IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 1089 OF 2011

1) Hamid Ali Khan s/o Mahiboob
Ali Khan Kayamkhani,
Died through L.Rs.

1/1) Maimuna Banu w/o Hamid Ali Khan Kayamkhani,
Age-89 years, Occu:Household,
R/o-Latur,

1/2) Qamar Banu w/o Abdul Rashid Khan,
Age-71 years, Occu:Household,
R/o-Parbhani,

1/3) Qaisar Banu w/o Abdul Muqasit Khan,
Age-69 years, Occu:Household,
R/o-Aurangabad,

1/4) Apsar Banu w/o Iftikhar Ahmed,
Age-67 years, Occu:Household,
R/o-Ausa,

1/5) Akhtar Banu w/o Muntijibuddin Shaikh,
Age-66 years, Occu:Household,
R/o-Aurangabad,

1/6) Akbar Banu w/o Mohammad Ali Khan,
Age-65 years, Occu:Household,
R/o-Latur,

1/7) Jamshid Ameeralikhan s/o Hamidali
Khan Kayamkhane,
Age-63 years, Occu:Agril, R/o-Latur,
Died through L.Rs.,

1/7(1) Mois Banu, w/o Jamshed Khan,
Age-59 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(2) Tayyaba Banu w/o Himayatulla Sayyad,
Age-41 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(3) Farooq Khan s/o Jamshed Khan,
Age-40 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(4) Asad Khan s/o Jamshed Khan,,
Age-36 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(5) Fatemabanu w/o Mohammad Iliyas,
Age-35 years, Occu:household,
r/o-Ambajogai, Tq-Ambajogai
Dist-Beed,

1/7(6) Saleha banu w/o Ashraf Khan,
Age-34 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(7) Hushain Khan s/o Jamshed Khan,
Age-32 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(8) Salma Begum w/o Asmatulla Khan,,
Age-28 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(9) Abdulla Khan s/o Jamshed Khan
Age-23 years, Occu:agri,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(10) Zainab Banu D/o Jamshed Khan,
Age-17 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(11) Jawad Khan s/o Jamshed Khan,
Age-16 years, Occu:student,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/8) Afroz Banu w/o Abdul Hamid Patil,
Age-59 years, Occu:Household,

1/9) Taufiq Aslam Khan s/o Hamidali
Khan Kayamkhane, Age-55 years,
Occu:Agril, R/o-Latur,

1/10) Tabasum Banu d/o Hamidali Khan
Kayamkhane, Age-52 years,
Occu:Household, R/o-Mumbai,

1/11) Zakikhan Hamidali Khan Kayamkhane,
Age-51 years, Occu:Agrill, R/o-Latur,

1/12) Dr. Saquib Abbas Khan s/o Hamidali
Khan Kayamkhane, Age-46 years,
Occu:Agril, R/o-Latur,

All represented through GPA,
Zaki Khan s/o Hamidali Khan
i.e. appellant No.1/11.

2) Saquib Abbas Khan s/o Hamidali Khan
Kayamkhane, Age-46 years,
Occu:Agril, & business, R/o-Latur,

...APPELLANTS

VERSUS

1) The State of Maharashtra,
The Collector, Latur,
Dist-Latur.

2) The Executive Engineer,
P.W.D. Latur.

...RESPONDENTS

...

Mr. R.N. Dhorde, Senior Counsel with Mr. V.D. Gunale Advocate for appellants-claimants
Mr. S.S. Dande, AGP for Respondents.

...

**WITH**

**FIRST APPEAL NO. 57 OF 2015**

1) The State of Maharashtra,
Through The Collector, Latur,

2) The Executive Engineer,
P.W.D. Latur, Dist-Latur.

**...APPELLANTS**

**VERSUS**

1) Hamid Ali Khan s/o Mahiboob Ali Khan,
Kayamkhani DIED through L.Rs..

1/1) Maimuna Banu w/o Hamid Ali Khan Kayamkhani,
Age-69 years, Occu:H.H.
R/o-Latur,

1/2) Qamar Banu w/o Abdul Rashid Khan,
Age-51 years, Occu:H.H.,
R/o-Parbhani,

1/3) Qaisar Banu w/o Abdul Muqasit Khan,
Age-49 years, Occu:H.H.,
R/o-Aurangabad,

1/4) Apsar Banu w/o Iftikhar Ahmed,
Age-47 years, Occu:H.H.,
R/o-Ausa,

1/5) Akhtar Banu w/o Muntijibuddin Shaikh,
Age-46 years, Occu:H.H.,
R/o-Aurangabad,

1/6) Akbar Banu w/o Mohammad Ali Khan,
Age-45 years, Occu:H.H.,
R/o-Latur,

1/7) Jamshid Ameeralikhan s/o Hamidali Khan,
Kayamkhane, Age-43 years, Occu:Agricultural,
R/o-Latur,
Deceased through L.Rs.,

1/7(1) Mois Banu, w/o Jamshid Ameerali Khan,
Age-59 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(2) Tayyaba Banu w/o Himayatulla Sayyad,
Age-41 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(3) Farooq Khan s/o Jamshed Khan,
Age-40 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(4) Asad Khan s/o Jamshed Khan,
Age-36 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(5) Fatemabanu w/o Mohammad Iliyas,
Age-35 years, Occu:household,
r/o-Ambajogai, Tq-Ambajogai
Dist-Beed,

1/7(6) Saleha banu w/o Ashraf Khan,
Age-34 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(7) Hushain Khan s/o Jamshed Khan,
Age-32 years, Occu:agril,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(8) Salma Begum w/o Asmatulla Khan,,
Age-28 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(9) Abdulla Khan s/o Jamshed Khan
Age-23 years, Occu:agri,
r/o-Naigaon, Tq. & Dist-Aurangabad,

1/7(10) Zainab Banu w/o Jamshed Khan,
Age-17 years, Occu:household,
r/o-Naigaon, Tq. & Dist-Aurangabad,
U.G. of 1/7(1),

1/7(11) Jawad Khan w/o Jamshed Khan,
Age-16 years, Occu:student,
r/o-Naigaon, Tq. & Dist-Aurangabad,
Under Guardianship of 1/7(1).

1/8) Afroz Banu w/o Abdul Hamid patil,
Age-39 years, Occu:H.H.,

1/9) Taufiq Aslam Khan s/o Hamidali Khan Kayamkhane,
Age-35 years, Occu:Agricultural,
R/o-Latur,

1/10) Tabasum Banu d/o Hamidali Khan Kayamkhane,
Age-32 years, Occu:H.H.,
R/o-Bombay,

1/11) Zakikhan Hamidali Khan
Kayamkhane,
Age-31 years, Occu:Agricultural,
R/o-Latur,

1/12) Dr. Saquib Abbas Khan s/o Hamidali Khan
Kayamkahane,
Age-26 years, Occu:Agricultural,
R/o-Latur,

2) Saquib Abbas s/o Hamidali Khan Kayamkahane,
Age-26 years, Occu:Agricultural and business
R/o-Latur,

...RESPONDENTS

...

Mr. S.S. Dande, AGP for appellants.
Mr. R.N. Dhorde, Senior Counsel with Mr. V.D. Gunale, Advocate with Mr. Y.M. Khan, Advocate and Mr. A.N. Sabnis, Advocate for respondents-claimants.

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**CORAM: SUNIL P. DESHMUKH AND S.M. GAVHANE, JJ.**

**DATE : 4TH OCTOBER, 2019**

**ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :**

1. These two first appeals are preferred against Judgment and award dated 6th April, 2011 passed in Land Acquisition Reference bearing No. 396 of 1991. First Appeal No. 1089 of 2011 is preferred by claimants seeking enhancement of compensation for their acquired land which had been granted at the rate of Rs. 112/- per square foot, to Rs. 300/- per square foot. First Appeal No. 57 of 2015 is preferred by the State taking exception to enhanced compensation granted by the reference court.

2. Land acquisition proceedings were initiated in respect of lands bearing survey No. 208, 209, 211, 212/A comprising 6 *Hectare*, 95 *Are* situated within limits of the then Latur municipal

council. The land was sought to be acquired for the purpose of construction of administrative building of zilla parishad and office of the superintendent of police at Latur. Section-4 notification pursuant to Land Acquisition Act, 1894 had been published on 26th February, 1987 and award was passed on 3rd May, 1990. The land acquisition officer had awarded compensation at the rate of Rs. 50/- per square metre. In the challenge to order passed by the land acquisition officer by the claimants, reference court had determined compensation at the rate of Rs. 160/- per square foot and after deduction of 30 % therefrom for development charges, awarded compensation at the rate of Rs. 112/- per square foot.

3. Case of the claimants is that compensation at the rate of Rs. 300/- per square foot is deserved, for, acquired land is situated in heart of Latur city and is very close to crowded Shivaji chowk and many other developments *viz*; collector's office, as a matter of fact, is occupying the adjoining land donated by the claimants' predecessor to an educational institution. S.T. workshop is also close by and many housing and commercial developments had come up in the vicinity. Acquired land is situated on Latur-Ambajogai highway. Further, Latur-

Barshi high-way is on other side of acquired land. Many sale instances have been relied on, on behalf of the claimants, rate of which according to them ranges between Rs. 120/- per square foot to Rs. 220/- per square foot Acquired land is situated in prime location and said position vividly emerges from the observations in award by the land acquisition officer as well as in impugned judgment. While the land has been located in such a prime area, according to the learned counsel for the claimants, with passage of time between the sale deeds and the acquisition proceedings, there should be increase in the rate of compensation. It is submitted that Latur city had been a developing city.

4. On the other hand, case of the State is that rate of compensation enhanced is too steep to be realistic which is from Rs. 50/- per square meter granted by the land acquisition officer to Rs. 112/- per square foot by the reference court. Sale instances have not been properly discussed. The court ought to have minutely scrutinized evidence on record. It seems that the reference court has generally gone by the matter and has cursorily considered evidence on record. It is submitted that the reference court has erred in taking into account and going by its

own judgment. The judgment is of a land which is at quite a long distance from the acquired land. If properly taken into account, it would be seen that rate of compensation granted is too high which would require downward modification.

5. Learned senior counsel Mr. Dhorde appearing with counsel for the claimants had drawn our attention to the map submitted by the claimants at Exhibit-55 giving location of the acquired land, stating, it would show that land is quite close to Shivaji statute and is abutting Latur-Ambajogai high-way. Collector's office is situated between acquired land and Latur-Barshi highway. Acquired land is near technical institute, S.T. workshop, Dayanand College. Acquired land is surrounded by plots and other developments. Many commercial, shopping complexes, various other buildings *etc*. are developed in proximity and vicinity of the acquired land. Developments are subsisting from a very long time, almost from even before 1980. It is busy area. Evidence has not been disputed nor challenged.

6. Learned senior counsel purports to draw our attention to sale instances relied on and referred to in evidence by claimants which according to him show rate of Rs. 120/- per

square foot to Rs. 220/- per square foot. He submits that looking at proximity of the acquired land to lands under sale transactions, the land acquisition compensation granted at the rate of Rs. 112/- per square foot is grossly inadequate and improper. Acquired lands were already in developed area in the municipal limits of Latur city from long time. Acquired lands being situated in developed area, compensation should have been granted at the rate of Rs. 300/- per square foot.

7. Learned counsel submits that it would have to be considered that sale value of even a small developed plot can be considered for determining the value of large tracts of land if it is fully developed with the facilities.

8. It is submitted that no specific further developments are to take place for which expenditure is likely to be incurred. In such a case, deduction at the rate of 30 %, is exorbitant. It ought not to have been more than 10 % in any case. It is alternatively urged that rate of compensation ought to have been granted at the highest rate of the sale instances *viz*; Rs. 220/- per square foot if not Rs. 300/- per square foot without deductions.

9. Learned counsel for claimants has referred to a judgment of supreme court in the case of *Atma Singh (dead) through LRs. and others Vs. State of Haryana and another* reported in *(2008) 2 SCC 568*, wherein it has been held that rule of deduction of compensation on account of developmental charges is not uniformally applicable and amount of deduction would vary depending on circumstances. Having regard to the facts and circumstances of that case, the supreme court had considered that deduction of 30 % to be on higher side whereas 10 % would be a reasonable deduction from market value of the land.

10. While claimants have produced sale deeds and have relied on them and have given evidence in support of their claims with that of valuer, the onus is on the respondents to adduce evidence to sustain the award. Burden of proving true market value of acquired property is on the State. It is submitted that it is not the case that the State has given any evidence. In the absence of rebuttal evidence, reliance ought to be placed on the evidence of claimants, for determination of market value.

11. Learned advocate for the claimants contends, that reversal of judgment of reference court is not possible when the same has been given on the basis of evidence and material on record. Suggestions by the State for reversal of a judgment are not justifiable. The market value determined by reference court may not be interfered with, with downward modification and compensation be enhanced as demanded.

12. The claimants contend that compensation granted by the special land acquisition officer as well as enhanced by the reference court has been inadequate and the claimants deserve rate of Rs. 300/- square foot to their acquired lands.

13. Learned AGP Mr. Dande appearing for the State submits that the State may not have adduced any evidence, yet, primary burden is to be discharged by claimants. *Albeit,* whatever evidence is on record, it ought to have been properly scanned. While reference court differs with the award of land acquisition officer, cogent reasons are expected.

14. He submits that sale deeds relied on and referred to are of small pieces of lands and contends that when a large area

of land has been acquired, compensation at the rate at which small developed plots are sold would not be possible.

15. He contends that 30 % deduction is on lower side. Deduction ought to have been more than 70 % for the acquired land which is a large tract. He submits that while making deductions from the acquisition compensation two factors would be taken into account *viz;* developmental infrastructure and developmental expenditure and for each of them as observed by the Supreme Court 33½ % is permissible together deduction would be in the region of 67 %.

16. He goes on to submit that perusal of impugned judgment would show the court had been largely influenced by its earlier decision in some other land acquisition reference wherein certain sale instances had been taken into account. The judgment by reference court can hardly be an evidence in substance. Besides, that was a land close to Ganjgolai in Latur city which is the main market place. Acquired lands are situated outside the city. He submits reference court has been in error in relying on its own judgment Exhibit – 52 granting compensation at the rate of Rs. 150/- per square foot.

17. In support of his aforesaid propositions, Mr. Dande purports to refer to and rely on various judgments. In support of his contention that the instances of sale in respect of smaller pieces of plots for determination of market value of large tracts of land, would not be a safe criterion, he cites judgments of supreme court in *Manohar Lal Vs. State of Punjab 1995 (Supp. 4) SCC 665*, *P. Rajan Vs Kerala State Electricity Board Vs Kerala State Electricity Board* reported in *1997 (9) SCC 330, Karnataka Urban Water Supply and Drainage Board, etc. Vs. K.S. Gangadharappa and another etc.* reported in *2009 (11) SCC 164* as well as *G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel* reported in *2005 (6) SCC 454* additionally to urge that if reference court intended to differ with the opinion of the land acquisition officer, sufficient and cogent reasons are expected.

18. He purports to refer to, on proposition that deduction ought to be more than 30 %, citations *Chandrashekhar (dead) by LRs. Vs. Land Acquisition Officer* reported in *2012 AIR (SC) 446, G. Prema Vs. The Special Tahsildar, Tirupattur* *reported in* *(2010) 12 SCC 502, Vithal Rao and others Vs. The Special Land Acquisition Officer* reported in *(2017) 8 SCC 558* and *Kapil Mehra Vs. Union of India (UOI)* reported in *(2015) 2 SCC 262.*

19. He refers to *Manoj Kumar and others Vs. State of Haryana and others 2018 (13) SCC 96*, contending that there is no escape for the claimants from discharging their burden to prove relevant parameters before the court by adducing evidence. A mere reference to other judgment would not be sufficient, particularly when the judgment and award would not be *' inter-partes '.* Failure to discharge such burden, judgment relied on can hardly be a valid consideration. Such evidence is to be outrightly rejected.

20. Learned Assistant Government Pleader Mr. Dande also refers to decision of supreme court in the case of *Ramanlal Deochand Shah and another Vs. State of Maharashtra and another* reported in *2013 AIR (SC) 3452,* to contend that on failure to lead any evidence before reference court in support of the claim, grant of any enhanced compensation would hardly be possible.

21. He submits that there is no credible material placed before reference court to arrive at market value as claimed by claimants. Material does not support the rate as claimed by them. He, therefore, urges to substantially scale down the rate of compensation.

22. Having regard to the rival cases, following points arise for determination -

***A***. *Whether claimants prove, market value of lands would be as demanded by them ?*

***B***. *Whether the market value as determined by reference court is excessive as claimed by the State ?*

***C***. *Whether the direction of reference courts for payment of interest on compensation from the date of notification under section 4 of the Land Acquisition Act would be sustainable ?*

23. On behalf of claimants, Zaki Khan at Exhibit – 34 and valuer at Exhibit – 53 are examined. Sale deeds from Exhibits – 38 to 46, copies of awards at Exhibits – 67 and 64, copies of judgments at Exhibits – 51, 52 and 86, map of Latur city at Exhibit – 55, non-agricultural use permissions along with maps at Exhibits – 65 to 74 and Exhibits – 78 to 80 are produced by claimants. State authorities have not produced any evidence.

24. While an issue with regard to limitation was sought to be raised on behalf of the State, the reference court has found that though award had been declared on 03-05-1990, its

intimation had not been given to claimants till 14-01-1995 and from that day onwards the reference has been made within the period of limitation.

25. After hearing learned counsel for parties and having regard to the evidence on record, it appears that the lands are situated within municipal limits. As observed by reference judge, Exhibit – 64 – award by land acquisition officer gives out the situation and location of the acquired land, particularly that it is very close to Shivaji chowk and about 100 feet from highway, *albeit*, map - Exhibit – 55 shows the acquired lands to be abutting Latur-Ambejogai highway. On the other side of acquired lands, there is Latur-Barshi highway very close-by. It emerges that earlier from land survey no. 208, a portion had been donated to an institution, which has subsequently been occupied for the collector's office. There is no dispute on that Shivaji chowk is a busy area.

26. Exhibits – 65 to 80 depict non-agricultural use and permission from a long time to various parts of lands bearing survey nos. 208, 209, 211, 212. Exhibit – 65 pertaining to

portion of land survey no. 212, refers to that the land is being used for non-agricultural purpose since 1966 – 67.

Evidence on behalf of claimants reflects upon that acquired land being surrounded by all sorts of non-agricultural developments. Various developments have come up on and around and close to acquired land. Undeniably, the land is surrounded by highways on its two sides and municipal roads and Shivaji statute on the other two sides. Some parts of the lands have been given non-agricultural use permission from a long time and documents to that effect have been produced. Number of housing colonies have been in the surrounding areas and the area is stated to be most sought after. There are quite a few shopping complexes near the acquired land and the acquired land is close to schools, colleges, offices and hospitals. Such evidence has gone unrebutted by the State. From the evidence, it appears that the acquired had been capable for being used for residential or commercial purposes. Its non-agricultural potentiality is evident.

27. Decision of supreme court in the case of *"Collector Raigarh V/s Harisingh Thakur and Vice Versa"* reported in *1978 SGLS (SC)*

*334 : 1979 AIR (SC) 472* refers to factors to be considered while determining potential value of the land are its suitability for building purposes, its proximity to residential, commercial and industrial area and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, etc.

28. *G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel* reported in *2005 (6) SCC 454* is cited on behalf of the State, to contend that it would not be proper for reference court to rely on its own judgment given in some other reference, while the reference court therein purportedly had relied on judgments in other references. It is in that context, the supreme court had dealt with the case and had considered that fixing market value of acquired land, comparable sales method of valuation is preferable to other methods of valuation of land such as capitalisation of net income method or expert opinion method because it furnishes the evidence for determination of market value of acquired land at which the willing purchaser would pay for acquired land if it had been sold in the open market at the time of issue of notification under section 4 of the Land Acquisition Act. Comparable sales method is not always

conclusive. There are certain factors which are required to be fulfilled *viz*; sales must be genuine, time proximity to the notification, land under sale must be in vicinity of acquired land, land covered would be required to be similar and size of plots. In the course of said judgment, it was observed that if reference court intends to differ with the opinion of special land acquisition officer, it better assign sufficient and cogent reasons therefor. The award made in another land acquisition reference would hardly form the basis for determination of market value. The court had considered that such judgment and award, in the absence of any other evidence like sale deeds, report of expert or other relevant evidence, however, would have only evidentiary value.

29. There is no specific evidence regarding prices of acquired lands. Claimants have placed heavy reliance on sale deeds produced for prices and for enhancement in acquisition compensation. The State has not produced any evidence at all.

30. It has often been considered by courts that sale instances would be relevant piece of evidence in determining market value of lands. Valuation with reference to comparable

sale deeds would be a settled method taking into account various decisions.

31. While the State had not placed any sale deed on record, in the circumstances, sale deeds placed on record by the claimants may guide and would be useful for determining compensation. Compensation will have to be determined considering various aspects. Proper and safer way appears to be to arrive at market value of acquired lands taking cue from the sale deeds on record.

32. Sale instances relied on have been got verified and have been exhibited. Sale deeds relied on by claimants are at Exhibits – 38 to 46. The sale deeds are in respect of small properties. Aforesaid, sale deeds depict that rates, as can be seen are, in the range of Rs. 100/- to Rs. 200/- per square foot going by area and consideration referred to in the sale deeds. Sale deeds are from lands in municipal area and in the vicinity. It would have to be noted that, the State in the grounds of its appeal (No. V (first) in the memo) has referred to that assuming sale deeds are to be accepted, the average market value in the vicinity would be Rs. 140/- per square foot.

33. There are no documents placed on record by the valuer except report. Although it appears that the reference court has justifiably considered that report of the valuer was difficult to be taken into account and relied on and had not given any weightage to the same, *albeit*, the valuer in his oral evidence refers to various aspects, *inter-alia*, number of developments have come up around the acquired lands and that it is the most sought after residential area in Latur city. There is municipal council road on the western side having width of about 60 feet as also muncipal road on the northern side and that the acquired lands are between Latur-Barshi state highway and Latur-Ambejogai state highway. In surrounding area there are many shopping complexes and residential developments in existence and on the date of notification, average market rate had been Rs. 176/- per square foot. His cross-examination reveals that rate quoted by him is with reference to the sale deeds and market enquiry.

34. The case *viz*; *P. Rajan* (supra) has been referred to and relied on for that sale instances of smaller pieces of land

would hardly form basis and would not generally be resorted to for determination of market value of larger tracts, yet, very same judgment does show that it is not an absolute rule. Lot of other factors flow in for consideration for example situation of the acquired land in developed area, surrounding developments in the area, whether the same is situated in the heart of commercial centre etc. *P. Rajan*'s case does not appear to propose to lay down any absolute rule. Said decision is in the facts of that case.

35. In *Karnataka Urban Water Supply and Drainage Board, etc.* (supra) referred to and relied on by the State, though it has been observed that where a large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion, however, in the very judgment, it has also been observed in paragraph no. 9, thus,

> "*9. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.*"

Further, observations are to the effect that element of speculation would be reduced in comparable sales method, if the sales transactions are bonafide, there is proximity in time and the lands are from nearby area and has similar advantages. It has further been observed that deduction to be made towards development charges cannot be measured in any strait-jacket formula.

In above case, supreme court had found the deductions by high court had not indicated any basis and had come to an abrupt conclusion and high court cannot do away with foundation.

36. In *Land Acquisition Officer, Revenue Divisional Officer*, *Chittoor Vs. Smt. L. Kamalamma (dead) by LRs. and others AIR 1998 SC 781*, it has been observed to the effect that when no sale instances of comparable land are available, even land transactions of smaller extent of land could be taken note of as indicating the price that may be fetched in respect of large area by making appropriate deductions for development of land.

37. It has been observed by supreme court in various decisions that it cannot be laid down as an absolute proposition

that rates of sale of small plots cannot be basis for fixing land acquisition compensation for large tracts. For example, where there is no other material in appropriate cases, it would be open for adjudicating court to make comparison of prices paid for smaller pieces of land, however, with necessary deductions.

38. Judgment of supreme court in *Special Land Acquisition Officer and another Vs. M.K. Rafiq Saheb* reported in *2011 AIR (SC) 3178,* considers in paragraph no. 23 as under,

> *" 23. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracks of land. The sale of land containing large tracks are genrally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction. "*

39. A judgment in the case of *"Bhagwathula Samanna V/s Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam"* reported in *1991 (4) SCC 506* particularly, paragraphs No. 7 and 13 from the same may be relevant and useful to be considered. Paragraph No. 7 relates to factors which weigh while determining market value of land, whereas paragraph No. 13 refers to that it is not always that a large area of land would not fetch price at the same rate as small plots.

40. It may not be out of place to refer to that decision in *G.M. O.N.G.C. Ltd.* (supra) particularly refers to that sale instances in respect of the comparable land should be taken into account as guiding factor. In the absence of any better evidence, the courts could have made addition in sale prices for the land.

41. May be sale deeds produced and relied on are of small pieces of properties, yet, it is not an absolute rule nor there is any absolute regulatory injunction on relying upon sale deeds of small developed plots for the purpose of determining compensation of large tracts of lands making suitable deductions for the purpose of development and other charges. For said purpose, the judgment in the case of *"Executive Engineer © MSEB, Nagpur V/s Uttamrao Bapurao Raut and Others"* reported in *2009 (6) ALL MR 827* as well as judgment in the case of *"Hasanali Walimchand (dead) by LRs V/s State of Maharashtra"* reported in *AIR 1998 SC 700* can be usefully referred to. If the sales are genuine and reliable and if the lands have comparable features, reasonable deduction could be made to arrive at just and fair market value of large tracts of land. It is not the case of the State that sale deeds produced are not genuine transactions.

42. Decision in the case of *Ramanlal Deochand Shah and another Vs. State of Maharashtra and another* reported in *2013 AIR (SC) 3452* (supra) relied on, on behalf of the State appears to be a case wherein reference court had relied on, on the discussion in draft award and certain observations of the special land acquisition officer and had enhanced the compensation. It is considered that reference is original proceeding and in that case, it was found that claimants had not led any evidence in support of their claim before reference court to prove market value. The high court had reversed the decision of reference court for want of evidence. It is in that context that the observations of supreme court appear and the supreme court ultimately had remanded the matter to reference court, letting opportunity to the claimants to lead evidence in support of their claims. This decision would hardly have any analogy in the present circumstances whereas it is not a case that the claimants have not led any evidence.

43. Though learned Assistant Government Pleader Mr. Dande referred to *Manohar Lal Vs. State of Punjab 1995 (Supp. 4) SCC 665,* it appears to be a decision in peculiar facts involved in the

case, for the high court as well as the supreme court had sensed that the sale instances relied on by claimants were brought up documents. It is not the case of the State in present matter that sale deeds are brought up documents. However, the supreme court in said case has also observed that the court ought to give regard to developments taking place around the acquired lands. In the present case, evidence sufficiently bears that lands have been not only close to highways but also certain other developments *viz;* the Collector office, colleges, residential complexes have been developed close by. As such, it does not appear that said decision may in real sense further the cause of appellants/State. That was a decision in peculiar facts involved.

44. Decision in the case of *Manoj Kumar and other Vs. State of Haryana and others* reported in *(2018) 13 SCC 96*, as also that in *G.M., O.N.G.C. Ltd.,* (supra) have been referred to, to contend that previous judgment would be a piece of evidence in case of similarity of lands and is required to be proved like any other exemplars. In the present case, reference to the decision had been made only as indicative material with similarities in respect of acquisition of land is for public purposes *viz*; for civil hospital, zilla parishad and police offices and the lands are situated

within municipal limits. They are acquired in quite close proximity to say that in 1987 and 1990. In the present case, reference court may not have particularly referred to and discussed the award of the land acquisition officer, however, with reference to evidence, speaks about the reasons for arriving at the judgment. Decision of reference court in present case is with reference to evidence on record.

45. In *Chandrashekhar (dead) by LRs. Vs. Land Acquisition Officer* reported in *2012 AIR (SC) 446*, the supreme court has found with reference to evidence in that case, and consideration which had weighed having regard to the facts and circumstances, there had been no reason for it to interfere with the decision by high court while the high court had deducted about 55 % towards development charges, 5 % for waiting period and 10 % towards de-escalation. However, no such case has been made out on behalf of the State in respect of non-availability of developmental facilities around acquired land while the evidence by the claimants shows the land being falling within the developed area like highways and roads and being surrounded by residential and commercial developments.

46. Decisions in the case of *G. Prema Vs. The Special Tahsildar, Tirupattur* reported in *(2010) 12 SCC 502* and *Vithal Rao and others Vs. The Special Land Acquisition Officer* reported in *(2017) 8 SCC 558* have been referred to wherein, respectively, 60 % and 40 % deductions were allowed, in peculiar facts and circumstances of those cases.

47. In the case of *Kapil Mehra Vs. Union of India (UOI)* reported in *(2015) 2 SCC 262*, the supreme court had considered the aspects of deductions which have been emphasized on behalf of the State. It has been observed that consistent view taken by this court is 1/3rd deduction is generally approved for areas to be used subject to certain variations depending on its nature, location, extent of development around. Appropriate deduction would be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area.

Referring to *Kasturi Vs. State of Haryana (2003) 1 SCC 354*, wherein it has been considered in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There are various considerations while applying cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd in some cases less than 1/3rd. It has further been observed that while determining market value, normally 1/3rd towards development charges is allowed. Reference has been made to *A. P. Housing Board Vs. K. Manohar Reddy (2010) 12 SCC 707*, *Ashrafi and others Vs. State of Haryana and others (2013) 5 SCC 527* and *Kashmir Singh Vs. State of Haryana and others (2014) 2 SCC 165*.

48. In *Manoj Kumar*'s case (supra), it has also been traken into account referring to various decisions of supreme court from 1991 to 2014 that while determining market value of the acquired land, normally 1/3rd deduction towards development charges is allowed in respect of acquisition of undeveloped or underdeveloped lands.

49. In the decision in the case of *Bhagwathula Samanna* (supra) wherein as referred to hereinbefore it had been considered that a proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it

would be permissible to take into account the price fetched by the small plots of land. Additionally, it further considers that, if 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 development is not warranted. It may be pertinent to reproduce following extracts from paragraphs no. 12 and 13 as under,

> *" The High Court has itself concluded on the evidence that lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the Town Planning Trust road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. "*

> *" Therefore, the High Court erred in making a deduction of one third of the value of the comparable sale and thus reducing the fair market value of land from Rs. 10 per sq. yard to Rs. 6.50 per sq. yard. "*

50. Reference to following observations in paragraph no. 16 from the judgment in the case of *Special Land Acquisition Officer and another Vs. M.K. Rafiq Saheb* (supra) may also be useful,

> “ *16. Otherwise also, we are of the opinion that in light of the fact that the land was situated by the side of a residential locality and was in the midst of a highly developed industrial locality, the acquired land was capable of being used for non-agricultural purposes and should be considered as non-agricultural land in determination of compensation. We find support in this reasoning from the judgment of this court in Anjani Molu Dessai v. State of Goa and Anr., reported in (2010) 13 SCC 710.*”

51. Going by the evidence, as adduced, it emerges that acquired land indeed had non agricultural potential from a long time. It is surrounded by developments as referred to hereinbefore earlier, having main roads from all sides. There are public establishments *viz;* S. T. workshop, office of the collector, etc. quite close by the acquired land. There are housing and commercial developments near the acquired land. It has come on record that parts of land survey numbers were allowed non-agricultural use. It emerges that the acquired lands are not underdeveloped rural lands but are within urban developed lands and, as such, while determining compensation regard will have to be given to the same.

52. Reference court has found rates in the sale deeds of lands from vicinity relied on, are in the range of Rs. 120/- per square foot to Rs. 220/- per square foot and the valuer has refered to prevailing market value to be Rs. 176/- per square

foot. The State has not produced any evidence, however, has, in the alternative, referred to in its appeal, rate of Rs. 140/- per square foot in the vicinity going by the sale deeds produced on record on behalf of claimants, *albeit*, there is no reference, *asto* how the computation has been made in this respect. In the present case, the court, having regard to location of the land and close proximity to developments and taking cue from the cited sale deeds, has in its judgment considered value to be Rs. 160/- per square foot.

53. While there is no contrary evidence placed on record on behalf of the State and going by the evidence as available on record, particularly, with regard to developments and sale deeds, it appears that the rate determined by the reference court in its judgment would hardly be liable to be faulted with. The court appears to have considered relevant factors for determination of market value of the acquired land.

54. As a matter of fact the decision in the case of *Special Land Acquisition Officer and another V/s. M.K. Rafiq Saheb* (supra) gives an indication of that normally 1/3rd of asset's value can be deducted for development expenses depending upon various aspects like

expenditure incurred and the land required for road and other civic amenities. In the present matter, it has emerged that the land is surrounded by roads and certain developments, as a matter of fact part of survey number has already been housing collector's office which was donated earlier to educational institution and in this case the claimants have reasonably brought forward that the land is surrounded by roads on almost all sides, lot of developments and are within municipal limits, thus, development of 6 *Hectare* 95 *Are* land may not require major costs to be incurred for development. The reference court in its judgment found that 30 % deduction is reasonable. The cut in market rate allowed by court, does not appear to be unreasonable. Reference can be had to the case of *Bhagwathula Samanna* (supra). The consideration and estimation does not appear to be far from evidence on record and appears to have nexus with the same. There does not appear to be any error in manner adopted for judgment. In the circumstances, the deduction granted by reference court does not appear to be in any way liable to be found fault with.

55. In such a case, it does not appear that any interference is required in the amount of deduction as directed by reference court.

56. With reference to the evidence, the reference court had found it appropriate to consider the rate to be Rs. 160/- per square foot with deduction of 30 %, has determined fair market vale to be Rs. 112/- per square foot. The determination does not appear to be unreasonable and judgment formed with reference to the evidence as appearing on record, in the absence of any contrary evidence by the other side, is not liable to be interferred with. Simultaneously, it does appear that there is no cogent material made available to support the case of the claimants for enhancement of the rate to Rs. 300/- per square foot.

57. The court has given along with rate of market value, benefit of 12 % p.a. additional component under section 23 (1-A) and 30 % solatium under section 23 (2) of the LA Act and interest from the date of notification under section 4, for the first year at the rate of 9 % p.a. and for subsequent years at the rate of 15% p.a. till the date of payment to the claimants.

58. While the reference courts purport to grant interest on market value, additional component and solatium from the dates of notification under section 4 of the Act to the date of actual payment, this particular direction / order has been rendered unsustainable in view of declaration of law over this aspect by full bench of this court in the decision on reference reported in *2016 (3) Mh.L.J. 457 : MANU/MH/0557/2016*, in the case of *"State of Maharashtra V/s Kailas Shiva Rangari"*.

59. In said judgment it has been clearly considered that interest under section 34 of the Act would start running from the date of possession only if possession is taken in exercise of powers under section 17 of said Act. It has been held that if possession of land under acquisition is taken under section 16 of the Act, then interest would be payable under section 34 from the date of passing of award under section 11 of the Act.

60. In the present case, neither the parties have pleaded that possession been taken from the claimants was in exercise of powers under section 17 of the Act, nor it is their case that procedure thereunder had been followed before taking over the

possession. So far as interest is concerned, the area would be governed by the full bench decision (*supra*).

61. So far as interest is concerned, the situation appears to be governed by full bench decision of this court.

62. In the circumstances, direction / order of the reference courts to pay interest from the date of notification under section 4 of the Act appears to be incompatible with decision of full bench (*supra*) and that will have to be altered and brought in tune with said decision.

**FINDINGS**

63. It emerges that claimants could not prop up their claim with evidence. From evidence on record, it does not appear market value as determined by reference court is excessive. Direction of reference courts to pay interest from the date of notification under section 4 of the LA Act has been rendered unsustainable. Points A to C are answered accordingly.

64. Claimants, in addition to market value, would be entitled to benefits of sections 23 (1-A), 23 (2) and sections 28 and 34 deducting the amount received by the claimants before.

65. In view of forgoing discussion and reasons, it would be appropriate to consider that rate determined by reference court of Rs. 112/- per square foot for acquired land to be proper and not liable to be interferred with. The decision of the reference courts in respect of benefits of provisions of the Act, *viz;* section 23 (1-A), 23 (2) as referred to above, is not being disturbed.

66. The direction under references or awards to pay interest from the date of notification under section 4 of the LA Act, stands altered and modified. Interest under provisions of the LA Act would be required to be paid from the date of passing of the award under section 11 of the LA Act, in tune with decision of full bench reported in *2016 (3) Mh.L.J. 457 : MANU/MH/0557/2016.* The authorities would be liable to pay interest @ 9% p.a. for one year from the date of award under section 11 on the components of compensation referred to under section 23, including 23 (1-A) and 23 (2) of the Act and @ 15% p.a. subsequent to one year from the date of award under section 11 till actual payment.

## ORDER

I. First appeal no. 1089 of 2011 by claimants is dismissed.

II. First appeal no. 57 of 2015 by State is partly allowed to the extent of date from which interest would be liable to be paid. Rest of its appeal is dismissed.

III. Judgment and award of reference court, thus, is modified to the extent of interest as under,

Interest be paid on the compensation in accordance with full bench judgment *viz; 2016 (3) Mh.L.J. 457 : MANU/MH/0557/2016*, in the case of *"State of Maharashtra V/s Kailas Shiva Rangari"* from the date of award @ 9% p.a. for first year and @ 15% p.a. for subsequent years till payment of amount.

IV. First appeals are disposed of accordingly.

V. Pending civil applications, if any, stand disposed of.

**(S.M. GAVHANE, J.)** **(SUNIL P. DESHMUKH, J.)**

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