

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

First Appeal NO.1304 of 2004

Harilal S/o Vasta Parmar,
Age 38 yrs., Occ.: Agril.
R/o Parli-Vaijnath,
Tq. Parli-Vaijnath,
Dist. Beed.

= **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Collector Beed
2. The Executive Engineer,
Civil Construction
Division No.IV
M.S.E.B. Parli-Vaijnath,
Dist.Beed

= **RESPONDENTS**

WITH

First Appeal No.1305 of 2004

Mohd. Usman S/o Mohd. Abdul
Karim,
(Died through his L.Rs.)

- I) Abdul Sattar S/o Mohd.
Usman Kacchi,
Age 38 yrs.,Occ.: Business
- II) Taherabi W/o Mohd.
Usman Kacchi,
Age 62 yrs.,Occ.: Household
- III) Abdul Gafar S/o Mohd.
Usman Kacchi,
Age 40 yrs.,Occ.: Service
- IV) Abdul Jabbar S/o Mohd.
Usman Kacchi,
Age 34 Yrs.,Occ.: Business

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V) Abdul Rahim S/o Mohd
Usman Kacchi,
Age 32 yrs., Occ.: Business

R/o Parli Vaijnath,
Dist. Beed.
Through the
Power of attorney holder
Abdul Sattar S/o Mohd
Usman Kacchi.

= **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Collector Beed,
2. The Executive Engineer,
Civil Construction
Division No.IV
M.S.E.B.Parli- Vaijnath,
Dist. Beed

= **RESPONDENTS**

WITH

First Appeal No.1306 of 2004

Panditrao S/o Shivajirao Deshpande,
Age 56 yrs., Occ.: Advocate,
R/o Beed, Tq & Dist. Beed

= **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Collector Beed,
2. The Executive Engineer,
Civil Construction
Division No. IV
M.S.E.B. Parli-Vaijnath,
Dist. Beed

= **RESPONDENTS**

WITH

First Appeal No 1307 of 2004

1. Harising Thakursing
Died through L.Rs.

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- 1/a Arjunsing S/o Harising Thakur,
Age 43 yrs., Occ.: Agril.
R/o Parli Vaijnath,
Tq Parli-Vaijnath,
Dist. Beed
- 1/b Bharatsing S/o Harising Thakur
Age 40 yrs., Occu.: Service,
R/o Parli Vaijnath,
Tq. Parli- Vaijnath,
Dist. Beed
- 1/c Shivcharansing S/o Harising Thakur,
Age 37 yrs., Occ.: Agril.,
R/o Parli Vaijnath,
Tq Parli-Vaijnath,
Dist. Beed
- 1/d Papasing S/o Harising Thakur,
Age 32 yrs., Occ.: Agril.,
R/o Parli Vaijnath,
Tq. Parli-Vijnath,
Dist. Beed
2. Gajrajsing Thakursing
Died through L.Rs.
- 2/a Sheshnarayan S/o Gajrajsing
Thakur
(died through L.Rs.)
- 2a-I Ranjeetsing S/o Sheshnarayansing
Thakur
Age 43 yrs.,Occ.:Agril.,
- 2a-II Randheersing S/o Sheshnarayansing
Thakur
Age 33 yrs.,Occ.:Agril.,
- All R/o Parali Vaijnath,
Tq. Parli, Dist. Beed
- 2/b Jagatsing S/o Gajrajsing
Thakur,
Age 35 yrs,Occ.: Agril.
R/o Parli Vaijnath,
Tq. Parli-Vaijnath,
Dist. Beed

= APPELLANTS

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3. Prakashsing Hanumansing
Age 30 yrs., Occ.: Agril.
R/o Parli Vaijnath,
Tq. Parli-Vaijnath,
Dist. Beed

4 Arunsing Hanumansing Thakur,
Age 25 yrs., Occ.: Agril.
R/o Parli Vaijnath,
Tq. Parli- Vaijnath,
Dist. Beed

= **APPELLANTS**

VERSUS

1 The State of Maharashtra
Through Collector Beed,

2 The Executive Engineer,
Civil Construction
Division No. IV
MSEB, Parli Vaijnath,
Dist. Beed

= **RESPONDENTS**

Mrs. M.A.Kulkarni, Adv. for Appellant/s;
Shri AM Phule, AGP for Respondent-State;
Shri S.S.Choudhari, Adv. for Resp. for No.2;

WITH

FIRST APPEAL NO.1335 OF 2004

1. Mr. Annasaheb Patloba Chate
(Died through his L.Rs.)
- 1A. Nilvanti Annasaheb Chate
Age: 62 Yrs., occu. Household.
- 1B. Kusum Annasaheb Chate
Age: 55 Yrs., occu. Household.
- 1C. Dinkar Annasaheb Chate
Age: 40 Yrs., occu. Serlvice.
- 1D. Chandrakant Annasaheb Chate
Age: 33 Yrs., occ. Agril.
- 1E. Nilkanth Annasaheb Chate

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Age: 31 Yrs., occu. Agril.

1F. Vaijanath Annasaheb Chate
Age: 27 Yrs., occu. Agril.

1A to 1F r/o Shivaji Nagar,
TPS Road, Parali Vaijanath,
District Beed.

2. Bhaskar Patloba Chate,
Age: Adult, occu. Agril.

R/o Parli Vaijinath,
Tq. Ambejogai, Dist. Beed.

= **APPELLANTS**
(orig. Claimants)

VERSUS

1. The State of Maharashtra

2. The Executive Engineer,
Civil Construction Divn.No.4,
MSEB Parli Vaijnath,
Tq. Ambejogai, Dist. Beed.

= **RESPONDENTS**
(Orig. Opponents)

WITH

First Appeal No.1341 of 2004

Vaijnath Govind Vaishnav
Age Adult, Occ.: Agril.
R/o At Parali Vaijnath,
Tal. Ambajogai,
Dist. Beed

= **APPELLANT**
(Orig. Claimant)

VERSUS

1 The State of Maharashtra,

2 The Executive Engineer
Civil Construction
Division No. 4,
M.S.E.B Parali Vaijnath,
Tal. Ambejogai,
Dist. Beed

= **RESPONDENTS**
(Orig. Opponents)

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WITH

First Appeal No.1342 of 2004

Salim Nisa Begum w/o
Mirajamin Ali
Since deceased Through:
her L.Rs.

1-a) Mir Jaweed Ali Mirjamin Ali
(Since Deceased Through L.Rs.)

1a-A) Smt. Asmabegum Mir Jawed Ali
Age 65, Occ.: Household

1a-B) Mir Mujahed Ali Mir Jaweed Ali
Age 32, Occ.: Business

1a-C) Mohammad Abdul Kadar Mir
Jaweed Ali
Age 24, Occ.: Business

All R/o Bangala Galli
Parali Vaijnath,
Tq. Parli Vaijnath,
Dist. Beed
Presently Residing at
Red Hills,
Hyderabad. (Telangana)

1-b) Mir Sohel Ali,
Age 56 yrs, Occ.: Nil,
R/o. 11/5/242, Red Hills,
Hyderabad,
Dist Hyderabad (A.P.).

1-c) Sharukh Tanvir,
Age 67 yrs, Occ.: Household,
R/o 11/06/822 Red Hills,
Hyderabad,
Dist. Hyderabad (A.P.)

1-d) Maharukh Parvin,
Age 63 yrs. Occ.: Household,
R/o 11/06/822 Red Hills,
Hyderabad,
Dist. Hyderabad (A.P.)

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1-e) Sayeeda Sitwath
Age 59 yrs, Occ.: Household,
R/o 11/04/822 Red Hills,
Hyderabad,
Dist. Hyderabad (A.P.)

1-f) Rana Batul,
Age 55 yrs, Occ.: Household,
R/o Flat No.101,
Somayya Apartment,
Red Hills Hyderabad,
Dist. Hyderabad (A.P.)

= APPELLANTS
(orig.Claimants)

VERSUS

1 The State of Maharashtra

2 The Executive Engineer
Civil Construction
Division No.4,
M.S.E.B Parali Vaijnath,
Tal. Ambejogai,
Dist. Beed

= RESPONDENTS
(Orig. Opponents)

FIRST APPEAL NO.1343 OF 2004

1. Bajirao Prakashrao Dharadhikari,
(Parlikar), Age. Adult,
occu. Agril.

2. Harihar Prakashrao Dharmadhikari,
(Parlikar), Age. Adult,
occu. Agril.

3. Partap Prakashrao Dharmadhikari,
(Parlikar), Age. Adult,
occu. Agril.

Residing at Parli Vaijnath
Tq.Ambejogai, Dist. Beed.

= APPELLANTS
(orig.Claimants)

4. Smt. Shakuntalabai Manikrao
Dharmadhikari, Age: 67 Yrs.,
occu.Nil., R/o Ambeves,
Parli, Dist. Beed.

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5. Suresh @ Suryakant Manikrao
Dharmadhikari, Age: 48 Yrs.,
occu. Agril. R/o as above.
6. Sow. Minaxi Bharatrao Terkar,
Age: 34 Yrs., occu.Nil.
R/o Bank Colony, Parli,
Dist. Beed.
7. Chandrashekhar Manikrao
Dharmadhikari, Age: 45 Yrs.,
occ. Agril. r/o Ambeves,
Parli Dist. Beed.
8. Ramakant Manikrao Dharmadhikari,
Age. 35 Yrs., occu. and r/o
as above. = **CO-APPELLANTS**

VERSUS

1. The State of Maharashtra
2. The Executive Engineer,
Civil Construction Divn.No.4,
MSEB Parli Vaijnath,
Tq.Ambejogai, Dist. Beed. = **RESPONDENTS**
(Orig.Opponents)

WITH

FIRST APPEAL NO.1344 OF 2004

- . Vaijnath Balasaheb Itke,
Age: Adult, occu. Agril.
R/o Parli Vaijnath,
Tq.Ambejogai, Dist. Beed. = **APPELLANT**
(orig.Claimant)

VERSUS

1. The State of Maharashtra
2. The Executive Engineer,
Civil Construction Divn.No.4,
MSEB Parli Vaijnath,
Tq.Ambejogai, Dist. Beed. = **RESPONDENTS**
(Orig. Opponents)

WITH

FIRST APPEAL NO.1444 OF 2004

1. Vaijnath s/o Digambar Dube,

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(since deceased through L.Rs.)

- 1A. Smt.Anuradha Vaijnath Dube,
Age: 61 Yrs., occu. HH
R/o Vaidyanath Mandir Road,
Parli, Dist. Beed.
- 1B. Manju Vaijnath Dube,
Age: 36 Yrs., occu. and
R/o as above.
- 1C. Vyankatesh Vaijnathrao Dube,
Age: 28 Yrs., occ. and
R/o as above.
- 1D. Jyoti Vaijnathrao Dube,
Age: 26 Yrs., occ. and
R/o as above.
- 2. Laxmikant s/o Digambar Dube,
Age: 50 Yrs., occ. and
R/o as above.

= **APPELLANTS**
(orig.Claimants)

VERSUS

- 1. The State of Maharashtra
- 2. The Executive Engineer,
MSEB (T.P.S.)
Civil Construction Divn.No.4,
Parli Vaijnath,
Dist. Beed.

= **RESPONDENTS**

WITH

First Appeal No.1336 of 2004

Nagurao Bapusaheb Deshmukh,
Age Adult, Occ.: Agril.,
R/o Parali Vaijnath,
Tal. Ambejogai, Dist. Beed

= **APPELLANT**
(Orig. Claimant)

VERSUS

- 1 The State of Maharashtra
- 2 The Executive Engineer
Civil Construction
Division. No. 4,
M.S.E.B.Parali Vaijnath,
Tal. Ambejogai,

(10)

Dist. Beed

= **RESPONDENTS**
(Orig. Opponents)

Mr.MG Heblkar, Adv. i/b Mr. Mr.Mukul S.Kulkarni &
Mr. VV Bhavthankar, Advocates for Appellants (in
respective matters);

Mr. AM Phule, AGP for Respondent No.1-State;

Mr. SS Choudhari, Adv. For Respondent No.2.

WITH

FIRST APPEAL NO.1488 OF 2004

Samandar Khan s/o Sher Khan
Ag: 35 Yrs., occu. Agril.
R/o Parali Vaijinath,
Tq. Ambejogai, Dist. Beed.

= **APPELLANT**

VERSUS

1. The State of Maharashtra

2. The Executive Engineer,
Civil Construction Divn.No.4,
MSEB Parli Vaijnath,
Tq.Ambejogai, Dist. Beed.

= **RESPONDENTS**

Mr.Milind M.Patil-Beedkar Advocate for Appellant;

Mr. AM Phule, AGP for Respondent No.1-State;

Mr. SS Choudhari, Adv. For Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 26th February, 2019

ORAL JUDGMENT

1. First Appeal Nos.1336/2004 & 1488/2004
not on Board. Taken on Board.

2. Since all these appeals are arising out

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of the common Judgment and Award passed by Additional District Judge, at Ambejogai in LAR No. 134/2003 with connected LARs decided on 15th April, 2004, I have heard the common arguments in all these appeals and I deem it appropriate to decided these appeals by a common reasoning.

3. All these appeals are filed by the original claimants, seeking enhancement in the amount of compensation, as has been awarded by the Reference Court vide the impugned Judgment and Award.

4. The lands, which are involved in the present appeals, owned by the respective appellants, were acquired for the purpose of Railway Widening and Marshalling Yards, Divergence of Beed road and extension of Parli-Vaijinath Thermal Power Station of MSEB. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) in that regard was published in the Official Gazette on 3rd March, 1979. Possession of the lands was taken by the acquiring body by invoking provisions under

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Section 17 of the Act on 8th July, 1979. Award under Section 11 of the Act came to be passed on 23rd September, 1986. The Special Land Acquisition Officer had offered the compensation to the respective claimants @ Rs.170/- to Rs.240/- per Are. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act, which were adjudicated by the learned Ad hoc District Judge (hereinafter referred to as the Reference Court).

5. The material on record reveals that initially, the Reference Applications were decided by the District Judge, Beed. In the Reference Applications, the claimants had claimed the compensation @ Rs.20/- per sq.ft. In order to substantiate the claim so raised by them, the claimants, in addition to their own testimonies, had placed on record certain sale instances and had also examined few witnesses. The Reference Applications were opposed by the respondents. However, no evidence was adduced on behalf of the respondents. The learned Reference Court, on

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assessment of the oral and documentary evidence brought on record before it, determined the market value of the acquired lands @ Rs.6/- per sq.ft. and accordingly enhanced the amount of compensation. The Reference Court also held the claimants entitled for the statutory benefits and interest under the provisions of the Act on the enhanced amount of compensation.

6. Aggrieved by the common Judgment and Award passed by District Judge Beed, the acquiring body preferred the appeals before this court. It was the contention of the acquiring body in the said appeals that, it was not made party in the Reference proceedings and hence did not have the opportunity to defend the claims raised by the respective claimants, which, according to it were exorbitant. The Division Bench of this Court, vide order passed in those appeals, remitted the matters to the Reference Court for deciding the same afresh by adding the acquiring body as a party respondent. Accordingly, the matters were remitted and were adjudicated by the Reference Court.

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7. After the matters were remitted, the claimants as well as the respondents both, incorporated certain fresh pleadings and also adduced evidence on their behalf. The Reference Court on the basis of the evidence which was adduced before it, determined the market value of the acquired lands @ Rs.1175/- per Are and held the claimants entitled for the compensation accordingly with all statutory benefits and the interest. As noted herein above, dissatisfied with the market value, as has been determined by the Reference Court and the consequent meager enhancement in the amount of compensation, the claimants have preferred the present appeals.

8. Though different counsel are appearing in these matters for the respective appellants, lead argument was advanced in First Appeal No.1335/2004 by learned counsel Shri M.G.Hebalikar. Learned counsel assailed the impugned judgment on several grounds. The learned counsel submitted that the Reference Court has utterly failed in appreciating the sale instances brought on record by the claimants. The learned counsel further submitted

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that the Reference Court has also failed in appreciating that each and every piece of the acquired land was having NA potentiality and was hailing from a fully developed area or surrounded by fully developed area, and as such, was liable to fetch the price much more than awarded by it.

9. The learned counsel submitted that influenced by the judgment of the Hon'ble Apex court in the case of Digambar Tandale - (Civil Appeal Nos.3374 to 3376 of 1999) the reference court has determined the market value of the acquired lands at such a lower rate. The learned counsel submitted that there was ample evidence brought on record by the claimants showing that the land of Tandale which was the subject matter in the appeals before the Hon'ble Apex court, was at quite a long distance from the acquired lands and was out of the municipal area, so also situated in un-developed area. In the circumstances, according to the learned counsel, the market value, as was determined of the said land, could not have been the basis for determining the market value of the lands, which were involved in the present appeals.

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10. The learned counsel, inviting my attention to the averments in the Award passed under Section 11 of the Act, submitted that, as per the observations made in the said Award, the acquired lands were surrounded by fully developed area and were possessing NA potentiality. The learned counsel more particularly invited my attention to clauses (C) and (J) of the Award.

11. The learned counsel submitted that, in fact, in view of the averments and observations made in the Award itself, the claimants were not required to bring on record any more evidence to show or to prove that the subject lands were having NA potentiality and were surrounded by fully developed area. The learned counsel submitted that during the course of hearing before Reference Court, decisions rendered in earlier Land Acquisition References, arising out of the same project, were also brought on record, wherein the market value of the lands involved in the respective LARs was determined in one matter @ Rs.2.50 per sq.ft.; in another matter @ Rs.3.25 per sq.ft. and in one more matter @ Rs.4.75 per sq.ft.

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The learned counsel submitted that some of such judgments and awards were challenged before the High Court by filing first appeals but in none of the said appeals the High court has caused any interference.

12. Bringing to my notice the judgment of Division Bench of this Court in FA No.232/2003 along with connected appeals decided on 9th October, 2003, the learned counsel submitted that on the basis of the evidence brought on record in the respective LARs, the Division Bench has recorded a clear finding that the land, which was owned by Mr. Tandale, was not liable to be compared with the acquired lands, and as such, the judgment in the said matter was not of any use for determining the market value of the lands which were the subject matters in the said appeals.

13. The learned counsel submitted that, the lands which were the subject matter of the decided appeals, were acquired for the same project for which the subject lands have been acquired. The learned counsel pointed out that first notification

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under section 4 of the Act was published in the year 1975, second in the year 1977; and third such notification was issued in the year 1979. The learned counsel submitted that some of the lands, which were acquired, vide notification issued in the year 1979, were also the subject matter of appeal before this Court for which the concerned Reference court had determined the market value at the rate of Rs.3.25 per sq. foot and the High Court confirmed the said rate in appeal.

14. The learned counsel submitted that lands involved in present appeals and the lands which were the subject matter of the decided appeals were similar in quality and potentiality and proximate in locality. The learned counsel submitted that in such circumstances, in no case, the Reference Court could have determined the market value at such lower rate of Rupee 1/- per sq.ft. The learned counsel submitted that, in fact, the evidence, which was brought on record in respect of the subject lands, was apparently suggesting that the present lands were more superior to the previously acquired lands, and as such, were liable to receive

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the market value at the higher rate which was claimed by the claimants. The learned counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

15. Shri Choudhari, learned counsel appearing for the acquiring body, supported the impugned Judgment and Award . The learned counsel submitted that considering the evidence on record, it is difficult to agree with the contentions raised on behalf of the appellants that the lands were having NA potentiality. The learned counsel further submitted that the appellants have failed in bringing on record any evidence showing that NA permission was obtained for the acquired lands or that all those lands were falling within the municipal limits. The learned counsel also invited my attention to cross-examination of Chief Officer, who was examined in the present matter, to urge that from his evidence also, it cannot be said that there was any concrete evidence as about the location of the acquired lands and the distance of the said lands from the centre of the city. The learned counsel, in the circumstances, prayed for

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dismissal of the appeals.

16. Learned AGP Shri Phule adopted the arguments advanced by Shri Choudhari and submitted for dismissal of the appeals being devoid of any merits.

17. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned Judgment and Award. I also perused the judgment, which was previously delivered in these matters by the then Reference Court and the order passed by this court, whereby the matters were remitted for fresh decision. I have also gone through the entire evidence which was adduced before the Reference Court. I also perused the judgments, which are earlier delivered by the concerned Reference Courts pertaining to the lands which were acquired for the same project, from the same area and the judgments delivered by the High Court in First Appeals arising out of the same.

18. On perusal of the impugned judgment, it

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is transpired that the judgment delivered by the Hon'ble Apex court in the case of Digambar Tandale has much weighed in the mind of the Reference Court while determining the market value of the subject lands. However, having regard to the evidence which is available on record and more particularly the location map, it apparently appears that the Reference Court has erred in determining the market value on the basis of the market value as was determined of the land belonging to Shri Tandale, which was the subject matter in the appeal before the Hon'ble Apex court. Location Map as well as the evidence on record, clearly demonstrates that the land owned by Shri Tandale was at a quite long distance from the acquired lands and admittedly it was out of municipal area. Further, there is sufficient evidence on record which supports the arguments advanced on behalf of the appellants that the said land could not have been the basis for determining the market value of the acquired lands.

19. While appreciating the evidence adduced in the references, it appears to me that the averments and observations made by SLAO in the Award passed

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by him under section 11 of the Act, must also be taken into account, so far as they relate to location, quality and potentiality. The assessment made by the Special Land Acquisition Officer in regard to aforesaid aspects while preparing the Award under Section 11 of the Act assumes vital importance. I deem it appropriate to reproduce herein below some of such averments and observations in the award which read thus, -

“(C) **Situation and description** :- The lands under acquisition are situated at town Parli and lands of village Jalalpur are also situated within the Municipal limit of Parali Town. The Town Parli is having “D” Class Municipality and located at a distance of about 27 kms. Away from the Taluka Head quarters Ambejogai. Town Parli Vajinath is having Railway Terminal for Broad and Meter gauges respectively. Due to railway facilities the Parli town has become a big business centre and also famous town in the Maharashtra. There is a Thermal Power Station situated at Parli town from which the Electric Energy is provided to different places in the Maharashtra State. A number of Education Schools, collages, Banking and postal and Telephone facilities are available in Parli Town. There is weekly Bazar on

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each Monday. The lands are situated within the half km. At the western side of the town Parli. The Parli town having Bus Station and Bus Depot and having big market and State Highway and other Public road etc.

A famous Vaijinath Mandir is situated there. The pilgrims from all over India visits this place for Darshan of Jyotirlingas. As a result, this is most advanced town in Beed District and also in Maharashtra State.

In view of the description of town Parli it became evidence that this area is developed one. The population of the town has been augmented reciprocally to its amending and rapid developments. By virtue of its developments in every directions and increasing trend of population the lands in its vicinity are found much in demand not only in Parli but also in its adjacent villages."

J) Valuation of N.A. Land :-

On the southern side of the acquired lands there is a Railway Station and further to the south of this Railway Station there is developed residential area. To the North of land under acquisition, there is an existing site of the Thermal Power Station in

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the eastern side of the land under acquisition, there is also a big piece of land acquired by the Thermal Power Station. Lands already acquired are developed for Thermal Power Station and residential Colonies and store sheds etc. of the Thermal Power Station Parli. From the above, it will be seen that the lands under acquisition are completely surrounded by developed areas. The lands from the southern side of Parli- Jalalpur road are also under acquisition. So it can be considered that the land under acquisition can be developed for non agricultural used, in the near future, if allowed, as such potential is there, Due to non agricultural activities are increased and the lands between Jalalpur- Parli – Ambejogai Road are particularly laid out in the residential plots, Further some layouts are appearing in Jalalpur outside. The Municipal area along the Ambajogai Road. This fully justified that the rates of the lands are increased due to non agricultural potentiality in Parli and particularly the lands which are situated near to be developed areas. Therefore, I come to the conclusion that the lands under acquisition which are surrounded by the developed areas basis non Agricultural potentiality and can be developed with in a period of few years.

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Lands under valuation are bulk lands, individual, holdings are also big one, so the sales for the consideration of valuation are considered for big pieces of lands. The same are discussed are as under :-

Since the lands are having N.A. Potential, these are valued on the basis of N.A. Potential and not on the basis of assessment groups.

The Lands under acquisition are agricultural lands growing mainly crops like Jawar, Moong, Bajra, Khardi, Gram, and Tur etc. Parli Railway Station is situated to the south of the lands under acquisition and beyond that the lands in Sy. Nos. 12, 14, 16 and 17 of Jalalpur situated on Parli jalalpur road are under development. The Layouts of these lands have been approved by the Town planing Department. Similarly on the same roads plots have been carved out in Sy. No. 42, 43, and 44 of Jalalpur situated immediately outside the municipal limit. Due to development of thermal Power station and its residential colonies on the southern and eastern side of the lands under acquisition, availability of communication such as State Highway and railway station nearby and proposed development on Parli Jalalpur Road, the lands under acquisition have gained N.A. Potential value in near future."

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20. The assessment so made in the award cannot be disputed by the acquiring body. Considering the evaluation in the award, there remains no doubt that the acquired lands were surrounded by fully developed area and as has been observed by the Special Land Acquisition Officer, each of the said land was having NA potentiality. During the course of arguments, it was pointed out by learned counsel Shri Hebalikar that in respect of some of the lands NA permissions were already obtained and copies of the said permissions were also placed on record of the Court.

21. The Reference Court has, however not taken into account the said evidence. Further, the evidence, which does not seem to have been properly considered and appreciated by the Reference Court is the earlier decisions rendered by the respective reference courts, in the LARs arising out of the acquisitions made for the same project. The material on record reveals that First Appeals were preferred in the High Court against some of such awards. Most of the said appeals have been dismissed, meaning thereby that enhancement granted

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by the reference court has been confirmed. In few matters, the awards are modified. However, in none of the matters market value of the lands has been determined less than Rs.2.50 ps.

22. Three such decisions were brought to my notice delivered by the Reference Court. I deem it appropriate to discuss the said evidence. In LAR No.100/1980, which was pertaining to 17 Ares land, which was acquired by notification under Section 4 of the Act issued on 3.1.1975, the Reference Court had awarded the market value @ Rs.5/- per sq.ft. In First Appeal No.4/1985, this court, vide judgment delivered on 10th December, 1991, brought down the market value to Rs.2.50 ps. Per sq.ft. The said appeal was decided by the Division Bench of this court (Coram: A.D.Mane & M.S.Vaidya,JJ.). The material on record shows that the said decision was subjected before the Hon'ble Apex court in Special Leave Petition, but it was dismissed and the judgment of this court was confirmed, meaning thereby that the rate of Rs.2.50 ps per sq.ft. was confirmed in the said matter and attained finality. It has to be emphasized that the market value

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determined at the rate of Rs. 2.50 ps in the said matter was as on 3.1.1975, i.e. prior to about four years of the acquisition of the lands involved in the present appeals.

23. The material on record further reveals that the land in survey No.18 situated at village Jalalpur Tq. Parli owned by one Deviprasad Chunnilal Pande, admeasuring 1 hectare and 20 Ares, was acquired for the same project vide section 4 notification of the Act dated 8th October, 1981. The owner Shri Pande had filed LAR No.56/1984 seeking enhancement in the amount of compensation offered by Special Land Acquisition Officer and the Reference Court in the said matter determined the market value @ Rs.3.25 ps per sq.ft. Against the said judgment, no appeal was preferred by the acquiring body and the Award passed was satisfied by the acquiring body.

24. The material on record further reveals that one more land, belonging to said Deviprasad Pande from Survey No. 18 itself, admeasuring 4 hectares and 12 Ares, was acquired, vide notification dated

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4th October, 1979 issued under Section 4 of the Act. In that regard, LAR No.57/1984 was filed by said Shri Deviprasad Pande and the Reference Court, vide the judgment delivered on 9th April, 1986, determined the market value of the said land @ Rs.3.25 ps per sq.ft. As was argued by learned counsel appearing for the appellants, even against the said judgment, no appeal was preferred by the acquiring body and the said judgment of the Reference Court attained finality.

25. It was also brought to my notice that the lands belonging to one Madhukar Vinayak Tambat (Kasar), admeasuring 81 Ares and 1 hectare and 75 Ares, were acquired vide notification under Section 4 of the Act published on 3rd June, 1982 and in that regard, LAR No.538/1987 and LAR No.539/1987, were filed by said Kasar, wherein also, the Reference Court determined the market value of the acquired lands @ 3.25 ps. per sq.ft.

26. The location map is placed on record by the appellants. With the assistance of learned counsel appearing for the appellants as well as the

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learned counsel appearing for the acquiring body and the learned AGP, I perused the said map. On perusal of the said location map, it is revealed that the lands, which are the subject matter of the present appeals, are at a short distance from survey No.18. As has come on record, some of the portions from out of said survey No.18, belonging to Deviprasad Chunnilal Pande, were acquired for the construction of Irrigation colony. One such portion of land, admeasuring 4 hectares and 12 Ares, was acquired vide notification issued under Section 4 of the Act, on 4.10.1979. In the said matter, said Deviprasad Chunnilal Pande had made reference under Section 18 of the Act which was numbered as LAR No.57/1984 and the Reference Court, which decided the said Reference Application, had determined the market value of the said land @ Rs.3.25 ps per sq.ft. I am referring to the decision in the said LAR, more particularly for the reason that the lands, which are involved in the present appeals, were acquired vide notification issued on 31.3.1979, i.e. prior to about six months of the acquisition of the said land. The said acquisition, therefore, can be said to be more

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proximate in time comparing to the acquisitions of the othoer lands belonging to said Deviprasad Pande to which also I have referred herein above.

27. Considering the evidence on record, the learned Reference Court was expected to consider and rely upon the decision rendered in the said LAR No.57/1984; it has however preferred to rely upon the decision in the mater of Digambar Tandale. The observation made by the Reference Court in para 75 of the impugned judgment that the lands, which are the subject matter of the present appeals, are far away from survey No.18, is factually incorrect. As I noted herein above, on perusal of the location map it is clearly revealed that the lands, which are the subject matter of the present appeals are at a short distance of survey No.18. Some of the lands can also be said to be adjacent lands. On the contrary, the land acquired of Digambar Tandale from out of survey No.107/2, is apparently at quite a long distance from the acquired lands and was situated at village Sangam. The Reference Court has also failed in appreciating that Tandale's aforesaid land was out of the municipal area and

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the area surrounding to the said land was not as developed as the area around the subject lands. It appears that the learned Reference Court was influenced by the judgment of the Hon'ble Apex court in the case of Digambar Tandale and accordingly preferred to rely upon the decision rendered in said matter.

28. I reiterate that from the evidence on record, it has become amply clear that the market value of the lands involved in the present appeals could not have been determined on the basis of the market value determined of Tandale's land for many reasons. Firstly, that Tandale's land is at the far away distance from the acquired lands; secondly, that Tandale's land is out of the municipal area; thirdly that the area around Tandale's land is not that developed as is the area around the acquired lands. As noted by me earlier, the learned Reference Court also failed in appreciating the situation and description of the acquired lands, as is mentioned in the award under Section 11 of the Act. The Reference Court has also failed in appreciating the observations made

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in clause J of the Award under the caption "Valuation of N.A.potentiality". In the award itself, it is stated that the acquired lands were surrounded by fully developed area and each of the said lands was having N.A. potentiality.

29. After having considered the entire evidence on record, I have no hesitation in determining the market value of the acquired lands @ Rs.3.25 ps. per sq.ft.

30. The next question arises as to while determining the amount of compensation to what extent the deductions can be permitted. It was argued by Shri S.S.Choudhari, learned counsel appearing for the acquiring body and learned AGP Shri Phule that towards the development of the acquired lands, the appropriate deductions will be 40% of the total amount of compensation or the total area acquired. As against it, it was argued on behalf of the appellants that at the most, 10% of the total amount of compensation on the area acquired can be deducted towards the development charges. It was the contention of the learned

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counsel that the surrounding area is already developed. As has been observed in the Award itself, the lands under acquisition are completely surrounded by developed area. In the circumstances, it is difficult to accept the argument made on behalf of the acquiring body and the State Government to deduct 40% amount of the compensation towards the development charges. After having considered the entire material on record, according to me, it would be just and fair to deduct 25% of the total amount of compensation towards the development of the acquired lands.

31. For the reasons recorded above, following order is passed, -

ORDER

i. The market value of the lands which are the subject matter of the present appeals, is determined @ Rs. 3.25 p.s per sq.ft. The appellants-claimants are entitled for the compensation towards the acquired lands at the aforesaid rate, deducting 25% of the said amount towards the development charges;

ii. The appellants-claimants are also

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entitled for the amount of solatium, as provided under Section 23(2) of the Act and the amount of 12% component, as provided under Section 23(1A) of the Act on the enhanced amount of compensation.

iii. Since the acquired lands were taken in possession by invoking the urgency clause, as provided under Section 17 of the Act, the appellants-claimants shall be entitled for the interest under Section 28 as well as under Section 34 of the Act from the date of possession of the lands at the rate prescribed under the aforesaid sections.

iv. It is clarified that the enhanced amount of compensation shall include the amount of solatium as well as the amount of 12% component while calculating the interest under Sections 28 and 34 of the Act.

v. Modified Award be prepared accordingly.

vi. All the appeals, thus stand partly allowed in the aforesaid terms. Pending civil applications, if any, stand disposed of.

(P.R.BORA)
Judge

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