

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5270 OF 2006

Maruti H. Bathe and ors. .. Petitioners.

vs.

Pune Municipal Corporation
and ors. .. Respondents.

WITH
WRIT PETITION NO. 3821 OF 2006

The Municipal Corporation of
the City of Pune and anr. .. Petitioners.

vs.

Maruti H. Bathe and ors. .. Respondents

WITH
WRIT PETITION NO. 3822 OF 2006

The Municipal Corporation of
the City of Pune and anr. .. Petitioners.

vs.

Amit Anil Natekar and ors. .. Respondents.

WITH
WRIT PETITION NO. 5269 OF 2006

Amit Anil Natekar and ors. .. Petitioners.

vs.

Pune Municipal Corporation
and ors. .. Respondents.

Mr. V.P. Sawant for the Petitioners in Writ Petition 5270 and
5269 of 2006 and for the Respondents in Writ Petition 3821
and 3822 of 2006.

Mr. R.S. Khadapkar for the Petitioners -PMC in Writ Petition
3821 and 3822 of 2006 and for the Respondents -PMC in
Writ Petition 5270 and 5269 of 2006.

CORAM : M. S. SONAK, J.
RESERVED THE JUDGMENT : 04 APRIL 2019.
PRONOUNCED THE JUDGMENT : 09 APRIL 2019.

JUDGMENT :-

- 1] Heard learned counsel for the parties.
- 2] Learned counsel for the parties agree that all these petitions can be disposed of with common judgment and order, since the issues involved therein are common.
- 3] In Writ Petition No. 3821 of 2006 and Writ Petition No.5270 of 2006, the challenge is to the judgment and order dated 4th January 2006 made by the Judge, Small Causes Court, Pune (Appeal Court). The operative portion of which reads as follows:
 - “(1) The Appeal is partly allowed with proportionate costs.*
 - (2) The Respondents do pay balance compensation of Rs.1,17,07,094 (Rupees One Crore Seventeen Lac Seven Thousand Ninety four only) towards the compensation of land admeasuring 1854 sq.,mtrs. i.e. 19,950 sq.ft as detailed described in para 1B of the Plaint to the Appellants along with interest thereon at the rate of 6% per annum from the date of possession i.e. 12.8.2002 till realization of decretal amount.*
 - (3) The Claim of compensation as regards to land admeasuring 646 sq. mtrs. As described in plaint para 1C is rejected.*
 - (4) Decree be drawn up accordingly.”*

4] Writ Petition No.3821 of 2006 has been instituted by the Municipal Corporation of City of Pune (PMC) challenging the aforesaid judgment and order dated 4th January 2006 on the ground that no compensation ought to have been awarded to Shri. Maruti H. Bathe and others (respondents) or in any case, on the ground that the compensation awarded is excessive.

5] Writ Petition No. 5270 of 2006 has been instituted by . Maruti H. Bathe and others against the aforesaid impugned judgment and order dated 4th January 2006 on the ground that the compensation awarded in their favour is inadequate and the same warrants enhancement.

6] Thus, Writ Petition No. 3821 of 2006 and Writ Petition No. 5270 of 2006 are cross petitions against the impugned judgment and order dated 4th January 2006 passed by the learned Judge, Small Causes Court, Pune (Appeal Court).

7] The position is similar when it comes to Writ Petition Nos.3822 of 2006 and 5269 of 2006, in both of which, the challenge is to the impugned judgment and order dated 3rd January 2006 made by the Appeal Court. In Writ Petition No. 3822 of 2006, the PMC has questioned the award of compensation in favour of Amit A. Natekar and another (respondents) and in Writ Petition No. 5269 of 2006, Amit Natekar and another have questioned the very same impugned order on the ground that the compensation awarded is meagre and warrants enhancement.

8] Since the issues involved are substantially common the learned counsel for the parties agree that all these petitions can be disposed of by common judgment and order.

9] For sake of convenience, reference is made to the fact situation relevant to Writ Petition Nos. 3821 of 2006 and 5270 of 2006. The fact situation in the remaining two writ petitions is also quite similar, except insofar as details of

acquired land and the compensation payable therefore, is concerned.

10] The *Bathes* were admittedly the owners of strip of land ad-measuring 1854 sq.mtrs., i.e., 19,950 sq.ft., which was reserved for purpose of 60' wide D.P. Road in terms of development plan approved on 5th January 1987. In the year 1996, PMC, vide letter dated 12th October 1997 offered *Bathes* compensation at the rate of Rs.3,565/- per sq.meter for acquisition of the aforesaid land (said property) for setting out 60' wide D.P. Road. This offer was not accepted and *Bathes* issued notice dated 15th October 1999 under section 127 of the Maharashtra Regional Town Planning Act to PMC to acquire the aforesaid property within six months from the date of notice. It is the case of the *Bathes* that since no acquisition proceedings were initiated within six months period, the reservation automatically lapsed. Nevertheless, some correspondence ensued between *Bathes* and PMC in relation to the acquisition of the said property. This was followed by negotiation between the parties, which did not

fructify into any agreement. However, it is the case of *Bathes* that on 12th August 2002, the PMC, forcibly took over possession of the said property and thereafter even proceeded with the development of 60' wide D.P. Road. By way of compensation, the PMC, offered an amount of Rs.20,16,226/- to *Bathes* which corresponds to Rs.1087/- per sq.meter, in contrast to offer of compensation at the rate of Rs.3565/- per sq.meter way back in the year 1997.

11] *Bathes* accepted the aforesaid compensation amount under protest but instituted proceedings before the Appeal Court invoking the provisions of section 406 of Maharashtra Municipal Corporations Act, 1949 (MMC Act) to seek enhancement of compensation and other benefits. This appeal was registered as Municipal Appeal No. 97 of 2002. The impugned judgment and order dated 4th January 2006 was made in Municipal Appeal No. 97 of 2002 by the Appeal Court enhancing compensation to Rs.5700/- per sq. meter along with other benefits like solatium, interests etc. This was on the basis that PMC in 1997 had offered compensation

at the rate of Rs.3565/- per sq. meter.

12] As noted earlier, aggrieved by award of such enhanced compensation, PMC has instituted Writ Petition No. 3821 of 2006 and *Bathes* have also instituted Writ Petition No. 5270 of 2006 contending that the compensation awarded is still meagre.

13] Mr. Rajdeep Khadapkar, learned counsel for the PMC, at the outset, has submitted that Municipal Appeal No. 97 of 2002 was not at all maintainable before the Appeal Court under section 406 of MMC Act. He submits that the appeals under section 406 of MMC Act relate against order fixing ratable value, capital value or tax. He states that the prescribed Court fee in relation to appeals under section 406 of MMC Act were never paid by *Bathes*. For these reasons, Mr. Khadapkar submits that the impugned judgment and order dated 4th January 2006 is a nullity and is required to be set aside.

14] Mr. Khadapkar in the alternate submits that the PMC in this case was constrained to resort acquisition of the said property under section 213 of MMC Act. He submits that compensation at the fair rate was determined by PMC in terms of section 216 of MMC Act. He therefore, submits that even assuming that the appeal before Appeal Court were to be relate to the provisions in section 406 of the MMC Act, even then, the Appeal Court was duty bound to assess compensation in terms of sections 213 and 216 of MMC Act and not by applying principles of Land Acquisition Act, 1894, which was not at all applicable to the facts of the present case. He submits that the Appeal Court, by adverting to the provisions and the principles under the Land Acquisition Act, has committed an error which is apparent on the face of record and on this ground as well, the impugned judgment and order dated 4th January 2006 is liable to be set aside.

15] Mr. Khadapkar, without prejudice to the aforesaid, submits that the Appeal Court has failed to appreciate the material on record, which suggests that the market rate for

the said property is in the range of Rs.900/- to 1000/-per sq. meter and not Rs.3565/- per sq.meter. Mr. Khadapkar submits that the Appeal Court has also failed to appreciate that the offer which was made in the year 1997 was by treating the case of *Bathes* as “*special case*”. He submits that since this offer was not accepted by *Bathes*, PMC proceeded to acquire the said property under section 213 of the MMC Act and determined the compensation under section 216 of the MMC Act at the rate of Rs.1087/- sq. meter. Mr.Khadapkar submits that this compensation amount was fair and reasonable and the Appeal Court exceeded jurisdiction in enhancing the same. Mr. Khadapkar submitted that the MMC Act makes no provision for award of solatium or even interest and therefore, the Appeal Court exceeded jurisdiction in awarding solatium and interest as if it was determining the compensation under the Land Acquisition Act. For all these reasons, Mr. Khadapkar submits that the impugned judgment and order is deserves to be set aside.

16] Mr. V.P. Sawant, learned counsel for *Bathes*, has defended the impugned judgment and order on the aspect of maintainability of the appeal. He however, submits that the PMC has made out no case to question the compensation at the rate of Rs.3565/- per sq.meter, since according to him, the market value of the said property is in the range of Rs.8228/- per sq. meter going by Deed of Assignment dated 2nd June 1999 in relation to the similar line in the similar locality. Mr. Sawant, therefore, submits that Writ Petition No.5270 of 2006 is required to be allowed and the compensation amount enhanced from Rs.3565/- sq. meter to at least Rs.8228/- per sq. meter.

17] Mr. Sawant submits that in the present case, the acquisition was in respect of 60' wide D.P. Road. He submits that said property was not within the regular line of public street and therefore, the provisions in sections 213 and 216 of the MMC Act were not at all applicable. He submits that when it comes to acquisition for a D.P. Road, the PMC could have only moved under the Land Acquisition Act. He submits

that merely because the PMC in the present matter, in high handed manner forcibly took over the possession of the said property, the PMC cannot be absolved all the liability to pay compensation as per the Land Acquisition Act. He relies on ***Umesh J. Patel and ors vs. Harishnakar R. Mhatre and ors. - 2013 (3) Mh.L.J. 338*** and ***Jiwani Kumar Paraki vs. First Land Acquisition Collector Calcutta and ors. – (1984) 4 SCC 612*** in support of his submissions.

18] Mr. Sawant submits that the Municipal Appeal No. 97 of 2002 very clearly relates to the provisions in section 405 of MMC Act. He submits that merely because an incorrect provision may have been referred to in the appeal memo, that by itself, does not denude the Appeal Court of the powers which it otherwise possess in abundance. In support, he relied on the ***B.S.E. Brokers Forum, Bombay and others vs. Securities and Exchange Board of India and ors – (2001) 3 SCC 482*** and ***Municipal Corporation of the City***

of Ahmedabad vs. Ben Hiraben Manilal – (1983) 2 SCC 422.

19] For all the aforesaid reasons, Mr. Sawant submits that Writ Petition No. 3821 of 2006 filed by PMC may be dismissed and Writ Petition No. 5270 of 2006 filed by *Bathes* may be allowed.

20] The rival contentions now fall for determination.

21] In this case, as noted earlier, PMC, without initiating, any formal land acquisition proceedings, took over the said property ad-measuring 1854 sq.meter belonging to *Bathes* for purposes of establishment 60' wide D.P. Road.

22] Mr. Khadapkar, however, contends that the acquisition is relatable to section 213 of MMC Act which permits acquisition of open land or of land occupied by platforms etc. “*within regular line of the street*”.

23] Section 213 of the MMC Act reads thus:

213. If any land not vesting in the Corporation, whether open or enclosed, lies within the regular line of a public street and is not occupied by a building, or if a platform, verandah, step, compound wall, hedge or fence or some other structure external to a building, abutting on a public street or a portion of a platform, verandah, step, compound wall, hedge or fence or other such structure, is within the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention to do so, take possession on behalf of the Corporation of the said land with its enclosing wall, hedge or, fence, if any, or of the said platform, verandah, step or other such structure as aforesaid or of the portion of the said platform, verandah, step or other such structure as aforesaid which is within the regular line of the street and, if necessary, clear the same and the land so acquired, shall thenceforward be deemed a part of the public street :

Provided that when the land or building is vested in the [Government], possession shall not be taken as aforesaid, without the previous sanction of the Government concerned and, when the land or building is vested in any Corporation constituted by any law for the time being in force, possession shall not be taken as aforesaid, without the previous sanction of the [State] Government."

24] From the aforesaid, it is quite clear that acquisition under section 213 of the MMC Act can be resorted to only where acquisition is of open or land occupied by a platform etc., which lies "*within regular line of a public street*".

25] In the present case, there is absolutely no material on record to suggest that the said property was the line which lay within the regular line of the public street. Therefore, the Appeal Court, quite correctly, rejected the contentions on behalf of PMC that the acquisition in the present case was relatable to the provisions of section 213 of MMC Act.

26] In *Umesh Patel (supra)* , the learned Single Judge of this Court after considering the scheme of MRTP Act and the Land Acquisition Act, has held that for purposes of developing a D.P. Road, the authorities have to resort to acquisition under the Land Acquisition Act. Since, the view taken by the Appeal Court is consistent with the view taken in *Umesh Patel (supra)* , there is no case made out to interfere with the same, in these proceedings.

27] Since, the acquisition, so called, in the present case, is not relatable to the provisions in section 213 of the MMC Act, it is obvious that the provisions of section 216 of the MMC Act can have no application when it comes to determination

of compensation in respect of the said property. Even otherwise, the stand of PMC can hardly be appreciated. In the year 1997, PMC itself offered compensation at the rate of Rs. 3565/- per sq. meter in respect of said property. However, in 2002, after PMC almost without authority of law acquired the said property, PMC chose to offer compensation at the rate of hardly Rs.1087/- per sq.meter, which is almost 1/3rd of the compensation earlier offered. Such approach on the part of the public authority like PMC can hardly be countenanced.

28] Mr. Khadapkar is right in his contention that the appeal instituted by *Bathes* was not maintainable under section 406 of the MMC Act. However, there is really no error in the view taken by the Appeal Court that though, *Bathes* chose to style the proceedings instituted by them as appeal under section 406 of the MMC Act, the same was nothing but a reference as contemplated under section 405 of the MMC Act, which, in any case, lay before the Appeal Court.

29] It is settled position in law that omission or error in mentioning correct provision of law, by itself, will not denude the power of authority to exercise the same, so long as such power is traceable to some statutory provision, which party may have failed to invoke. In such a situation, even the presumption under section 114 illustration (e) of the Evidence Act can be raised. This is what was held by the Supreme Court in *B.S.E. Brokers's Forum, Bombay (supra)*.

30] To the same effect are the observations in *Municipal Corporation of the City of Ahmedabad vs. Ben Hiraben Manilal (supra)*, in which, it is held that the exercise of statutory power will assume validity under a proper forum conferring jurisdiction, even if a different or wrong provision is referred to by the parties.

31] Thus, it is clear that merely because *Bathes* had made reference to provisions in section 406 of the MMC Act, that by itself will not denude the appeal Court of its powers and authority to exercise jurisdiction under section 405 of the

MMC Act, which power and jurisdiction, undoubtedly, was vested in the appeal Court.

32] Besides, it is necessary to note that though section 405 of the MMC Act speaks of “*reference to the Judge*”, it is not as if such a reference is required to be made by the Government or any other authority to the Judge in order to exercise powers under section 405 of the MMC Act. Even the parties, who have a grievance regards subject referred to in section 405 of the MMC Act make reference to a Judge and seek determination under section 405 of the MMC Act. This is quite clear from the provisions of section 405 of MMC Act which read thus:

405. *In the following cases a reference shall be made to the Judge :—*

(1) *whether a councillor has ceased to hold office under section 12 ;*

[(1A) *regarding removal and disqualification of a Councillor under section 13 ;]*

(2) *whether a person has ceased to be a member of the Transport Committee under section 26 ;*

(3) *whether the Commissioner may be directed to remove a shaft or pipe on the application of the owner of a building or hut under section 175 ;*

- (4) regarding the amount of the price for the land required for setting forward a building under section 216 ;*
- (5) regarding the amount or payment of expenses for any work executed or any measure taken or things done under the orders of the Commissioner or any municipal officer under section 439 ;*
- (6) regarding the amount or payment of expenses or compensation and the apportionment thereof falling under any of the provisions of this Act or any rule or by-law thereunder not otherwise specifically provided for.”*

33] From the aforesaid, it is quite evident that the appeal Court, had power and jurisdiction to go into the question of the amount of price payable for land required for setting forward a building under section 216 of the MMC Act as well as regarding the amount or payment of expenses or compensation and apportionment thereof falling under any of the provisions of the MMC Act or any rule or by-law thereunder not otherwise specifically provided therein.

34] In the present case, as noted earlier, we are not concerned with acquisition under section 213 of the MMC Act and consequently, there arises no issue of determination of prices under section 216 of the MMC Act. However, since it

was the case of PMC that the acquisition was relatable to section 213 of the MMC Act and compensation was determined under section 216 of the MMC Act, certainly, reference was maintainable under section 405 (4) of the MMC Act.

35] In any case, reference was certainly maintainable under section 405 (6) of the MMC Act, which concerns the compensation payable “*under any of the provisions of this Act not otherwise specifically provided for*”. Since, it is the case of *Bathes* that the said property was required to be acquired under the Land Acquisition Act and further, compensation was required to be paid under the Land Acquisition Act in terms of provisions of sections 77, 78 and 79 of the MMC Act, clearly, reference lay under section 405 of the MMC Act.

36] For all these reasons, the contention of Mr.Khadapkar that the appeal before the Appeal Court was itself not maintainable because it referred to the provisions in section 406 of the MMC Act, deserves no acceptance.

37] Even otherwise, in the peculiar facts of the present case, PMC has made out no case for warranting exercise of supervisory jurisdiction under Article 226/227 of the Constitution of India in order to upset the assumption of the jurisdiction by the Appeal Court. This is because the material on record suggests that the PMC almost, without authority of law, acquired/took over the property from *Bathes*, after *Bathes* refused to part with the said property for compensation at the rate of Rs.3565/- per sq.meter. Thereafter, PMC, by advertng to incorrect provisions of the MMC Act offered *Bathes* compensation of hardly Rs.1087/- per sq. meter, when in fact, the PMC, almost five years earlier, had offered *Bathes* compensation at the rate of Rs.3565/- per sq.meter in respect of the very said property. The Appeal Court, has merely directed the PMC to honour its offer made in the year 1997, no doubt, by allowing appropriate increase and awarding certain additional benefits as well. However, the view taken by the Appeal Court in the facts of the present case, certainly promotes substantial justice. Therefore, the PMC, has not made out a

case to upset this view of the Appeal Court by urging that the Appeal Court had no jurisdiction to entertain the appeal under section 406 of the MMC Act. Writ jurisdiction can neither be invoked nor be exercised for such purposes, since such extraordinary and equitable jurisdiction is designed to promote justice and not to thwart justice, even assuming that such justice was a by-product of an erroneous view.

38] In ***Roshan Deen vs. Preeti Lal – (2002) 1 SCC 100***, the Supreme Court held that the powers conferred on the High Court under Articles 226 and 227 of the Constitution is to look out of the High Court should not be to merely pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. *If justice became a by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law.*

39] In ***S.D.S. Shipping (P) Ltd. vs. Jay Container Services (2003) 9 SCC 439***, the Supreme Court has held

that powers under Articles 226 and 227 of the Constitution of India may be exercised only if there is '*supreme need*' for the exercise. Hence, even if legal flaws might be electronically detected, writ court may not interfere save manifest injustice or miscarriage of justice.

40] In ***Rajashtan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur and ors. - (2013) 5 SCC 427***, the Supreme Court has held that while dealing with a writ petition, the Court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Thus, it

is evident that a writ is not issued merely as is legal to do so. The Court must exercise its discretion after examining *pros and cons* of the case.

41] In ***Municipal Board, Pratabgarh and anr vs. Mahendra Singh Chawla and ors – (1982) 3 SCC 331***, the Supreme Court has held that, “*while administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render this Court a normal court of appeal which it is not*”.

42] In ***Mohammad Swalleh and other vs. Third Additional District Judge, Meerut and anr. - (1988) 1 SCC 40***, an erroneous order passed by the prescribed authority refusing to grant eviction of tenant, was set aside by the District Court in appeal. The Supreme Court, after

accepting tenant's contention that an appeal to the District Court was not maintainable, refused to interfere with the order since justice was done even though, technically, the tenant had a point that the order of District Court was illegal and improper. The Supreme Court held that it is true that there has been some technical breach because if there is no appeal maintainable before the District Judge, the order of the District Judge, setting aside the erroneous order made by the prescribed authority, may be improper. However, the Supreme Court added that the High Court was exercising its jurisdiction under Article 226 of the Constitution. *The High Court had already come to the conclusion that the order of the prescribed authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned earlier, technically the appellant had a point that the order of the District Judge was illegal and improper.*

43] All this discussion means that the powers under Articles 226 and 227 of the Constitution of India should be

exercised to advance justice and not to thwart it. The very purpose of conferment of such Constitutional power on the High Court is to ensure that no man is subjected to injustice. The lookout of the High Court, should therefore, not be merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

44] Similarly, a writ court is not bound to interfere with the action complained of or an order impugned, even if it is satisfied that the action is not strictly lawful or the order is not in accordance with law. Since the powers are discretionary and the jurisdiction exercised by the writ court is equitable, the Court must also be convinced that such interference is called for in the interest of justice, equity and good conscience.

45] Applying the aforesaid principles to the facts of the present case, it is not possible to accept Mr. Khadapkar's contention and on such basis interfere with the impugned judgments and order dated 4th January 2006, particularly since the impugned judgment and order promotes substantial justice.

46] There is also no merit in Mr. Khadapkar's contention that the compensation amount determined by the Appeal Court is excessive or that there is material on record to indicate that rate of compensation should have been in the range of Rs.900/- to Rs.1000/- per sq. meter. The record very clearly bears out that in the year 1997 itself, the PMC had offered compensation at the rate of Rs.3565/- per sq. meter in respect of very said property.

47] Mr. Khadapkar's contention that this was offered "*special case*" is neither here nor there. This is because the appeal Court, has awarded compensation in respect of very said property and it is not as if based upon offer of 1997, compensation at the same rate was claimed in respect of

some other property by some other person. In any case, the special reason was that the PMC had dire need of the said property in order to develop 60' wide D.P. Road by urgent basis. Accordingly, the Appeal Court, was quite right in determining compensation on the basis that the market value as in the year 1997 was Rs.3565/- per sq. meter. The appeal Court has thereafter proceeded on the basis that the market rate would increase at the rate of 12% per annum and on such basis, determined the market rate in 2002 when said property was actually acquired at Rs. 5074 rounded upto 5700 per sq. meter. Although, the enhancement normally ranges between 8 to 10%, in the peculiar facts and circumstances of the present case, there is no necessity to interfere with the impugned judgment and order when it grants enhancement at the rate of 12% per annum. This is because we are concerned with road side property, the value of which would obviously enhance each year at a little higher rate. In any case, taking into consideration the fact that the PMC resorted to acquisition, virtually without authority of

law, there is no case made out to interfere with the compensation determined by the Appeal Court.

48] On the aspect of payment of solatium, it is perhaps possible to contend that the provisions of MMC Act did not contemplate such payment. However, the Appeal Court, has reasoned that the MCC, in order to develop a D.P. Road was required to resort to provisions of Land Acquisition Act for acquisition of the said property. This is quite consistent with the provisions in Sections 77,78 and 79 of the MMC Act. To a peculiar situation of this nature, therefore, the Appeal Court cannot be faulted for determining the compensation by applying the principles under the Land Acquisition Act. Equity looks upon that as done which ought to have been done. This means that a where person is under an obligation to perform an act, equity looks on it as done and allows the results as follow as if it were actually done. This is explained in the legal *Maxim Acqutias Factum Habeat Quod Fieri Opportuit.*

49] Besides, in the aforesaid context, reference can usefully be made to the decision of the Supreme Court in ***Narain Das Jain (since deceased) by Lrs. vs. Agra Nagar Mahapalika, Agra (1991) 4 SCC 212***, in which, the Supreme Court has held that solatium and interest thereon must be paid in all cases even if land acquired under any other statute which has no specific provision solatium. The Supreme Court referred to its earlier ruling in ***Om Prakash vs. State of U.P. - (1974) 1 SCC 628***, that if Government could acquire land for a Mahapalika or other local body by resort to either Land Acquisition Act or U.P. Town Improvement Act, it would in the former case have to pay solatium and in the later case, no solatium, which would lead to discrimination. On this basis, the Supreme Court approved the view taken by the High Court in which, it had awarded solatium, even though, there was no provision under the U.P. Town Improvement Act for award of such solatium. The Supreme Court noted that solatium is recompense or reparation to the loss caused to the owner of the land on account of compulsory acquisition.

50] Further in ***Savitri Cairee vs. U.P. Avas Evam Vikas Parishad and anr- (2003) 6 SCC 255***, the Supreme Court was concerned with a case where land could be acquired both under Central Land Acquisition Act or under the local U.P. Avas Evam Vikas Parishad Adhiniyam 1965 (Adhiniyam). The purpose for acquisition of land both under Parliamentary Act and State Act was the same. However, under the Land Acquisition Act, there was a provision for payment of higher compensation including solatium. Under the Adhiniyam the compensation would work out to much lesser and besides, there was no provision for payment of solatium. The Supreme Court in such circumstances observed that though ordinarily equality clause enshrined in Article 14 of the Constitution of India cannot be invoked in the matter of *vis-a-vis* a parliamentary legislation and/or legislation of another State, nevertheless, the contention that Article 14 is not attracted in such a situation cannot be accepted.

51] The Supreme Court also made reference to the decision of ***Nagpur Improvement Trust vs. Vithal Rao – (1972) 1 SCC 500***, in which, it was categorically held that the owner of the land is not concerned with the nature of public purpose, i.e., whether the land is acquired for a hospital or for a school or for housing. So long as the acquiring authority, and the public purposes wherefor lands are acquired are the same, in view of the fact that the provisions have been made for payment of compensation in terms of the provisions of the Land Acquisition Act, although acquisition is made under the State Act, but if higher amount of compensation is payable under the latter, such higher amount of compensation will be payable. The Supreme Court held that it is equally immaterial whether it is one acquisition Act or another acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated, the owner who is discriminated against, can claim the protection of Article 14 of the Constitution.

52] Applying the aforesaid principles to the facts of the present case as well, there is no case made out to interfere with the amount of solatium awarded by the Appeal Court. For all the aforesaid reasons, there is no merit in Writ Petition No. 3821 of 2006, which is required to be dismissed and is hereby dismissed.

53] The contentions insofar as in Writ Petition No. 3822 of 2006 are similar/same to the contentions raised by PMC in Writ Petition No. 3821 of 2006. Therefore, on applying the very same reasoning as aforesaid, even Writ Petition No.3822 of 2006 is required to be dismissed and is hereby dismissed.

54] Insofar as Writ Petition No. 5270 of 2006 is concerned, again, it cannot be said that *Bathes* have made out any case for enhancement of compensation upto Rs.8228/- per sq. meter. The entire claim of *Bathes* is premised upon the Deed of Assignment dated 2nd June 1999. However, there is absolutely no evidence on record to establish that the property which was subject matter of the said Deed of Assignment was comparable to the said property. Merely stating that the property was from the same locality is not sufficient in such matters. The Deed of Assignment was concerned with a plot of land having building potential as well as other amenities. Accordingly, no case has been made out for enhancement. Besides, as noted earlier, though, the rate in the year 1997 has offered by PMC was Rs.3565/ per sq. meter, the Appeal Court, has taken the rate at Rs.5700/- in the year 2002 by granting apportionment of 12% per annum, which is slightly on the higher side, since the rate of enhancement should normally be 8 to 10% per annum. This is an additional reason as to why *Bathes'* claim for enhancement deserves to be rejected. Accordingly, even Writ

Petition No. 5270 of 2006 is liable to be dismissed and is hereby dismissed.

55] Since the claim for enhancement in Writ Petition No.5269 of 2006 is substantially on the same basis as in Writ Petition No 5270 of 2006, even , Writ Petition No. 5269 of 2006 is required to be dismissed and is hereby dismissed.

56] For all the aforesaid reasons, all the writ petitions are dismissed. There shall be no order as to costs.

57] The interim orders, if any, are hereby vacated.

58] PMC is directed to pay compensation amounts to the respondents in Writ Petition Nos.3821 and 3822 of 2006, as expeditiously as possible and in any case within a period of six weeks from today. If PMC has already paid some amounts towards compensation, then, PMC will be entitled to credit for the same. However, if PMC fails to pay the compensation amount in terms of the impugned judgments and orders within six weeks from today, then, such amounts will carry interest at the rate of 8% per annum. This shall obviously be without prejudice to any other action which *Bathes* and *Natekars* may chose to initiate in the matter.

59] Rule, is accordingly discharged in all these petitions.

(M. S. SONAK, J.)

60] At this stage, learned counsel for PMC seeks a stay of the order which is just now made. Since six weeks is already granted to PMC to pay the compensation in respect of the properties which were acquired by PMC without authority of law way back in the year 2002, the prayer for stay is not considered.

61] At this stage, learned counsel appearing for the respondents-*Bathes* in Writ Petition No. 3821 of 2006 points out that by order dated 28th June 2006, PMC has been directed to deposit an amount of Rs.1 Crore. He states that this amount has in fact been deposited by PMC in the Small Causes Court. He, therefore, submits that leave may be granted to *Bathes* to withdraw this amount together with the accrued interest. Since learned counsel for PMC seeks to question the judgment and order now made by this Court, the Small Causes Court is directed not to release this amount to *Bathes* for a period of six weeks from today. The amount can be released to *Bathes* after six weeks from today, unless PMC secures interim relief in the meanwhile.

(M. S. SONAK, J.)