Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 71 OF 2014
WITH
CIVIL APPLICATION NO. 492 OF 2019

Bhagwan Shivling Kendale,
since deceased through his representatives,

1. **Smt Avadabai Bhagwan Kendale**, Age 41, Occupation Housewife
2. **Rahul Bhagwan Kendale**, Age 22, Occupation Business.
3. **Sharad Bhagwan Kendale**, Age 20 years, Occupation Business, R/at 412, North Sadar Bazar, Lashkar, Satyanam Chowk, Solapur 413 006. ... **Appellants** (Orig. Claimants)

versus

1. **The State of Maharashtra**
2. **The Special Land Acquisition Officer No. 5**, Collector's Compound, Solapur 413 001.
3. **The Commandant**, State Reserve Police Force Group No. 10, Soregaon, Solapur.

3A. **Parshuram Bhiva Kendale**

Age Adult, Occupation Service.

4. **Tuljaram Bhiva Kendale**, Age Adult, Occupation Service, died through his legal representatives

4A. **Chandrakala Tuljaram Kendale**, Age 40 years, Occupation Household

4B. **Santosh Tuljaram Kendale**, Age 25, Occupation Service.

4C. **Ankush Tuljaram Kendale**, Age 23, Occupation Service.

4D. **Meena Santosh Shinde**, Age 21, Occupation Household.

4E. **Mangesh Tuljaram Kendale**, Age 19 years, Occupation Service, All R/o House no. 32 & 33, Kate Manewali Road, Chincha Pada Road, Darshan Apartment, Kalyan (East), District Thane.

5. **Suryakant Namdev Kendale**, Age Major, Occupation Business.

6. **Malanbai Namdev Kendale** Age 70, Occupation Housework

7. **Sharanabai Shivling Kendale**, Age 65, Occupation Housework

8. **Shailendra Shivling Kendale**, Age 30, Occupation Worker, Opponents Nos. 3A to 8

R/o. 412, North Sadar Bazar,
Solapur.

9. **Digambar Shivling Kendale**, Age Adult, Occupation R/at 412, North Sadar Bazar, Solapur 413 006.

9A **Laxman Digambar Kendale**, Age 45, Occupation Business, R/o 412, North Sadar Bazar, Lashkar, Solapur.

9B **Jaya Subhash Thorat**, Age 44 years, Occupation Household, R/o. Dombivali, Thane.

9C **Sushma Raju Dolare**, Age 42 years, Occupation Household
R/o Kumta Naka, Solapur.

9D **Jyoti Vinod Kendale**, Age 22, Occupation Household

9E **Roshani Vinod Kendale**, Age 22 years, Occupation Household
Both R/o. Dombivali, Thane.

10 **Manohar Papayya Ige**, Age 38 years, Occupation Daji Peth, Solapur 413 005.

11 **Shriniwas Kanaklingam Kompelli**, Age 31, Occupation: R/o. New Pachha Peth, Ashok Chowk, Solapur 413 006 died through legal representatives

11A **Laxmi Shriniwas Kompelli**, Age 33 years, Occupation Household.

11B **Ashwini Shrinivas Kompelli**, Age 15 years, Occupation Education.

11C **Rakesh Shriniwas Kompelli**, Age 10 years, Occupation Household

11D **Shrikant Shriniwas Kompelli**, Age 12 years, Occupation Education, All R/o. House No. 34/23, New Pacha Peth, Ashok Chowk, Solapur. Opponent Nos. 11B to 11D are minor through their guardian Opponent No. 11A – mother. … **Respondents** (Original Opponents)

AND

FIRST APPEAL NO. 135 OF 2014

WITH

CIVIL APPLICATION NO. 491 OF 2019

1. **Siddhappa Aliad Sidram Dhondappa Kamshetti**, Solapur, Since deceased, through his representatives

1A. **Kasturbai Siddhappa Alias Sidram kamshetti**, Age 55, Occupation Household.

1B. **Chanawwa Baburao Bidwe**, Age 35 years, Occupation Household.

1C. **Dhondappa Siddhappa Alias Sidram Kamshetti**, Age 32 years, Occupation Business

1D. **Shivshankar Siddhappa Alias Sidram Kamshetti**, Age 30 years, Occupation Business

1E. **Sukeshami Subhash Udand**, Age 28 years, Occupation Household.

1F. **Anil Siddhappa Alias Sidram Kamshetti**, Age 22 years, Occupation Business, All R/o. 290-295, Shankar Nagar, Opposite Shivshahi, Majarewadi, Solapur.

2. **Mallasha Alias Mallikarjun Dhondappa Kamshetti**, Age Major, Occupation Business, R/o. C/o. Sidhappa D Kamshetti, Majarewadi, North Solapur, Solapur.

3. **The Govindraj Chamak Va Soot Doubiling Utpadak Sahakari Sanstha Maryadit**, New Pachha Peth, Solapur through its Chairman Mr Narendra G Dara … **Appellants** (Orig. Claimants)

versus

1. **The State of Maharashtra**

2. **The Special Land Acquisition Officer No. 5**, Collector's Compound, Solapur 413 001.

3. **The Commandant**, State … **Respondents**

Reserve Police Force Group No. 10, Soregaon, Solapur. (Original Opponents)

APPEARANCES

FOR THE APPELLANTS	**Dr Ramdas P Sabban**.
FOR RESPONDENTS NOS. 1 TO 3	**Mr Ashutosh Kumbhakoni, Advocate General**, *with YY Dabke, AGP.*

CORAM : G.S. Patel, J.

RESERVED ON : 24th April 2023

PRONOUNCED ON : 20th October 2023

JUDGMENT:

1. This common judgment will dispose of both First Appeals. I have heard Mr Kumbhakoni, learned Senior Advocate, then Advocate General for the Respondent-State, Dr Sabban for the Appellant in both matters at some length. With their assistance I have considered the material on record and gone through the authorities cited.

2. For the reasons that follow, I am not persuaded that the orders under Appeal require any interference at all. I have dismissed both First Appeals.

3. Both Appeals are under Section 54 of the Land Acquisition Act 1894 ("**LA Act**"). The Appellants are the original Claimants in References filed before the Joint Civil Judge Senior Division, Solapur. Both References were rejected, leading to the filing of these Appeals. In First Appeal No. 71 of 2014, the impugned order of the

Joint Civil Judge Senior Division is dated 25th October 2013 in LAR No. 12 of 2004. In First Appeal No. 135 of 2014, the impugned order of the Joint Civil Judge Senior Division is dated 11th November 2013 in LAR No. 22 of 1999.

FACTS IN FIRST APPEAL NO. 71 OF 2014

4. In First Appeal No 71 of 2014, the Reference Petition under Section 18 of the LA Act seeking enhancement of compensation was numbered as LAR No. 12 of 2004.[1] Written Statements were tendered by the Respondents.[2] The Claimants led evidence and were cross-examined.[3] The Respondents were also cross-examined briefly.[4] At this stage, it is only necessary to note that the Collector made his Award on 29th February 2000.

5. The Reference before the Joint Civil Judge Senior Division was under Section 18 of the LA Act. The Applicants sought enhancement of compensation. The land is situated at House No. 8/2, New Gat No. 14/1, Old Gat No. 21/1 of Village Soregaon, District Solapur. The land admeasures 7.32 Hectares, about 7,320 sq mtrs. According to the Claimants the land was acquired in the year 1976–1977 for the State Reserve Police Force ("**SRPF**"). The Claimant says that a notice under Section 4 was issued on 20th October 1977 and possession was taken on 12th December 1978, On 3rd March 1979, the Government declared this a surplus land under

1 Paper book, *pp.* 43 to 56 of FA 71 of 2014.

2 Paper book. *Pp.* 57 to 61.

3 Paper book, *pp.* 62 to 76.

4 Paper book, *pp*, 77 to 79.

Section 8(4) of the Urban Land Ceiling and Regulation Act ("**ULC Act**"). An area of 67,273 sq mtrs was withdrawn from the Land Acquisition proceedings. An area of 5,900 sq mtrs remained acquired under the LA Act. The balance area of 5,900 sq mtrs was later acquired. We are not concerned with that in these proceedings. The remaining land vested with the Government but under the ULC Act. The Applicants challenged the ULC proceedings in a Writ Petition before this Court and that came to be allowed releasing the land from acquisition under the ULC Act. There were in fact contempt proceedings and ultimately this tract of land of 67,273 sq mtrs came under a fresh acquisition proceeding under the LA Act. The Government acquired the land. This resulted in an Award of 17th August 2000. The compensation awarded was Rs. 17,72,560/-. The Applicants in the Land Acquisition Reference said that this compensation was wrongly fixed by the Collector. By the impugned order dated 25th October 2013, the Jt Civil Judge, Senior Division, Solapur, rejected the Reference. Hence this First Appeal.

6. Shortly stated, the Appellants claim that compensation should be awarded at Rs. 1,000/- per sq mtr. There is also a claim of interest from the date of the first acquisition in 1977–1978. Before the Civil Judge Senior Division, Written Statements were filed by the State Government and the Special Land Acquisition Officer. In addition, the State Reserve Police Force, Opponent No. 3, filed a Written Statement through its Commandant. All these Opponents defended the compensation awarded.

7. Only two significant issues were framed by the Civil Judge Senior Division. The first was whether the compensation awarded was proved to be inadequate and second whether the Applicants prove that they were entitled to additional compensation in the amount of Rs. 2 crores. Both issues were answered in the negative.

FACTS IN FIRST APPEAL NO. 135 OF 2014

8. The dates as to possession and the proceedings under the LA Act are broadly the same. The area acquired, however, was 50,900 sq mtrs. The Award is dated 2nd January 1999 and is in the amount of Rs. 13,05,212/-. Again, the claim is for compensation at the rate of Rs. 1,000/- per sq mtr. There was an additional issue cast on solatium and interest in this Reference. All issues were answered in the negative.

BACKGROUND CHRONOLOGY

9. Some of these dates will be common to both matters. The Urban Land (Ceiling and Regulation) Act, 1976 ("**ULC Act**") came into force in Maharashtra on 17th February 1976. The Appellants in FA 71 of 2014 originally held 73,000 sq mtrs. Of this, 67,273 sq mtrs was found to be in excess of the permissible holding under the ULC Act. It thus became liable to acquisition under the ULC Act. This is an important distinction because it tells us that the land was not originally targeted for acquisition under the LA Act at all.

10. A Notification under Section 4 of the LA Act was issued in respect of 7.32 Hectares (73,200 sq mtrs) of land on 20th October

1977. The land was proposed to be acquired for SRPF. A Section 6 Notification under the LA Act followed on 3rd November 1977.

11. On 3rd March 1979, there was an order issued under Section 8(4) of the ULC Act. This declared the holding of the Applicant, to the extent of 67,273 sq mtrs, to be in excess of the permission ceiling limits under the ULC Act. The remaining portion of 5,900 sq mtrs was held to be retention land available to the Appellants. Consequently, under Section 48 of the LA Act, the acquisition proceedings in respect of only the retention portion of 5,900 sq mtrs continue and the LA Act acquisition proceedings initiated in respect of 67,273 under the LA Act were dropped.

12. Thus, the land declared to be in excess of the ceiling limits, 67,273 sq mtrs, by virtue of the ULC Act vested in the State Government as of 15th October 1981. Possession of this land of 67,273 sq mtrs and its vesting in the State Government for land acquisition purposes was not under the LA Act at all but under the ULC Act. This makes a significant difference to the question of the starting point of interest even assuming that the Appellants are entitled to succeed. On 8th December 1982, the Special Land Acquisition Officer passed an Award under Section 11 in respect of 5,900 sq mtrs, i.e., the retainable portion under the ULC Act. The Appellants filed Writ Petition No. 5965 of 1995 challenging the ULC proceedings and the vesting of this land in the State Government. On 1st October 1998, the Writ Petition was allowed and the ULC Authorities were directed to take a decision in terms of a Government Resolution on 1st October 1997. It is only thereafter on

9th March 1999 that a fresh Notification was issued under Section 4 of the LA Act in respect of the land admeasuring 67,273 sq mtrs.

13. It seems that the Appellant filed Contempt Petition No. 93 of 1993 saying that the Government had not complied with the order passed in Writ Petition. The Contempt Petition was admitted on 10th March 1999. On 1st April 1999, a Notification under Section 4 was published in the official Gazette. Notice of the Section 4 Notification was pasted on site on 5th June 1999. According to Mr Kumbhakoni, this is the date when notional possession of the land can be said to have been taken under the Land Acquisition Act. It is his submission that this is the only relevant date when looking at the date of possession. No earlier date can be considered.

14. A Notification under Section 6 of the LA Act followed on 2nd December 1999. On 4th February 2000, this Court passed an order in the Appellants' Contempt Petition directing the State Government to pass an award within six months in regard to the acquisition proceedings in respect of 67.273 Hectares of land. Ultimately, on 20th February 2000, the Collector made an Award under Section 11 warranting amount of Rs.17,72,560/- as compensation for the 67.273 Hectares of land. A notice under Section 12(2) of the LA Act was issued on 29th July 2000. On 29th November 2004, the Appellants filed the LA Reference No. 12 of 2004 in the Court of the learned Joint Civil Judge Senior Division, Solapur. This resulted in the impugned decision of 25th October 2013, and this in turn led to the filing of the present First Appeal.

15. In FA 135 of 2014, the land in question is Survey No 8/1, Gat No 20 of Village Soregaon, District Solapur. The area was 57,706 sq mts, originally. The remaining facts are broadly similar, and not much will turn on those. The award was of 2nd January 1999 in the amount of Rs 13,05,212 for an area of Rs 2,794 sq mts (the remaining having vested in the Government under the ULC Act). Here, the reference was Land Acquisition Reference No 22 of 1999. It failed by an order 11th November 2013 passed by the Jt Civil Judge, Senior Division, Solapur, and against which this First Appeal is filed.

QUESTIONS FOR DETERMINATION

16. As the following discussion shows, there is nothing in these First Appeals that demands a re-evaluation of the evidence on record. It is almost entirely non-controversial. The only issue is about the applicable law. There is only one sale deed for a relatively larger plot of land that needs to be considered. There is no controversy before me about the quality of evidence, the cross-examination, the admissibility or proof of documents and so forth. Neither side has advanced submissions in this regard. The entire discussion has been only on a proper application of law and a correct approach to one sale deed.

17. Consequently, the points for determination in the First Appeals are:

(a) Whether the Appellants prove that they are entitled to a higher rate of compensation, and, if so, what rate?

(b) If the answer to the first question is in the affirmative,

(i) What is the rate or amount of compensation to which the Appellants are entitled?

(ii) Do the Appellants prove that they are entitled to interest, and, if so, at what rate and from what date?

(iii) Do the Appellants prove that they are entitled to solatium?

18. If the answer to the first issue is in the negative, the remaining will not survive. I have answered the first issue in the negative.

19. Given the manner in which arguments were structured, I will take all issues together but, as I noted, it is the first issue that is dispositive.

RIVAL SUBMISSIONS & FINDINGS

20. Dr Sabban's submissions are essentially founded on what he calls the principle of parity. He seeks to draw support from 16 sale instances and nine awards by the Collector, saying that these are 'comparable' instances produced in evidence.[5] These show, according to him, that the rate of compensation ranged from Rs 276 per sq mtr to Rs 1144 per sq mtr. Even on a simple 'averaging' principle, the rate awarded ought to have been Rs 611.37 sq mts, or approximately Rs 611 per sq mts. What has been awarded is far less, no more than Rs 16.64 per sq mt. According to him, the

5 Paper book, pages 11, 73–74 and 80; and submissions noted in the impugned judgment at page 39.

Government did not show competing sales instances. Instead, it relied on an Award in case no SR/MHADA/9.[6] This was in relation to an area of 19,465.30 sq mts, also near Solapur. The award took into account 11 sales instances. Dr Sabban contends that the rtes here range from Rs 594 per sq mt to Rs 1165 per sq mt, averaging Rs 712 per sq mt. Thus, from either perspective, based on the material on record, the rate awarded was unconscionably low.

21. He presses this arithmetical exercising of averaging even further, for he says that the average of these averages (Rs 611 and Rs 712) is approximately Rs 662 per sq mt. In both References, the claim was for Rs 1000 per sq mt. The 'median' between this average-of-averages, Rs 662 per sq mt, and the claim of Rs 1000 sq mt is Rs 721 per sq mt. The Ready Reckoner ("RR") rates for 1999 for Soregaon was Rs 425 per sq mt.

22. But size matters. The acquisition was of huge tracts of land: in FA 71 of 2014, it was 67,273 sq mts. The only comparable sale instance is at Sr No 10 of the tabulation, of 18th August 1998, of land belonging to the Shikshan Prasark Mandali, Pune. Altogether two hectares and 23 Are fell into acquisition. This land, Dr Sabban says, was no more 700 mts distance from the subject lands. The consideration was Rs 67.75 lakhs, which computes to Rs 276 per sq mt.

23. He then goes to claim that an annual rise of 12% per annum should be computed, bringing this figure to Rs 295 per sq mts. The

6 Paper book, *p.* 241.

total for the entire acquired land (in which the Appellants have a fractional interest) would be Rs 1,98,45,535. Deducting the amount awarded, the enhancement ought to be Rs 1,87,27,195/- and the Appellants' 8.32% share would work out to Rs 15,58,103/-. In addition, there is a claim for 30% solatium, an additional amount at 12% per annum under Section 23(1-A) from the dated of the Section 4 notification to the date of Award (15 months), bringing the Appellants' share to Rs 22,59,249. On this, interest at 9% per annum is claimed for the first year and 15% per annum for the remaining period from the date of possession until deposit. This would bring the claim of the Appellants to Rs 50,15,365. Then there is also a claim for additional interest under Section 48 at 15% per annum, and also a claim for 'equitable interest' at 6% per annum.

24. In First Appeal No 135 of 2014, while the submissions follow the same trajectory, the figures will differ. The award for Rs 13,05,212/-, averaging Rs 16.64 per sq mt. The Appellants relied on 11 sale instances and eight awards,[7] to contend that the rates ranged from Rs 276 per sq mt to Rs 1144 per sq mt, averaging, again, roughly Rs 611 per sq mt. Again, the averaging method is used to first claim Rs 662 per sq mt. Here, the Appellants had claimed Rs 400 per sq mt. The so-called 'median' was said to be Rs 721 per sq mt and the RR rate for 1996 for Soregaon was pegged at Rs 400 per sq mt. The instance of Shikshan Prasarak Mandali is again cited. The claim here is for Rs 1,30,77,982, plus solatium and interest, bringing the total claim to Rs 4,14,42,780/-, on which there is a claim for further equitable interest.

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7 Paper book, *pp.* 62 and 60.

25. Dr Sabban relied on the decisions of the Supreme Court in:

(a) *Madishetti Bala Ramul v Land Acquisition Officer*;[8]

(b) *Tahera Khotoon & Ors v Revenue Divisional Officer/Land Acquisition Officer & Ors*;[9]

(c) *Balwan Singh & Ors v Land Acquisition Collector & Anr*;[10] and

(d) *State of Maharashtra & Ors v Maimuma Banu & Ors*.[11]

26. Additionally, on the invoked principle of parity, he relied on:

(a) *UP Awas Evam Vikash Parishad v Asha Ram*;[12] (affirmed in *Asha Ram v UP Awas Evam Vikash Parishad*[13]);

(b) *State of Madras v AM Nanjan & Anr*;[14]

(c) *Bhagat Singh & Ors v Union of India & Anr*;[15]

(d) *Hans Raj Sharma v Collector, Land Acquisition, Tehsil and District Doda*;[16]

(e) *Parmeshwari Devi & Ors v Punjab State Electricity Board & Anr*;[17]

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8 (2007) 9 SCC 650.
9 (2014) 13 SCC 613.
10 (2016) 13 SCC 412.
11 (2003) 7 SCC 448.
12 2021 SCC OnLine 250.
13 (2022) 2 SCC 567.
14 (1976) 1 SCC 973.
15 (2009) 9 SCC 427.
16 (2005) 1 SCC 553.
17 1994 Supp (1) SCC 564.

(f) *Thakarsibhai Devjibhai & Ors v Executive Engineer, Gujarat & Anr*;[18]

(g) *RL Jain v DDA & Ors*.[19]

27. The submission was that on parity grounds, earlier awards of neighbouring lands and of the relevant time are the best and most reliable guide. Within a radius of 10 miles or two to five kms, parity should be maintained. Interest can be granted for a period prior to the Section 4 notification possession time.

28. Mr Kumbhakoni contests Dr Sabban's formulation root and branch. He begins by contesting the legal principles advocated by Dr Sabban. The established principle, he submits, is that in determining compensation, the Court must see itself as seated in the 'armchair of willing prudent purchaser in an open market': *Basant Kumar & Ors v Union of India & Ors*.[20] Further, the burden to establish inadequacy is always on the claimant. It never shifts. It is only if that initial burden is discharged that it shifts to the State to justify the award: *Gafar v Moradabad Development Authority*.[21] Similarly, sale instances of smaller sized plots provide no frame of reference for larger tracts of land.

18 (2001) 9 SCC 584.

19 (2004) 4 SCC 79.

20 (1996) 11 SCC 542.

21 (2007) 7 SCC 614. Followed in *Special Land Acquisition Officer v Karigowda & Ors*, (2010) 5 SCC 708.

29. He turns to the methodology adopted by the Special Land Acquisition Officer.[22] The relevant date for valuation is 5th June 1999, the last date of publication of the Section 4 notification. The Special Land Acquisition Officer called for records of sale instances in the Soregaon area for the five years preceding 1999. This was tabulated. The instances were separated into two classes: *jirayat* land, which is non-irrigated, and *bagayat* or irrigated land. Self-evidently, the two are not comparable in value. The land under acquisition in these cases was all *jirayat* land. Thus, the Special Land Acquisition Officer only took into account *jirayat* land sale instances rates.

30. Next, the Special Land Acquisition Officer noted that the present land tracts abutted other lands already acquired for the very same purposes. For those adjacent lands, an Award No 4 of 1998 had already been drawn. It could hardly be ignored. In that award, the Assistant Director of Town Planning and Valuation, Pune, had prescribed the market rate. This was also taken into account. Applying a prescribed formula, the total value was computed at Rs 11,18,320 for that acquisition. The acquiring body had itself developed the land and done the construction. The Reference Court accepted this methodology.

31. This is the point of differentiation. Dr Sabban's argument is founded on a per sq mt rate, in marked deviation from the approach adopted by the Special Land Acquisition Officer.

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22 Paper book, *p.* 57 onwards.

32. There is no doubt that the land under consideration is an enormous 6.72 hectares (16.61 acres). It is settled law that sales of small sized plots cannot validly be used for comparison. Dr Sabban's case, Mr Kumbhakoni argues, 'flattens' the legal position by simply computing per sq mt rates. This is apparent from the tabulation of the cases led in evidence by the Appellants, and which they tabulated. The largest single instance was one-third the size of the present land, no more than 2 ha 23 Are (1 ha being 10,000 sq mts and 1 Are being 100 sq mts; totally 22,230 sq mts). In contrast, this land was 67,200 sq mts. The areas of the other lands range from 61.61 sq mts to 765.18 sq mts. Simply multiplying non-comparable sale instances cannot, Mr Kumbhakoni submits, and I think correctly, provide a basis of reference. Fundamentally, larger plots always fetch a lower value — there are fewer arms' length purchasers for large plots of land.

33. The only exception is the land of the Shikshan Prasarak Mandali, at Sr No 10 of the table. This was the land of 2 ha 23 Are (22,230 sq mts), mentioned above. The Appellants produced the sale deed. This was not a case of an award. The sale deed produced shows that it was executed by the holder of a power of attorney for 27 owners of various small plots along with four owners of other plots. The land was converted to non-agricultural. Open plots were demarcated. A large layout was approved, splitting the larger plot into smaller plots. An exemption scheme under Section 20 of the Land Acquisition Act was prepared. Construction was permitted in terms of that scheme, which was sanctioned on 24th April 1996. The owners entered into a Development Agreement. Many of these plots were sold — and thus several purchasers of smaller plots came together and collectively executed the sale deed in question, on 18th August 1998 in favour of the Shikshan Prasarak Mandali. Thus, Mr Kumbhakoni's argument, one I am inclined to accept, is that this is *not* a sale instance of a comparably large plot of land but a transaction of a sale of several smaller plots. What is relevant is not the document but the size of the land or the plot. Therefore, this sale instance — a critical component of Dr Sabban's analysis — is also incapable of being deployed in support of the First Appeals.

34. Mr Kumbhakoni points out that the sale instances are not from Soregaon but from Majarewadi. He contends that the sale instances are at a distance from the subject lands, and that all the sale instances relate to open plots, as contrasted with the barren, uncultivable, jirayat or non-irrigated lands in question. On the other hand, the Special Land Acquisition Officer took into account only comparable cases of large tracts of similar agricultural lands in Soregaon, and all within the five-year time frame preceding 1999.

35. As to the question of interest, the issue turns on when possession was taken. Mr Kumbhakoni points out that actual possession was not taken under the Land Acquisition Act at all, but under the ULC Act. Immediately thereafter, possession was given to the State's Home Department for the State Reserve Police Force establishment. Even if the land was later released from the ULC Act proceedings, physical possession was never *restored*: it continued throughout with the State RPF. If this is correct, and there is nothing in the record to indicate to the contrary, I fail to see how a claim for interest can be sustained. If the case is one for unlawful dispossession, then the entire Reference and the First Appeal must be held to be thoroughly misconceived — the Appellants' remedy would then have had to be in damages. There is simply no such claim for damages or compensation for the period before the Section 4 notification. This claim comes for the first time in the First Appeals.

36. With this, I turn to the authorities cited in support of the rival contentions.

37. Dr Sabban's reliance on *Madishetti Bala Ramul* is, I believe, entirely misplaced. That decision was rendered, as it clearly says in paragraph 20, 'in the peculiar facts and circumstances of the case' and in the interests of justice. There was no discussion on rival sale instances or awards. Indeed, the Court held in paragraph 10 that the findings of the High Court could not be faulted, and the Supreme Court reaffirmed those. That was also a case where a later acquisition came to be made after the 1984 amendment to the Land Acquisition Act. While the Reference court granted additional compensation and interest, the High Court held that the appellants were *not* entitled to either additional market value or interest from the date of the first possession until the date of the award. The High Court granted additional market value at 12% per annum on the enhanced market value from the date of publication of the later notification.

38. *Tahera Khotoon* adopted the *Madishetti* approach, again in case-specific circumstances. This is also true of *Balwan Singh*.

39. Contrary to Dr Sabban's submission, *Maimuma Banu* in paragraph 8 unequivocally holds that the Land Acquisition Act does not provide for rental compensation. Any such claim, or interest in lieu thereof, is without statutory basis. The matter was decided on a principle of equity, though the Supreme Court held that the High Court was *not* justified in granting interest.

40. On a careful reading, the Supreme Court decision in *UP Awas Evam Vikash Parishad v Asha Ram* is entirely against Dr Sabban, not in his favour. As the following extracts show, it supports the submissions of Mr Kumbhakoni.

> 22. A three Judge Bench of this Court [*Smt Tribeni Devi v Collector of Ranchi and Vice Versa*, (1972) 1 SCC 480] indicated methods of valuation to be adopted to ascertain the market value of land on the date of the notification under Section 4(1) as : (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired.
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> 23. This Court [*Gujarat Industrial Development Corpn v Narottambhai Morarbhai*, (1996) 11 SCC 159] **held that the acid test which the court should always adopt in determining the market value in matters of compulsory acquisition is to eschew feats of imagination and sit in the armchair of a prudent willing purchaser.** It was held as under:
>
>> "6. **No prudent purchaser would purchase large extent of land on the basis of sale of a small extent of land in the open market. The acid test the court should**

> **always adopt in determining market value in the matter of compulsory acquisition would be to eschew feats of imagination, sit in the armchair of a prudent willing purchaser, it should consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation.** Taking these facts into consideration, we are of the view that the reasonable and adequate compensation for the lands would be at a net rate of Rs. 22 per sq. mtr., after giving deduction of 1/3rd of the amount towards developmental charges. Therefore, the claimants would be entitled to the compensation @ Rs. 22 per sq. mtr. They are also entitled to the statutory benefits on the enhanced compensation."

24. This Court [*Land Acquisition Officer v B Vijender Reddy*, (2001) 10 SCC 669] **has also held that in fixation of rate of compensation under the Land Acquisition Act, there is always some element of guesswork but that has to spring from the totality of evidence, the pattern of rate, the pattern of escalation and escalation of price in the years preceding and succeeding the notification under Section 4 of the LA Act**. The Court has held that:

> "13. The first question we proceed to consider is, whether the High Court was right to enhance the rate from the rate recorded in Exhibits A-1 and A-2 by Rs. 10,000/- per acre per year for three years. It is true, in the fixation of rate of compensation under the Land Acquisition Act, there is always some element of guesswork. But that has to be based on some foundation. It must spring from the totality of evidence, the pattern of

> rate, the pattern of escalation and escalation of price in the years preceding and succeeding Section 4 notification etc. In other words, the guesswork could reasonably be inferable from it. It is always possible to assess the rate within this realm. In the present case, we find there are three exemplars i.e. Exhibits A-1 and A-2 which are three years preceding the date of notification and Exhibit A-3 which is of the same point of time when Section 4 notification was issued."

25. Further, this Court [*Viluben Jhalejar Contractor (Dead) by LRs v State of Gujarat*, (2005) 4 SCC 789] has held that for determining the market value of the land under acquisition, *suitable adjustments have to be made while considering the various positive and negative factors.* The following observations have been made—

> "18. **One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.**
>
> 19. **Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase.** Where definite material is not forthcoming either in the shape of sales of similar lands in

> the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.
>
> xxxxxx
>
> 21. **Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.**"

27. The relationship between the market value of land and its potentiality has also been discussed by this Court [*Atma Singh (Dead) through LRs v State of Haryana*, (2008) 2 SCC 568] wherein it was observed that-

> "4. … **The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired**. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. **The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a**

> **prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.** The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities….
>
> 5. For ascertaining the market value of the land, **the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions.** The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration…"

28. In another three Judge Bench of this Court [*Revenue Divisional Officer-cum-Land Acquisition Officer v Shaik Azam Saheb*, (2009) 4 SCC 395], the Court held as under:

> "13. One other important factor which also should be borne in mind is that it may not be safe to rely only on an award involving a neighbouring area irrespective of the nature and quality of the land. For determination of market value again, the positive and negative factors germane therefor should be taken into consideration as laid down by this Court in *Viluben Jhalejar Contractor v. State of Gujarat* [(2005) 4 SCC 789], namely : (SCC p. 797, para 20)..."

29. The land forming the subject matter of the present appeals was acquired in pursuance of notification under Section 28 of the Act published on 26.6.1982. **Therefore, firstly, the attempt to determine the market value should be based on the sale instances, which are proximate to both the date of notification under Section 28 of the Act and to the land sought to be acquired.** The land owners have relied upon seven sale instances in respect of villages of which the land was acquired. Out of such seven sale instances, two are almost four years later than the publication of notification under Section 28 of the Act, and thus cannot be taken into consideration in terms of the Section 24 of the LA Act.

30. **The potentiality of the acquired land is one of the primary factors to be taken into consideration to determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not primarily depends upon its condition, situation, use to which it is put or its**

reasonable capability of being put and also its proximity to residential, commercial or industrial areas/institutions. The existing amenities like water, electricity as well as the possibility of their further extension, for instance whether near about town is developing or has prospects of development have to be taken into consideration. It also depends upon the connectivity and the overall development of the area.

31. **The record in the present matter does not suggest that there were large scale development activities. The evidence is rather of sale of small areas.** There is nothing on record as to when the industrial units were set up and what was the cost of land. Furthermore, there are no sale instances of land situated in Village Makanpur prior to date of notification i.e. 26.6.1982. The sale instances produced by the land owners pertain to Village Sahibabad and Jhandapur which are at a distance of about 3.5 kms from Delhi border. This Court [*Mohammad Raofuddin v Land Acquisition Officer*, (2009) 14 SCC 367] while dealing with comparable sale instances has held that—

> "14. **Thus, comparable sale instances of similar lands in the neighbourhood at or about the date of notification under Section 4(1) of the Act are the best guide for determination of the market value of the land to arrive at a fair estimate of the amount of compensation payable to a landowner.** Nevertheless, while ascertaining compensation, it is the duty of the Court to see that the compensation so determined is just and fair not merely to the individual whose property has been acquired but also to the public which is to pay for it."

> 32. The sale instances of a smaller area have to be considered while keeping in view the principle that where a large area is the subject matter of acquisition, suitable deduction is required to be made as no prudent purchaser would purchase large extent of land on the basis of sale of a small extent in the open market. **The Court thus has to consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation.** This Court has even provided for 50% deduction for development charges on the price mentioned in the sale deed. [*Himmat Singh v State of Madhya Pradesh, (2013) 16 SCC 392*]

(*Emphasis added*)

41. These principles have been uniformly followed and it is not necessary to multiply authorities.

42. Mr Kumbhakoni relies on the decision of the Full Bench of this Court in *State of Maharashtra v Kailash Shiva Rangari*,[23] inter alia for the factual similarity, where possession was taken years before the Section 4(1) notification, i.e., where possession preceded the notification and further steps. After examining the scope and ambit of the Land Acquisition Act, and the Supreme Court decision in *RL Jain*, the Full Bench held:

> 32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of *R.L. Jain* and *Lila Ghosh*, cited supra, the position of law can be summarized as under:
>
> (i) If the possession of the land under acquisition is taken under section 16 of the said Act i.e. after an award is

23 2016 SCC OnLine Bom 2236 : (2016) 3 Mah LJ 457 (FB).

made by the Collector under section 11 therein, the interest would be payable under section 34 from the date of passing of the award and we are in agreement with such a view expressed by the Division Bench of this Court (S/Shri N.V. Dabholkar and M.G. Gaikwad, JJ.) in the case of *State of Maharashtra v. Rajendra Narayanrao Gaikwad*, reported in 2007 MhLJ Online 2 : 2008 (1) BCR 839.

(ii) **The interest as provided under section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under section 17 of the said Act which would obviously be after issuance of notice under section 9(1) of the said Act**. If the possession is taken under section 17, the interest payable under section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) **Where the possession of the land under acquisition is taken prior to issuance of notification under section 4(1), then there would be no question of invoking the urgency clause under section 17 of the said Act and the interest under section 34 shall start running from the date of passing of the award**.

(iv) The starting point for the purposes of calculating the amount of additional component under section 23(1-A) of the said Act at the rate of twelve per centum per annum is the date of publication of the notification under section 4 of the said Act, and the terminal point is either the date of the award or the date of taking possession, whichever is earlier.

(v) **We hold that in none of the eventualities, the claimant shall be entitled to interest under section 34 of the said Act from the date of publication of the notification under section 4(1) of the said Act**.

(vi) There is no overlapping of the benefits under section 23(1-A) and section 34 of the said Act. The terminal points under section 23(1-A) are the starting points under section 34 of the said Act and both the provisions operate in different fields.

(vii) **We express our full agreement with the view taken by the Division Bench of this Court in *Lalitkumar Shah*'s case, cited supra, that in a case where possession is taken prior to issuance of notification under section 4(1) of the said Act, the interest under section 34 shall start running from the date of award only**.

(viii) We also express our full agreement with the view taken by the Division Bench of this Court in *Lalitkumar Shah*'s case, cited supra, that the decision of the Division Bench in the case of *Jafarali Mithabhai Hirani v. State of Maharashtra*, reported in 2009 (3) All MR 779, and the similar view taken in other matters is no longer a good law.

(*Emphasis added*)

43. Reference is also made to paragraph 11 of the Supreme Court decision in *Chanabasappa v Karnataka Neeravari Nigam Ltd & Anr*:[24]

11. In *Karigowda* [*LAO* v. *Karigowda*, (2010) 5 SCC 708 : (2010) 2 SCC (Civ) 531], **the question came up for consideration as to interest payable on taking of possession.** This Court considered various issues and observed that the decision of larger Bench in *R.L. Jain case* [*R.L. Jain* v. *DDA*, (2004) 4 SCC 79] is binding. **It has been observed that once notification under Section 4(1) has been issued and the award has been passed, then only the land will vest in the State.** In case its possession has been taken earlier to the issuance of notification under Section 4(1) of the Act, the Court can direct the Collector to examine the extent of rent or damage that the owners of the land would be entitled to. The Collector was directed to

24 (2020) 11 SCC 370.

> examine the question of payment of rent/damages from the period their respective lands were submerged in the backwater of the river, till the date of issuance of notification under Section 4(1) from which date, they would be entitled to claim benefits on the enhanced compensation. **The question of interest arises after the date of notification under Section 4 and not prior to under Section 28 or 34 of the Act**.

(*Emphasis added*)

44. In *State of Maharashtra v Prashram Jagannath Aute*,[25] a Full Bench of this Court held:

> 5. **The analytical examination of the above enunciated principles of law would lead to no other conclusion but each case of determination of market value of the acquired land has to be decided on its own facts, existing statutory guidelines stated in sections 23 and 24 of the Act and in the backdrop of judicial pronouncements controlling exercise of jurisdiction under section 18 of the Act.** The evidence led by the parties and, particularly the claimants, would have to be scrutinized so as to arrive at a just, fair and adequate compensation. Another facet of this aspect of acquisition law is what kind of methodology the Court would adopt while arriving at a conclusion. Should it adopt capitalization method, multiple method, belting system or evolve any other method which necessarily would have to depend on record before the Court. **Location and potential of the land cannot be a question of law; it will ever be a matter of fact**. The enunciated principle of law which, de hors the evidence on record, can be applied to every case, is not only improbable but is even impermissible. **It can be said that**

25 2007 SCC OnLine Bom 634 : (2007) 5 Mah LJ 403 : (2007) 5 Bom CR 847.

> **normally an irrigated land would get higher compensation than the unirrigated or jirayat land, but there can be cases where this principle is commonly appears to be true, may not be applicable. For example irrigated agricultural land is located away from the national highway or industrial area but non-irrigated land is located adjacent to the industrial area, which is fully developed and/or is adjacent to the national or State highway. Parties have to lead evidence to show that the lands have greater potential and value, which is higher than the agricultural land.** In those circumstances the Court would have to consider the entire matter objectively and may be in all probability the bagayat land may get higher compensation than the agricultural land. Thus it cannot be stated as an universal rule that irrigated agricultural land must always get price higher or the double compensation than the non irrigated agricultural land.

(*Emphasis added*)

45. Mere citing of sale instances is, therefore, insufficient.

46. The Supreme Court decision in *Gafar v Moradabad Development Authority*[26] illumines the critical issue of the size of the plots in question:

> 11. Learned Senior Counsel and other learned counsel appearing in the appeals relating to the lands in Harthala **argued that the High Court has misdirected itself into thinking that sale instances of small plots had no evidentiary value or are not relevant in determining the compensation due for larger extents of lands.** It was also pointed out that **though the extent as a whole may be large, the ownership was several and that fact also could**

26 (2007) 7 SCC 614.

not be forgotten especially when the test is to see what a willing buyer was willing to give and willing purchaser (sic seller) was willing to receive. Various decisions were brought to our notice and particular emphasis was placed on the decision in *Ravinder Narain v Union of India* [(2003) 4 SCC 481] wherein it was held that there was no absolute prohibition in taking note of the rates fixed for sale of smaller plots and making it the basis for fixation of compensation for larger extents. There cannot be any quarrel with the proposition that there is no absolute prohibition. **But the fact remains that normally, when larger extents are involved in an acquisition, it will be more prudent to rely on sale deeds of larger extents and not to base the assessment of the compensation on values fetched at sales of small extents.** In this case, transactions involving sales of land in acres or of larger extents were simply ignored by the awarding officer without giving adequate reasons for such exclusion except vaguely stating that they were distantly located. Even those sale instances would have provided a basis for assessing the compensation due in respect of the acquired lands subject to adjustments for the distance or other disadvantages or advantages compared to the acquired lands. The basic sale deed relied on by the awarding officer was in respect of sale of a portion of his property by a seller which had an extent of only 100 square metres and even there, the price fetched was only Rs 80 per square metre. The evidence of PW 1 shows that the lands involved were agricultural lands and did not have any electricity or other facilities available. In fact, some of the sale instances indicate that the prices were only in the range of Rs 11 per square metre up to Rs 27 per square metre. On the facts of this case, we are of the view that the contention that it is not as if sale instances of small extents had to be completely ignored, does not lead the claimants far. In any event, it cannot be held that the High

> Court was in error in not relying on sale instances of small extents in assessing the compensation payable.
>
> (*Emphasis added*)

47. At this stage, a few passages from the Supreme Court decision in *Subh Ram v State of Haryana*[27] will be necessary in view of the attempted arguments regarding a 'hypothetical layout'.

> 11. **What is the concept of deduction of development cost to arrive at market value?** If the market value of a large tract of agricultural and or undeveloped non-agricultural land possessing potential for development is to be determined with reference to the market value of a small residential plot situated in a neighbouring residential layout, **it becomes necessary to work back the market value of the large tract of undeveloped land from the market value of the small residential plot. This is because the value of one square yard of undeveloped land is not the same as one square yard of developed residential plot. If there is a large tract of agricultural or undeveloped land, obviously the entire extent cannot be sold as residential plots. If the agricultural or undeveloped land has to be sold as residential plots, it is first necessary to make a layout of plots in such land. This would mean that a provision will have to be made for roads to provide access to each plot in the layout.**
>
> 12. In a standard layout with plots measuring say 2500 sq ft (50' × 50') each, to provide road access to each plot, it will be necessary to provide a road after every two rows of plots. If the depth of each plot is 50', and if the road width is 25 ft, then for every two strips of plots, there will have to be a strip of road of 25 ft. This means a minimum of 25% of the total land area will be utilised for roads. A typical layout

27 (2010) 1 SCC 444.

will also have cross-roads, and areas earmarked for park, and/or community areas. Consequently non-saleable area (area which cannot be sold as plots) would be around 30% to 40% of the total area.

13. **Therefore, in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one-third (33%)**.

14. **But merely deducting the areas required for roads, drains, parks and community areas, will not convert a large tract of agricultural or undeveloped land into a developed residential layout. For that, considerable financial outlay has to be made. The land will have to be levelled. The land will have to be converted from agricultural use to non-agricultural residential use by paying necessary fees/fine to the Revenue/development authorities. Then the roads will have to be asphalted or concreted. Drains will have to be dug and lined with reinforced cement concrete or stone, for drainage of rainwater. Electricity, water, and sewage lines will have to be laid. Deposits will have to be made to the authorities dealing with electricity, water and sewage removal. The development will also involve the service of surveyors, engineers and developers. All these involve considerable expenditure. Further, as there will be a time gap between the expenditure for development and the actual sale of plots, the cost of development will also have an element of interest on investment. The developer who undertakes the development and invests the monies for development would also expect a reasonable profit when the plots are sold. All these expenditure and factors are standardised into another one-third (33%) deduction towards**

> **expenses of development.**
>
> 15. **Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development), in all two-thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances** (see *Lal Chand v Union of India* [(2009) 15 SCC 769 : (2009) 11 Scale 627], paras 8 and 9 for illustrations of such circumstances).
>
> 16. Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, **the deduction has nothing to do with the purpose for which the land is acquired. The deduction is with reference to the price of the small residential plot, to work back the value of the large tract of undeveloped land. On the other hand, where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards "development cost"**.

(*Emphasis added*)

48. In the present case, no attempt is made before me to show anything other than the so-called comparable sale instances and awards. I have discussed these, and do not find merit in the Appellants' submissions. The counter-argument by Mr Kumbhakoni is not just well-taken. It is the only possible view in the circumstances of the case, particularly on an analysis of the sale deed for the Shikshan Prasarak Mandali sale. Indeed, it would not be out of place to remark that the Appellants' case is really one of comparing apples with oranges.

49. There being no merit in the First Appeals, they are dismissed. There will be no order as to costs.

50. In view of this, both Civil Applications do not survive and are also disposed as such.

(G.S. PATEL, J.)