



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FIRST APPEAL NO.2158 OF 2008

Sumitrabai w/o. Madhavrao Naik,
Deceased – Her LRs :

- 1/1. Madhavrao s/o. Yeshwant Naik
Age : 80 years, Occu : Agril,
- 1/2. Vijay Madhavrao Naik
Age : 46 years, Occu : Agril,
- 1/3. Hemant s/o. Madhavrao Naik,
Age : 46 years, Occu : Agril,
- 1/4. Yeshwant s/o. Madhavrao Naik
Age : 44 years, Occu : Agril,
2. Hemant s/o. Madhavrao Naik,
Age : 46 years, Occu : Agril,
All R/o. Nilanga, Tal. Nilanga,
Dist. Latur

.. Appellants
(Orig. Claimants)

Versus

1. The State of Maharashtra,
Through : Collector, Latur
2. The Executive Engineer,
(P.W.D.) Latur
3. The Special Land Acquisition Officer,
(P.T.I.T.), Latur
4. The Superintendent of Police,
Dist. Latur

... Respondents

.....

AND

FIRST APPEAL NO.2159 OF 2008

Yeshwant Madhavrao Naik,
Age : 44 Years, Occu.: Service,
R/o. Nilanga, Tq. Nilanga,
Dist. Latur

... Appellant
(Original Claimant)

Versus

1. The State of Maharashtra,
Through - Collector, Latur
2. The Executive Engineer,
[P.W.D.], Latur
3. The Deputy Collector and
The Land Acquisition Officer,
Udgir
4. The Superintendent of Police,
District - Latur.

... Respondents

.....

AND

FIRST APPEAL NO.2161 OF 2008

Madhavrao Yeshwantrao Naik,
Since Died – Through LRs :

- 1A. Vijay s/o. Madhavrao Naik
Age : 63 years, Occu : Agriculture,
R/o. Nilanga, Tq. Nilanga,
Dist. Latur
- 1B. Hemant s/o. Madhavrao Naik
Age : 60 years, Occu : Agriculture,
R/o. Nilanga, Tq. Nilanga, Dist. Latur
- 1C. Yeshwant S/o. Madhavrao Naik,
Age : 55 years, Occu : Agriculture,
R/o. 01, Station View, Plot -19,
Sector – 30, Vashi, Thane.
2. Hemant s/o. Madhavrao Naik,
Age : 46 years, Occu : Service and Agriculture,
R/o. Udgir, Tq. Udgir, Dist. Latur

... Appellants
(Orig. Claimants)

Versus

1. The State of Maharashtra,
Through the Collector, Latur
2. The Executive Engineer,
(P.W.D.)

... Respondents

.....

In all the matters :

Shri. Sharad V. Natu, Shri. Navin Shah a/w. Shri. Ashwin Thool,
Shri. Ayesha Singh, Shri. Jaymangal Dhanraj, Shri. Archishmati, Advocate
for the Appellants

Dr. Smt. Kalpalata Patil Bharaswadkar, Addl. G. P. for the Respondent /
State.

**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 07.02.2025
PRONOUNCED ON : 07.03.2025**

COMMON JUDGMENT [*PER* NEERAJ P. DHOTE, J.] :

1. As the acquired lands are from the same Survey / Gat Number situated at village Dapaka, Tal. Nilanga, Dist. Latur, the evidence led before the learned Reference Court is common and common submissions are made by both the sides in all these three (3) Appeals filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the LA Act), they are decided by this common Judgment.

1A] In First Appeal No.2158 of 2008, the impugned Judgment and Order / Award is dated 05.03.2008, passed by the learned Civil Judge, Senior Division, Nilanga, Dist. Latur in Land Acquisition Reference (LAR) No.505/2002, partly allowing the Appellants' claim for enhanced compensation.

1B] In First Appeal No.2159 of 2008, the Judgment and Order / Award is dated 05.03.2008, passed by the learned III Jt. Civil Judge, Senior Division, Nilanga, Dist. Latur in Land Acquisition Reference (LAR) No.1/2004, partly allowing the Appellant's claim for enhanced compensation.

1C] In First Appeal No.2161 of 2008, the Judgment and Order / Award is dated 28.03.2008, passed by the learned Civil Judge, Senior Division, Nilanga, Dist. Latur in Land Acquisition Reference (LAR) No.1/2008 (Old L.A.R. No.298/1999), partly allowing the Appellants' claim for enhanced compensation.

2. The facts giving rise to the present Appeals are as under :

2.1. In First Appeal No.2158 of 2008 :-

I) The Appellants were the owners and possessors of land admeasuring 2 Hectar, 2 R from Gat No.86 located in village Dapaka, Tq. Nilanga, Dist. Latur. The said land was acquired by the Respondents / Acquiring Body for construction of the residential colony / quarters and other facilities for the police personnel. For the said acquisition, the Land Acquisition Officer (LAO) issued the Notifications under the relevant provisions of the LA Act. The Appellants raised their claim in response to the notice received under the LA Act and claimed compensation @ Rs.350/- (Rs. Three Hundred Fifty) per Sq. Ft. The LAO, by considering all the aspects passed the Award and granted compensation @ Rs.14 to 15 /- (Rupees Fourteen to Fifteen) per Sq. Ft. (Rs.145/- [Rupees One Hundred Fourty Five] per Sq. Meter) to the Appellants.

II) The Appellants preferred the Reference under Section 18 of the LA Act, contending that the acquired land is situated in the developed area and adjacent to the Municipal limits of Nilanga. The acquired land was having Non-agricultural (NA) potentiality. The LAO did not consider the documents submitted in support of claim for enhanced compensation. The Appellants led evidence in support of their claim before the learned Reference Court. The Appellants' examined Witness No.1 – Hemant Madhavrao Naik [Appellant No.1/3] at Exh.21, Witness No.2 – Vasant s/o. Govindrao Naik at Exh.23 [Survey No.7/A, Sale deed dated 25.08.1997], Witness No.3 - Ravishankar Sitarampant Sabnis at Exh.25 [Survey No.86/B, Sale deed dated 21.04.1999], Witness No.4 – Achyut Wamanrao Talikhede at Exh.27 [Survey No.292 Sale deed dated 14.03.1996], and Witness No.5 – Sidramappa Bhimannappa Solapure at Exh.29 [Survey No.292, Sale deed dated 14.03.1996] and brought the sale instances on record.

III) The Respondents / Acquiring Body placed on record certified copies of Index II and the sale-deed and submitted pursis that they do not want to examine any witness.

IV) Considering the evidence available on record and after hearing both the sides, the learned Reference Court partly allowed the

Reference by accepting the rate of Rs.100/- per Sq. Ft. and deducting @ 25% towards development charges and held the Appellants entitled to receive the compensation @ Rs.75/- per Sq. Ft. The operative Order of the learned Reference Court in Land Acquisition Reference (LAR) No.505/2002, reads as under :

- “1. Reference is hereby partly allowed.*
- 2. Claimants namely – Hemant s/o Madhavrao Naik, Vijay s/o. Madhavrao Naik, Madhavrao s/o. Yeshwantrao Naik, Yeshwantrao s/o. Madhavrao Naik, L.Rs. Of deceased original claimant namely – Sumitrabai w/o. Madhavrao Naik, all R/o. Nilanga, Tq. Nilanga, Dist. Latur in LAR No.505/2002 do recover excessive enhanced amount of compensation of Rs.1,83,90,699/- from the respondents, with interest @ 9% p.a. for one year from the date of notification u/Section 4 of the L.A. Act i.e. 2/08/1999 till 1/08/2000 and @ 15% p.a. for the subsequent years till depositing the amount by the respondents, in the court.*
- 3. Respondents do bear their own costs and pay the cost to the claimants.*
- 4. Deficit court fee be recovered from the claimants, if any.*
- 5. Decree be drawn accordingly.”*

2.2. In First Appeal No. 2159 of 2008 :-

I) The Appellant was the owner and possessor of land admeasuring 1 Hector, 60 R from Gat No.86 located in village Dapaka, Tq. Nilanga, Dist. Latur. The said land was acquired by the Respondents / Acquiring Body for construction of the residential colony / quarters and other facilities for the police personnel. For the said acquisition, the Land Acquisition Officer (LAO) issued the Notifications under the relevant provisions of the LA Act. The Appellant raised his claim in response to the notice received under the LA Act and claimed compensation

@ Rs.400/- (Rs. Four Hundred) per Sq. Ft. The LAO, by considering all the aspects passed the Award and granted compensation @ Rs.17/- (Rupees Seventeen) per Sq. Ft. (Rs.178/- [Rupees One Hundred Seventy Eight] per Sq. Meter).

II) The Appellant preferred the Reference under Section 18 of the LA Act, contending that the acquired land is situated in the developed area and adjacent to the Municipal limits of Nilanga. The acquired land was having Non-agricultural (NA) potentiality. The LAO did not consider the documents submitted in support of claim for enhanced compensation. The Appellant led evidence in support of his claim before the learned Reference Court. The Appellant examined himself as Witness No.1 – Yashwant s/o. Madhavrao Naik at Exh.18, and also examined Witness No.2 – Vasant s/o. Govindrao Naik at Exh.20, [Survey No.7/A, Sale deed dated 25.08.1997], Witness No.3 – Ravishankar Sitarampant Sabnis at Exh.22 [Survey No.86/B, Sale deed dated 21.04.1999], Witness No.4 - Achyut Wamanrao Talikhede at Exh.24 [Survey No.292 Sale deed dated 14.03.1996], and Witness No.5 – Sidramappa Bhimannappa Solapure at Exh.26 [Survey No.292, Sale deed dated 14.03.1996] and brought the sale instances on record.

III) The Respondents / Acquiring Body placed on record certified copies of Index II and the sale-deed and submitted pursis that they do not want to examine any witness.

IV) Considering the evidence available on record and after hearing both the sides, the learned Reference Court partly allowed the Reference by accepting the rate of Rs.100/- per Sq. Ft. and deducting @ 25% towards development charges and held the Appellant entitled to receive the compensation @ Rs.75/- per Sq. Ft. The operative Order of the learned Reference Court in Land Acquisition Reference (LAR) No.1/2004 reads as under :

- “1. Reference is hereby partly allowed.*
- 2. Claimant namely – Yeshwant s/o. Madhavrao Naik, R/o. Nilanga, Tq. Nilanga, District – Latur in L.A.R. No.1/2004 do recover excessive enhanced amount of compensation of Rs.1,39,19,905/- from the respondents, with interest @ 9% p.a. for one year from the date of notification u / Section 4 of the L.A. Act i.e. 22-6-2001 till 21-6-2002 and @ 15% p.a. for the subsequent years till depositing the amount by the respondents, in the court.*
- 3. Respondents do bear their own costs and pay the cost to the claimant.*
- 4. Deficit court-fee be recovered from the claimant, if any.*
- 5. Decree be drawn accordingly.”*

2.3. In First Appeal No.2161 of 2008 :-

I) The Appellants were the owners and possessors of land admeasuring 1 Hector, 51 R and 49 R from Gat No.86 located in village Dapaka, Tq. Nilanga, Dist. Latur. The said land was acquired by the

Respondents / Acquiring Body for construction of the quarters for Officers and staff members of Civil Court at Nilanga. For the said acquisition, the Land Acquisition Officer (LAO) issued the Notifications under the relevant provisions of the LA Act. The Appellants raised their claim in response to the notice received under the LA Act and claimed compensation @ Rs.300/- (Rs. Three Hundred) per Sq. Ft. The LAO, by considering all the aspects passed the Award and granted compensation @ Rs.14/- (Rupees Fourteen) per Sq. Ft. (Rs.145/- [Rupees One Hundred Fourty Five] per Sq. Meter).

II) The Appellants preferred the Reference under Section 18 of the LA Act, contending that the acquired land is situated in the developed area and adjacent to the Municipal limits of Nilanga. The acquired land was having Non-agricultural (NA) potentiality. The LAO did not consider the documents submitted in support of claim for enhanced compensation. The Appellants led evidence in support of their claim before the learned Reference Court. The Appellants' examined Witness No.1 – Hemant Madhavrao Naik at Exh.19, Witness No.2 – Vasant Govindrao Naik at Exh.22 [Survey No.7/A, Sale deed dated 25.08.1997], and Witness No.3 - Achyut Wamanrao Talikhede at Exh.23 [Survey No.292, Sale deed dated 14.03.1996].

III) The Respondents / Acquiring Body placed on record certified copies of Index II and the sale-deed and submitted pursis that they do not want to examine any witness.

IV) Considering the evidence available on record and after hearing both the sides, the learned Reference Court partly allowed the Reference by accepting the rate of Rs.100/- per Sq. Ft. and deducting @ 25% towards development charges and held the Appellants entitled to receive the compensation @ Rs.75/- per Sq. Ft. The operative Order of the learned Reference Court in Land Acquisition Reference (LAR) No.1/2008 (Old L.A.R. No.298/1999) reads as under :

“1. Reference is hereby partly allowed.

2. Claimants namely – Madhavrao s/o. Yeshwantrao Naik and Hemant s/o. Madhavrao Naik, R/o. Udgir, Tq. Udgir, Dist. Latur in L. A R. No.1/2008 (Old L.A.R. No.298/99) do recover excessive enhanced amount of compensation of Rs.1,80,84,873/- from the respondents, with interest @ 9% p.a. for one year from the date of notification u/section 4 of the L.A. Act i.e. 21-7-1998 till 20-7-1999 and @ 15% p.a. for the subsequent years till depositing the amount by the respondents, in the court.

3. Respondents do bear their own costs and pay the cost to the claimants.

4. Deficit court-fee be recovered from the claimants, if any.

5. Decree be drawn accordingly.”

3. It is submitted by learned Advocates for the Appellants that the sale instances at Exhs.26/23/12 in the respective Land Acquisition

References dated 21.04.1999, wherein transaction took place for Rs.100/- (Rupees Hundred) per Sq. Ft. cannot be the sole criteria for determining the market value of the acquired lands. There were other sale instances brought on record with higher market value and having close proximity with the acquired lands. The potentiality of the acquired lands were not considered. The learned Reference Court ought to have considered the highest sale instance and per year increase in the value of land and allowed the References. The rejection of other sale instances on the ground that they were not within the reasonable proximity of the acquired lands, was against the legal position. The Court can award higher compensation than claimed in the light of the settled legal position. In support of the submissions, they relied on the decisions of the Hon'ble Supreme Court of India which would be considered in the later part of the Judgment. They submitted that the Appeals be allowed by considering and granting the rate as per the highest sale instance.

4. It is submitted by the learned Addl. G.P. appearing for the Respondents / State that, one of the sale instance which was relied upon by the Claimants before the LAO and the learned Reference Court was from the same survey number which was the subject matter of acquisition and therefore, the learned Reference Court has rightly considered and accepted the said sale instance. The other sale instances were in respect of the lands having different survey numbers and those

lands were located away from the acquired lands. All the relevant aspects have been considered by the learned Reference Court i.e. NA potentiality, proximity of the acquired land etc. The deduction towards development charges by the learned Reference Court should have been on the higher side by taking into consideration the purpose for which the lands are acquired. In support of her submissions, she cited the Judgment of the Hon'ble Apex Court in **Mala Etc. Etc. vs. State of Punjab and Others** in Civil Appeal Nos.3992-4000/2011, 2023 LiveLaw (SC) 663. She submitted that the Judgments and Orders / Awards of the learned Reference Court require no interference and the Appeals be dismissed.

5. Heard both the sides. Scrutinized the evidence available on record. The learned Advocates for the Appellants placed reliance on the Judgments in the case of :-

- (a) **U.P. Awas Evam Vikash Parishad vs. Asha Ram (Dead) Through Legal Representatives and Others, (2021) 17 SCC 289**
- (b) **Udho Dass vs. State of Haryana and Others (2010) 12 SCC 51**
- (c) **Pehlad Ram and Others vs. Haryana Urban Development Authority and Others, (2014) 14 SCC 778**
- (d) **V. Subrahmanya Rao vs. Land Acquisition Zone Officer, (2004) 10 SCC 640**
- (e) **Mehrawal Khewaji Trust (Registered), Faridkot and Others vs. State of Punjab and Others, (2012) 5 SCC 432**

- (f) **Himmat Singh and Others vs. State of Madhya Pradesh and Another, (2013) 16 SCC 392**
- (g) **Kasturi and Others vs. State of Haryana, (2003) 1 SCC 354**
- (h) **Ashok Kumar and Others vs. State of Haryana and Others, (2015) 15 SCC 200**
- (i) **Major General Kapil Mehra and Others vs. Union of India and Another, (2015) 2 SCC 262**
- (j) **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Another, (1988) 3 SCC 751**
- (k) **Bhag Singh and Others vs. Union Territory of Chandigarh Through The Land Acquisition Collector, Chandigarh, (1985) 3 SCC 737**
- (l) **Bhimasha vs. Special Land Acquisition Officer and Another, (2008) 10 SCC 797**
- (m) **Horrimal (Deceased) through his LRs and Others vs. State of Haryana and Others, 2024 SCC OnLine SC 2990**
- (n) **Special Land Acquisition Officer (North Goa), Konkan Railway Corporation Limited & Anr. vs. Dr. Edgar Silveira, 2005 SCC OnLine Bom 1570.**
- (o) **Special Land Acquisition Officer vs. Karigowda and Others, (2010) 5 SCC 708.**

6. The aforesaid Judgments reiterate the following legal principles in respect of Land Acquisition Act, 1894 :-

- (i) *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. 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 existing amenities like water, electricity as well as the possibility of their further extension, for instance whether nearby town is developing or has prospects of development have to be taken into consideration. It alsodepends upon the connectivity and the overall development of the area.*

- (ii) *Comparable sale instances of similar lands in the neighbourhood at or about the date of notification under Section 4 (1) of the LA 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.*
- (iii) *A cumulative increase of 10 to 15% per year in the market value of the land may be accepted unless the State agencies or acquiring authority prove otherwise.*
- (iv) *The best evidence of market value would be the sale transactions in respect of the acquired land to which the claimant himself is a party; the time at which the property came to be sold; the purpose for which it is sold; nature of the consideration and the manner in which the transaction came to be brought out, these are the relevant factors. If those are not available, then the sale transactions relating to the neighbouring lands in the vicinity of the acquired land have to be taken into consideration.*
- (v) *When there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted.*
- (vi) *In respect of agricultural land or undeveloped land which has potential value for housing commercial purposes, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for the residential or commercial purposes. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3 and in some cases less than 1/3.*
- (vii) *The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.*
- (viii) *The most comparable instances out of the genuine instances have to be identified on the following considerations: (i) proximity from time angle, (ii) proximity from situation angle.*

7. Coming to the cases in hand, there is no dispute on the following aspects :-

- (A) The Appellants were the respective owners and possessors of the acquired lands situated at village Dapaka, Tal. Nilanga, Dist. Latur.
- (B) The aforesaid lands of the Appellants were acquired for the purposes of construction of facilities for the police personnel and Officers and staff of Civil Court.
- (C) The Notifications under Section 4 (1) of the LA Act were published in the Government Gazette on :-
 - (a) 02.08.1999 in First Appeal No.2158 of 2008,
 - (b) 14.06.2001 in First Appeal No.2159 of 2008, and
 - (c) 21.07.1998 in First Appeal No.2161 of 2008.
- (D) The LAO granted the compensation :-
 - (a) @ Rs.14 to 15/- (Rupees Fourteen to Fifteen) per Sq. Ft. (Rs.145 [Rupees One Hundred Forty Five] per Sq. Meter) in Land Acquisition Reference No. 505/2002,
 - (b) @ Rs.17/- (Rupees Seventeen) per Sq. Ft. (Rs.178/- [Rupees One Hundred Seventy Eight] per Sq. Meter) in Land Acquisition Reference No. 1/2004, and
 - (c) @ Rs.14 /- (Rupees Fourteen) per Sq. Ft. (Rs.145/- [Rupees One Hundred Fourty Five] per Sq. Meter) in Land Acquisition Reference No.1/2008.

- (E) The Appellants in First Appeal No.2158 of 2008 claimed the enhanced compensation @ Rs.350/- (Rupees Three Hundred Fifty) per Sq. Ft., the Appellant in First Appeal No.2159 of 2008 claimed the enhanced compensation @ Rs.400/- (Rupees Four Hundred) per Sq. Ft. and the Appellants in First Appeal No.2161 of 2008 claimed the enhanced compensation @ Rs.300/- (Rupees Three Hundred) per Sq. Ft., with statutory benefits.
- (F) The Respondents resisted the claims of the Appellants before the learned Reference Court by filing Written-statements in the respective References.

8. The learned Reference Court framed the following issues in Land Acquisition Reference No.505/2002 at Exh.11 and recorded the findings on the issues as under :-

<u>“ISSUES</u>	<u>FINDINGS</u>
1) Whether claimant proves that the compensation awarded by the Special L.A.O. is inadequate ?	In the Affirmative.
2) Whether claimant proves that the market price of the acquired land was @ Rs. 350/- per sq. ft. at the relevant time ?	In the Affirmative, to the extent of Rs.75/- per sq. after deducting 25% from awarded compensation.
3) Whether claimant is entitled for enhanced amount of compensation ? If yes, at what rate ?	In the affirmative, above.
4) What order and decree?	As per final order.”

9. The learned Reference Court framed the following issues in Land Acquisition Reference No.1/2004 at Exh.8 and recorded the findings on the issues as under :-

<u>“ISSUES</u>	<u>FINDINGS</u>
1) Whether claimant proves that the compensation awarded by the Special L.A.O. is inadequate?	In the Affirmative.
2) Whether claimant proves that the market price of the acquired land was @ Rs. 400/- per sq. ft. at the relevant time?	In the affirmative, to the the extent of Rs. 75/- per sq. ft. after deducting 25% awarded compensation
3) Whether claimant is entitled for enhanced amount of compensation? If yes, at what rate ?	In the affirmative, as above.
4) What order and decree?	As per final order.”

10. The learned Reference Court framed the following issues in Land Acquisition Reference No.1/2008 (Old L.A.R. No.298/1999) at Exh.8 and recorded the findings on the issues as under :-

<u>“ISSUES</u>	<u>FINDINGS</u>
1) Does the claimant prove that the land acquisition officer has awarded inadequate compensation to the acquired land?	In the Affirmative.
2) If yes, what will be the reasonable compensation to the claimant in respect of the land ?	@ Rs.75/- per sq. ft. after deducting 25% awarded compensation.
3) Does the claimant is entitled to get 30% solatium, 12% increase and interest in the compensation amount ?	In the affirmative, as per calculation Sheet.
4) What order ?	As per final order.”

11. Before the Reference Court, the Appellants examined the witnesses and brought on record the sale instances in support of their claims for enhanced compensation.

12. The following Chart in respect of the sale instances in Land Acquisition Reference No.1/2004 would give clear picture in respect of the necessary details.

Sr. No	Survey No.	Area	Place	Sale Deed date	Amount of consideration and Rate	Exh.
1.	7/A	60x50 ft	Dapaka	25.08.1997	Rs.2,10,000/-, (Rs.70/- per Sq. Ft.)	21
2.	86/B	40x40 ft	Dapaka	21.04.1999	Rs.1,60,000/- (Rs. 100/- per Sq. Ft.)	23
3.	292	60x40 ft.	Nilanga	14.03.1996	Rs.2,70,000/- (Rs.112.50 Ps. Per Sq. Ft.)	25 & 27
4.	297	22x20 ft.	Nilanga	17.03.1998	Rs.66,000/- (Rs. 175/- per Sq. Ft.)	40

13. The following Chart in respect of sale instances in Land Acquisition Reference No.1/2008 (Old L.A.R. No.298/1999) would give clear picture in respect of the necessary details.

Sr. No	Survey No.	Area	Place	Sale Deed date	Amount of consideration and Rate	Exh.
1.	86/B	40x40 ft	Dapaka	21.04.1999	Rs.1,60,000/- (Rs. 100/- per Sq. Ft.)	12
2.	7/A	60x50 ft	Dapaka	25.08.1997	Rs.2,10,000/-, (Rs.70/- per Sq. Ft.)	13
3.	297	22x20 ft.	Nilanga	17.03.1998	Rs.66,000/- (Rs. 175/- per Sq. Ft.)	14
4.	292	60x40 ft.	Nilanga	14.03.1996 (Exh.15) 04.04.1996 (Exh.16)	Rs.2,70,000/- (Rs.112.50 Ps. Per Sq. Ft.)	15 & 16

14. The following Chart in respect of the sale instances in Land Acquisition Reference No.505/2002 would give clear picture in respect of the necessary details.

Sr. No	Survey No.	Area	Place	Sale Deed date	Amount of consideration and Rate	Exh.
1.	7/A	60x50 ft	Dapaka	25.08.1997	Rs.2,10,000/-, (Rs.70/- per Sq. Ft.)	24
2.	86/B	40x40 ft	Dapaka	21.04.1999	Rs.1,60,000/- (Rs. 100/- per Sq. Ft.)	26
3.	292	60x40 ft.	Nilanga	14.03.1996	Rs.2,70,000/- (Rs.112.50 Ps. Per Sq. Ft.)	28 & 30
4.	297	22x20 ft.	Nilanga	17.03.1998	Rs.66,000/- (Rs. 175/- per Sq. Ft.)	45

15. The provisions of Section 23 of the LA Act provide for matters to be considered in determining the compensation. From the above Charts, which are based on the evidence available on record, it is clear that the sale instance dated 21.04.1999 was the latest in point of time. It was from the very survey number, from which the lands were acquired. The evidence goes to show that the other three (3) sale instances, referred above, were from the different survey numbers and at some distance from the acquired lands ranging from 400 (four hundred) feet to 1,000/1,500 (one thousand to one thousand five hundred) feet.

16. There is no dispute that the said sale instances were genuine. Out of the aforesaid sale instances, the sale instances at

Exhs.26, 23, 12 dated 21.04.1999 in First Appeal Nos. 2158 of 2008, 2159 of 2008 and 2161 of 2008 respectively, is the best sale instance to be considered to determine the compensation to the Appellants, as it is from the same survey numbers from which the lands were acquired. No other sale instance, except the above, can form the basis to determine the market price of the acquired lands. True it is, that in one of the Judgments relied by the learned Advocate for the Appellants, referred above, the market rate of the land situated in the adjoining village and the land at the distance of 1 (one) kilometer was considered to determine the compensation, however, the said decision was on the facts, circumstances and the evidence in that cases. When the sale-deed from the very survey number from which the lands are acquired is available, discarding it and considering the sale instances from the other survey numbers situated at some distance, though no far, would not be in consonance with the legal position. Considering the length of time between the said sale instance at Exhs.26 and 23 and the Notification under Section 4 (1) of the LA Act, 10% increase per year in the market value of the acquired lands can conveniently be considered in First Appeal Nos.2158 of 2008 and 2159 of 2008, respectively, keeping in view the material on record that the acquired lands were surrounded by developments and were having N.A. potential.

17. As far as First Appeal No.2161 of 2008 is concerned, Section 4 (1) Notification is dated 21.07.1998 and the sale instance (Exh.12) relied upon by the learned Reference Court is dated 21.04.1999 which is post Notification. The learned Reference Court while relying on the said sale instance at Exh.12 which is from the same survey number has observed thus:

“27. The learned counsel for the claimants placed reliance in the case of Chindha Vithal Sonawane –vs- Special Land Acquisition Officer, reported in 1975 Mah.L.J. 468, wherein it has been held that:

Land Acquisition Act [1 of 1894], SS. 23 and 24 – Post notification sale - They are not irrelevant and cannot be discarded merely because they are effected two or three years after relevant date.”

Having going through the ratio laid down in the above citation, it reflects that Their Lordships held that post notification sale cannot be discarded merely because they are effected two or three years after the relevant date. Herein the case, date of notification under section 4 of the L.A. Act is 15-12-1998 and date of sale-instance under Exh.12 is 21-4-1999. Thus, considering the facts in hand and ratio laid down in the above citation, I find substance in the argument advanced by the learned counsel for the claimants that post notification sale, which is within period of five months of relevant date of notification under section 4 of the L.A. Act cannot be discarded merely because it is a post notification sale.

32. The learned counsel for the claimants further pointed out that the sale-instance Exh.12, on which respondents also relied under Index-II vide Exh.40. Having look to the Index-II vide Exh.40, it reflects that respondents have placed reliance on the said sale-instance dated 21-4-1999, on which claimants also placed reliance on the same sale-instance Exh.12. Admittedly, plot under sale-instance Exh.12 is out of same Sy. No.86, from which land of the claimants has been acquired. The price estimated under the above sale-instance for a plot area 40'x40' ft. for a consideration of Rs.1,60,000/-, which comes to Rs.100/- per sq. ft. I have already discussed in detail and hold that the

learned counsel for the claimants have rightly pointed out that though sale –instance Exh.12 is post notification sale, it can be considered as a good guide, so as to determine the prevailing market rate of the acquired portion. He also further rightly pointed out that the said sale-instance is after four months of the relevant date. The ratio laid down in 1975 Mh.L.J. 868 (supra) reflects that there was post notification sale of 2 or 3 years and Their Lordships in the foresaid citation held that post notification sale cannot be discarded merely because they are effected after 2 or 3 years of the relevant date. Thus considering the ratio laid down in the above citation, facts in hand that plot under sale-instance Exh.123 is out of same. Sy. No.86, from which land of the claimants has been acquired and respondents also placed reliance on same sale-instance under Index-II vide Exh.40 and, therefore, in the above back-drop, I find substance in the argument advanced by the learned counsel for the claimants that the aforesaid sale-instance can be considered as a good guide, so as to determine the prevailing market price of the acquired portion.

36. It is pertinent to note that on western side of his purchased plot, acquired portion is shown located in the name of claimant – Hemant. Having look to the western side boundary mentioned in the sale-instance Exh.12, it supports the argument advanced by the learned counsel for the claimants that acquired portion is located just adjacent to western side of the purchased plot under sale-instance Exh.12. Thus, after due consideration of the location, situation of the purchased plot and acquired portion, I find substance in the argument advanced by the learned counsel for the claimants that purchased plot is just adjacent to the acquired portion and it is from the same Sly. No.86, from which land of the claimants has been acquired.”

18. The learned Reference Court has passed the impugned Judgments and Orders / Awards on the basis of the evidence available on record and after considering the Judgments relied upon by the learned Advocate for the Claimants. We see no merit in the submissions of the learned Advocate for the Appellants that the learned Reference Court misread the Judgments cited by all the Claimants. The impugned Judgments and Orders / Awards do no call for interference, except for

granting 10% increase per year in the market value of the acquired lands from the date of sale instance i.e. 21.04.1999 till the date of Notification under Section 4 (1) of the LA Act in First Appeal Nos.2158 of 2008 and 2159 of 2008.

19. Though it is the contention of the learned Additional Government Pleader that the learned Reference Court has granted deduction towards development charges @ 25% from the compensation amount was at lower side, admittedly there is no challenge to the impugned Judgments and Orders / Awards by the State or the Acquiring Body and, therefore, the said submission cannot be considered and dealt with.

20. In the light of the above discussion, we proceed to pass the following order.

ORDER

1(i) First Appeal Nos.2158 of 2008 and 2159 of 2008 are partly allowed.

(ii) The Appellants in First Appeal Nos.2158 of 2008 and 2159 of 2008 shall be entitled to increase @ 10% per year in the market value of the acquired lands from the date of sale instance dated 21.04.1999 at Exhs.26 and 23 in Land Acquisition Reference Nos.505/2002 and 1/2004, respectively, till the date of the Notifications issued therein under Section 4 (1) of the LA Act.

- (iii) Rest of the operative Orders of the learned Reference Court in Land Acquisition Reference (LAR) Nos.505/2002 and 1/2004 shall stand as it is.

2 (i) First Appeal No.2161 of 2008 is dismissed.

- (ii) Parties shall bear their own costs.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP