IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 287 OF 2004
WITH
CROSS OBJECTION NO. 10349 OF 2004 IN FA/287/2004
WITH
CIVIL APPLICATION NO. 8108 OF 2005 IN FA/287/2004
WITH
CIVIL APPLICATION NO. 785 OF 2022 IN FA/287/2004

The State of Maharashtra
Through the Collector, Osmanabad
For Sub Divisional Officer
and Special Land Acquisition
Officer, Osmanabad. .... Appellant
(Orig. Respondent)

Versus

Mukund Sadashivrao Deshpande,
Age : 34 Years, Occu.: Service,
Through holder of power of Attorney
Arun Sadashivrao Deshpande,
Age 43 Years, Occu.: Agri. & Advocate .... Respondent
R/o. Anand Nanagar, Osamanabad (Orig. Claimant)

WITH

FIRST APPEAL NO. 288 OF 2004
WITH
CROSS OBJECTION NO. 9739 OF 2004 IN FA/288/2004
WITH
CIVIL APPLICATION NO. 9525 OF 2005 IN FA/288/2004

The State of Maharashtra
Through the Collector, Osmanabad
For Sub Divisional Officer,
and Special Land Acquisition
Officer, Osmanabad. .... Appellant
(Orig. Respondent)

Versus

Venkatesh Krishnarao Jinturkar
died L.Rs.

A) Dattatraya Krishnarao Jinturkar,
died through L.Rs.

A-1) Dr. Shriram Digambarrao Jinturkar,
Age : 52 Years, Occu.: Medical
Practitioner and Agri.
R/o. Osmanabad, Dist. Osmanabad.

A-2) Dr. Shrikrishna Digambarrao Jinturkar,
Age : 46 Years, Occu.: Medical
Practitioner and Agri.
R/o. Osmanabad, Dist. Osmanabad.

2) Digambarrao Krishnarao Jinturka (Died)
Through his L.RS. Age : 81 Years, Occ.: Nil,

2-A) Anil Digambarrao Jinturkar,
Age : 46 Years, Occu.: Medical
Practitioner and Agri.
R/o. At present 10 Anand Swatantraya
Sainik Colony, Nageshwarwadi, Auranabad,
Tq. And Dist. Aurangabad.

2-B) Shailaja Subhash Patil,
Age : 64 Years, Occu.: Household,
R/o. Block No.202, Pied paradise,
Opp. Om Super Market,
Deept Banagala Chowk,
Model Colony, Shivaji Nagar, Pune -6
At Present Dalas U.S.A.

2-C) Shriram Digambarrao Jinturkar,
Age : 46 Years, Occu.: Medical
Practitioner and Agri.
R/o. Near Sanjevan Hospital,
Shivaji Chowk, Osmanabad,
Tq. & Dist. Osmanabad.

2-D) Padmaja Umakant Barhale,
Age : 58 Years, Occu.: Household
R/o. Falat No. 307, Wing B
Sungrace Apartment, Raheja Vihar,
Chandiwali, Powai, Mumbai – 72.

2-E) Shrikrishna Digambarrao Jinturkar,
Age : 52 Years, Occu.: Medical
Practitioner and Agri.
R/o. B-5, Highway Cooperative
Housing Society Plot No.46/47,
Shivshrushti, Kurla (East),
Mumbai. …. Respondents
(Orig. Claimant)

WITH

FIRST APPEAL NO. 289 OF 2004
WITH
CIVIL APPLICATION NO.11055 OF 2006 IN FA/289/2004

The State of Maharashtra
Through the Collector, Osmanabad
For Sub Divisional Officer
and Special Land Acquisition
Officer, Osmanabad. …. Appellant
(Orig. Respondent)

Versus

Shridhar Santukrao Jinturkar,
Age : 48 Years, Occu.: Service,
Through holder of power of Attorney
Arun Sadashivrao Deshpande,
Age 43 Years, Occu.: Agri. & Advocate …. Respondent
R/o. Anand Nanagar, Osamanabad (Orig. Claimant)

….

Mr. S.G. Sangle, AGP for the Appellant / State.
Mr. D.P. Palodkar, Advocate for the Respondents in FA/287/2004
Mr. D.P. Palodkar, Advocate h/f Mr. M.S. Patil, Advocate for the Respondent Nos.A-1, A-2, 2-A to 2-E in FA/288/2004.
Mr. R.B. Deshmukh, Advocate for the Respondent in FA/289/2004 (absent)

….

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 14.03.2022
Pronounced on : 02.05.2022

JUDGMENT :-

1. These appeals with cross objections can be disposed of by common judgment.

2. The land admeasuring 11 H. 99 R/gunthas from Survey Nos. 366/1 to 366/6 belonging to the original claimants came to be acquired for the purpose of government Industrial Training Institute at Osmanabad.

3. The Municipal Council, Osmanabad has prepared development plan (hereinafter referred to as “DP”) and submitted the proposal in respect of the acquired land for reservation to establish Government Industrial Training Institute. On 01.03.1975 the DP came into effect.

4. On 14.06.1979, the Principal of the Government I.T.I. has submitted the proposal for acquisition of the land (considering reservation No. 94 in D.P., the land of respondents / land owners admeasuring 11 H. 99 R was earmarked).

5. On 17.09.1979 / 24.09.19979, the Collector caused public notice of the intention to acquire land. On 04.10.1979, the public notice was served upon the respondents.

6. On 16.10.1980, the proposal for minor modification was submitted under Section 37 of the M.R.T.P. Act in respect of proposed acquired land.

7. On 13.09.1981, preliminary notification under Section 4(1) of the Land Acquisition Act, 1984 (hereinafter referred to as the "Act") was published in the official gazette.

8. On 11.08.1982, the proposal for minor modification was submitted by Town Planning Officer Osmanabad to Director Town Planning, Pune.

9. On 11.09.1982, the notification under Section 6 of the Act was published.

10. On 16.10.1982, the notification under Section 37(2) of M.R.T.P. Act, de-reserving the acquired land from I.T.I. to residential purpose, was issued.

11. On 23.09.1995, the Special Land Acquisition Officer, Osmanabad declared the award determining the compensation at the rate of Rs. 11,000/- per Hectare and Rs.13,700/- per Hectare.

12. On 16.03.1986, the possession of the acquired land was taken.

13. Feeling dissatisfied by the amount of compensation determined by the S.L.A.O., Osmanabad, the original claimants had filed L.A.R. Nos. 227/1990, 214/1990 and 221/1990 and sought enhancement of compensation.

14. The reference Court vide judgment and award dated 30.04.1992, was pleased to enhance the market value at the rate of 4.50/- per Sq. Feet by allowing the references. The State has challenged the decision given by the reference Court by way of first appeal Nos. 55/1994, 408/1996 and 64/1997. This Court, by its judgment and order, was pleased to set aside the impugned award passed by the reference Court and remitted back the references with liberty to lead the evidence as regard to distance between the acquired land and the land under the sale instances relied upon by the claimants.

15. On remand of the references, the claim petitions came to be amended and the additional written statement came to be filed by the State. The claimants have adduced evidence. So also, examined one expert in support of their claim for enhancement.

16. The reference Court vide its judgment and award dated 23.09.2003, was pleased to enhance the compensation in respect of the acquired land and awarded the compensation at the rate of Rs.5/- per Sq. Feet.

17. Feeling dissatisfied by the impugned common judgment and award passed by the reference Court in L.A.R. Nos. 227/1990, 214/1990 and 221/1990, the appellant / State has preferred these appeals. Whereas, the original claimants have also preferred cross objections vide cross objection Nos. 10349 of 2004 in first appeal No. 287 of 2004 and 9739 of 2004 in first appeal No. 288 of 2004. Accordingly, the set of first appeals and cross objections thereof are being disposed by this common judgment.

18. Heard Mr. S.G. Sangle, learned AGP for the appellant / State and Mr. D.P. Palodkar, learned counsel for the respondents / original claimants.

19. Mr. Sangle, learned AGP for the State vehemently submitted that the sale instances relied upon by the reference Court vide Exhibit 49 dated 17.11.1982 is of small area. It dose not reveal true market value of the land in the vicinity before the

notification under Section 4 of the Act, and as such, cannot be considered for determining the market value of the acquired land. Mr. Sangle, learned AGP submitted that the reference Court has committed an error by relying upon sale instance at Exhibit 49, which was executed by the vendor Mr. Dinkar Sadashivrao Deshpande, which is post issuance of notification under Section 4 of the Act. The vendor happens to be the brother of the land owner in L.A.R. No. 227/1990. The reference Court has failed to consider all these aspects. The plot under sale instance vide Exhibit 49 was not converted to N.A. use. It was an agricultural land. As such, the reference Curt should not have relied upon that sale instance. It was not proper on the part of the reference Court to make any comment upon Exhibits 55 and 57 and examine the same for comparison.

20. According to Mr. Sangle, learned AGP the sale instance vide Exhibit 49 relied by the reference Court was a collusive transaction and post notification under Section 4 of the Act. It does not give true picture about the market price of the acquired land. The reference Court ought to have considered the fact that this Court vide judgment dated 23.04.2003 in first appeal No.55/1994 with connected appeals had recorded the finding that Survey No.

354/1 lies in old Gaothan area. The reference Court has also not properly considered the distance between the acquired land and the land under the sale instances relied upon by the claimants. Mr. Sangle, learned AGP submitted that the learned reference Court has not appreciated the evidence of witnesses as well as documentary evidence in a proper way. The reference Curt has also not considered the deductions under two components i.e. development and development costs.

21. Mr. Sangle, learned AGP submitted that the claimants have placed on record the report of private valuer and also examined the private valuer Mr. Sharadchandra Parchure. His evidence cannot be considered. Mr. Parchure was on the panel of Central Board of Direct Taxes under Section 34 AB of Wealth Tax Act, 1957 and Wealth Tax Rules, 1957. Rule 8 A of the Wealth Tax Rules prescribe the qualification of registered valuer. He cannot be said to be qualified for making assessment of agricultural lands.

22. Mr. Sangle, learned AGP submitted that the Apex Court has laid down the parameters regarding determination of the market value in a landmark case of ***Chimanlal Hargovinddas Vs. Special***

Land Acquisition Officer, Poona and another reported in ***(1988) 3 SCC 751***.

23. Mr. Sangle, learned AGP has also relied upon the following stock of citations in support of his argument.

(i) ***K. Posayya and others Vs. Special Tahsildar,*** reported in ***AIR 1995 SC 1641***.

(ii) ***State of Maharashtra and another Vs. Shashikant Bhagwant Jadhav and others*** reported in ***2003 (Supp.2) Bom. C.R. 247***.

(iii) ***Union of India Vs. Ramphool*** reported in ***(2003) 10 SCC 167***.

(iv) ***Kanta Devi and others Vs. State of Haryana*** reported in ***AIR 2008 SC 3107***

(v) ***KUWSDB Vs. K.S. Gangadharappa and another*** reported in ***AIR 2009 SC 3762***.

(vi) ***Subh Ram Vs. State of Haryana*** reported in ***(1010) 1 SCC 444***.

(vii) ***HSAMB Vs. Krishan Kumar*** reported in ***AIR 2011 SC 2540***.

(viii) ***Special Land Acquisition Officer and anothers Vs. M.K. Rafiq Saheb*** reported in ***2011 AIR SCW 4420***.

(ix) ***Chandrashekhar (D) L.Rs. and others Vs. Land Acquisition Officer*** reported in ***AIR 2012 SCC 446***.

(x) ***Sabiha Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and others Vs. Special Land Acquisition Officer and others*** reported in ***AIR 2012 SC 2709***.

(xi) ***Bhule Ram Vs. Union of India and another*** reported in ***AIR 2014 SC 1957***.

(xii) ***Maj. Gen. Kapil Mehra and Others Vs. Union of India*** reported in ***2014 AIR SCW 6086***.

(xv) ***Nirmal Singh etc. Vs. Sate of Haryana*** reported in ***AIR 2015 SC 453***.

(xvi) ***Vithal Rao and Another Vs. Special Land Acquisition Officer*** reported in ***(2017) 8 SCC 558***.

(xvii) ***Maya Devi (D) through LRs. And others Vs. State of Haryana and another*** reported in ***AIR 2018 sc 645***.

(xviii) ***Shankarrao Bhagwantrao Patil Vs. State of Maharashtra*** reported in ***2021 AIR (SC) 4962***.

(xix) ***Umesh Gupta Vs. State of Haryana*** reported in ***2017 DGLS (SC) 1472***.

(xx) ***Manojkumar Vs. State of Haryana*** reported in ***AIR 2018 SC (Supp.) 247***.

(xi) ***Indian Council of Medical Research Vs. T.N. Sanikop and others*** reported in ***air 2015 SC (Supp.) 64***.

(xxii) ***State of Haryana and another Vs. Rohtas and Etc.*** reported in ***2017 DGLS (SC) 1646***.

24. Mr. Sangle, learned AGP for the State by placing reliance on the above stock of citations submitted that the market value determined by the reference Court in above said three land acquisition proceedings is very much on higher side. The common award passed by the reference Court needs to be quashed and set aside. He, therefore, urged to allow the appeals preferred by the State.

25. Mr. Sangle, learned AGP while canvassing on the cross objections preferred by the original claimants argued that the reference Court has rightly discarded the sale instances relied upon by the claimants vide Exhibits 50, 55, 57, 58. He submitted that the sale instance vide Exhibit 50 was a auction sale by the Bank in the year 1971 and that too property was in the midst of town, and as such, not similar and comparable.

26. Mr. Sangle, learned AGP for State submitted that it is well settled position of law that when sale instances are available on record, the Court need not require to consider the awards, which have been passed earlier in another land acquisition proceedings. By placing reliance in case of ***Umesh Gupta Vs. State of Haryana*** (supra), he submitted that the judgment and award passed in

another L.A.R. proceedings is not binding on the Court as precedent. The Court has to apply its mind independently to the facts of the case and record findings, and accordingly determine the market value of the acquired land. He submitted that the reference Court has rightly rejected the report of private valuer vide Exhibit 112 as well as his testimony. He submitted that there is no merit in the cross objections and liable to be dismissed.

27. Mr. Palodkar, learned counsel for the original claimants submitted that the acquired land is situated with the Municipal limits of the Osmanabad. Even though at the time of acquisition, the acquired land was not converted to N.A., the fact of N.A. potentiality cannot be overlooked. One plot adjacent to the acquired land was sold by the Municipal Council, Osmanabad to L.I.C. The acquired was included in the development plan of the Municipal Council, Osmanabad and reserved for commercial zone in the development plan. The acquired land is surrounded by residential houses. Existing Highway is near to the acquired land, which is proceeding from Solapur to Aurangabad. Aurvedic college premises is on the northern side of the acquired land. The Government polytechnic college, M.S.E.B. office, VIP guest house are at short distance from the acquired land, which makes it clear

that the acquired land was very much suitable for N.A. use. The S.L.A.O has also mentioned such fact while passing the award. He submitted that the reference Court has awarded inadequate compensation to the claimants having regard to the location of the acquired land and its proximity with the Hilghway road coupled with the advantages available. He, therefore, submitted that the claimants are entitled to get compensation of the respective acquired lands at the rate of Rs.9 per Sq. Feet on the basis of sale instances, which are on record.

28. Mr. Palodkar, learned counsel for the claimants submitted that the claimant has examined expert in the field vide PW-2 Mr. Sharadchandra Mahadeo Parchure vide Exhibit 25, who is Government approved valuer. According to the evidence of PW-2 Mr Parchure (expert), the market value of the acquired land at the relevant point of time was at Rs. 6 per Sq. Feet. The expert report is also to that fact is on record. He submitted that the reference Court has committed an error in rejecting the evidence of expert and its valuation report. Mr. Palodkar, pointed out that the valuer's report about the market value can be taken into consideration in view of Section 45 of the Evidence Act, 1872. He has placed his reliance in case of ***Nelson Fernandes and others Vs. Special Land***

Acquisition Officer, South Goa and others reported in ***(2007) 9 SCC 447***.

29. Mr. Palodkar, learned counsel for the claimants submitted that the Apex Court in case of ***Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others*** reported in ***(2012) SCC 432***, has held that when there are several exemplars with reference to similar lands, usually the highest of the exemplar, which is a bona fide transaction needs to be considered.

30. Mr. Palodkar, submitted that the reference Court has committed an error in deducting 33% under the head of development costs. The acquired land was within the limits of Municipal Council having substantial potential for development of residential and commercial complexes. The belting system should not have been restored to. Mr. Palodkar has placed his reliance in case of ***Ashrafi and others Vs. State of Harayana and others*** *reported in* **(2013) 5 SCC 527**.

31. He pointed out that the documentary evidence on record coupled with the evidence of claimant has proved that the acquired land was abutting to the highway. The activity of the building

construction was going on around the acquired land. He submitted that the claimants are entitled to get compensation at the rate of Rs 9/- per Sq. Feet. He, therefore, urged to allow both the cross objections.

32. I have considered the submissions of Mr. S.G. Sangle, learned AGP for the appellant / State and Mr. Palodkar, learned counsel for the original claimants. I have also gone through the stock of citations relied upon by both the sides. Perused the impugned common judgment and award passed by the reference Court and relevant documentary evidence.

33. For determining the amount of compensation to be awarded, the Land Acquisition Officer is guided by the provisions of Section 23 and 24 of the Act. The market value of the land means, the price which a willing seller is reasonably accepted / fetched in the open market from willing purchaser. In case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** reported in ***(1988) 3 SCC 751***, the Hon'ble Supreme Court has laid down the principles to be kept in mind by the Court in determining the market value in view of Section 18 and 23 of the Act. It is necessary to study and examine the impugned judgment delivered

by the reference Court in the background of principles laid down by the Hon'ble Supreme Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra).

34. In the present appeals and cross objections, the controversy is centered with the question of market value of the land under acquisition . The appellant / State and the original claimants as well contended that the reference Court has not properly determined the market price of the acquired land having regard to its location, evidence on record and the parameters laid down by the Hon'ble Supreme Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra).

35. The evidence produced in L.A.R. No. 227/1990 is considered by the reference Court while deciding all the references. I have perused the evidence of power of attorney holder of claimant Mr. Mukund Sadashivrao Deshpande, who is PW-1 Arun Sadashivrao Deshpande vide Exhibit 14 (POA), evidence of PW-2 Mr. Sharadchandra Mahadeo Parchure (expert valuer) vide Exhibit 25, PW-3 Mr. Bruhaspati Mohanlal Kudal vide Exhibit 73, Mr. Chandulal Manikchand Gandhi at Exhibit 74 and Mr. Vasant Janardhanrao Thite at Exhibit 77. I have also gone

through the certified copy of the judgment delivered in another proceedings vide L.A.R. No. 154/1984 at Exhibit 15 and judgment in L.A.R. No. 131/1984 at Exhibit 16. Apart from the oral stock of evidence, the claimants have also produced and relied upon the following sale instances.

<u>The land owners / claimants relied upon following sale instances</u>

Exh. No.	Date of execution of sale instances	Area	Consideration	Rate
49	17.11.1982	66 X 66	Rs. 20,000/-	Rs.4.59/-
50	23.09.1983	1856 Sq. Mts.	Rs.1,35,000/-	Rs.6.78/-
55	07.06.1979	165 x 36	Rs. 25,000/-	Rs.4.20/-
57	26.05.1971	150 x 60	Rs. 34,001/-	Rs.3.77/-
58	18.07.1990	60 x 50	Rs. 27,000/-	Rs.9.00/-

36. The issue of limitation has been decided by the reference Court in favour of the claimants. That finding is not seriously disputed by the appellant / State. Even one step ahead, after going through the record and the finding recorded by the reference Court relating to the issue of limitation, it is evident that the reference Court has rightly held that all the references have been filed on 35th day from the date of declaration of the award. There is no evidence as to when notices under Section 12(2) of the Act were served on the claimants. By considering all these aspects and

evidence on record, the reference Court has rightly held that the references are within limitation. I am in agreement with the finding recorded by the reference Court on the issue of limitation.

37. The State / appellant has seriously disputed that the acquired land had N.A. potentiality. It is stand of appellant / State that the acquired land was agricultural land at the time of the acquisition. There was no N.A. permission. No sanctioned layout. The reference Court in para No.19 of the impugned judgment has dealt with that aspect. It is observed by the reference Court that the acquired land was located within the limits of Municipal Council, Osamanbad. It is also brought on record that various plots surrounded to the acquired land were sold for residential and commercial purpose before and after the date of acquisition.

38. It is undisputed position that the acquired land was abutting to the National Highway. Mr. Thite, who is the employee of the Municipal Council has stated during his evidence that plot purchased by the L.I.C. is just at a distance of 1.5 k.m. away from the acquired land. He went on admitting that the area like Ganesh Nagar is near to the acquired land. The distance between the office of the Home-guard, S.T. workshop, Government Dairy and Idgah

are about at 1.5 k.m. away from the acquired land. If the above stock of evidence is taken into consideration, it is difficult to accept the stand taken by the State / appellant. The acquired land had N.A. potentiality in view of the factual scenario, which is brought on record. I am in agreement with the observations made by the reference Court. The location of the acquired land also plays important role in this case. It is evident from the testimony of PW-1 Mr. Arun Sadashiv Deshpande that Terna Engineering college, Government polytechnic college and Government Ayurvedic college are very close to the acquired land. Even though, the above said colleges were not established at the the time of notification under Section 4 of the Act, those sites were selected for the purpose of opening colleges, which indicates prime importance and location of the acquired land.

39. So far as the sale instances relied upon by the claimants referred above are concerned, the reference Court has rightly discarded the sale instances at Exhibit 50 and 56 since those have been executed after long time from the date of notification under Section 4 of the Act. Those two sale instances are rightly kept away by the reference Court for determining the market value of the acquired land. The reference Court has rightly taken into

consideration the sale instances vide Exhibit 55 and 57 coupled with sale instance vide Exhibit 49. Even though sale instance at Exhibit 49 is dated 17.11.1982, soon after the notification under Section 4 of the Act, it can be taken into consideration and relied upon in view of citation in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra).

40. The reference Court after comparing the sale instances vide Exhibit 49, 55 and 57, and after taking into consideration the evidence of concerned witnesses, accepted the sale instance vide Exhibit 49 and accordingly determined the market value of the acquired land at the rate of Rs.5/- per Sq. Feet. The sale instance vide Exhibit 49 though of small area, cannot be discarded since it is very close to the acquired land. It is also observed by the reference Court that sale instance vide Exhibit 49 is found genuine transaction, after going thorough the evidence of the relevant witnesses. It is also rightly observed by the reference Court at the time of notification under Section 4 of the Act, the surrounding plots of the acquired land were sold in the range from 4.5 per Sq. Feet to Rs. 7/- per Sq. Feet. The exercise made by the reference Court for determining the market value of the acquired land by assessing the sale instances vide Exhibit Nos. 49, 55 and 57, and

accepting the sale instance at Exhibit 49 found proper and correct and according to the law laid down by the Apex Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra). The reference Court has also rightly deducted 33% for development costs by taking into consideration that when large chunk of land is being acquired, it is necessary to consider deductions towards development costs and development expenditure.

41. Mr. Sangle, learned AGP for the State has relied upon various decisions of the Apex Court on the point of percentage of deductions. It is well settled principle of law that when large chunk of land is going to be acquired, it is necessary to consider the cost of development when a large block of land is required to be valued, appropriate deduction has to be made for parks / playgrounds land for carving out roads, leaving open spaces and plotting out smaller plots suitable for construction of buildings. The Hon'ble Supreme Court in case of ***Subh Ram Vs. State of Haryana*** (supra), has held that the standard deduction should be 33% for development and another 33% expenditure for development for small area covered by the exemplar sale instance. In case of ***Vithal Rao and Another Vs. Special Land Acquisition***

Officer (supra), the Hon'ble Supreme Court has held that the percentage of the deductions would vary from 10% to 86%. In case of ***Maya Devi (D) through LRs. And others Vs. State of Haryana and another*** (supra), the Hon'ble Supreme Court has held that 33% deduction for development charges for Small extent of land could be appropriate.

42. Having regard to the above reasons and discussion and in the light of citations of the Apex Court (supra), the deduction of 33% made by the reference Court towards development costs appears to be reasonable and proper having regard to the are of the acquired land and its proximity. The acquired land has road on two sides. One is the Highway and another is diversion road. The other advantages are are also available with the acquired land. By considering all these aspects, 33% deduction made by the reference Court cannot be said to be on lesser side or higher side. The reference Court has rightly deducted 33% towards development costs while determining the market value of the acquired land. I do not see any error on the part of the reference Court while deducting 33% under the head of development costs while determining the market value of the acquired land.

43. So far as the evidence of expert in concerned, Section 45 of the Evidence Act speaks about admissibility of the expert evidence. However, the reference Court has rightly turned down the evidence of expert and its valuation report by giving in detail reasons, which are found to be sound. The citation relied upon by Mr. Palodkar on the valuation report of the expert in case of ***Nelson Fernandes and others Vs. Special Land Acquisition Officer, South Goa and others*** (supra) is not anyway helpful to the claimants having regard to the facts of the case in hand.

44. Mr. Sangle, learned AGP for State has referred number of citations regarding principles for determining the market value of the acquired land and standard deductions under development costs. There is no need to refer each and every citation referred by Mr. Sangle, when the position of law is made clear by the Hon'ble Supreme Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra), ***Vithal Rao and Another Vs. Special Land Acquisition Officer*** (supra) and in case of ***Maya Devi (D) through LRs. And others Vs. State of Haryana and another*** (supra). The reference Court has also rightly not accepted the judgment delivered in another land acquisition proceedings, when comparative sale instances are available on record.

45. On studying the findings recorded by the learned reference Court, it is revealed that the reference Court has recorded the findings on the basis of evidence on record supported by the documentary evidence. The findings are also in the line of principles laid down by the Apex Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** (supra). I do not see any manifest error on the part of the reference Court while determining the market price of the acquired land at the rate of Rs.5/- per Sq. Feet. The market price of the acquired land determined by the learned reference Court is found adequate having regard to its location and proximity with the Highway coupled with other advantages. The claimants are not entitled to get more compensation as claimed by them at the rate of Rs.9/- per Sq. Feet or Rs.6/- per Sq. Feet. I do not find any merit in the cross objections filed by the respective claimants. Equally, I do not find any merit in the appeals filed by the appellant / State. The acquired land is situated within the limits of Municipal Council, Osmanabad. The acquired land was reserved in the development plan. The acquired land had N.A. potentiality. The acquired land had prime location having regard to the surrounding residential houses and commercial plots. The market price determined by the

learned reference Court cannot be said to be inadequate or sky high. In the result, the appeals as well as the cross objections need to be dismissed.

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

(i) The appeals and cross-objections stand dismissed

(ii) No order as to costs.

(iii) Civil Applications also stand disposed of

(iv) The Record and Proceedings be sent to concerned reference Court.

(v) The compensation amount, if any, lying with the Registry, it be paid to the respective claimants along with accrued interest thereon.

(vi) The Registry to make payment to the claimants in view of the final disposal of the appeals.

(vii) The appeals and and cross-objections are accordingly disposed of.

(viii) Civil Applications, if any, also also stand disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane