector of Madra 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 is 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 bona fide 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."

iii) The Apex Court in the matter of ***Valliyammal and Anr. Vs. Special Tahsildar (Land Acquisition) and Anr. 2011 8 SCC 91*** held that if the acquired land is situated in the close vicinity of the residential colonies, educational institutes, hospitals etc. and at a junction of two important roads then only 1/3rd deductions to be done towards the development charges and not 40% as applied by the court in that case. Paragraph 21 reads thus;

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

iv) The Apex Court in the matter of ***Bhupal Singh & Ors. Vs. State of Haryana (2015) 5 SCC 801*** held that at the time of deciding market value of the acquired land the prevailing rate of adjacent similarly situated lands may be permitted. The Apex court, further held that the future potentiality is required to be considered at the time of fixing the market value. Paragraph 27 thereof reads thus:

"27. As rightly argued by learned counsel for the respondent, the fair market value of the acquired land is required to be determined under Section 23 of the Act on the basis of the market rate of the adjacent lands similarly situated to the acquired lands prevailing on the date of acquisition or/and prior to acquisition but not subsequent to the date of acquisition. In appropriate cases, addition of 10% per annum escalation in the prices specified in the sale deeds (if filed and relied on) in relation to adjacent similarly situated lands for fixing the market value of the acquired land may be permitted. Such is, however, not the case in hand. Here is the case where firstly, no sale deeds were filed by the appellants to prove the fair market value of the acquired land and secondly, what they now want this Court to do is to take into consideration the rate of those lands which were acquired ten years after the date of acquisition in question and then reduce the value of such land by 10% every year so as to determine the fair market value of the acquired land in question. In our view, such procedure for determination is not provided in the Act."

25. In the case in hand, the Special Land Acquisition Officer issued Notification u/s.4 of the said Act on 30.08.1982 for acquiring Appellant claimant's land for Bus Station and Depot. Initially, it was 5H 20R. Subsequently it was decided to acquire only 4H 98.5R equivalent to 49850 sq.mtr. from Sy.No.102 H.No.A/1 of village Boisar, Tq. Palghar, Dist. Thane.

26. It is to be noted that though the claimant as well as the Respondent placed on record several sale instances, valuation report and evidence, for fixing market value, admittedly in the present proceedings, the claimant agreed to purcahse the suit land from Smt. Homai Kaikhushroo Irani alias (Tafti) prior to 1980. There was dispute between the claimant and owner of land. Hence, the claimant filed Suit No.2023/1981 on the original side of this court for declaration that they have valid and subsisting agreement between the parties and they are entitled for specific performance of the agreement of sale. That suit was filed in the year 1981 which was before issuing Notification u/s.4 of the said Act which is dated 30.08.1982. That suit was settled between the parties by filing Consent Terms dated 23.12.1981. As per the said Consent Terms, the claimant agreed to purchase the acquired land to the extent of 41986 sq.mtr. for sum of Rs.18 lakh i.e. @ Rs.42.87 per sq.mtr. Thereafter they executed the sale deed dated 21.12.1981 from same survey No.102 for remaining land admeasuring 11660 for Rs.2 lacs @ Rs.17.15 per sq.mtr. Both these sale instances are in respect of the acquired land itself.

27. As soon as the claimants agreed to purchase those lands they

made an Application for N.A. Permission and obtained the same. Thereafter the complainant filed plans for development. Before issuing Notification u/s.4 of the said Act, he started development with consent of the owner. Therefore, he made a representation to the Government for releasing certain portion of the land which he had already developed and that was considered by the Government. Hence, for fixing the market value of the acquired land instead of relying on the valuation report and/or other sale instances the best sale instance is of Exhibit- 84 and 86 itself. In support of this we can safely rely on the judgment of the Apex Court in the matter of **Shakuntalabai (supra) and** of this court in the matter of **Gleitleger (India) Pvt. Ltd. (supra).**

28. Now the question remains at what rate the claimants are entitled to compensation in respect of the acquired land. It is to be noted that the Special Land Acquisition Officer as well as the Reference Court has decided the market value on the basis of the belting system. In fact in the present proceedings, the acquiring body has acquired the land for bus station and depot. Therefore, there is no question of deciding the market value on the basis of the belting system.

29. In the present proceedings the land was acquired by the Respondent Corporation for bus stand and depot. That means maximum land will remain open. To that effect the learned counsel for the claimant, during the course of arguments placed on record some recent photographs. Those photographs show that as on today less than 25% land is in use of the Respondent Corporation. Therefore, the question is whether the market value can be fixed on the basis of belting system or not. It is to be noted that the Apex Court in the

matter of ***Land Acquisition Officer Revenue Divisional officer, Chittor Vs. L. Kamalamma (Smt) Dead by Lrs. and Ors. (1998) 2 SCC 385*** held that when a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantage as well as disadvantages. Paragraph 7 thereof reads thus:

> *"7. The argument advanced by Shri Nageswara Rao that the classification by the Land Acquisition Officer was in order and ought not to have been interfered with by the reference court or the High Court does not appeal to us. When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."*

30. Similarly, the Apex Court in the matter of ***Trishala Jain and Anr. Vs. State of Uttaranchal and Anr. (2011) 6 SCC 47*** held that belting system should not be adopted at the time of fixing market value if the entire acquired land was intended to be used for the same purpose.

31. The Apex Court in the matter of ***Ashrafi and Ors. Vs. State of Haryana and Ors. (2013) 5 SCC 527*** held that land having substantial potentiality for development of residential and commercial complexes should not be valued on the basis of the belting system. In the case in hand, the claimants had submitted their plans before the acquisition for development of entire property for residential and commercial activities. Moreover, even the Land Acquisition Officer in his award has specifically recorded that the entire land is near the developed area. Considering these facts and the law declared by the Apex Court, we are of the opinion that the market value fixed by the Land Acquisition Officer as well as the Reference Court on the basis of the belting system is not correct.

32. It is to be noted that the claimant purchased the remaining land admeasuring 11660 sq.mtr. from Sy.No.102 H 1/2 (P) by Article of Agreement dated 24.12.1981 (Exhibit- 84) from Smt. Homai Kaikhushroo Irani alias Tafti @ Rs.17.50 sq.mtr. because of terms and conditions as stated in the Consent Terms and the order dated 25.08.1981 passed by the Additional Collector and Dy. Director of Resettlement. Paragraph 3 of the Consent Terms reads thus:

> *"3. The Plaintiffs as the present Trustees of A. K. Gosalia Trust for themselves and the Trustees for the time being of the said Trust holding office as such Trustees and their successors and assigns hereby covenant with the defendant that they shall as mentioned in the said order dated August 25, 1981 at all times hereafter keep a strip of land leading from the Boisar Tarapore Road and shown in yellow colour on the said plan hereto annexed to the remaining portion of the land other than the suit land and belonging to the*

defendant and admeasuring about 3 acres equivalent to 11660 square meters or thereabouts unbuilt upon and open to the sky as an approach road which remaining portion admeasuring about 11660 square meters is shown surrounded by a Red coloured boundary line on the said Plan hereto annexed and described in the Second Schedule hereunder with full power to the Defendant her servants and agents and her executors, administrators and permitted assigns and successors to have free access over the said strip of land at all times."

33. The portion of the order dated 25.08.1981 passed by the Additional Collector and Dy. Director of Resettlement reads thus:

"The Additional Collector and Deputy Director of Resettlement (Land) Thane is hereby pleased to grant sale permission of land admeasuring 10 acres and 10¼ Gunthas out of 13 acres and 10 1/4th Gunthas bearing Sy. No.102, Hissa No.1/2(P) of village Boisar, Taluka Palghar, District Thane subject to the conditions that the ;

(i) Vendor, i.e. Applicant, her purchaser or purchasers and the purchasers assignees if any, shall given an access of 6 feet in width as an approach road to the remaining land admeasuring about 3 acres left from the said Survey No. by virtue of the Order dated 8th May 1981 of the Government in Revenue and Forest Department."

34. It is crystal clear from the said order that the Additional Collector has allowed the owner to sell the property on certain terms and conditions i.e. to give access of 6' in width as an approach road to the remaining land admeasuring 3 Acre. Because of this condition, the owner sold the remaining land admeasuring 11660 sq.mtr. to the claimant @ Rs.17.15 per sq.mtr.

35. Considering the situation of the land as described by the Special Land Acquisition Officer in award itself and also the valuation report

Exhibit- 94, there is no dispute that the land is situated in the heart of the city having all facilities. Same is abutting to road also. Hence, considering the judgment of the Apex Court in the matter of Bhupalsingh and others (supra) future potentiality can be considered and for that purpose we can safely take into consideration 20% increase per annum. Sale Deed Exhibit- 86 is dated 21.12.1981 @ Rs.42.86 per sq.mtr. and the Notification u/s.4 of the said Act was issued on 30.08.1982. Therefore, for eight months the increase comes to Rs.5.40 per sq.mtr. Therefore, the market value of the acquired land on the date of Notification u/s.4 of the said Act comes to Rs.48.26 per sq.mtr. But considering the law laid down by the Apex Court in the matter of Valliayammal & Anr. (supra) 1/3 is required to be deducted towards development charges. Hence by deducting 1/3rd from 48.26 per sq.mtr. it comes to Rs.32.17 per sq.mtr. The Special Land Acquisition Officer has awarded total compensation for the acquired land Rs.8,81,250/- and Rs.56,795/- for the structure whereas the Reference Court has awarded compensation of Rs10,57,500/-. The total compensation @ Rs.32.17 per sq.mtr. comes to Rs.16,03,674.50 (49850 sq.mtr. X Rs.32.17 per sq.mtr.)

36. The issue raised by the learned counsel for the claimant about the interest u/s.34 of the said Act is not sustainable because in the present proceedings the Special Land Acquisition Officer has taken possession of the property after passing the award. The claimant has not placed on record when the amount was deposited by the Land Acquisition Officer and it was paid to them. For want of pleading and/or evidence on record, there is no question of granting interest u/s.34 of the said Act. Hence, the finding given by the trial court in

para 31 on this point does not warrant any interference.

37. Hence, the First Appeal is partly allowed as under:

a. The claimants are entitled to compensation in respect of the acquired land admeasuring 49850 sq.mtr. @ Rs.32.17 per sq.mtr. after deducting the amount already paid with all benefits as per the amended provisions of the Land Acquisition Act, 1894 30% solatium 12% component and interest u/s.28.

b. The Respondent Nos.1, 2 and 3 jointly and severally pay the additional amount of compensation to the claimant.

c. Decree be drawn up accordingly.

d. The First Appeal stands disposed of accordingly.

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