

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 846 OF 2016**

**1. Kekobad Dossabhoy Doongriwalla )**  
**Age : 73 years )**

**2. Khorshed Navzar Wadia, )**  
**Age : 85 years, )**  
**Both residing at Doosabhoy Mansion, )**  
**796, Jame Jamshed Road, Dadar, )**  
**Mumbai 400 014 )**

**..... Petitioners**  
**(Original Claimant)**

**VERSUS**

**The Municipal Corporation of Greater )**  
**Mumbai )**  
**Having their head office at Mahapalika )**  
**Marg, Nagar Chowk, Mumbai 400 001 )**

**..... Respondent**  
**(Original Respondent)**

**ALONGWITH**  
**NOTICE OF MOTION NO. 607 OF 2016**  
**IN**  
**ARBITRATION PETITION NO. 846 OF 2016**

**The Municipal Corporation of Greater )**  
**Mumbai )**  
**Having their head office at Mahapalika )**  
**Marg, Nagar Chowk, Mumbai 400 001 )**

**..... Applicant**  
**(Original Respondent)**

**IN THE MATTER BETWEEN**

**1. Kekobad Dossabhoy Doongriwalla )**  
**Age : 73 years )**

**2. Khorshed Navzar Wadia, )**  
**Age : 85 years, )**  
**Both residing at Doosabhoy Mansion, )**

**796, Jame Jamshed Road, Dadar,  
Mumbai 400 014**

)  
)

**..... Petitioners  
(Original Claimant)**

**VERSUS**

**The Municipal Corporation of Greater  
Mumbai  
Having their head office at Mahapalika  
Marg, Nagar Chowk, Mumbai 400 001**

)  
)  
)  
)

**..... Respondent  
(Original Respondent)**

Dr.Birendra Saraf, a/w. Mr.Rohan Sawant, Ms.Dhwani Bokaria, i/b. Purnanand & CO. for the Petitioner.

Mr.Ram S.Apte, Senior Advocate a/w Mr.P.G.Lad and Mr.R.Y.Sirsikar for Respondent-BMC.

**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 5<sup>th</sup> MARCH, 2018**  
**PRONOUNCED ON : 21<sup>st</sup> MARCH, 2018**

**JUDGMENT :-**

. By this petition filed under section 34 of the Arbitration and Conciliation, 1996, the petitioners have impugned the arbitral award dated 31<sup>st</sup> July, 2015 passed by the learned arbitrator thereby rejecting part of the claims made by the petitioners. The petitioners were the original claimant in the arbitral proceedings whereas the respondent was the original respondent. Notice of Motion No.607 of 2016 is filed by the respondent praying for permission to deposit the awarded sum in this Court and for other reliefs. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. One Dinshaw Cawasji Doongriwalla, grandfather of the petitioners was the owner of land admeasuring 12 Gunthas at Survey No.121, Hissa No.2, Village Majiwada, Taluka and District Thane.

3. By an award dated 16<sup>th</sup> November, 1951, a small portion admeasuring about 14 Annas out of 12 Gunthas was acquired by the respondent as per the award of the Assistant Collector, Thane bearing no. LAQ/SR/69 of 16<sup>th</sup> November, 1951 leaving behind an area admeasuring about 11 Gunthas 2 Annas.

4. It is the case of the petitioner that the said land was acquired for constructing the Tansa Lake Pipeline and the said property was taken over by the respondent to build a protective wall for the pipeline and for other buildings of the Municipal Corporation. It is the case of the petitioners that though only 14 Annas were acquired by the respondent, their name was erroneously brought on record for the larger property. The predecessor of the petitioners realized this mistake in the year 1974 and accordingly vide their letter dated 8<sup>th</sup> July, 1974 pointed out the said mistake to the respondent and requested them to correct the said mistake.

5. On 26<sup>th</sup> July, 1974, the Project Engineer Water Supply of the respondent by his letter confirmed the said mistake and asked the predecessor of the petitioners to approach the revenue authorities to correct the said mistake. The predecessor of

the petitioners accordingly made an application to the revenue authorities for correcting the mistake and brought back the name of the predecessor of the petitioners in respect of the said property vide Mutation Entry No.1711 of 1975 dated 11<sup>th</sup> October, 1975. It is the case of the petitioners that after the death of Mr.Dinshaw Doongriwalla, the petitioners became entitled to the said property exclusively.

6. In the year 1981, the Office of the DILR carried out a survey in presence of the officer of the respondent and confirmed the possession of the petitioners over the said property.

7. It is the case of the petitioners that sometime prior to 1985, the respondent illegally commenced construction of an office building on the said property owned by the petitioners. The petitioners accordingly filed a civil suit (Regular Civil Suit No.580 of 1985) before the learned Civil Judge, Thane for a direction to put the petitioners in vacant possession of the said property after removal of the constructions and encroachment made by the respondent and also prayed for permanent injunction against the respondent, for compensation for damages suffered by the petitioners in view of the illegal unauthorized acts by the respondent.

8. On 6<sup>th</sup> March, 1985, the petitioners addressed a letter to the respondent recording that without prejudice to their rights, the petitioners were ready and willing to condone the acts of the respondent provided that the respondent was willing to pay the prevailing market rate of the land which was Rs.450 per sq.ft. at the relevant time.

9. On 10<sup>th</sup> December,1992, learned Civil Judge, Senior Division, Thane allowed the said Suit No. 580 of 1985 filed by the petitioners and passed a decree with cost. The respondent was directed to place the petitioners in vacant and peaceful possession of the suit property. The respondent was restrained from encroaching or trespassing upon the said property. Being aggrieved by the said decree dated 10<sup>th</sup> December,1992, the respondent filed an Appeal (108 of 1992) before the learned 3<sup>rd</sup> Additional District Judge, Thane.

11. It is the case of the petitioners that during the year 1996, the parties exchanged various correspondence between them wherein the respondent approached to acquire the said property of the petitioners at the market value than prevailing.

11. On 16<sup>th</sup> March,1996, the Deputy Hydraulic Engineer of the respondent addressed a letter to the petitioners recording that the ownership of the said

property was vested with the petitioners and the respondent was willing to take over the same at the prevailing market value.

12. On 18<sup>th</sup> November, 1996, the petitioners addressed a letter to the office of the Deputy Hydraulic Engineer (Operations) of the respondent and agreed to accept an amount of Rs.36,24,000/- which was the prevailing market value as estimated by the Government approved and registered valuer.

13. The Deputy Hydraulic Engineer of the respondent however vide his letter dated 13<sup>th</sup> December, 1996 requested the petitioners to produce the sale instances which formed the basis of the valuation report submitted by the petitioners.

14. On 7<sup>th</sup> January, 1997 the petitioners addressed a letter to the respondent clarifying that their talks were without prejudice to the rights and contentions of the petitioners and they were not required to prove the sale instances.

15. On 30<sup>th</sup> September, 1998, the first appeal filed by the respondent thereby impugning the decree passed by the learned Civil Judge Senior Division dated 10<sup>th</sup> December, 1992 came to be dismissed with cost by the first appellate court. The respondent was given three months time to demolish the existing construction and to handover possession thereof to the petitioner.

16. On 18<sup>th</sup> February, 1999, the petitioners issued a notice to the respondent to comply with the decree passed by the learned Civil Judge, Senior Division in favour of the petitioners.

17. Sometimes in the year 1999, the respondent filed a second appeal bearing (Stamp) No.5236 of 1999 thereby impugning the order passed by the first appellate court dismissing the first appeal filed by the respondent. The said second appeal was subsequently numbered as 1216 of 2005.

18. It is the case of the petitioners that sometime in the year 1999, vide an internal letter dated 24<sup>th</sup> May, 1994, a proposal was alleged to have been put up by the respondent for acquisition of the said property owned by the petitioners. The estimated cost of Rs.16,65,830/- was arrived at. The proposal was dated 1<sup>st</sup> October, 1999 and a resolution dated 20<sup>th</sup> December, 1999 accepting the said rate was alleged to have been passed by the respondent. The petitioners were never communicated with the said decision nor the petitioners had agreed to the said proposal.

19. Sometime in the year 2005, the said second appeal (1216 of 2005) appeared on board for hearing. The parties tendered a draft 'minutes of the order' in the said second appeal. It was mentioned that the respondent agreed, confirmed and

declared that the petitioners herein are the owners of the property bearing Survey No.121, Hissa No.2 (Part) situated at Village Majiwade, admeasuring 1113.2 sq.mts. or thereabout and that the respondent had no right, title, interest, claim or demand of any nature whatsoever in respect of the suit property. The petitioners herein gave their no objection to the acquisition of the suit property by the respondent on the principle enumerated in the Land Acquisition Act. The respondent agreed to pay market value of the suit property as on the date of the passing of the order plus solatium, interest and mesne profits for the use of the suit property from 1983 as determined by Shri V.P.Tipnis, a retired High Court Judge within 7 days of declaration of award. The learned propsective arbitrator was directed to give his award which shall not be less than the value mentioned in the ready reckoner issued by the Government of Maharashtra for valuation purpose. Both the parties were granted liberty to produce the instances and make representations to the sole arbitrator.

20. Learned senior counsel for the respondent was asked to take instructions in respect of various clauses incorporated in the said draft minutes of the order. The Municipal Corporation gave its no objection for appointment of Shri Justice V.P.Tipnis, a former Judge of this court as a sole arbitrator. The Municipal Corporation also gave no objection in respect of the other clauses incorporated in the minutes of order, except clauses 3 and 4. It was suggested by the learned

senior counsel for the respondent that all questions relating to determination of compensation should be left open to be decided by the arbitrator and clauses 3 and 4 therefore be modified accordingly.

21. Learned counsel for the petitioners made a statement before this court that the petitioners were prepared to surrender the suit land in favour of the Municipal Corporation and the matter be referred to the learned arbitrator without modifying any condition stipulated in the draft minutes of the order. It was submitted by the learned counsel for the petitioners that the determination of the market value of the property has to be with reference to the date of the passing of the order dated 7<sup>th</sup> July 2014 and not with reference to any date earlier than that.

22. This court accordingly passed an order thereby appointing Shri Justice V.P.Tipnis, former Judge of this court as an arbitrator to decide the disputes between the parties in respect of the determination of the market value and compensation payable to the petitioners including all other entitlements in terms of the provisions of Land Acquisition Act. It was provided in the said order that except clauses 3 and 4, all other clauses in the minutes of the order should be implemented. The learned arbitrator was requested to submit an award within a period of six months from the date of completion of the pleadings of the parties. The petitioners were directed to file their statement of claim before the learned

arbitrator on the first date of appearance. The respondent was directed to file response to the statement of claim before the learned arbitrator. It was made clear that all questions arising out of the award to be passed by the learned arbitrator were kept open. This court directed that the second appeal to remain pending and the parties were at liberty to move this court after conclusion of the proceedings before the learned arbitrator.

23. On 5<sup>th</sup> August, 2014, since the learned arbitrator appointed by this court expressed his unwillingness to take up the matter as an arbitrator, both the parties agreed that another retired judge of this court be appointed as an arbitrator in terms of the order dated 7<sup>th</sup> July, 2014 passed by this court. This court accordingly by an order dated 5<sup>th</sup> August, 2014 modified the order dated 7<sup>th</sup> July, 2014 to this extent.

24. On 15<sup>th</sup> November, 2014 the petitioners filed a statement of claim before the learned arbitrator *inter alia* praying for determination of the market value and compensation payable by the respondent to the petitioners including all other entitlements in terms of the provisions of “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the said Act) in accordance with the order dated 7<sup>th</sup> July, 2014 and modified by the order dated 5<sup>th</sup> August, 2014. The petitioners also prayed for interest at the rate of 12% from the date of the award till payment and/or realization in

accordance with section 30(3) of the Act of 2013. The respondent filed statement of defence before the learned arbitrator on 22<sup>nd</sup> January, 2015 denying the claim of the petitioners and also disputing the contention of the petitioners that the provisions of the said Act of 2013 were applicable.

25. The learned arbitrator framed six issues and rendered an award on 31<sup>st</sup> July, 2015 thereby partly allowing the claims of the petitioners. The learned arbitrator determined the market value of the land at Rs.16,65,830/- with interest at the rate of 12% per annum thereof from 1996 till 31<sup>st</sup> July, 2015 totalling to Rs.37,98,092.40. The learned arbitrator also awarded a solatium as contemplated under section 23(2) of the Land Acquisition Act 1894 calculated at the rate of 30% of the market value and derived the said amount at Rs.4,99,749/- and totalling to Rs.59,63,671.40. The learned arbitrator also held that the petitioners would be entitled to interest on the said amount of Rs.59,63,671.40 at the rate of 12% per annum from the date of the award till the date of realization.

26. Being aggrieved by the said award dated 31<sup>st</sup> July, 2015, passed by the learned arbitrator, the petitioners have filed this petition under section 34 of the Arbitration and Conciliation Act, 1996.

27. Dr.Saraf, learned counsel for the petitioners invited my attention to the annexures to the arbitration petition, documents from a compilation of documents

filed by the petitioners, various orders passed by this court from time to time in the second appeal filed by the respondent in this court and also various findings recorded by the learned arbitrator in the impugned award.

28. It is submitted by the learned counsel for the petitioners that the learned arbitrator has illegally held that the market rate of the property was decided as in the year 1996 which was the date on which the land would have been restored to the petitioners if the decree passed by the trial court would have been executed. He submits that the learned arbitrator ought to have determined the market value of the property on the date of the passing of the order dated 7<sup>th</sup> July, 2014 and not prevailing in the year 1996. He submits that the award shows patent illegality and perversity.

29. Learned counsel for the petitioners invited my attention to the order dated 7<sup>th</sup> July, 2014 in the second appeal filed by the respondent and would submit that for the first time on that date, the parties arrived at an agreement that the respondent shall acquire the land of the petitioners and thus on that date the petitioners became entitled to compensation at the prevailing market rate on the date of the said order with other benefits under the Act of 2013. He submits that admittedly on that day, the said Act of 2013 was in force which had arrived in force on 1<sup>st</sup> January 2014. He submits that the provisions of the said Act of 2013 were thus

applicable to the land in question and not the provisions of the Land Acquisition Act, 1894 which are applied by the learned arbitrator while determining the compensation payable to the petitioners which provisions had been already repealed by the said Act of 2013.

30. It is submitted by the learned counsel for the petitioners that though in the order dated 7<sup>th</sup> July 2014 passed by this Court in second appeal, this Court has used the words “Land Acquisition Act”, the learned arbitrator could not have applied the provisions of the Land Acquisition Act, 1894 which were not applicable at the relevant time when the matter was referred to the arbitration by this Court in second appeal having been repealed. He submits that the findings of the learned arbitrator that this Court had mentioned “Land Acquisition Act” is totally perverse in view of the fact that when this Court had passed the said order, the Act of 2013 was already in force w.e.f. 1<sup>st</sup> January 2014. The proceedings in the second appeal were not ended in the year 2005 as erroneously held by the learned arbitrator. He submits that in the year 2005, the parties had submitted draft minutes of order which was admittedly not finalised.

31. It is submitted that this finding of the learned arbitrator is ex facie and patently illegal on the face of the order passed by this Court on 7<sup>th</sup> July 2014. The parties had merely prepared draft of the minutes of order. He submits that

the respondent had admittedly not agreed to the said draft minutes of order in the year 2005 till the final order came to be passed by this Court on 7<sup>th</sup> July 2014 with modification of the draft minutes of order.

32. It is submitted by the learned counsel that though the second appeal was filed by the respondent no.1 in the year 1999, the same was renumbered in the year 2005 and was taken up for hearing in the year 2014. This Court had not passed any order on the said draft minutes of order in the year 2005. The matter was adjourned to enable the respondent to take instructions on the said draft minutes of order which was never agreed by the respondent. He submits that this Court recorded in the year 2014 that the learned senior counsel for the respondent had admitted that the corporation should have taken steps to get the land acquired through the Collector under the provisions of the Land Acquisition Act or by way of negotiations and “the fact remained that as on the date of the said order, both things had not been done.”

33. The next submission of the learned counsel for the petitioners is that the finding of the learned arbitrator that the compensation should be determined as in the year 1996 is without any basis and non application of mind. The petitioners were never communicated by the respondent till 7<sup>th</sup> July 2014 that the land of the petitioners was to be acquired. There was neither any notification nor were

any proceedings initiated under the provisions of the Land Acquisition Act, 1894. It is submitted that the alleged decision of the respondent to pay compensation to the petitioners in the year 1996 was never communicated to the petitioners and the same though would be by way of internal correspondence and resolutions alleged to have been passed by the respondent, the same was not binding upon the petitioners.

34. It is submitted that the learned arbitrator has totally ignored the directions issued by this Court on 7<sup>th</sup> July 2014 in Second Appeal No.1216 of 2005 directing the learned arbitrator to decide the dispute between the parties in respect of determination of the market value and compensation payable to the petitioners including all other entitlements in terms of the provisions of the Land Acquisition Act. The petitioners had not agreed to the compensation of Rs.16,65,830/- internally decided by the respondent. He submits that in any event, the learned arbitrator has not given any basis whatsoever for arriving at the finding that the market value of the property should be fixed at Rs.16,65,830/- which according to the respondent was the market value of the property in 1996. This part of the award is totally based on no evidence and without any basis and thus illegal.

35. It is submitted that the respondent had not even relied upon any internal correspondence of the year 1996 before the learned arbitrator to indicate that

the market value of the property was Rs.16,65,830/-. Admittedly, no letter was addressed to the petitioners by the respondent stating that the respondent was ready and willing to pay the said amount as compensation to the petitioners. It is submitted that the award relating to solatium to the petitioners by deriving from the amount of compensation at Rs.16,65,830/- is also totally perverse and without application of mind.

36. Mr.Apte, learned senior counsel for the respondent, on the other hand, placed reliance on the findings rendered by the learned arbitrator. It is submitted that the respondent had already carried out construction on the suit land. He placed reliance on the draft minutes of order prepared in the month of April 2005 and referred in the order dated 7<sup>th</sup> July 2014. He submits that the terms and conditions in the said minutes of the order were already finalised. He submits that the respondent was admittedly in possession of the suit land much prior to 1996 and thus the provisions of the Land Acquisition Act, 1894 were applicable at that point of time and not the provisions of the Act of 2013.

37. It is submitted that the learned arbitrator has thus rightly applied the provisions of the Land Acquisition Act, 1894. Learned senior counsel submits that even in the order dated 7<sup>th</sup> July 2014 passed by this Court in second appeal while appointing the learned arbitrator, it was clearly mentioned in the order that the

learned arbitrator shall decide the dispute between the parties in respect of determination of the market value and compensation payable to the petitioners herein including all other entitlements in terms of the provisions of the Land Acquisition Act.

38. It is submitted that the names of the predecessors of the petitioners were already appearing in the 7/12 extracts in respect of the said property much prior to 1996. There was certain internal correspondence/resolutions dated 24<sup>th</sup> May 1994 and 20<sup>th</sup> December 1999 thereby the suit property was agreed to be acquired by the respondent for Rs.16,65,830/-. A cheque of Rs.16,65,830/- was also prepared and kept ready. He submits that the value of the suit property ought to be determined on the date of resolution dated 20<sup>th</sup> December 1999. It is submitted that though the order was passed by this Court on 7<sup>th</sup> July 2014 thereby referring the dispute of the parties to the arbitration and though on the date of the said order, the provisions of the said Act of 2013 were already brought into force, this Court had specifically referred to the provisions of the Land Acquisition Act and not the provisions of the said Act of 2013. The learned arbitrator thus rightly did not consider the provisions of Act of 2013 and has rightly applied the provisions of the Land Acquisition Act, 1894. It is submitted that the findings of facts rendered by the learned arbitrator cannot be interfered with by this Court in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

39. Dr.Saraf, learned counsel for the petitioners in rejoinder submits that even though in the order dated 7<sup>th</sup> July 2014 passed by this Court in Second Appeal No.1216 of 2005, the dispute was referred to the arbitration, the fact remained that till that date, there was no order of acquisition of the property of the petitioners. It was agreed for the first time conclusively in the said order by the parties that the petitioners had no objection to the acquisition of the suit property by the respondent. The question of applicability of the provisions of the Land Acquisition Act, 1894 to the acquisition of the land of the petitioners did not arise. He laid emphasis on the statement of the learned senior counsel for the respondent recorded by this Court in the said order dated 7<sup>th</sup> July 2014 that on that date, Corporation had agreed to the appointment of a retired Judge of this Court as an Arbitrator to adjudicate the dispute between the parties and all questions relating to the determination of compensation should be left open to be decided by the learned arbitrator.

40. Learned counsel also laid emphasis on the fact that the respondent had admitted before this Court that though the respondent should have taken steps to get the land acquired through the Collector under the provisions of the Land Acquisition Act or by way of negotiations the fact remained that as on the date of the said order, both things had not been done. It is submitted that if acquisition of the land of the petitioners itself was agreed on 7<sup>th</sup> July 2014, the question of

applicability of the provisions of the Land Acquisition Act, 1894 to such acquisition when on that date the provisions of the Act of 2013 had already come into effect and the question of paying any compensation to the petitioners under the provisions of the Land Acquisition Act, 1894 did not arise.

**REASONS AND CONCLUSIONS :-**

41. A perusal of the record indicates that the respondent had carried out construction of office building on the land of the petitioners. The petitioners had filed a Regular Civil Suit No.580 of 1985 before the Civil Judge, Senior Division, Thane inter alia praying for vacant possession of the suit property after removal of the construction and encroachment made by the respondent and for other reliefs. Admittedly the said suit was decreed by the learned Civil Judge, Senior Division on 10<sup>th</sup> December 1992. The first appeal against the said decree filed by the respondent was also admittedly dismissed with costs on 10<sup>th</sup> September 1998. The respondent was given three months' time to demolish the existing construction and hand over possession of the suit land of the petitioners. The respondent had thereafter filed Second Appeal bearing No.1216 of 2005 in this Court.

42. A perusal of the order dated 7<sup>th</sup> July 2014 passed by this Court in Second Appeal No.1216 of 2005 clearly indicates that this Court had referred to the draft

minutes of order prepared in the month of April 2005 containing eight clauses.

Clauses 3 and 4 of the said draft minutes of order are extracted as under :-

*“3. The appellants will pay market value of the suit property as on the date of the passing of the order plus solatium, interest and mesne profits for the use of the suit property from 1983 as determined by Shri V.P. Tipnis, Retired High Court Judge within 7 days of declaration of Award.*

*4. The said Shri V.P. Tipnis, Retired High Court Judge shall give his Award and value of the property so determined in the award shall not be less than the value mentioned in the Ready Reckoner issued by Government of Maharashtra for valuation purposes.”*

43. A perusal of the said order indicates that though the said draft minutes of order was prepared in the month of April 2005, the respondent through its learned senior counsel had admitted before this Court that the respondent should have taken steps to get the land acquired through the Collector under the provisions of the Land Acquisition Act or by way of negotiations and “the fact remained that as on the date of the said order, both things had not been done.”

44. A perusal of the said order further indicates that this Court also recorded that the learned senior counsel for the respondent was to take instructions in respect of various clauses incorporated in the said draft minutes of order. The respondent had thereafter stated that the respondent had no objection for appointment of Shri V.P. Tipnis, a retired Judge of this Court as an arbitrator. This Court also recorded the submission made by the learned senior counsel for the respondent that the respondent had no objection in respect of other clauses

incorporated in the minutes of order, except clauses 3 and 4. It was further stated by the respondent through its learned senior counsel that all questions relating to the determination of compensation should be left open to be decided by the arbitrator and clauses 3 and 4 of the draft minutes of order be modified accordingly.

45. This Court also recored the submission of the learned senior counsel for the petitioners that the determination of the market value of the property has to be with reference to the date of passing of this order and not with reference to any date earlier than this. This Court accordingly modified the said minutes of order and recorded that except clauses 3 and 4, all other clauses in the minutes of order shall be implemented and requested the learned arbitrator to make an award within a period of six months from the date of completion of pleadings of the parties. In clause 2 of the said minutes of the order, the petitioners herein gave their no objection for acquisition of the land in question by the respondent.

46. When the said minutes of order was prepared in the month of April 2005, obviously the said Act of 2013 had not come into force. Though the said draft minutes of order was prepared in the month of April 2005, the fact remains that the said draft minutes of order was admittedly not finalised and signed by the parties before this Court in the second appeal or otherwise. The final agreement

on the said draft minutes of order with modification admittedly took place on 7<sup>th</sup> July 2014 when this Court accepted the said minutes of order with modification in so far as clauses 3 and 4 are concerned.

47. It is not in dispute that the petitioners herein filed a suit against the respondent inter alia praying for declaration and possession in respect of the suit property. The said suit was decreed in favour of the petitioners. The respondent was directed to put the petitioners in vacant and peaceful possession of the said property after removal of the construction unauthorisedly made by the respondent. The first appeal filed against the said order dated 10<sup>th</sup> December 1992 came to be dismissed. The second appeal filed by the respondent against the said order and judgment is pending before this Court.

48. A perusal of the impugned order dated 7<sup>th</sup> July 2014 passed by this Court in Second Appeal No.1216 of 2005 clearly indicates that the respondents through their learned senior counsel had admitted before this Court that the respondent should have taken steps to get the land acquired through the Collector under the provisions of the Land Acquisition Act or by way of negotiations which had not been done as on the date of the said order dated 7<sup>th</sup> July 2014. The said order passed by this Court further indicates that learned senior counsel for the respondent was asked to take instructions in respect of various clauses of the draft minutes of order incorporated in the said order which was prepared in the month

of April 2005. Learned senior counsel for the respondent informed this Court that the respondent had no objection for appointment of Shri V.P. Tipnis, a retired Judge of this Court as an Arbitrator. He further made a submission that the respondent had no objection in respect of other clauses incorporated in the draft minutes of order except clauses 3 and 4. It was one of the submissions made by the learned senior counsel for the respondent that all questions relating to the determination of compensation should be left open to be decided by the arbitrator and clauses 3 and 4 therefore be modified accordingly.

49. This Court accordingly held without prejudice to the rights and contentions of the parties that the said draft minutes of order prepared in the month of April 2005 could be acted upon subject to the modification set out in the said order dated 7<sup>th</sup> July 2014. This Court provided that the learned arbitrator was appointed to decide the disputes between the parties in respect of determination of the market value and compensation payable to the petitioners including all other entitlements in terms of the provisions of the Land Acquisition Act. Except clauses 3 and 4, all other clauses in the minutes of order shall be implemented. All questions arising out of the award to be passed by the arbitrator are left open. It is thus clear beyond reasonable doubt that the agreement that the suit property of the petitioners shall be acquired by the Corporation was arrived at and concluded the first time before this Court on 7<sup>th</sup> July 2014.

50. A perusal of the arbitral award however clearly indicates that the learned arbitrator held that the second appeal was filed in the year 1999 and was renumbered in the year 2005 and was taken up for hearing in the year 2014. The entire time was consumed because of delay in taking up for disposal of the appeal by this Court and it was this which was kept in mind by this Court when it used the phrase “Land Acquisition Act” in the minutes. It is erroneously held that when this Court accepted the minutes of order of the year 2005, it could not have imagined application of 2013 Act. Learned arbitrator held that there was no explanation as to why the land owner was quiet from 1952 to 1985 when the land records were corrected. In my view, the learned arbitrator has acted illegally in considering the irrelevant materials produced by the respondent for the purpose of deciding as to what would have been the intention of the parties while agreeing to refer the dispute to the arbitration by an order dated 7<sup>th</sup> July 2014. Learned arbitrator has thereafter proceeded to decide as to why the Act of 2013 cannot apply to an acquisition which according to him ought to have taken place in the year 1951 when part of the land was acquired under the Act of 1894.

51. In my view, the learned arbitrator ought to have considered the agreement between the parties as to when they agreed that part of the land of the petitioners to be acquired by the respondent and not when the part of the acquisition had taken

place prior to 2013 under the provisions of the Land Acquisition Act 1894. This part of the award totally shows perversity and patent illegality on the face of the award. In my view, since the parties have admittedly agreed that the land of the petitioners shall be acquired by the Corporation for the first time in the year 7<sup>th</sup> July 2014, the question of applying the provisions of the Land Acquisition Act, 1894 did not arise at all. The learned arbitrator could not have considered the draft minutes of order which were admittedly not approved and finalised by the parties prior to the Act of 2013 came into force and when admittedly such agreement was arrived at after the said Act of 2013 came into force.

52. In so far as the valuation of the property in question is concerned, the learned arbitrator has rejected the sale instances produced by the petitioners in support of their submission that the approximate value of the land in question ought to have been considered at Rs.5199.6/- per sq.ft. which land was almost adjacent to the land in question and had taken place in the year 2013 on the ground that the compensation will have to be decided on the date of the decree passed by the Trial Court. In my view, this part of the award shows total perversity and patent illegality. The land was admittedly agreed to be acquired on 7<sup>th</sup> July 2014 and not when the decree was passed by the Trial Court. It is not in dispute that the Trial Court had directed the respondent to remove the existing structure constructed by the respondent and to hand over the possession thereof to the

petitioners. The first appeal against the decree passed by the Trial Court came to be dismissed.

53. In my view, the learned arbitrator has decided contrary to the terms of the reference agreed between the parties before this Court in the order dated 7<sup>th</sup> July 2014 and has exceeded his jurisdiction. Learned arbitrator has held that if the decree as passed by the Trial Court was executed, the land would have been restored to the petitioners in the year 1996 and if it was to be acquired or sold by him, the price it would fetch would be that of year 1996 or till 1999 when all that time the Act applicable was the Land Acquisition Act of 1894. The learned arbitrator accordingly held that the petitioners were entitled to compensation at the rates existing in the year 1996 with solatium and interest as contemplated by the Land Acquisition Act, 1894. In my view, this finding of the learned arbitrator is totally perverse for the reason that even if the petitioners would have been placed in vacant possession of the land in execution of the decree in the year 1996, that date could not have been considered as the date of acquisition or for the purpose of compensation or otherwise since admittedly the acquisition of the land of the petitioners was agreed for the first time on 7<sup>th</sup> July 2014. The entire basis of awarding the compensation is totally absurd and shows patent illegality.

54. A perusal of the award indicates that the learned arbitrator has determined the market value of the land of Rs.16,65,830/- without any evidence and without recording any reason. The learned arbitrator appears to have taken into consideration the internal correspondence/the alleged resolutions dated 24<sup>th</sup> May 1994 and 20<sup>th</sup> December 1999 in the file of the respondent which were never communicated to the petitioners. In my view, the internal correspondence/resolutions in the file of the respondent could not be acted upon or were not binding on the petitioners till the same were communicated to the petitioners and correctness thereof was accepted by the petitioners. The impugned award shows patent illegality on this ground also.

55. In so far as the submission of the learned senior counsel for the respondent that the Act of 2013 rightly was not applicable to the facts of this case on the ground that the draft minutes of order were already prepared in the month of April 2005 is concerned, the learned senior counsel for the petitioners could not dispute the statement made by the learned senior counsel for the respondent that the land of the petitioners was not acquired by the respondent till the date of the order dated 7<sup>th</sup> July 2014 passed by this Court. Learned senior counsel could not justify as to how the impugned award rendered by the learned arbitrator could be sustained. In my view, each and every finding rendered by the learned arbitrator

is totally perverse and thus can be interfered with by this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

56. In my view, the parties had agreed for acquisition of the land of the petitioners on 7<sup>th</sup> July 2014. The provisions of the Land Acquisition Act, 1894 were not applicable to the acquisition in question but the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would be applicable to the parties for all the purposes. However, since this Court cannot make an award and allow the larger claims of the petitioners by applying the provisions of the Act of 2013, this Court has to set aside the award and to leave the petitioners to invoke the arbitration agreement again.

57. I therefore pass the following order :-

- (i) The impugned award dated 31<sup>st</sup> July 2015 made by the learned arbitrator is set aside.
- (ii) Arbitration petition is allowed in terms of prayer clause (a).
- (iii) In view of the disposal of the arbitration petition, Notice of Motion No.607 of 2016 does not survive and is disposed of accordingly.
- (iv) The respondent is directed to pay cost of Rs.1 lakh to the petitioners within two weeks from today.

**(R.D.DHANUKA, J.)**