IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

First Appeal No.1106/2012

Vidarbha Irrigation Development Corporation,
through its Executive Engineer, Arunavati Project Division Digras,
Tah Digras, Dist- Yavatmal. .... Appellant
(On R.A.)

-Versus-

1] Uttamchand Fulchand Jain,
Aged Major, Occ.-Cultivator, R/o Digras,
Tq. Digras, Distt-Yavatmal.

2] Champalal Takhatmal Sethiya
Dead therefore through L.Rs.

2A] Manakchand Champalal Sethiya,
Aged Major,

2B] Lakhmuchand Champalal Sethiya,
Aged Major,

2C] Kasturchand Champalal Sethiya,
Aged Major,

2D] Subhashchand Champalal Sethiya,
Aged Major,

2E] Manojkumar Champalal Sethiya,
Aged Major,
(2A to 2E) R/o Yawatmal, Tal. and Distt-Yavatmal.

2F] Sau. Leelabai Uttamchand Duggad,
Aged Major, Occ- Household, R/o Arni, Distt. Yavatmal.

2G] Sau. Suryakantabai Prakashchandji Bothra,
Aged Major, Occ.-Household, R/o Bhadravati, Distt-Chandrapur.

(**Amendment carried out as per Court's order dated 19-07-2011**)

1] Uttamchand Fulchand Jain,
Main Road near Dr. Ambedkar Statue, in front of
Buldana Urban Co-operative Bank, Arni, Tal. Arni, District Yavatmal.

2] Champalal Takhatmal Sethiya
Dead through L.Rs.

2A] Manakchand Champalal Sethiya,
In front of Gopal Mangalkaryalaya near Lala Building,

Awadhoot Wadi, Sugandha Building, Yavatmal.

2B] Lakhmuchand Champalal Sethiya,
Someshwar Apartment, Raut Nagar, Waghapur Road,
above Dr. Dehankar Dispensary, Yavatmal.

2C] Kasturchand Champalal Sethiya,
Infront of Nagarparishad Uchha Prathamik Shala,
Bajoriya Nagar, Yavatmal.

2D] Subhashchandra Champalal Sethiya,
Near Lala Building, Gopal Mangalkaryalaya, Awdhot Wadi, Yavatmal.

2E] Manojkumar Champalal Sethiya,
Near Lala Building, Gopal Mangalkaryalaya, Awdhot Wadi, Yavatmal.

2F] Sau. Leelabai Uttamchand Duggad,
Main Road near Dr. Ambedkar Statue, in front of
Buldana Urban Co-operative Bank, Arni, Tal. Arni, District Yavatmal.

2G] Sau. Suryakantabai Prakashchandji Bothra,
Near Jain Mandir, Mukam Post Bhadrawati, District- Chandrapur.

3] The State of Maharashtra,
through the Collector, Yavatmal.

4] The Special Land Acquisition Officer, Benefited Area, Yavatmal. .... Respondents.

With

Cross Objection No.102/2017

Uttamchand Fulchand Jain,
Aged Major, Occ.-Cultivator, R/o Digras,
Tq. Digras, Distt-Yavatmal. .... Cross Objector
(Ori. Respondent)

- Versus -

1] Vidarbha Irrigation Development Corporation,
through its Executive Engineer, Arunavati Project Division Digras,
Tah Digras, Dist- Yavatmal.

2] The State of Maharashtra,
through Collector, Yavatmal.

3] The Special Land Acquisition Officer, Benefited Area, Yavatmal.

4] Champalal Takhatmal Sethiya
Dead through L.Rs.

4A] Manakchand Champalal Sethiya,

aged Major, Plot No.188, Pande Layout, Khamla, Nagpur.

4B] Lakhmuchand Champalal Sethiya,
aged Major, R/o.- Bajoria Nagar, infront of Nagar Parishad School, Yavatmal.

4C] Kasturchand Champalal Sethiya,
aged Major, R/o.- Bajoria Nagar, infront of Nagar Parishad School, Yavatmal.

4D] Subhashchand Champalal Sethiya,
aged Major, R/o.-Awadut Wadi, Opp.Gopal Mangal Karyalaya, Yavatmal.

4E] Manojkumar Champalal Sethiya,
aged Major, R/o.-Awadut Wadi, Opp.Gopal Mangal Karyalaya, Yavatmal.
(4A to 4E) R/o Yavatmal, Tq. and Distt-Yavatmal.

4F] Sau. Leelabai Uttamchand Duggad,
aged Major, Occ- Household, R/o.-Main Road Arni, Distt. Yavatmal.

4G] Sau. Suryakantabai Prakashchandji Bothra,
aged Major, Occ.-Household, R/o.-Near Jain Temple,
Bhadravati, Distt-Chandrapur. .... Respondents.
(Ori. Appellants)

Shri A.B. Patil, Advocate for appellant.
Shri M.M. Agnihotri, Adv with Shri R.J. Shinde, Adv for resp. no.1/Cross objector.
Shri R.D. Bhuibhar, Adv for Resp. nos.2A, 2E and 2G.
Shri Amol Darekar, Adv for resp. nos. 2B, 2C and 2D.
Shri M.A. Kadu, AGP for resp. nos.3 and 4.

CORAM : S.M. MODAK, J.
Reserved on : 04-12-2020.
Pronounced on : 10-03-2021

J U D G M E N T

Reference Court enhanced compensation from Rs. 8526/- to Rs. 25,14,612/- as per judgment dated 30-04-2009. Both the parties are aggrieved by the said judgment. Acquiring body V.I.D.C. is aggrieved because they say the amount is excessive and unwarranted. And that is why they had come in appeal. Whereas original claimant no.1 Uttamchand says that the amount is inadequate. That is why he has filed cross objection. So this Court is required to decide what will be the correct market value of the acquired land on the relevant date i.e. 03-12-1994 when Section 4 notification under the Land Acquisition Act (said Act) was issued.

CLAIM BY L.RS. OF DECEASED CLAIMANT NO.2-CHAMPALAL

2] In addition to that after the impugned judgment was pronounced, natural legal representatives of Champalal Sethiya (Original claimant No.2 before reference Court) have raised a dispute about their entitlement to 1/2 of the share in the amount of compensation. They are respondent Nos. 2A to 2G herein. They have complained that Uttamchand Jain (Original Claimant No.1/ Present respondent No.1) has forged will deed dated 15-04-1997 of Champalal Sethiya and illegally claimed compensation solely to their exclusion. They have contended that Champalal Sethiya was alive at the time of filing of reference. He expired on 08-08-2005 prior to decision on 30.4.2009. So Uttamchand Jain - Respondent No.1 also forged no objection certificate/NOC of these respondent Nos.2 A to 2G and tried to grab entire amount of compensation.

3] These respondent Nos.2A to 2G have not raised present dispute before the reference Court. (They plead that the decision was obtained behind their back and it was known to them only when they received notice of execution proceedings filed by Uttamchand Jain present respondent No.1). <u>It is true that Uttamchand Jain exclusively claimed compensation (on the basis of Will of Champalal Sethiya) before the Reference Court.</u> Rightly or wrongly, the reference Court missed that point.

FINDINGS OF REFERENCE COURT

4] The Reference Court has not given any finding on the claim of exclusivity of Uttamchand Jain. However, while passing final order, the Reference Court was pleased to observe "*compensation be paid to petitioner*

Uttamchand Jain". So impliedly the claim of Uttamchand Jain was accepted. However, this approach without giving any finding is not warranted (even though there is limited scope of inquiry contemplated in a reference case).

5] So in addition to regular issue of market value of the land, this Court is required to decide about entitlement to compensation i.e. to say Uttamchand Jain exclusively or to Uttamchand Jain and also to Chamapal Sethiya (deceased).

EVIDENCE

6] During inquiry before the Reference Court only Uttamchand Jain gave evidence and relied upon few documents. Respondents therein have not adduced any evidence. The reference Court has fixed the compensation @ Rs.123/- per sq.ft. The reference Court followed two parameters:-

a) 'principle of average'

that is arrived at average of rates fixed in 2 reference proceedings.

b) 'principle of deduction'

while arrived at exact area of land available, deducted 33% from acquired land and considered only 19 R (28R – 9R 33%)

7] Learned advocate Shri A.B. Patil for VIDC and learned advocate Shri M.M. Agnihotri for respondent No.1 Uttamchand assisted the Court in perusing the record and understanding principles of law. Learned Advocate Shri R.D. Bhuibhar for natural legal representatives of Champalal Sethiya respondent Nos. 2A to 2G though supported the prayer for enhancement & reiterated their demand for share in the amount of compensation. Firstly the issue of correct amount of compensation needs to be decided.

SUBMISSIONS

8] The findings are challenged by V.I.D.C. mainly on following grounds:-

a) two judgments of Reference Court relied in the impugned judgment were delivered in an acquisition proceedings which were initiated (Section-4 notification on 16-08-1997 and on 02-07-1998) <u>much after the present acquisition proceedings</u> (Section 4 notification dated 03-12-1994).

b) There is a criticism in not deescalating the rates by the Reference Court.

c) There is also a submission that enhancement was granted even though, the claimants have not given any evidence of contemporaneous sale instances.

d) The findings that "*there is commonness of purposes of acquisition in 3 reference proceedings*" is also challenged.

9] Whereas learned Advocate Shri Agnihotri on one hand rebutted the contentions on behalf of the appellant and at the same time requested for enhancement on the basis of available evidence. By way of additional evidence he also relied upon one sale instance of similar situated land from the same village. This Court permitted the said sale instance to be taken on record as per the order dated 03-12-2020.

10] According to learned Adv Shri Agnihotri, reliance on judgments delivered by reference Court in other matters is permissible. And Court can certainly look into the rate fixed in those matters.

11] To buttress his submission in support of enhancement, he invited our attention towards

i) number of amenities like school, offices, public utility services in and around the acquired land;

ii) towards the location of the land and

iii) towards possible potential of land about non agricultural use.

He also invited our attention towards proved documents including maps, talathi certificate. According to him, these factors were not considered by the Reference Court in right perspective.

12] By way of reply, learned Advocate Shri Patil pointed out certain short comings in the evidence including not showing in the proved map the location of the land involved in connected reference proceedings (in case of *Mohd Ashraf Vs. Abhishek Chintawar*). He criticized the conduct of claimants in filing of an application for grant of permission for N.A. use on 18-04-1994 (particularly after start of acquisition proceedings in the year 1992-93). It is countered by learned Advocate Shri Agnihotri by contending that if it is so then why N.A. permission was sought for entire area/and not restricted to acquired land

FINDINGS OF REFERENCE COURT

13] It is matter of record that no sale instances pre Section 4 notification were relied upon by either of the parties before the reference Court. So also no contemporaneous sale deeds were relied upon by both the parties. Before the reference court there were two judgments delivered by reference court (in proceedings under different Section 4 notification) were available. Reference Court considered them and done average of two rates fixed in them. So also reference court deducted certain land while arriving at correct area of land available for fixing market value.

14] Now before us in addition to 2 judgments in other reference proceedings, we have got one sale instance pre Section 4 notification. <u>So which will be the correct method of valuation</u> ?

Whether to arrive at the market value by applying the principle of average by considering the rates fixed in 2 already decided reference proceedings?

OR

Whether to apply principle of deduction in rates fixed in 2 disposed of reference proceedings?

OR

Whether to fix the market value by considering the rate as per sale deed (subsequently produced) and then apply the principle of appreciation?

We know we have to apply the test of willing vendor and willing purchaser. So also court should try to endevour to protect the interest of owner of land. At the same time the interest of acquiring body should not be overlooked. <u>So it will be better to ascertain the market value by looking to the material from all angles.</u>

<u>RELEVANCY OF JUDGMENTS</u>

15] <u>*It is true that the Reference Court has referred to the judgments delivered in Mohd. Asraf case and in Abhisekh Chintanwar case. Bare minimum facts of those proceedings need to be considered.*</u>

<u>Section 4 Notification</u>	***<u>Purpose of acquisition</u>***	***<u>Rate fixed in Md. Ashraf's case by the reference Court</u>***	***<u>Section 4 Notification in this appeal</u>***
<u>10-08-1997</u>	*<u>Construction of telephone exchange and of residential quarters</u>*	*<u>On Rs. 97/- per sq.ft</u>*	*<u>03-12-1994</u>*
		-	-
<u>02-07-1998</u>	*<u>Widening of by-pass road</u>*	*<u>On Rs. 150/- per sq.ft</u>*	*<u>03-12-1994</u>*

We know that in present appeal, land is acquired for erection of minor canal for Arunavati Project.

16] The Reference Court has considered the rates fixed in earlier disposed of references and has arrived at a figure of Rs.123/- per sq. ft. by applying the principle of average. This method is objected on behalf of VIDC. According to them the section 4 notification in above referred proceedings were issued much later than present section 4 notification is issued and in view of that the Reference Court ought to have applied '*principle of deduction'* while arriving at the market value.

17] Whereas according to Respondent Uttamchand nothing is wrong in applying that method but in addition to that several other factors that is location, potentiality, possible use of the land for land non agricultural purpose were not considered by the Reference Court and if considered the market value of the land will be more.

LAW ON THIS POINT

18] On the point of relevance of the judgment in another reference proceedings, learned Advocate Shri Agnihotri relied upon following judgments-

a) *Pal Singh and others vs Union Territory of Chandigarh*[1].

b) *General Manager, Oil and Natural Gas Corporation Limited vs Rameshbhai Jivanbhai Patel and another*[2]

19] Hon'ble Supreme Court in case of *Pal Singh* (supra) has dealt with a similar issue. There was an emphasis that such judgment must be previous judgment of the Court. Similarly in case of *Rameshbhai Jivanbhai Patel,*

1 (1992) SCC 400
2 (2008) 14 SCC 745

Hon'ble Supreme Court also put a seal of approval on the approach of Reference Court 'in considering the awards passed by the Court while fixing the rate by the Reference Court'. The factual aspects are reproduced in para no.4 and findings are given in para no.9.

20] The rate fixed by the Reference Court in earlier two proceedings was ₹ 10 per sq. meter. Applying the principle of escalation the probable rate arrived at was ₹ 19.10 per sq. mt. The concerned Reference Court has reduced it to ₹ 17.10 sq.mt. (because lands were situated in different villages) (para 4). The said method was approved. <u>Hon'ble Supreme Court has given only one rider. These previous awards can be considered in a situation wherein there was no evidence about said transaction/acquisition relating to village of Ijapura itself</u>.

21] So it is clear that judgments delivered in other reference proceedings can also be considered by the court seized of the reference. The date of notification, purpose of acquisition, location of the land, size of the plot, the potentiality of the land and present use of the land needs to be considered. It would not be proper to fix the same market value blindly as fixed in the earlier references. If other factors are similar and then there are 2 options. Market rate can be fixed by –

a) increasing the market rate already fixed if Section 4 notification in question was issued subsequent to rates fixed in disposed off reference.

b) by decreasing the already fix market rate if notification in question was issued earlier to disposal of reference in which rates are fixed.

22] Such principles have been followed and they have also been approved by Hon'ble Supreme Court as referred to in earlier two paragraphs. However the present reference court have arrived at the market rate by applying the principle of average of the market rate fixed in above two referred reference proceedings (it is pertinent to note that in above two reference proceedings, even though section 4 notifications were issued after present section 4 notification was issued, the judgment in them came earlier to the judgment impugned before this Court). <u>Whether the practice of average is correct or not will be decided hereinafter ?</u>

SALE INSTANCE METHOD

23] Hon'ble Supreme Court and this Court also in several judgments have laid down the relevance of sale instances as well as the rate fixed in similar situated proceeding by the Reference Court. The comparable sale method is recognized and is most favoured method of valuation recognized judicially. The instances may be of three kinds :-

(a) Pre-Section 4 notification instances.

(b) Contemporaneous instances.

(c) Post-Section 4 notification instances.

The law is also settled about parameters to be considered by the Court *vis-a-vis* any of the one instance mentioned above.

24] To buttress his submission about consideration of sale instance learned Advocate Shri Agnihotri relied upon the following judgments:

a) State of Uttar Pradesh vs Major Jitendra Kumar and others[3]

b) Dr. Caetano Jose Filomeno Jacinto vs Deputy Collector and another[4]

c) *Om Prakash (dead) by Lrs and others vs Union of India and another* [5]

d) *State of Haryana vs Gurbax Singh (dead) by Lrs. and another*[6]

3 (1982) 2 SCC 382
4 2005 (1) ALL MR 797
5 (2004) 10 SCC 627
6 (2008) 11 SCC 65

25] Hon’ble Supreme Court refused to interfere in the rate enhanced by High Court of Allahabad. He considered one post notification sale deed. According to State Government it was impermissible. There was no material to suggest fluctuation in prices from the year 1948 (Section 4 notification) and 1951 (sale deed). These were the findings in case of *Major Jitendra Kumar.*

26] Whereas in case of *Dr. Caetano Jose* case this court on one hand accepted post notification sale deed and on the other hand deducted 40% from the price fixed as per that sale deed, while arriving at market value of the acquired land.

27] Similarly, in case of *Om Prakash,* Hon’ble Supreme Court has considered escalation at different and varying rates by Hon’ble High Court for different period. In that case there was no abnormality in the rates.

28] Lastly, in the case of *Gurbax Singh,* Hon’ble Supreme Court has confirmed the application of principle of escalation when there were instances of two sale deeds and there was a gap of two years in between those sale deeds and the acquisition in question. Addition of 12% p.a. was granted (para 8).

As no comparable sale instance was quoted before the reference Court, there was no occasion for the reference Court to consider the guidelines reproduced above.

ADDITIONAL EVIDENCE

29] It is true that in reference proceedings neither of the parties have relied upon any previous, subsequent or contemporaneous sale instances. But before this court, the respondent No.1 Uttamlal relied upon one sale instance of a land from the same village by way of an additional evidence. It was allowed.

30] In the judgment of ***Deputy Collector, Land Acquisition, Gujarat and another vs Madhubai Gobarbhai and another***, reported in ***(2008) 17 SCC 443*** the Hon'ble Supreme Court has interpreted the provision of Section 51A of the Land Acquisition Act. The ratio is "*without examining the signatory, copy of registered Sale Deed can be accepted as a evidence for the transaction recorded in it*." The details of that Sale Deed are as follows :-

Date of Sale Deed	Location of the Plot	Consideration
09-10-1990	Gram Panchayat-Arni, Panchayat Samiti-Digras, Zilla Parishad-Yavatmal	47,000/-

31] According to learned Advocate Shri Agnihotri the area of the plot sold as per the Sale Deed is 533.33 sq.ft., so per sq. feet rate is Rs.88.15 (47,000 divided by *533.33 sq. ft/*48 sq.mt.). Considering this rate,he requested for increase @ 10 to12% in the rate as per the above Sale Deed. It is for the reason that notification in question was issued 4 years after 1990 Sale Deed whereas according to learned Advocate Shri Patil this sale instance cannot be considered by this Court. I am afraid that this objection can be entertained. Because Section 51 A of the Land Acquisition Act gives status to registered sale Deed as that of evidence (without examining the signatory to such document). It is no doubt true that the land as per that Sale Deed is situated in the same village 'Arni'. If at all the principle of escalation is not to be followed then VIDC ought to have brought material to show that the prices of the land were static from 1990 till 1994. It has not been done. So not at 12% but appreciation certainly at 10% can be considered. It will be as follows:-

New Calculation

Rate as per sale deed	No. of years	rate of increase	Total
Rs.88.15 per sq.ft.	4 years	10%	35.2 + 88.15 = 123.35 per sq.ft.

32] Now this Court will consider the calculation made by the Reference Court in the impugned judgment. As we can see that notification in Mohmmad Ashraf case was issued 2 1/2 years after notification in question is issued. The purpose of acquisition is for construction of telephone exchange (for commercial use) and for construction of quarters (for residential use) Whereas in Abhishek Chintanwar case the notification was issued almost 3 years after notification in question is issued. Already road was in existence and acquisition was for widening of that road. The rate arrived at by the reference court is Rs.123 per sq. ft. (by applying the principle of average)

33] It is true that the Reference Court in the impugned judgment has made observation "about commonness of the purposes of acquisition (in between earlier to disposed of references and the present reference). The objection by learned Advocate Shri Patil about this incorrect factual observation is right. The purposes of 3 acquisition proceedings are all together different. But this Court does not feel that it will affect the final outcome.

34] Now let us calculate the rate by decreasing 10% fall in the individual rates fixed in above 2 reference proceedings. It is for the reason that notification in question was issued prior to notifications in above two referred references.

Case	Rate fixed	Proposed rate on decrease
Mohd. Ashraf case	Rs.97 per sq. ft.	**Rs.71.78** (Rs. 97 x 10% for 2 1/2 years)
Abhisek Chintanwar case	Rs.150 per sq. ft.	**Rs.105** (150 x 20 % for 3 years)

If we consider the rates arrived at in above manner, this Court feels that they will be too low. No genuine vendor will sell his land for such low rate. Even otherwise the circumstances surrounding the acquired land also need to be considered. Though it has come in the evidence that there are residential areas (Arunawati Colony, Adivasi Colony, Adhyapak Gruha Nirman Colony and public road around the acquired land as per Exhibit-55), the land is situated in village Arni which cannot be considered to be a city, but it can certainly be considered to be a village in transforming such into a city. The certificate and plan at Exhibit-56 issued by the Talathi of Arni need to be considered. So this Court feels that Rs.123 per sq. ft. will be the appropriate market value which a willing vendor is desirous to receive from willing purchaser. The proposed NA use of the entire land of the claimants is not considered because it was applied after acquisition proceedings were initiated in 1992-93.

35] <u>This Court feels that Rs.123 per sq. ft. will be correct market value. It is the same figure which was arrived at by the Reference Court in the impugned judgment and it is the same figure which is arrived at by considering 1990 Sale Deed.</u>

PRINCIPLE OF DEDUCTION

36] There is justification on behalf of VIDC for 33 % deduction applied by the Reference Court. Whereas, there is a strong opposition on behalf of respondent no.1 for applying the said principle. Learned Advocate Shri Agnihotri relied upon following judgments :-

a) *Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and another*[7]

b) Nelson Fernandes and others vs Special Land Acquisition Officer, South Goa and others[8]

---

7 (1988) 3 SCC 751
8 (2007) 9 SCC 447

c) *C.R. Nagaraja Shetty (2) vs Special Land Acquisition Officer and Estate Officer and another*[9].

d) *Abhishek s/o Dilip Chintawar and others vs The State of Maharashtra and others*[10]

37] It is true that while applying that principle, the Reference Court has not given any reason why it was applied and why 33% was applied (except one judgment in para 22).

38] When the acquisition was for the purpose of widening of national highway, the Hon'ble Supreme Court refused to allow deduction on account of development charges at the rate of Rs.25/- per sq.ft. There was no evidence to support the plea of proposed development. Whereas, in case of *Nelson Fernandes and others* the acquisition was for the purpose of construction of new BG line for the Konkan Railway. Considering the purpose of acquisition (laying of a railway line) deduction by way of development charge was not held necessary. Basic civil amenities such as Bank, Police Station etc. were considered. Hence, the order of the High Court for granting deduction towards development was set aside (para 30). So also in case of <u>*C.R. Nagaraja Shetty*</u> there was acquisition for widening of the national highway. Hence, there was no question of development or any costs therefor. So there was no evidence regarding proposed development. Hence, the order of the High Court directing deduction on account of development charges at the rate of Rs. 25/- was set aside.

39] It is the judgment in case of *The Special Land Acquisition Officer, Bangalore vs V. T. Velu and others*[11]. There was acquisition for the purpose of establishment of defence. The market value was done on the square yard

9 (2009) 11 SCC 75.
10 Cross objection No.31/2012, delivered by this Court, Shri Justice Chandurkar.
11 1996 (2) SCC 538.

basis. There was conversion of use to residential purpose. The buildings are to be constructed. In that sense there was need for erection of the road and civil amenities and hence deduction for development purpose was granted. There was already connecting road available. But it was not considered as a ground for refusing deduction towards development (para 6).

40] Though it is a settled law that principle of deduction is recognized principle, it depends upon the purpose of acquisition and concerning circumstances. The Reference Court has blindly made applicable the principle of average without considering the difference in fact in case of *V. T. Velu and others* and facts of the present case. In *V. T. Velu and others* case, the new defence establishment has to be erected as it requires erection of internal road and better amenities and hence deduction was granted. So whether to grant deduction or not depends upon the purpose of acquisition and several factors. Some times it may be on account of necessity to undertake the developmental activities in the form of internal road and public amenities and some times it is on account of considering the sale instance then to arrive at market rate of earlier date by granting deduction. Reference Court has not given any reason for deduction of 33%.

41] If we apply these principles to the facts of this case what we find is that the land is acquired for the purpose of erection of minor canal as per the Arunavati project. It has come in the evidence that the land is abutting the public road by name Borgaon road. It has come in the evidence that the residential colonies by name Arunavati colony etc. are already existing there, so the basic infrastructure has already been erected. So on that ground, there is no need to grant deduction. So this Court feels that the Reference Court was wrong in granting deduction at the rate of 33% while considering the comparable sales. The issue of deduction has already been considered. So this Court feels that the claimants are entitled for compensation of total area 28 R. So, to that extent, the findings of the Reference Court need to be set aside.

CONCLUSION

42] For the above discussion, I do not feel that the grievances of the appellant have got any merit. So I also do not think that there is need for enhancement in the rate fixed by the Reference Court. At the same time, the deduction granted by the Reference Court is held as impermissible.

DISPUTE AMONGST RESPONDENT NO.1-UTTAMCHAND AND LEGAL REPRESENTATIVES OF CHAMPALAL

43] One fact is clear that the legal representatives of deceased Champalal – respondent no.2 has filed Regular Civil Suit No.329/2012 before the Court of Civil Judge, Senior Division, Yavatmal. It is true that one of the reliefs sought is "*not to pay entire amount of compensation to defendant no.4 i.e. Uttamchand Jain i.e. respondent no.1*". Though the Reference Court in the impugned order has observed that amount of compensation be paid to the petitioner-Uttamchand Jain, however, while giving reasons there were no observations to support the said direction. The Reference Court has missed the point. Though respondent no.1-Uttmachand has claimed the compensation exclusively (on the basis of Will) the trial Court has failed to give any findings. <u>This Court cannot decide the issue as to entitlement in this appeal. At the</u> same time, this <u>Court cannot overlook the fact that a dispute has been raised by the legal representatives of deceased Champalal.</u>

44] As per the provisions of Section 31(2) of the Land Acquisition Act, the Collector is required to deposit the amount of compensation in the

Reference Court if there is a dispute as to title about entitlement to the compensation and its apportionment. This Court feels that this issue be left open to be decided by the Reference Court. It is not clear whether the concerned Collector has requested the Reference Court to decide the said issue. Otherwise also, the issue is pending adjudication before the Civil Court, Yavatmal. <u>So this Court feels best option available is to keep that issue pending till the time the Civil Court decide the issue in above referred Civil Suit.</u> Once the issue is decided, the reference/Executing Court is free to decide the issue about entitlement and its apportionment. At this stage, at the most, the appellant and respondent nos. 3 and 4 can be directed to deposit the amount of compensation as per the above calculation before the Reference Court. Hence, the following order is passed :-

<u>O R D E R</u>

(a) The appeal is dismissed.

(b) The cross objection is partly allowed.

(c) The present appellant and respondent nos. 3 to 4 are directed to deposit the compensation at the rate of Rs. 123/- per sq.ft. for area of the land admeasuring 28 R before the concerned Reference Court within the period of six months.

(d) The Reference/Executing Court is directed to apportion the compensation along with accrued interest as per the decision that will be given by the Court of Civil Judge, Senior Division in Regular Civil Suit No.329/2012.

(e) After decision will be given in RCS No.329/2012, if the Reference/Executing Court will find difficulty (about understanding these directions) then that Court is at liberty to seek directions of this Court on their own. (So that inconvenience to the litigating parties will be avoided.

(f) The rest of the order of the Reference Court about the statutory benefits and interest is confirmed.

(g) The Reference Court is further directed to recover the deficit Court fee from the concerned persons who will be held entitled to compensation.

(h) The parties to bear their own costs.

(S.M. Modak, J.)

Deshmukh