

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

FIRST APPEAL NO.1094 OF 2002

1. The State of Maharashtra
Through Collector, Latur.

2. The Executive Engineer,
Minor Irrigation Division,
Latur.

Appellants.

Versus

1. Srikant Tamanappa Udge
Age : 47 years, occu.: agri.,
R/o Latur.

2. Snehal Srikant Udge
(Minor), occu.: education
Under guardianship of natural
father respondent No.1.

Respondents.

Mr. A.M. Phule, A.G.P. for appellant No.1.
Mr. V.R. Sonwalkar, Advocate for appellant No.2.
Mr. V.D. Gunale and Mr. V.G. Kodale,
Advocates for respondent Nos.1 and 2.

WITH

X-OBJEN. NO. (ST.) 5895 OF 2013

1. Srikant Tamanappa Udge
Age : 52 years, occu.: agri.,
R/o Latur.

2. Snehal s/o Srikant Udge
Age : 22 years, occu.: student
R/o as above.

Applicants.

Versus

1. The State of Maharashtra
Through Collector, Latur.
2. The Executive Engineer,
Minor Irrigation Division,
Latur.

Respondents.

Mr. V.D. Gunale and Mr. V.G. Kodale,
Advocates for the appellants.

Mr. A.M. Phule, A.G.P. for respondent No.1.

Mr. V.R. Sonwalkar, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 30 April 2019.

Judgment pronounced on : 04 June 2019.

JUDGMENT.

1. First Appeal No.1094 of 2002 is filed by the State of Maharashtra and Acquiring Body, who were the respondents in Land Acquisition Reference (L.A.R.) No. 954/1997, against the judgment and award passed by 2nd Additional District Judge, Latur whereas compensation at the rate of Rs. 450/- per square metre was awarded for the land acquired from claimant No.1 and compensation at the rate of Rs. 7,500/- per Aar was awarded for the area of 5 Hectare 06 Aar acquired from claimant No.2.

2. The respondents in First Appeal are the original claimants. The respondents/claimants have also filed Cross-objection for enhancement of compensation amount at the rate of Rs. 500/- per sq.ft.

3. For the sake of convenience, hereinafter the parties are referred to in accordance with their status in the Land Reference as “claimants” and “State” as well as “Acquiring Body”.

4. Undisputed facts in between the parties are that out of Survey No.166 situated at Latur, 5 Hectare 93 Aar land was acquired by State of Maharashtra for Acquiring Body, for construction of Katpur Dam (Minor Irrigation Dam). Claimant No.1 had share in the acquired land to the extent of 87 Aar and claimant No.2 had 5 Hectare 06 Aar share in the acquired land. Claimant No.1 is practicing Advocate at Latur and he is father of minor claimant No.2. Even it is not disputed that notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as the “Act”), was published in Government Official Gazettee on 22.04.1993. The collector passed award on 29.08.1997. At the appellate stage it is not disputed that possession of the acquired land was taken by Acquiring Body on

22.12.1992. The Collector offered compensation at the rate of Rs.1,20,000/- per Hectare for the acquired land. Being dissatisfied with this award, the claimants filed L.A.R. No.954/1997 which was decided by the Reference Court and out of acquired land, for the land acquired from claimant No.1, compensation was awarded at the rate of Rs. 450/- per square metre and for the land acquired from claimant No.2 compensation was awarded at the rate of Rs. 7,500/- per Aar. This award has been challenged by both parties.

5. Heard Mr. A.M. Phule, learned A.G.P. for appellant No.1 and Mr. V.R. Sonwalkar, learned Counsel for appellant No.2. Learned Counsel Mr. V.D. Gunale and Mr. V.G. Korale argued for respondent Nos.1 and 2 respectively.

6. Learned A.G.P. for the appellant submits that the sale instances (Exhs.12, 13 and 15) being regarding small N.A. plots, cannot be accepted as comparable sale instances to determine the market value of the acquired land admeasuring 5 Hectare 93 Aar.

7. The next contention of the learned A.G.P. is that though the claimants placed reliance on the award passed in

L.A.R. No.175/1994 (Exh.34) and L.A.R. No. 509/1993 (Exh.35), these Land References cannot be considered because the date of notification under Section 4 (1) of the Act and purpose of acquisition, in these both Land References, is altogether different, and therefore, the rate awarded by Reference Court in those Land References cannot be considered for determining the rate of compensation in the case at hand. To substantiate this contention, learned A.G.P. placed reliance on the cases of **“Ali Mohammad Beigh and others Vs. State of J & K”** (AIR 2017 SC 1518) and **“Prakash Manikrao Borade & others Vs. State of Maharashtra and others”** delivered by this Court on 7 January 2019 in **First Appeal No.1586 of 2009**.

8. The next objection raised by learned A.G.P. is that the learned Reference Court awarded interest under Section 28 of the Act on compensation since 22.12.1992 i.e. from the date of taking possession of the acquired land by State, when notification under Section 4 (1) of the Act was published in Official Gazette on 22.04.1993. He submits that as the possession was taken by Acquiring Body prior to the date of publication of notification under Section 4(1) of the Act, the interest under Section 28 of the

Act can be awarded only from the date of passing of award i.e. from 29.08.1997 and not from the date of dispossession of the claimants. To substantiate this contention, he placed reliance on the judgment delivered by this Court on 05.03.2018 in **First Appeal No. 583 of 2018 (State of Maharashtra Vs. Pandharinath Misal and others)**.

9. The next contention of learned A.G.P. is that the Reference Court erroneously considered the draft award prepared by Special Land Acquisition Officer for determining the rate of compensation, when the draft award was rejected by the Commissioner, and therefore, subsequent award was prepared and after its acceptance it was declared by the Collector.

10. Learned Counsel for the Acquiring Body supports the arguments submitted by learned A.G.P.

11. Learned Counsel for the claimants submits that when the sale instance of the agricultural land or of the land of larger area is not available, the claimants can also rely on the sale instance of small piece of land, subject to certain adjustment. He submits that the sale instances (Exhs.12, 13 and 15) are of the lands which are near the acquired land, and

therefore, these sale instances can be accepted as comparable sale instances. He placed reliance on the cases of **“Special Tahsildar Vs. Mangala Gowry” (AIR 1992 SC 666)**, **“T.S. Ramchandra Shetty Vs. Karnatak Housing Society” [AIR 2009 (Suppl.) 1870]** and **“Patel Jathabhai Vs. North Gujraath” [2015 (3) SCC 650]**.

12. The next contention of learned Counsel for the claimants is that on 19.11.1992 the claimants obtained permission for use of acquired land for non-agricultural purpose. He submits that this permission (Exh.20) was obtained prior to the date of publication of notification under Section 4(1) of the Act, and therefore, on the date of publication of notification under Section 4 (1) of the Act, 87 Aar land of the share of claimant No.1 was already converted into non-agricultural land and its layout was also sanctioned by the Authorities prior to the date of notification (Exh.21). Relying on this N.A. order, he submits that the acquired land of the share of claimant No.1 being non-agricultural land, fetches more value. So also the land of the share of claimant No.2 being situated in well developed area in the Municipal limits of Latur City, carries N.A.

potentiality, and therefore, this land also fetches higher market value like non-agricultural land.

13. Regarding interest under Section 28 of the Act, learned Counsel for the claimants supports the judgment passed by the Reference Court relying on the cases of **“Manipur Tea Company Pvt. Ltd. Vs. The Collector” (AIR 1997 SC 1779)**, **“Narayan Das Jain Vs. Agra Mahapalika” [(1991) 4 SCC 212]**, **“Haridwar Development Authority Vs. Raghuvir Sing” (AIR 2010 SC 1754)** and Judgment delivered by this Court on 2 September 2015 in **First Appeal No. 831 of 2014 (Prabhakar Vs. State of Maharashtra and others)**.

14. The next objection raised by learned Counsel for the claimants is that as the acquired land carries N.A. potentiality, there cannot be any deductions from the value of the acquired land towards development charges. He placed reliance on the cases of **“C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer & anr” (2009 LAC 437 SC)**, **“Special Tahsildar Vs. Abdul Reguman” (AIR 1996 Madras 198)** and **“Bhagwathulla Samanna Vs. Special Tahsildar”**

(AIR 1992 SC 2298).

15. The next contention of learned Counsel for the claimants is that in L.A.R. No.175/1995 (Exh.34) the acquired land was situated at village Kanheri, which is adjoining to Latur City, and therefore, the above both awards passed by the Reference Court can be considered for assessing the market price of the acquired land on the date of publication of notification under Section 4 (1) of the Act.

16. Learned Counsel for the claimants submits that under sale instance (Exh.25) dated 04.12.1992, N.A. plot out of Survey No. 166 was sold out at the rate of Rs. 777/- per sq.mtr. Even the acquired land is out of the same survey number. Therefore, the rate Rs. 777/- per sq.mtr. can be awarded to the acquired land.

17. Learned Counsel for the claimants assailed the judgment of Reference Court on the ground that the Reference Court awarded less compensation than the market value of the acquired land as well as the Reference Court did not consider the entire area owned by claimant No.1 while determining compensation amount. He prays for enhancement of

compensation amount by allowing Cross-objection filed by the claimants.

18. After hearing both the sides, following points arise for my determination.

POINTS	FINDINGS
1) What is the reasonable and fair :- market value of the acquired land on the date of notification under Section 4 (1) of the Act?	Rs. 778/- per sq.mtr. for 87 Aar of the share of claimant No.1 and Rs.584/- per sq.mtr. for 5 H. 06 Aar of the share of claimant No.2.
2) Whether the claimants are :- entitled to interest on enhanced compensation under Section 28 of the Act from the date of dispossession i.e. from 22.12.1992 or from the date of passing of award i.e. from 29.08.1997?	From the date of passing of award i.e. 29.08.1997.

AS TO POINT NO.1 :-

19. At the outset, I must make it clear that in the case of **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona” [1988 (3) SCC 751]**, the Apex Court has laid down certain principles regarding acceptable sale instance and

other principles which are to be considered by Reference Court at the time of awarding compensation in Land References. Those guidelines are as under:-

“ (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

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

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

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

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

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

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

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

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

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

- (i) proximity from time angle,
- ii) proximity from situation angle.

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

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

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

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

Plus factors

1. smallness of size.
2. proximity to a road. `
3. frontage on a road.
4. nearness to developed area
5. regular shape.
6. level vis-a-vis land under acquisition.

Minus factors

1. largeness of area.
2. situation in the interior at a distances from the Road.
3. narrow strip of land with very small frontage compared to death.
4. lower level requiring the depressed portion to be filled up.
5. remoteness from developed locality.
6. some special disadvantageous factor which

would deter a
purchaser.

7. special value for an owner
of an adjoining property
to whom it may have some
very special advantage.

(14) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(15) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself".

20. The Apex Court and the High Courts in subsequent judgments re-iterated same principles in one or another way in

the cases of **“Union of India Vs. Shriharikishan”** (AIR 1990 Delhi 101), **“Bayaji Taty Kalunge Vs. State of Maharashtra”** [2007 (2) ALL MR 316] and **“Ratanlal Vs. State of Punjab”** (AIR 2017 SC 730).

21. In view of the above-discussed legal position, for determination of fair and reasonable market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act, the most approved method is the use of comparable sale instance. As settled by the Apex Court, the comparable sale instance is to be chosen from the *bona fide* sale transactions, on the basis of proximity in between date of execution of comparable sale instances and the date of publication of notification under Section 4 (1) of the Act. Even the proximity in between sale instance and the acquired land is to be considered in respect of location, quality and advantageous and dis-advantageous factors.

22. In the case at hand, four sale instances are relied on by the claimants. On the other hand, on behalf of the State and Acquiring Body though Town Planner Sanjay Adhav (DW-1) is examined, no other comparable sale instance has been placed on

record and proved by the State and Acquiring Body. No doubt, in the cross-examination Sanjay Adhav (DW-1) learned Counsel for the claimants has brought on record that in the earlier draft award, Survey No. 166 was treated as the land having N.A. potentiality. However, as ruled by the Apex Court in the case of **“Chimanlal Hargovinddas Vs. SLAO, Poona”** (supra), the contents of award cannot be considered while determining the market value of the acquired land on the date of publication of notification. Therefore, the above admission given by Sanjay Adhav (DW-1) needs to be ignored.

23. The four sale instances placed on record by the claimants are as below :-

Exh. Nos.	Date of Sale Instance	Location / Area	Market value
12	27.02.1989	Plot No.1, Survey No.142/B, situated at Latur. 16 x 1.28 Metres.	Rs. 2,211/- per square metre.
13	27.02.1989	Plot No.1, Survey No.142/B, situated at Latur. 16 x 13.72 Metres.	Rs. 2,211/- per square metre.
15	19.07.1990	Grampancyaat Plot No.4124, Surve no.24/A situated at village	Rs. 160/- per square metre.

		Kanheri. 400 sq.ft.	
25	04/12/92	Plot No.35, Survey No.166, situated at Latur. 12 x 12 Metres.	Rs. 778/- per square metre.

24. To prove the sale instances (Exhs.12 and 13) the claimants have examined Vijaykumar Kapse (PW-1) who attested both sale deeds (Exhs. 12 and 13) as attesting witness. However, from the cross-examination of Vijaykumar Kapse (PW-1), it emerges that these both plots were sold out in auction to the higher bidder, to raise capital for restarting the closed Dalda Factory Unit. This witness has also admitted that the plots under the sale instances (Exhs.12 and 13) are commercial plots and for that reason those plots were sold at higher price. Thus, it is evident that the sale instances (Exhs.12 and 13) do not reflect true market value of the land at Latur. Therefore, these both sale deeds cannot be considered as comparable sale instances to determine the market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act.

25. Suresh Trimukhe (PW-2) has duly proved the third sale instance (Exh.15) executed on 19.07.1990. However, the land

under this sale instance is a small plot admeasuring 400 sq.ft. situated at village Kanheri and not at Latur. This plot is part and Parcel of Survey No.24. Though Suresh Trimukhe (PW-2) deposes that the plot under sale instance (Exh.15) is at the distance of 1000 ft. from the acquired land, the survey map (Exh.45) does not support this contention. The survey map (Exh.45) shows that Survey No. 24 situated at village Kanheri is at long distance from Survey No.166 i.e. from the acquired land. So also the sale instance (Exh.15) was executed on 19.07.1990. Therefore, there is no proximity in between the date of execution of sale deed and location of the land under this sale instance with the date of publication of notification under Section 4 (1) of the Act as well as with the location of the acquired land.

26. On the other hand, the last sale instance (Exh.25) shows that it was executed on 04.12.1992 which is too proximate with the date of publication of notification under Section 4 (1) of the Act dated 22.04.1993. Plot No.35 under sale instance (Exh.25) is the part and parcel of Survey No.166 i.e. the acquired land. Thus, so far as the date of execution of sale instance (Exh.25) and location of the land under the said sale instance is

concerned, it is too proximate with the acquired land regarding date of publication of notification and location of acquired land. Plot No.35 has been sold out under sale instance (Exh.25) as a non-agricultural plot. So also, out of 5 Hectare 93 Aar acquired land, 87 Aar land is already converted into non-agricultural land under order (Exh.20) of Collector dated 19.11.1992 and layout map (Exh.21) was also sanctioned by the Collector. Grant of permission to use the portion of Survey No.166 for non-agricultural residential purpose indicates that Survey No.166 carries N.A. potentiality for residential construction. Therefore, the proximity in between quality of the plot under sale instance (Exh.25) and quality of the acquired land out of survey No. 166 is also duly established. In the circumstances, in comparison with sale instance (Exh.15), the sale instance of plot No.35 (Exh.25) is more acceptable as comparable sale instance to determine market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act.

27. As rightly pointed out by learned A.G.P. for the State, the sale instance (Exh.25) is of small piece of land admeasuring 144 sq.mtrs. This plot was sold out for the consideration of

Rs.1,12,000/-. Therefore, the market price of the plot under sale instance (Exh.25) is Rs. 778/- per sq. mtr. Now the question arises whether the sale instance (Exh.25) of small piece of the land can be used to determine the market price of the acquired, which admeasures 5 Hectare 93 Aar.

28. According to learned A.G.P., on account of small size of this N.A. plot which fetches more value than the agricultural land, there shall be substantial deduction in the market value of the land under sale instance to determine the market value of the acquired land. However, it cannot be ignored that out of the acquired land admeasuring 5 Hectare 93 Aar, 87 Aar land was already converted into non-agricultural land under the order of Collector (Exh.20) dated 19.11.1992. Even layout of this non-agricultural land is sanctioned by the Town Planning Authority (Exh. 21). Therefore, out of the acquired land, 87 Aar land is already developed land. Even the remaining 5 Hectare 6 Aar land has N.A. potentiality as it is adjoining to Latur to Kawha road and it is situated in developed area, as admitted by Sanjay Adhav (DW-1) that to the south of survey No.166 there were constructed houses which was acquired for submersions area. In

th case of **“C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer”** (supra), **“Special Tahsildar Vs. Abdul Reguman”** and **“Bhagwathulla Samanna Vs. Special Tahsildar”** (supra), it is held that where deductions by way of development charges are permissible, the Court has to take into account the purpose of acquisition and the need of development. In the case at hand, the certificates (Exhs. 17 and 18) issued by Executive Engineer, Minor Irrigation show that the land of claimants are acquired for submersions for Katpur Dam (Minor Irrigation). Thus, it is clear that the land of the claimants was not acquired for residential building or for other similar purpose. On the other hand, as the land was acquired for submersions, the acquired land would remain below the dam water. Therefore, the question of development of acquired land for the purpose of acquisition does not arise. On the other hand, considering the purpose of acquisition, I have no hesitation to hold that as the acquired land needs no further development, no amount can be deducted from the market value of the acquired land towards development charges. Even the Apex Court, in the case of **“Bhagwathulla Samanna Vs.**

Special Tahsildar” (supra) has made it clear that, “ *the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted*”.

29. In the circumstances, I have no hesitation to hold that sale instance (Exh.25) can be considered to determine the market value of the acquired land admeasuring 87 Aar of the share of claimant No.1, on the date of notification under Section 4 (1) of the without deductions towards development charges as this 87 Aar area is already developed and converted into non-agricultural land. The land under sale instance (Exh.25) was sold out on 04.12.1992 at the rate of Rs. 778/- per sq. mtr. The date of publication of notification under Section 4 (1) of the Act is 22.04.1993. Thus, the sale instance (Exh.25) was executed only four months preceding the date of publication of notification. In the circumstances, considering this meager time gap in between execution of sale instance and publication of notification under Section 4(1) of the Act, there cannot be any escalation in the

market price of the acquired land. So also, the advantageous factor annexed to the acquired land and the land under sale instance (Exh.25) is identical as both the lands are abutting the road. In the circumstances, the market rate of the acquired land area 87 Aar of the share of claimant No.1 is to be determined at the rate of Rs. 778/- per sq. mtr.

30. The remaining portion of acquired land of the share of claimant No.2, admeasuring 5 Hectare 06 Aar is not converted into non-agricultural land and even its layout is not prepared. On the other hand, this 5 Hectare 06 Aar land is used as agricultural land though it has N.A. potentiality. Therefore, the market rate of N.A. plot, which was subject of sale instance (Exh.25), cannot be exactly considered, while determining the market value of the 5 Hectare 06 Aar agricultural land of the share of claimant No.2, though it is also within municipal limit of Municipal Council, Latur. In view of law settled by Apex Court in the case of **“Chimanlal Hargovinddas Vs. SLAO, Puna”** (supra), towards adjustment of price of this land, there shall be 25% deduction in the market value of land under sale instance (Exh.25). Thus, the true and fair market value of 5 Hectare 06

Aar land of the share of claimant No.2, comes to Rs. 584/- per square meter.

30. Though the claimants have claimed compensation at the rate awarded by the Reference Court in L.A.R. No.175/1994 (Exh.34) and L.A.R. No.509/2013 (Exh.35), the copy of judgment in L.A.R. No.175/1994 (Exh.34) shows that land Survey No.45/2 situated at village Kaneri and the copy of judgment in L.A.R. No.509/1993 (Exh.35) shows that land survey No.104/B is situated at Latur were acquired. The purpose of acquisition in these both cases was for ring road and in L.A.R. No.509/1993 notification under Section 4 (1) of the Act was published on 22.02.1990. However, in the case at hand the purpose of acquisition is for submersions in Katpur Dam. Even the date of publication of notification is altogether different i.e. 22.04.1993. Thus, it is clear that the date of notification under Section 4 (1) of the Act in above-said both Land References is distinct than the notification in the case at hand. So also the purpose for acquisition is different. Thus, the parameters for determining compensation will be different in the case at hand than in above-said two Land References. In the circumstances, as held by this

Court in the case of **“Prakash Borade Vs. State of Maharashtra”** (supra), on the ground of parity the rate awarded in L.A.R. No.175/1994 and L.A.R. No.509/1993 cannot be accepted in the case at hand.

31. Thus, my conclusion is that just and fair market value of 87 Aar acquired land of the share of claimant No.1 comes to Rs. 778/- per square metre and market value of the acquired land of the share of claimant No.2 admeasuring 5 Hectare 06 Aar comes to Rs. 584/- per square metre, on the date of publication of notification under Section 4 (1) of the Act.

AS TO POINT NO.2 :-

31. As the acquisition of the acquired land is compulsory acquisition, the claimants are also entitled to statutory benefits under Sections 23 (1A) and 23 (2) of the Act. On enhanced compensation, the claimants are also entitled to interest under Section 28 of the Act. Now question arises whether the interest under Section 28 of the Act can be calculated from the date of dispossession of the claimants i.e. from 22.12.1992 or from the date of passing of award i.e. 29.08.1997. Though the claimants have placed reliance on the cases of **“Manipur Tea Company**

Pvt. Ltd. Vs. The Collector”, “Narayan Das Jain Vs. Agra Mahapalika”, “Haridwar Development Authority Vs. Raghuvir Sing” and the Judgment delivered by this in **First Appeal No. 831 of 2014 (Prabhakar Vs. State of Maharashtra and others)** (all cited supra), after going through these Authorities, it become clear that in none of these cases, the possession of acquired land was taken prior to the date of publication of notification under Section 4 (1) of the Act. Therefore, under these Authorities the proposition of law is laid down that the interest under Section 28 of the Act can be charged from the date of possession for first year at the rate of Rs. 9% and thereafter at the rate of 15% per annum, till deposit of the compensation amount. However, in the case at hand, as the possession of acquired land is obtained prior to the date of publication of notification under Section 4 (1) of the Act, the ratio of these Authorities is distinguishable on above facts.

32. On the other hand, this Court in the case of **“State of Maharashtra Vs. Ramesh Tukaram Meshram and another” [2018 (1) ALL MR 645]**, held that the provisions under Sections 28 and 34 of the Act are *para materia*. Intent and

language expressed and used in both these Sections are identical except difference of stage at which interest is to be granted. So also, interest under Section 34 of the Act is awarded on compensation awarded by Collector, payable from the date of award when the possession is taken prior to publication of notification under Section 4 (1) of the Act in view of the the judgment of Full Bench of this Court in the case of **“State of Maharashtra Vs. Kailas Shiva Rangari”** reported in [2016 (4) ALL MR 513]. Therefore, interest under Section 28 of the Act on the enhanced compensation (excess compensation than awarded by Collector) is also payable from the date of award, when the possession of acquired land is taken prior to the date of publication of notification under Section 4 (1) of the Act. Therefore, interpretation accorded to Section 34 would also have its equal application while understanding import of Section 28 of the Act. Subsequently, in the case of State of Maharashtra Vs. Pandharinath Misal (supra), this Court held that in view of the Full Bench judgment in the case of **“State of Maharashtra Vs. Kailas Shiva Rangari”** (supra), whenever possession of the acquired land is taken prior to the date of publication of

notification under Section 4 (1) of the Act, the interest under Section 28 of the Act is payable from the date of passing of award by the Collector. Similar view was again taken by this Court in the case of **“Prakash Manikrao Borade & others Vs. State of Maharashtra”** (supra). Accordingly, I hold that the claimants are entitled to interest on enhanced compensation amount (excess compensation) from the date of passing of award by the Collector on 29.08.1997. However, in view of the law settled by Full Bench of this Court in the case of **“State of Maharashtra Vs. Kailas Shiva Rangari”** (supra), the claimants are entitled to rental compensation from the date of taking possession to the date of passing of award. For that purpose the claimants have to approach the Collector and not the Reference Court under the Act. I answer point No.2 accordingly.

33. In view of forgoing discussion and my findings against point Nos.1 and 2, I have no hesitation to hold that by allowing Cross-Objection, the compensation awarded to both claimant Nos.1 and 2 is to be enhanced at rate of Rs. 778/- per sq. mtr. and Rs. 584/- per sq.mtr. respectively for their respective shares in the acquired land, excluding 1600 sq. mtr. area out of

the share of claimant No.1 which is already handed over to Municipal Council, Latur as open space and for which token compensation of Rs. 1/- is already received by claimant No.1 under receipt (Exh.24). However, by partly allowing the appeal filed by the State and Acquiring Body, the award needs to be modified to award the interest on enhanced compensation together with solatium and component amount under Section 28 of the Act from the date of passing of award i.e. from 29.08.1997 at the rate of Rs. 9% per annum for the first year and subsequently at the rate of Rs.15 % per annum till deposit of enhanced compensation, solatium and component amounts in the Court.

34. In the result, my conclusion is that First Appeal No.1094 of 2002 and Cross-Objection (St.) No. 5895 of 2003 are partly allowed and the award passed by 2nd Additional District Judge, Latur in L.A.R. No.954/1997 is modified as under :-

- “(i) Land Acquisition Reference No.954/1997 is partly allowed with proportionate costs.
- (ii) Original respondents i.e. State of Maharashtra and Acquiring Body do jointly and severally pay compensation to claimant No.1 for the

acquired land i.e. Survey No. 166, admeasuring 87 Aar situated at Latur (excluding 1600 sq. mtr. area handed over to Municipal Council, Latur as open space), at the rate of Rs.778/- per square metre.

- (iii) Original respondents i.e. State of Maharashtra and Acquiring Body do jointly and severally pay compensation to claimant No.2 for the acquired land i.e. Survey No. 166, admeasuring 5 Hectare 06 Aar situated at Latur, at the rate of Rs.584/- per square metre.
- (iv) The claimants are entitled to component under Section 23 (1A) of the Land Acquisition Act at the rate of 12 % per annum on the market value of the acquired land, from the date of notification under Section 4 (1) of the Act to the date of passing of award.
- (v) The claimants are also entitled to solatium of 30% on the market value of the acquired land, under Section 23 (2) of the Act.
- (vi) The claimants are entitled to interest under Section 28 of the Land Acquisition Act on enhanced (excess) compensation, solatium and component at the rate of 9% per annum from the date of award i.e. 29.08.1997 for the first year and thereafter at the rate of 15% per

annum till the date of deposit of the above-said compensation amount in the Court by the respondents.

(vi) The award be drawn up accordingly.

35. Liberty is given to the claimants to approach the Collector for claiming rental compensation from the date of taking possession of the acquired land to the date of passing of award by the Collector, if not already recovered by the claimants.

36. Parties to bear their respective costs of the appeal and Cross-Objection.

37. If any compensation amount is deposited by the appellants in this appeal, it be transmitted to the Reference Court, Latur and the claimants are permitted to withdraw the compensation amount as per their shares and in accordance with the modified award.

(SUNIL K. KOTWAL)
JUDGE

vdd/