



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO. 4 OF 1999

The Special Land Acquisition Officer (3) Mumbai
Suburban District .. Applicant
And
Jayantilal P. Shah and Ors. .. Claimants
And
The Deputy General Manager (P) M.T.N.L. Acquiring Body

WITH
JUDGE'S ORDER NO. 418 OF 2007
WITH
JUDGE'S ORDER NO. 417 OF 2007
WITH
NOTICE OF MOTION NO. 1014 OF 2007
WITH
NOTICE OF MOTION NO. 604 OF 2000
WITH
INTERIM APPLICATION (L) NO. 4713 OF 2023
IN
LAND ACQUISITION REFERENCE NO. 4 OF 1999

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- Mr. Shriram S. Kulkarni a/w Mr. Sujay Palshikar, Mr. Pranjal Khatavkar, Mr. Monish Vig & Mr. Gaurav Ugale for Claimants
 - Mr. Manoj Patil a/w Mr. Shubham Dhenge for Acquiring Body.
 - Mr. Ashok R. Varma a/w. Vineet Jain, Advocates for SLAO – Applicant.
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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 02, 2025.

JUDGMENT:

1. Heard Mr. Kulkarni, learned Advocate for Claimants; Mr. Patil, learned Advocate for Acquiring Body and Mr. Varma, learned Advocate for SLAO – Applicant.

2. At the outset, Mr. Patil, learned Advocate for Acquiring Body has drawn my attention to the answers given by witness No.1 of the Acquiring Body, namely Chetankumar B. Kalamthekar, Senior Manager, MTNL to Question Nos. 29, 57 and 65 in his deposition. He would submit that when specific question was put to the witness of the Acquiring Body in respect of a expenditure incurred by the Acquiring Body for levelling of land for construction, evidence has been placed on record by way of substantive document which has been marked as Exhibit "X-1" for identification by Court Commissioner. Copy of the said document is appended at page No.1283 of Volume No.8 of Compilation of documents. I have perused the original document which has been marked as Exhibit "X-1" from the record and file of evidence maintained by this Court. It is seen that the said document is the original running bill for the work of levelling undertaken by Acquiring Body on the acquired land at the time of construction of the MTNL Exchange, 10 years after the acquisition was completed and possession of land was taken.

3. Mr. Patil, learned Advocate for Acquiring Body urges the Court to mark the said document as Exhibit on behalf of the Acquiring Body and consider the same for deducting the value incurred for levelling of the acquired land from the market value of the said acquired land on the relevant date. He would submit that appended to the said document dated 15.07.2023 is the summary of annexures of

costs of the running and final bills of the work of levelling and filling undertaken by Acquiring Body for construction of the administrative building on the acquired land. He would submit that total expenditure incurred by Acquiring Body is approximately Rs.8,39,000/- which should be deducted by the Court from the market value that will be awarded by the Court in this reference.

4. Mr. Kulkarni, learned Advocate for the Claimants raises a strong objection and submits that the relevant date for determination of market value in the present case is 27.10.1994 whereas pursuant to the land having been acquired, rights of the Claimants were extinguished.

5. He would submit that after a hiatus of 10 years, construction of the administrative building of the MTNL Department was undertaken on the acquired land. He would submit that submissions advanced by Mr. Patil that Acquiring Body incurred expenditure for levelling of the land cannot be countenanced in view of the fact that each running bill appended to Exhibit "X-1" dated 15.07.2023 and taken on record today, if seen, show that the entire expenditure has been incurred for the same and it pertains to various aspects of construction of the said building. He would submit that 10 years after acquisition is complete, there is no relevance for placing on record the construction cost of the MTNL Building and this claim for deduction be

rejected.

6. With the able assistance of Mr. Kulkarni and Mr. Patil, I have perused the bills appended to the document dated 15.07.2023 which has been marked as Exhibit "X-1". The said document dated 18.07.2023 alongwith its annexures is appended at page No.1284 and is running upto page No.1364. They are taken on record and marked "R-35-Colly" collectively as it is the original bill, subject to its proving of its contents and they being relevant for determination of market value on the relevant date i.e. 27.10.1994.

7. After hearing Mr. Kulkarni and Mr. Patil, it is clear from the running bills which I have perused with their able assistance that such bills cannot be taken into cognizance in favour of Acquiring Body which pertain to a time period of 10 years after the acquisition is completed. Their relevance is not understood at all. These bills, if seen pertain to the construction cost incurred for the Administrative Building which is constructed on the acquired land for MTNL Exchange. These bills are not for the levelling expenditure incurred by the Acquiring Body. Mr. Patil would submit that MTNL incurred expenditure for levelling of land should be taken into consideration as a negative deduction on the relevant date of acquisition on which the market value is to be decided. He would submit that entire expenditure incurred can be seen from the running and final bills appended to

letter dated 15.07.2023 and they pertain to construction, all aspects of construction and expenditure incurred. Admittedly the date of such expenditure incurred for construction is almost 10 years after the relevant date.

8. The submissions made by Mr. Patil on behalf of Acquiring Body to consider the above bill amount of Rs.8,39,000/- as deduction from the compensation that may be awarded cannot be accepted as there is no such provision in law for the reference Court to consider any such construction expenditure incurred on the acquired land 10 years after completion of acquisition proceedings.

9. The present Land Acquisition Reference is a Section 18 Reference filed by Applicant under the provisions of Land Acquisition Act, 1894 (for short "**the said Act**") in respect of acquisition of land bearing CTS No.442/A/3 (part) admeasuring 1792.80 square meters out of a much larger holding belonging to Claimants situated at P-South ward, Village – Pahadi, Goregaon (East), Mumbai.

10. The following facts are relevant for the purpose of determination of the present Land Acquisition Reference:-

10.1. On 04.08.2019, notification was published under the provisions of Section 126 (4) of the Maharashtra Regional and Town Planning Act, 1966 (for short "**MRTP Act**") read with Section 6 of the said Act and last date of such publication of it having been pasted on

the site and village Chavdi is 27.10.1994.

10.2. By consent of parties, Claimants have prepared nine (9) volumes of compilation of documents containing each and every document in the present Land Acquisition Reference for the sake of brevity and convenience. The same has been duly inspected by learned Advocate appearing for Acquiring Body and SLAO and also confirmed. Hence, for brevity reference to documents in the present case shall be with respect to page numbers in the nine (9) volumes placed on record by Claimants.

10.3. In this case, the relevant date of acquisition for purpose of determination of market value is 27.10.1994 (*emphasis supplied*).

10.4. On 18.10.1996, Special Land Acquisition Officer (for short 'SLAO') declared Award and awarded market value @ Rs.2,800/- per square meter for the acquired land (1792.80 square meters). Award is appended at page No.77 of Volume – I.

10.5. It is well settled that Award passed by SLAO is an offer. Claimants' / owners' right to file Reference Application under Sections 18 and 30 of the said Act to prove true and fair market value on the relevant date is invoked by filing the Reference Application in the year 1998.

10.6. It is seen that on 24.09.1997, possession of acquired land was handed over by Claimants to Acquiring Body through SLAO.

10.7. On 17.11.1998, Award dated 18.10.1996 was duly amended by SLAO and therefore this becomes the reference point for limitation for filing of Reference Application. Reference Application is filed on 15.12.1998. I have perused the Reference Application which is appended to Land Acquisition Reference No.4 of 1999 filed by SLAO. Reference Application is admittedly within time and filed within the stipulated limitation period prescribed under Section 18 of the said Act from the date of amended Award dated 17.11.1998.

10.8. On 15.12.1998, Claimants filed Reference with the SLAO. Though original Award was passed on 18.10.1996, since there is an amended Award dated 17.11.1998 published, the Reference is filed on 15.12.1998 within limitation. Hence, there is no discrepancy in so far as limitation is concerned in the present case.

10.9. In the present Land Acquisition Reference, aforesaid facts have already been considered and a detailed order to that effect dated 18.01.2007 has been passed by this Court (Coram: Smt. R.S. Dalvi, J.). Hence, there is no ambiguity about the Reference Application being filed within limitation. SLAO and Acquiring Body does not raise any dispute about the above issue.

10.10. In the Reference Application prosecuted before this Court, Claimant has led evidence of two witnesses. Firstly, Claimant led evidence of Mr. Kanaiyalal Purushottamdas Shah (for short “**Mr. K. P. Shah**”) who is Claimant No.6 in the Reference. Mr. K. P. Shah is the Constituted Power of Attorney of all Claimants. He has led evidence on the factual situation of acquired land so as to describe its status and description from his person knowledge as on the relevant date to enable the Valuer to determine its market value. Next, Claimants led evidence of Mr. Narayan Balkrishna Dharmadhikari, Expert Valuer to arrive at and prove the true and fair market value of the acquired land on the relevant date.

10.11. In rebuttal, Acquiring Body led evidence of Mr. Chetankumar B. Kalamthekar, Senior Manager working with MTNL and Mr. Jitendra Laxmanrao Bhople, the Deputy Director of Town Planning as Expert Valuer.

10.12. Before I advert to the submissions made by the learned Advocates and evidence led by respective parties, it needs to be stated that Valuer of Claimants has filed a detailed Valuation Report alongwith documentary evidence in support of the same and has relied upon three (3) comparable sale instances placed on record by Mr. K. P. Shah. In rebuttal Acquiring Body has led the evidence of the Deputy Director of Town Planning as Expert Valuer and his evidence in

rebuttal is based on the Ready Reckoner value of the year 1994 published by the State Government. He does not refer to any sale instance in his report.

10.13. Both learned Advocates have referred to and relied upon the SLAO's Award. Though, I have impressed upon both learned Advocates that Award is a mere offer, but for the sake of considering description and situation of acquired land on relevant date, paragraph Nos.3 and 4 of the Award are relevant and to that extent both learned Advocates have taken me through the Award and commented upon it. Paragraph Nos.3 and 4 of the Award state the situation and description of acquired land on the relevant date. Both learned Advocates agree to what is stated therein, save and except one specific submission stated therein with reference to the acquired land being agricultural land on the relevant date. This dichotomy is put to rest when the evidence led by both parties in effect agrees that the acquired land was not an agricultural land on the relevant date but admittedly situated in Industrial Zone since the first revised sanctioned Development Plan of 1966. Save and except the aforesaid position, there is no ambiguity with the situation and description of acquired land which has been accepted by the Valuer of Claimants while computing the market value of acquired land on the relevant date.

11. Mr. Kulkarni learned Advocate for Claimants would submit that Claimants led evidence of their constituted Power of Attorney, Mr. K.P. Shah as CW-1 to describe the status and description of the acquired land as on the relevant date and thereafter led evidence of Expert Valuer, Mr. N.B. Dharmadhikari to determine market value of acquired land on the relevant date. He would submit that Valuer of Claimants has relied upon certified copies of three (3) registered sale instances in support of his Valuation Report to determine market value of acquired land which have been placed on record and marked in evidence by Mr. K. P. Shah.

11.1. Before proceeding to the Valuation Report, he would draw my attention to the Examination-in-chief of Mr. K.P. Shah to describe the situation and location of the acquired land as also its surrounding vicinity on the relevant date so as to enable the Valuer to determine the market value by taking into cognizance the relevant evidence. He would submit that Claimants' witness of fact Mr. K.P. Shah has filed five (5) Affidavits-in-lieu of examination-in-chief before his cross-examination commenced which have been taken on record by the Reference Court. In these, he has deposed about the status of acquired land on the relevant date on the basis of his personal knowledge. He would submit that first Affidavit-in-lieu of examination-in-chief dated 03.10.2003 is appended at page No.1 of Volume I, second Affidavit-in-lieu of examination-in-chief dated 29.03.2007 is appended at page 114

of Volume II, third Affidavit-in-lieu of examination-in-chief dated 29.08.2007 is appended at page No.216 of Volume II, fourth Affidavit-in-lieu of examination-in-chief dated 01.09.2007 is appended at page No.316 of Volume III and fifth Affidavit-in-lieu of examination-in-chief dated 23.08.2010 is appended at page No.403 of Volume III. After taking me through these Affidavits, he would submit that the first Affidavit-in-lieu of examination-in-chief describes facts pertaining to acquisition beginning from ownership of the larger area comprising of CTS No.442/A/3 (part) by the Shah family which was purchased by Claimants jointly by registered conveyance dated 11.12.1970 from its erstwhile vendor in the year 1970.

11.2. He would submit that deponent Mr. K.P. Shah is the Constituted Power of Attorney of all joint owners and he has deposed on behalf of all Claimants. He would submit that acquired land in the present case is an area admeasuring 1792.82 square meters nomenclatured as CTS No.442/A/3/(part) situated at Village Pahadi, Goregaon, Mumbai. He would submit that deponent Mr. K.P. Shah has personally conducted land acquisition proceedings in the present case before the SLAO since its inception i.e. from the date of issuance of the statutory Notification dated 04.08.1994. He would fairly submit that the relevant date which is the last date of publication of the statutory Notification in the present case is to be considered for determination of market value which is 27.10.1994. He would submit that the acquired

land is acquired for setting up of MTNL Exchange. He would submit that the relevant date is considered by SLAO in his Award dated 18.10.1996 for awarding market value @ Rs.2,800/- per square meter for the acquired land. He would submit that being aggrieved Claimants filed the present Reference proceedings.

11.3. He would submit that Claimants handed over possession of the acquired land to the Acquiring Body i.e. MTNL through SLAO on 24.09.1997 pursuant to deposit of the entire compensation declared under the Award with SLAO. He would submit that deponent Mr. K. P. Shah in his evidence has stated that initially Claimants did not collect the compensation as they called upon the SLAO to consider Claimants' Application for grant of TDR in lieu of compensation awarded under the Award. He has drawn my attention to the reference made to amendment order dated 17.11.1998 and letter dated 26.11.1998 issued by the SLAO and reflected in paragraph No.25 of his first Affidavit-in-lieu of examination-in-chief to contend that SLAO passed the above order to pay the amount of deposited compensation to Mr. K.P. Shah who was the Constituted Attorney for all the co-owners. Hence on this aspect of Mr. K.P. Shah representing the all co-owners i.e. Claimants, there is no ambiguity or discrepancy whatsoever between them.

11.4. Thereafter he has drawn my attention to paragraph No.27 onwards in the aforesaid first Affidavit-in-lieu of examination-in-chief of Mr. K.P. Shah. He would submit that Mr. K. P. Shah has personal knowledge of the acquired land which is infact part of the larger holding of Claimants of CTS No.442/A/3 admeasuring 28,427 square meters. He would submit that Mr. K. P. Shah has deposed about the situation and description of the acquired land on the relevant date according to his personal knowledge for arriving at the market value. He would submit that in paragraph No.28, Mr. K. P. Shah has described in detail the entire surrounding and vicinity of the acquired land on the relevant date with all its features, available amenities and facilities and has concluded in his estimation that Claimants are entitled for compensation / market value @ Rs. 20,000/- per square meters for the acquired land.

11.5. He would then draw my attention to his second Affidavit-in-lieu of examination-in-chief dated 29.03.2007 which is nomenclatured as additional Affidavit of examination-in-chief. In this Affidavit, Mr. K. P. Shah has stated that he was acquainted with the acquired land and larger holding of Claimants' land since 1970. In this Affidavit he has described the precise distances in meters of all landmarks / amenities / facilities which are in close proximity to the acquired land by giving their respective references and distances.

11.6. Next, Mr. Kulkarni has drawn my attention to the third Affidavit-in-lieu of examination-in-chief dated 29.08.2007, in which Mr. K. P. Shah has placed on record original certified copies of three (3) sale instances which are closest in terms of proximity of time and distance to the acquired land for considering those sale instances by the Expert Valuer appointed on behalf of Claimants in order to determine the true and fair market value of acquired land on the relevant date. These three (3) sale instances have been marked in evidence as Exhibit "Z-10" having relevant date of 28.12.1996, Exhibit "Z-11" having relevant date on 08.02.1996, and Exhibit "Z-12" having relevant date on 08.02.1996.

11.7. He would next submit that Mr. K. P. Shah has filed two further additional Affidavits-in-lieu of examination-in-chief dated 01.09.2007 and 23.08.2010 which are appended at page Nos.316 and 403 of Volume III. In the fourth Affidavit, he has placed on record more comparable sale instances which is marked as Exhibit "Z-13" and Exhibit "Z-14" and is his fifth Affidavit-in-lieu of examination-in-chief he has narrowed down by placing reliance on the three (3) most comparable sale instances out of the aforesaid five (5) sale instances, namely Exhibits "Z-12", "Z-13" and "Z-14" which are taken into account by the Expert Valuer for preparing his Valuation Report.

11.8. He has next drawn my attention to the Affidavit-in-lieu of examination-in-chief of Claimants' Expert Valuer Mr. N.B. Dharmadhikari dated 07.06.2017 which is appended at page No.956 of Volume VI. It is a detailed Affidavit. This Affidavit refers to Valuation Report dated 06.05.2017 prepared by Mr. N.B. Dharmadhikari which is taken on record and marked as Exhibit "Z-22". He would submit that the expert Valuer has considered the evidence of Mr. K.P. Shah as per his fifth additional Affidavit-in-lieu of examination-in-chief dated 23.08.2010 and considered the following three (3) sale instances as comparable sale instances with the acquired land for undertaking the exercise of valuation and to determine the market value on the relevant date:-

- (i) Sale instance No.1 - Exhibit "Z-12" which is a Memorandum of Understanding dated 25.01.1995 between the Assignor M/s. Dimple Chemical and Services and the Assignee M/s Malcom Exports in respect of area admeasuring 232.4 square meters and giving a consideration of Rs.36,00,000/-.
- (ii) Sale instance No. 2 - Exhibit "Z-13" which is Articles of Agreement dated 08.02.1996 of a residential flat and parking space giving a consideration of Rs.21,84,400/-.
- (iii) Sale instance No.3 - Exhibit "Z-14" which is a certified copy of Index-II issued by the Sub Registrar in respect of

transaction of sale of flat dated 06.09.1996 between Shri. Suresh Atakur of M/s. Creascent Iron and Steel Corporation and M/s. Leading L System Ltd. wherein area of the flat is 560.60 square feet and total consideration is Rs.40,18,500/- as on date of execution of the document dated 05.12.1995.

11.9. Sale Instance Nos.(ii) and (iii) are of built-up properties whereas sale instance No.(i) is a land parcel. From the above, he would submit that on consideration of the aforesaid three (3) sale instances, Claimant's Valuer has derivated true and fair market value of Rs.26,000 per square meter after analysing all three (3) sale instances by adopting the Comparable Sales Method of Valuation and thereafter comparing the features and factors of the sale instance land with the acquired land and giving positive allowances and negative deductions. He has taken me through the analysis done by CW-2 Expert Valuer in his Valuation Report in support of his submissions and would submit that the same deserves to be accepted as Acquiring body has not led any independent evidence of its Valuer replying on any sale instance, but has based its case on valuation solely on the basis of Ready Reckoner.

11.10. Before parting, he would submit that the Acquiring Body has led evidence of two witnesses to oppose Claimants' case for enhancement of market value but has not supported SLAO's Award of

market value. He would submit that the Acquiring Body has led the evidence of Mr. Chetankumar B. Kalamthekar, Senior Manager (Land and Building) of the Acquiring Body (MTNL) and evidence of Mr. Jitendra L. Bhople, Deputy Director of Town Planning as Expert Valuer who has also given his independent Valuation Report stating that on the relevant date Claimants would be entitled to market value of Rs.4,500/- per square meter at the highest as per the Ready Reckoner and Annual Statement of Rate published by the State Government for the State in the year 1994. While drawing my attention to the said Valuation Report of Mr. Bhople appended at page No.1735, he would vehemently submit that the said Valuation Report does not refer to any comparable sale instance or any specific method of Valuation. He would submit that since Valuation Report of the Acquiring Body's Valuer even though it suggests that Claimants are entitled to a higher market value than what is declared in SLAO's Award, the said Report should not be considered by the Court as it is merely an opinion expressed by the Deputy Director of Town Planning on the basis of published Ready Reckoner rate for the entire area by the State for the year 1994, without adopting any method of valuation whatsoever to arrive at the market value stated therein. He would therefore vehemently submit that the Report filed below Exhibit "Z-22" by Claimants' Valuer is a fruitful exercise undertaken by the said Valuer of comparing the acquired land with the registered sale instance which is

similar to the acquired land and is in close proximity of time and distance to the acquired land on the basis of Comparable Sales Method of Valuation, which is a fairly known method.

11.11. With his above submissions, he would rest his case and urge the Court to award market value @ Rs.26,000/- per square meter for the acquired land on the relevant date as per the computation arrived at by Mr. N. B. Dharmadhikari in his Valuation Report below Exhibit "Z-22".

12. *PER CONTRA* Mr. Patil, learned Advocate appearing on behalf of the Acquiring Body would counter the evidence led by Claimants and submit that the Acquiring Body has led evidence of its independent witness namely Mr. Chetankumar B. Kalamthekar, Senior Manager (Land and Building) of MTNL who has deposed on the basis of the entire record of the case and opined that in view of the facts of the present case, claim for enhanced compensation be dismissed. His Affidavit-in-lieu of examination-in-chief is dated 24.02.2020 and appended at page No.1702 of Volume VIII.

12.1. Next, he would submit that Acquiring Body has independently led evidence of Mr. Jitendra L. Bhople, Deputy Director of Town Planning as Expert Valuer to opine and arrive at the market value of the acquired land on the relevant date. He would submit that on the basis of the Annual Statement of Rates for the year 1994, which

is popularly known as "Ready Reckoner" or "Basic Valuation Register", the Deputy Director of Town Planning has opined that the SLAO has committed an inherent mistake in the Award by deducting 50% of the market value arrived at by him which is not justifiable. Acquiring Body's Valuer has therefore suggested that as per the Annual Statement of Rates for the year 1994 which is placed on record and appended at page No.1375 of Volume-IX annexed to his Affidavit-in-lieu of examination-of-chief and after making adjustment for levelling the land and on its merits and demerits is opined to fetch the market value @ Rs.4,500/- per square meter to be reasonable and justifiable on the relevant date for the acquired land. He would submit that the Deputy Director of Town Planning has undertaken a cogent exercise though not under any particular method of valuation, but it is a practical approach adopted by him who is a Valuation Estate Officer of the State with several years of experience behind him as a Government Town Planner and he has been extremely fair in not accepting SLAO's valuation in this case. He would submit that he has relied on the Annual Statement of Rates for the year 1994 as basis for opining that market value of acquired land ought to be fixed @ Rs.4,500/- per square meter on the relevant date i.e. 27.10.1994 as reasonable and justifiable. He would therefore urge the Court to consider the aforesaid market rate / value opined by the Deputy Director of Town Planning on behalf of the Acquiring Body and determine it to be the market

rate / value of acquired land on the relevant date in the Reference Award and reject any further and higher claim of Claimants as prayed for by them.

13. Mr. Varma, learned Advocate for SLAO has adopted the submissions made by Mr. Patil on behalf of the Acquiring Body and would urge the Court to consider the same.

14. I have heard Mr. Kulkarni, learned Advocate for Claimants, Mr. Patil, learned Advocate for Acquiring Body and Mr. Varma, learned Advocate for SLAO and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

15. In the present case, it is seen that the relevant date for determination of market value is 27.10.1994. Acquired land admeasures 1792.80 square meters. SLAO in his Award dated 18.10.1996 awarded market value @ Rs.2,800/- per square meter. Possession of acquired land is taken by Acquiring Body through SLAO admittedly on 24.09.1997. Initially in lieu thereof, Claimants claimed TDR instead of compensation. Though Claimants pursued their alternate claim for TDR, it did not fructify. Compensation awarded under SLAO's Award is paid over to Claimants. Amended Award is declared on 17.11.1998. Within the prescribed statutory period Claimants filed Reference Application seeking enhancement of market

value under Section 18 of the said Act. Being aggrieved with the market value awarded under the SLAO's Award and instead claimed market value @ Rs.20,000/- per square meter in their Reference Application.

16. There is extensive correspondence which is referred to and relied upon by the SLAO and Acquiring Body pertaining to withdrawal of interest claim by Claimants. It is seen that under the amended Award dated 17.11.1998, interest is not paid to Claimants. This is because Claimants did not accept the declared amount under the original Award and instead claimed TDR in the alternative. Claimants on their own volition addressed one letter dated 20.11.1998, withdrawing their claim for interest. It is seen that on 27.11.1998, SLAO addressed a letter to Claimants informing them that compensation is paid to them without interest as they themselves had waived the interest amount by addressing the letter dated 20.11.1998. This was so because Claimants had signed a bond for waiver of interest under protest. It is seen that the amount under the original Award dated 18.10.1996 was deposited by the Acquiring Body with SLAO. SLAO has earned interest on the said amount until it was paid over to Claimants. Claimants initially refused to accept the said amount, since they filed their alternative plea for claiming TDR. They ultimately failed in obtaining it. During this time, the Award amount remained deposited with the SLAO. The awarded amount was paid to Claimants

after declaration of amended Award dated 17.11.1998 later. Claimants have filed Notice of Motion No.604 of 2000 subsequent to the filing of the Reference in this regard seeking to claim the interest amount as computed by them. It is seen that Acquiring Body has filed detailed Affidavit-in-Reply dated 20.11.2000 to oppose the claim for interest of the Claimants. Parties have referred to the extensive correspondence in their respective pleadings. Reference is also made to the orders passed by the SLAO in the interim and the bond which is appended at Exhibit "F-1" thereto. The issue of payment of interest claimed by the Claimants whether they are entitled under Section 34 of the said Act as claimed or otherwise on the above amount will therefore have to be decided separately in accordance with law. This is solely because the amount under the Award stood deposited with SLAO and Claimant refused to accept it due to their TDR claim being pending. Refusal to accept in such a case may amount to waiver. However hearing / pendency of this Notice of Motion cannot be an impediment to decide the present Reference. None of the parties / Advocates have chosen to address me on this claim or even brought the pendency of this Application to my notice during the hearing of the Reference including the Advocate for Claimants.

17. I do not find it of any relevance for determining the true and correct market value of the acquired lands on the relevant date in the present reference proceedings as it is a different claim altogether. The present

Reference proceedings shall be governed by the statutory provisions and principles enumerated in the said Act and more specifically Section 18 read with Section 23 of the said Act for determination of market value on the relevant date and under Section 28 of the said Act for payment of interest on the enhanced amount; if awarded in the Reference Award of this Court.

18. It is seen that both parties namely; Claimants and Acquiring Body have led evidence of their respective witnesses in the enhancement Reference. Evidence of Claimants is attempted to be rebutted by evidence led by witnesses of the Acquiring Body. I have before me two Valuation Reports, one filed by Claimant's Expert Valuer, Mr. N. B. Dharmadhikari below Exhibit "Z-22" *vis-a-vis* Valuation Report filed by Acquiring Body's Expert Valuer i.e. Deputy Director of Town Planning Mr. Jitendra L. Bhole annexed to his Affidavit-in-lieu of examination-in-chief below Exhibit "Z-37".

19. Before I advert to the twin Valuation Reports and its analysis, it would be worthwhile to ascertain the evidence led by both parties. In this case, SLAO in his Award declared market value for the acquired land @ Rs.2,800/- per square meter on the relevant date. Challenge thereto is maintained by Claimants under Section 18 of the said Act for enhancement of the market value awarded and Claimants have sought payment of market value @ Rs.26,000/- per square meter

pursuant to evidence led by Claimants through Mr. K. P. Shah and their Expert Valuer. As opposed to this, Valuer of Acquiring Body i.e. Deputy Director of Town Planning has in his Valuation Report opined that Claimants would be entitled to market value @ Rs.4,500/- per square meter on the relevant date. Thus, this is a case where even before the Reference Court is called upon to adjudicate and determine the true and fair market value of the acquired land, Acquiring Body itself has offered a higher market value on the basis of evidence of their Valuer and urged the Court to consider awarding the same and determine the Reference accordingly.

20. Be that as it may, Claimants' case for seeking enhancement of market value will be determined on the strength of its own evidence. Evidence of the Acquiring Body shall also be considered and scrutinised. Claimants have led evidence of two witnesses namely one witness of fact and second its Expert Valuer. Witness of fact is CW-1 namely Mr. K. P. Shah who himself is the owner / beneficiary / Claimant. He is the Constituted Power of Attorney of all remaining Claimants / co-owners of the acquired land. He has deposed that acquired land admeasuring 1792.82 square meters is carved out of the larger area of CTS No.442/A/3 admeasuring 28427 sq. mtr. belonging to Claimants i.e. joint ownership of Shah family. That the area is acquired for the designated public purpose of constructing a building for MTNL exchange which has since been fructified pursuant to

acquisition. It is seen that Claimant No.1 has all throughout represented and espoused the cause of all other Claimants as their Constituted Power of Attorney in the present acquisition since its inception before the SLAO and now in the Reference proceedings.

21. It is seen that Mr. K.P. Shah has represented as Constituted Power of Attorney of all other joint owners / Claimants even before the SLAO during the statutory phases of acquisition pursuant to issuance of Section 126 (4) Notification dated 04.08.1994. However for the purpose of determining the relevant date, the last date of publication is taken into account as per the said Act. In the present case the last date of publication is 27.10.1994. It is seen that Mr. K. P. Shah has filed five (5) detailed Affidavits-in-lieu of examination-in-chief which are referred to and alluded to herein above while noting the submissions made by Mr. Kulkarni. Apart from placing the certified copies of sale instances of comparable sale instances which are in close proximity of time and distance of the relevant date / acquired land, Mr. K. P. Shah has deposed about the situation and description of the acquired land as existing on the relevant date from his personal knowledge. In his first Affidavit dated 03.10.2003, he has deposed about the entire fact of acquisition and the situation and description of the acquired land from his personal knowledge. He has deposed that the entire basis of valuation adopted by SLAO in the award is flawed. He has challenged determination of market value under the Award by SLAO due to non-

grant of compensation on account of severance. However on this ground the Claimants' Valuer has not opined or led any cogent evidence in the present case even though Mr. K.P. Shah has raised this issue of awarding compensation on account of severance. This is *prima facie* true because the acquired land admeasures 1792.82 square meters and is carved out of a larger holding of 28427 square meters belonging to the Claimants / Shah family and under the principles of valuation, compensation on account of severance and injurious affection to the Claimants. This plea ought to have been made and claimed, which is not seen to be done. Hence I am unable to offer any compensation in lieu or on account of severance as claimed by Mr. Shah.

22. Next, Mr. K. P. Shah has deposed that SLAO has not considered the DC Regulations pertaining to conversion of the acquired land which was admittedly in the industrial zone to residential / commercial user and thus completely ignored the development potentiality of the acquired land. On availability of amenities, he has deposed in paragraph No.28 of his first Affidavit-in-lieu of examination-in-chief as below for immediate reference:-

“28. We state that the land in question is situated abutting the Goregaon Railway Station on its eastern side and it is about 300-400 metres from the Goregaon Railway Station. The Goregaon Railway Station came into existence prior to

independence. Western Express Highway was also constructed long back and at present is under use and the land is abutting to the said Highway. At the same time, existing 60 ft. D. P. Road is passing through the land. The land in question is having direct access from the D. P. Road. The land was purchased in the year 1970 when the Development Plan has already come into force and it was shown in the I-3 Zone at that time which is a heavy industrial commercial zone and the same is situated in the city of Bombay and therefore, the value of this land is very high. At the same time, the said land is surrounded by the commercial, semi-commercial and residential zones. Already many industries have come into existence much prior to the acquisition. At the same time residential commercial complexes have come into existence much prior to the acquisition and therefore, the land in question is located in a very prime locality and virtually adjoining the Railway Estate and the Western Express Highway and therefore, can definitely fetch-value of about Rs.20,000/- per sq.mtrs. or more. Similarly, we state that the land was purchased in the year 1970 for industrial purposes. Accordingly, the land is already put for non-agricultural purposes of industry and accordingly N. A. Assessment has been paid at the rate applicable to the Industrial units. At the same time the land is fully developed and levelled by us much prior to the acquisition. We have constructed industrial building in the name and style of M/s. Krishna Metal Works in the C.T.S. No. We state that the southern side of the land under acquisition is bounded by a wall and industries are developed abutting the wall. We have already spent huge amount for erecting the compound wall. Therefore, we are entitled for compensation @ Rs.20,000/- per sq.mtr. or more.”

23. Thus, on the basis of the above deposition, Claimants have claimed entitlement to compensation @ 20,000/- per square meter or more on the relevant date. Thereafter it is seen that in his second Affidavit-in-lieu of examination-in-chief dated 29.03.2007, Mr. K. P. Shah has placed on record the original documents of relevant sale instances. In paragraph No.4 of this Affidavit, Mr. K. P. Shah has given the precise proximity of distances of all available landmarks from the acquired land on the relevant date. It would be appropriate to reproduce paragraph No.4 herein for immediate reference for

consideration of Claimants' case on availability of amenities / facilities in the surrounding vicinity of the acquired land. Paragraph No.4 of this Affidavit dated 29.03.2007 reads thus:-

"4. I say that following are the distances of the landmark from the suit land shows the prime location of the suit land.:-

- | | |
|---|--|
| <i>i) 40' Road</i> | <i>-towards (West)=>0.75kms approx.</i> |
| <i>ii) 1st Bus Stop from Railway Station</i> | <i>-towards (West)=>0.70 kms approx.</i> |
| <i>iii) Arey Road Municipal Area</i> | <i>-towards (West)=>0.7 kms approx.</i> |
| <i>iv) Goregaon Railway Station</i> | <i>-towards (West)=>0_ kms approx.</i> |
| <i>v) Cana Industrial Area</i> | <i>-towards (South)=>1.5 kms approx.</i> |
| <i>vi) Laghu Udyog Kendra</i> | <i>-towards (South)=>0.9 kms approx.</i> |
| <i>vii) Film City</i> | <i>-towards (East)=>4 kms approx.</i> |
| <i>viii) Arey Milk Colony Gate</i> | <i>-towards (East)=>0.4 kms approx.</i> |
| <i>ix) Nandadeep Society</i> | <i>-towards (West)=>0.05 kms approx.</i> |
| <i>x) Jayprakash Nagar</i> | <i>-towards (West)=>0.1 kms approx.</i> |
| <i>xi) St. Pius College</i> | <i>-towards (North)=>0.25 kms approx.</i> |
| <i>xii) Anupam Theatre</i> | <i>-towards (West)=>0.7 kms approx.</i> |
| <i>Xiii) State Bank of India, Perubaug</i> | <i>-towards (West)=>0.3 kms approx.</i> |
- Br.*

24. Thereafter, Mr. K.P.Shah has filed three (3) additional Affidavits-in-lieu of examination-in-chief dated 29.08.2007, 01.09.2007 and 23.08.2010. In these Affidavits, Mr. K.P.Shah has placed on record certified copies of relevant sale instances which according to Claimants are relevant for the purpose of comparing with the acquired land for arriving at its market value on the relevant date. Under Section 51 of the said Act, certified copies of sale instances are admissible in evidence and therefore this Court has marked three (3) specific sale instances stated in the above Affidavits namely Exhibit "Z-12", "Z-13" and "Z-14" which are relied upon by Claimants' Valuer in his Valuation Report and the valuation exercise undertaken by him.

25. Sale Instance Exhibit “Z-12” is a sale instance described as an Assignment Deed dated 25.01.1995. It is in respect of a leasehold property situated at a distance of 800 meters from the acquired land. Sale Instance Exhibit “Z-13” is a sale instance of built-up property i.e. sale of flat and parking space dated 08.02.1996 situated at about 1500 meters from the acquired land. Sale Instance Exhibit “Z-14” is an Assignment Deed dated 05.12.1995 in respect of assignment / sale of a residential flat situated about 500 meters away from the acquired land.

26. In the present case it is seen that Claimants have referred to and relied upon the evidence of its Valuer, Mr. N.B. Dharmadhikari, as an Expert Valuer for arriving at the true and fair market value of the acquired land on the relevant date. The Claimants’ witness No. 1, Mr. K. P. Shah has placed on record certified copies of sale instances which are marked as Exhibits “Z-12”, “Z-13” and “Z-14”. In the additional Affidavit dated 23.08.2010, Mr. K.P. Shah has placed on record certified copies of the said sale instances viz, Assignment Deed of leasehold property dated 21.01.1995 between M/s. Dimple Care and Services and M/s. Malcom Exports which is taken on record by Reference Court and marked as Exhibit “Z-12”, Sale Agreement dated 08.02.1996 of built-up property namely residential flat between M/s. Dattani Constructions and SCICI Ltd. which is taken on record and marked as Exhibit “Z-13” and Deed of Assignment dated 05.12.1995 between M/s. Creascent Iron and Steel Construction and M/s. Leading

L. System Ltd. in respect of assignment of commercial premises which is taken on record and marked as Exhibit "Z-14".

27. Expert Valuer Mr. N. B. Dharmadhikari has filed his Valuation Report dated 06.05.2017 which is taken on record and marked as Exhibit "Z-22". The exercise undertaken by the Valuer to arrive at the true and fair market value of the acquired land is on the basis of Comparable Sales Method. In the Valuation Report, Valuer has initially commented upon ownership of the acquired land about which there is no dispute. On the basis of material placed on record by Mr. K. P. Shah (Claimants' witness) and record of the case, he has opined that acquired land is freehold land and the Property card and entry dated 08.07.1994 in it shows that NA permission is granted in respect of acquired land including the larger holding of Claimants' CTS No. 442/A/3 as far back as on 20.07.1972. This fact is confirmed since Non-Agricultural taxes are paid by Claimants to the Government since the year 1974. In order to confirm that the acquired land is in the vicinity of developed area, he has furnished positive information relating to establishment of M/s. Krishna Metal Works Industry established in the year 1974 on the balance land of Claimants and the factory permit issued by the Municipal Corporation under Section 390 of the Mumbai Municipal Corporation Act, 1888 as far back as on 27.07.1978. This fact according to the Valuer proves that acquired land for which market value is to be determined as on 27.10.1994 was

situated in a developed area.

28. Next, the Valuer has referred to the revised sanctioned Development Plan of the year 1966 and has on the reading of the same opined that the entire CTS No. 442/A/3 belonging to Claimants is shown as Industrial Zone - I-2 and resultantly from the year 1972 onwards several industries and factories were set up in around the entire vicinity of the acquired land which was also been developed since then. In the present case we are concerned with the relevant date of 27.10.1994. Expert Valuer has then referred to the precise status of the acquired land as per the revised sanction Development Plan published in the year 1993 and referred to Notification dated 22.03.1993. He has after scrutinising the aforesaid documents opined that acquired land was reserved in the Development Plan for setting up of a telephone exchange by Mahanagar Telephone Nigam Ltd. (Acquiring Body). Designated public purpose for which acquisition is done is fructified. Thereafter, Expert Valuer has referred to the exercise of acquisition of the acquired land undertaken by SLAO until the passing of Award under Section 11 of the said Act and filing of the present Reference under Section 18 of the said Act for enhancement of market value declared under the Award.

29. The aforesaid information is the precursor and *sine qua non* which is made available in the statutory Award also and in the

evidence of Claimants' witness No.1, Mr. K. P. Shah. Based on this information, the Expert Valuer has thereafter considered the contents of the statutory Award *qua* the situation and description of the acquired land and thereafter the evidence of Claimants' witness No. 1 and 2 with respect to the features / factors affecting and pertaining to the acquired land, *inter alia*, in regard to its location, surroundings, topography, proximity, transportation, neighborhood, development and other factors affecting the acquired land on the relevant date.

30. It is seen that in respect of access and location, Expert Valuer has mainly referred to accessibility and proximity of distance of all prominent places and civic amenities in reference to the acquired land. He has stated that acquired land is situated at a distance of 500 meters from both Goregaon Railway Station and Goregaon BEST Bus Depot. He has then stated that the principal road for transportation closest to the acquired land is Aarey Road situated at a distance of 200 meters from the acquired land and the Western Express Highway situated at a distance of about 1500 square meters. Thereafter, as far as access is concerned, he has stated that acquired land is abutting a 13.40 mtr wide DP road and is on the junction of three (3) roads and the said road is in existence since the year 1974 as Madam Cama Road. Thus the acquired land has direct access and connectivity. Next, he has stated that almost all civic amenities like school, college, theatre, market area, banks and commercial activities are in close

proximity of the acquired land having been developed and established since the year 1974 in the vicinity of the acquired land and been in existence on the relevant date i.e. 27.10.1994. He has thereafter measured and given the precise proximity of distance as travelled by road in terms of “meters” from the acquired land of all major civic amenities and facilities in the vicinity. He has stated that Goregaon Railway Station is at 500 meters, Goregaon BEST Bus Depot is at 500 meters, St. Pious College on Aarey road is at 250 meters, Anupam Theatre is at 700 meters, State Bank of India, Goregaon Branch is at 300 meters, Aarey Milk Colony is at 400 meters, Western Express Highway is at 350 meters and developed industrial plots such as Cama Industrial area, Laghu Udyog Kendra are within 1 kilometer of the acquired land.

31. The Expert Valuer in regard to topography of the acquired land has stated that the plot under reference is in level with the level of the adjoining land and therefore does not require any filling or cutting on the relevant date, that the ground of acquired land was hard murum rock available at shallow depth which would give good foundation strata for construction of building thereon just like the balance plot area of CTS No.442/A/3 belonging to Claimants being fully developed into an Industrial Zone area by then. In regard to transportation, he has stated that Goregaon Railway Station, Goregaon Bus Depot, Aarey Road, Western Express Highway all cater to

availability of access to the acquired land. On the issue of neighborhood, he has considered the evidence of Mr. K. P. Shah i.e. CW-1 and contents of SLAO's Award and opined that the acquired land is not in an isolated zone but is a part of a fully developed Industrial Zone including Claimants' own larger holding of CTS/442/A/3. He has stated that apart from industrial development it has resulted in residential development over the years. With regard to development potential, he has in his Report opined that under DC Regulation 23(1), in respect of plot area admeasuring 1000 to 2500 square meters, 15% Recreational Ground is required to be kept open as vacant land and in the present case the permissible FSI being 1.00, the built-up area available for development would be 1792.82 square meters i.e. 19,297.69 square feet of development. On the basis of the intrinsic and extrinsic features of the acquired land, the Expert Valuer has thereafter referred to and relied upon three (3) sale instances namely Exhibits "Z-12", "Z-13" and "Z-14" which are in close proximity of time and distance with the acquired land to determine its true and fair market value as on the relevant date by adopting the Comparable Sales Method.

32. Before I proceed analyse the comparable sale instances relied upon by the Expert Valuer, it will be fruitful to deal with the principles of Valuation envisaged under the Comparable Sales Method, whenever an Expert gives his opinion in that regard. It is seen that the Expert

Valuer has referred to and relied upon three (3) comparable sale instances. Here it would be fruitful to refer to the decision of the Supreme Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*¹ wherein the Supreme Court has laid down the principles required to be adopted for employing the Comparable Sales Method.

32.1. The primary requirement for seeking enhancement of compensation under Section 18 of the said Act is made clear from the above decision, wherein it is stated that while computing the market value of the acquired land, the Court has to correlate market value with the most Comparable Sale Instance which provides the index of market value. This Court (Coram: G.S. Kulkarni, J.) while determining the Reference under Section 18 of the said Act in the case of *The Special Land Acquisition Officer (7) Vs. Majas Madhu Co-operative Housing Society and Bombay Electric Supply & Transport Undertaking*² has fruitfully referred to the method and principles of law for payment of compensation on the basis of authoritative citations of the Supreme Court that are too well settled and has referred to some of the said decisions which crystallise the principles of valuation. Observations made in paragraph Nos.57 to 62 of the above decision are directly relevant in this regard and the same are reproduced herein below for brevity and immediate reference:-

1 (1988) 3 SCC 751

2 LAR No.4 of 1990 with LAR No.5 of 1990 decided on 20.08.2020

“57. In *The Government of Bombay vs. Merwan Moondigar Aga*²⁰, Mulla, J. considering as to what would the principle of market value of the land under Section 23 of the LA Act, ‘first’ observed that the provisions would mean that the owner is to be compensated for his land, the measure of compensation being the market value of the land. The expression “market value” means the value which a parcel of land would realise if sold in the market. The test then is the test of a sale in the market. The seller must be a willing seller; a forced sale affords no criterion of market value. The purchaser must be a prudent purchaser, that is, one who makes his offer after making necessary inquiries as to the value of the land; an offer made by one who knows nothing of the value of the land in the locality and who makes no inquiries about it, affords no test of market value.

58. The principles in regard to the determination of the market value of the land are well settled. In ***Raghubans Narain Singh vs The Uttar Pradesh Government***, AIR 1967 SC 465, the Supreme Court has held that market value on the basis of which compensation is payable under section 23 of the Land Acquisition Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor.

59. In its celebrated decision ***Chimanlal Hargovinddas vs Special Land Acquisition Officer, Pune*** (supra), the Supreme Court held that the scope of Section 18 proceedings is not of an appeal against the award, hence the Court will not take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court. An award is an offer made by the Land Acquisition officer and hence the Court would not sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer. The reference would be an original proceeding before the Court wherein the Court would determine the market value afresh on the basis of the material produced before it. The claimant would be in position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced before the Court and proof will be taken into account. It is held that the market value of land under acquisition has to be determined on the date of publication of the notification under sec. 4 of the Act. The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical

purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It would be required to assume that the vendor is willing to sell the land at a reasonable price. In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value. Even post notification instances can be taken into account if they are very proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. The Court would be required to identify the most comparable instances out of the genuine instances on the considerations, namely, (i) proximity from time angle, (ii) proximity from situation angle. It is held that after having identified the instances which provide the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition. A balance-sheet of plus and minus factors should be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do. The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors. The plus factors would include smallness of size, proximity to a road, frontage on a road, nearness to developed area, regular shape, level vis-a-vis land under acquisition, special value for an owner of an adjoining property to whom it may have some very special advantage. This entire exercise is required to be undertaken in a common sense manner as a prudent man of the world of business would do. The evaluation of these factors depends on the facts of each case and there cannot be any hard and fast or rigid rule. It is held that common sense is the best and most reliable guide. For instance, A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 sq. yds. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will also depend on whether it is a rural area or urban area and whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up. It is held that Minus factors would include largeness of area, situation in the interior at a distances from the road, narrow strip of land with very small frontage compared to death, lower level requiring the depressed portion to be filled up, remoteness from developed locality, some special

disadvantageous factor which would deter a purchaser. It is held that every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself. These are the guidelines to be applied with understanding informed with common sense as what is held.

60. *In Tribeni Devi & Ors. vs. Collector of Ranchi (supra), the principles for determining compensation under sections 23 and 24 of the L.A.Act, 1894 were again reiterated. It was held that the compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might be reasonably expected to obtain from a willing purchaser and as it may not be possible, to ascertain the amount with precision, the authority charged with the duty to award compensation is bound to make an estimate, judged by an objective standard. The land under acquisition is, therefore, required to be valued not only with reference to its condition at the time of the declaration under s. 4 of the Act, but its potential value also must be taken into account. It was held that the sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. Referring to an earlier decision in **Special Land Acquisition Officer, Bangalore vs. T. Adinarayan Setty, AIR 1959 SC 429**, it was held that the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under s. 4, being: (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transactions of the 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. It was held that these methods, however, do not preclude the Court from taking any other special circumstance into consideration, the requirement being always to arrive as near as possible an estimate of the market value. It was held that in arriving at a reasonable correct market value, it may be necessary to take even two or all of these methods into account in as much as the exact valuation is not always possible as no two lands may be same either in respect of the situation or the extent or the potentiality, nor is it possible in all cases to have reliable material from which that valuation can be accurately determined.*

61. *In Viluben Jhalejar Contractor (Dead) by LRs. vs State Of Gujarat, it was held that the 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. It was held that 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. It was held that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition suitable adjustments have to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by policy the two in juxtaposition. The Court laid down the following positive and negative factors:

Positive Factors	Negative Factors
(i) Smallness of size	(i) Largeness of area
(ii) Proximity to a road	(ii) Situation in the interior at a distance from the road
(iii) Frontage on a road	(iii) Narrow strip of land with very small frontage compared to depth
(iv) Nearness to developed area	(iv) Lower level requiring the depressed portion to be filled up
(v) Regular shape	(v) Remoteness from developed locality
(vi) Level vis-a-vis land under acquisition	(vi) Some special disadvantageous factors which would deter a purchaser
(vii) Special value for an owner of an adjoining property to whom it may have some very special advantage	(vii)

Further in paragraph 21 the Court held that :

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.

62. In **Trishala Jain v. State of Uttaranchal, (2011) 6 SCC 47**(supra), the Supreme Court has recognized the principles of "guesstimate" as a principle for determination of compensation to be awarded under the Land Acquisition Act. In paragraph 65, the Court observed as thus:

"65. It will be appropriate for us to state certain principles controlling the application of 'guesstimate':

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should

have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto."

33. Applying the aforesaid well enunciated principles of valuation to the facts of the present case, in so far as sale instance No. 1 namely Exhibit "Z-12" is concerned, it is a Deed of Assignment in respect of area of plot admeasuring 232.44 square meters and the date of registration of the document is 21.12.1996. Perusal of this sale instance shows that it is in respect of leasehold land between two private parties. It is seen that the superior lessor in this case is the Municipal Corporation of Greater Mumbai which is admittedly owner of the said plot of land. When the document below this particular sale instance is perused, in clause (J), it is stated that the Assignor is forced to assign leasehold interest in the said plot to the Assignee due to constraints arising from serious labour problems in the factory situated on the said plot. Covenant No.1 of the document itself states that it is a distress transaction between the parties due to the above issue. The Expert Valuer has therefore opined that this instance is a distress transaction and hence due to the aforesaid issue affecting the Assignor, consideration paid is well below the market value and therefore the market value in this case can be easily enhanced to bring it at par with the acquired land as on the relevant date by adding 50% of the market value over and above the value of the sale instance. Thereafter he has

deducted transfer fee of 7% from the market value to be payable to the Municipal Corporation and opined that since there is a time gap of only three (3) months between the date of this instance and the relevant date, according to him the amount calculated on the basis of the above exercise can be considered as the market value of the acquired land on the relevant date. Applying the aforesaid principles, in so far as sale instance No.1 is concerned, it is clearly seen that covenants and averments in the sale instance directly convey that the Deed of Assignment is executed due to severe labour constraints and admittedly it is a distress transaction showing a distress rate. That apart, the transaction in question is a Deed of Assignment and owner of the plot is the Municipal Corporation whose consent / permission would be required apart from payment of its statutory dues for effecting transfer which would be @ 7% of the market value as opined by the Valuer. From the above, it is opined that this type of transaction cannot be termed as a clear marketable transaction between a willing buyer and willing seller so as to determine its true and fair market value. Though the Expert Valuer has attempted to play down the issue of distress and has suggested increasing of the market value by more than 50%, still in my opinion applying the fundamental principles of valuation enunciated by the Supreme Court in the above mentioned citations which have been longstanding and too well-settled over a period of time, this transaction below Exhibit "Z-12" cannot be

considered as a comparable sale instance indicative of the true and fair market value as opined by Expert Valuer. The reason which compels me to reject this sale instance and disagree with the Expert Valuer is because the transaction admittedly is a distress transaction and there are three (3) parties with their rights involved namely the Assignor, the Assignee and the owner of plot i.e. Municipal Corporation. The principles of Valuation proceed on the fundamental premise that in a Comparable Sales Method, the transaction in question has to be between a willing buyer and a willing seller *sans* any condition compelling any party to undertake it. Once this is not the case, the transaction in question cannot be accepted as a comparable sale instance.

34. The Expert Valuer has next referred to Sale Instance No.2 below Exhibit "Z-13". This is a transaction of a built-up property namely residential flat sold alongwith parking space in stilt in the building known as "Suraj Heights" situated on CTS No.552 and 552/1, Village Pahadi, Goregaon in close vicinity of the acquired land. It is seen that this sale instance is of a built-up property and the Expert Valuer has arrived at / computed the land value from this transaction on the relevant date between the Seller M/s. Dattani Constructions and M/s. Suraj Estate Developers Pvt. Ltd. (confirming party) and purchaser SCICI Ltd. It is in respect of an area admeasuring 873.76 square feet classified as super built-up area. There are three (3) dates

of this transaction. The date of Memorandum of Understanding between the parties is of 20.04.1995, date of execution of sale instance document is 08.02.1996, whereas date of registration is 09.09.1996. Though the transaction document is registered in September 1996, the Memorandum of Understanding dated 20.04.1995 determines and settles the consideration between the parties and therefore that date has to be adopted as the relevant date for that transaction as the rate was determined on that date. The consideration agreed to therein by parties is Rs.21,84,400/-. Perusal of Exhibit "Z-13" reveals that a Memorandum of Understanding was executed between M/s Dattani Constructions, M/s. Suraj Constructions Pvt. Ltd. (as confirming party) and SCICI Ltd. whereby eight (8) flats with eight (8) parking spaces under stilts were agreed to be sold to SCICI Ltd. for total consideration of Rs.1,74,75,200/-. Exhibit "Z-13" is the transaction document registered in respect of one such flat and parking space which is considered as comparable sale instance. Thus for one flat, consideration amount paid is Rs.21,84,400/-. Expert Valuer has opined that sale of the said flat is on super built-up area basis and the rate per square feet of super built-up area on the basis of the above works out to Rs.2,499.54 (rounded of to 2500) per square feet. The document also states the carpet area of the flat in question as 612.88 sq. ft. Hence he has computed the built-up area being 1.20 times of the carpet area according to his opinion to arrive at the area admeasuring 735.456

square feet built-up area of the flat for valuation purpose. He has thereafter divided the consideration of Rs.21,84,400/- by 735.456 square feet to arrive at the figure of Rs.2969.58 (rounded of to 2970) per square feet as market rate of the said flat on the date of the transaction i.e. Memorandum of Understanding executed between parties thereto. He has also given a negative deduction on this market value for the parking space which is valued along with the valuation of the said flat. In his opinion, the rate of parking space in the stilt area would be between 5% to 10% of the rate of the residential flat and therefore he has deducted an amount of Rs.120/- per square feet from the aforementioned rate per square feet of built-up area to arrive at the figure of Rs.2849.58 (rounded of to 2850) per square feet of built-up area. The Expert Valuer has thereafter stated that the above market rate will now have to be considered to arrive at the land value so as to thereafter compare it with the acquired land. He has undertaken the following exercise to arrive at the market value of the land in the sale instance on the date of its determination i.e. 20.04.1995 (MOU date):-

“a) cost of land

b) cost of construction inclusive of various fees payable to the authorities and to the professionals and

c) the profit of the builder

The profit of the builder at 25 % on the total investment of cost of land and cost of construction is reasonable and just.

(i) Sale value of flat : Rs. 2850.00/sqft

(ii) The cost of construction is for the built up area of the flat which is normally : Rs. 400.00/sqft

prevailing at that time.

(iii) The builder's profit is considered at 25% : Rs. 2280.00/sqft on the cost of the land and cost of construction together. 80% of Rs.2850.00

(iv) After deducting cost of construction, cost Rs. 1880.00/sqft of gross built up area
=Rs. 2280.00- Rs. 400.00

(v) This rate is charged on built up area. This includes the area under balcony which is normally 10% of the FSI component. For 100.00 sqft of built up area the f.s.i. component i.e. the area of the land is $100.00/110.00= 90.90\text{sqft}$.

(vi) cost of the land component in the sale Rs. 2068.20/sqft proceeds is
 $\frac{\text{Rs. 1880.00}}{0.909}$

i.e. Rs.22262.00/
sqmtr

Say Rs.22300.00/
sqmtr

35. From the above computation, it is seen that he has deducted the cost of construction of the flat and the builder's profit and arrived at the market rate of Rs.2,068.20 per square feet for the sale instance land on the date of its transaction. Next, he has opined that the proximity of time between the date of the sale instance and the relevant date in the present case is less than six (6) months and therefore it would not be necessary to have any deduction in the market value. I fully agree with this suggestion of the Valuer.

36. Thus, from the above it is seen that the Expert Valuer has considered sale instance of a built-up property for derivating the market value of the acquired land on the relevant date and opined that

under sale instance No.2 i.e. Exhibit "Z-13", the market value of the acquired land as on the relevant date would be Rs.2,068.20 per square meter which would translate into Rs.22,262.10 per square feet (rounded of to 22622). The only demerit stated by him with respect to this sale instance land is that it is far away from Goregaon Railway Station whereas acquired land is very close to the Railway Station having all prime civic amenities.

37. Save and except the above, it is seen that the Expert Valuer though has adopted the Comparable Sales Method and taken this sale instance as one of the most comparable sale instance, he has however not objectively compared all merits and demerits of both the lands in terms of its location, encumbrances, size, situation, zoning, permissible FSI, frontage, and many other features / factors and carried out the exercise of factorisation by awarding positive allowances and / or negative deductions to all affecting factors as contemplated by the decision of the Supreme Court in the case of *Chimanlal Hargovinddas (supra)*. However, the exercise undertaken by the Expert Valuer with respect to comparison of this sale instance as the most comparable sale instance being the thrust of Mr. Kulkarni's submission needs to be considered. This is because it is an Expert's opinion. There is no specific set formula laid down under the principles of Valuation and broadly speaking the Comparable Sales Method which employs comparison of the features and factors as laid down by the Supreme

Court in the case of *Chimanlal Hargovinddas (supra)* and *Viluben Jhalejar Contractor (dead) by Lrs. Vs. State of Gujarat*³. Courts have enumerated various factors noted above as an indicator for the purpose of comparison to assign positive allowances and negative deductions so as to determine the market value for the relevant date. It is generally known as the balance sheet of plus and minus factors which are required to be drawn up to arrive at a comparable situation and determine the price which a willing seller and willing buyer would agree.

38. In the above backdrop, determination of the most comparable sale instance is required to be done by applying the principle of what a prudent and willing purchaser would offer to purchase land / property from the open market without any encumbrance at a fair market price to a willing seller. In this regard, it would be once again fruitful to refer to the decision of Supreme Court in the case of *Chimanlal Hargovinddas (supra)* which states that correlation of market value reflected in the most comparable sales instance can be undertaken by the Court.

39. The sequitur of the above proposition is that the most comparable sale instance would be required to be identified on the touchstone of proximity from the time angle, proximity from the distance / situation angle as held in the case of *Chimanlal*

³ 2005 INSC 204

Hargovinddas (*supra*). Even a sole sale instance, which is comparable can be considered. However, this does not essentially mean that the above exercise is required to be adopted scrupulously in each and every valuation matter. Otherwise it would give rise to an Utopian situation. What is required to be seen are two things namely; whether the transactional document in question can be considered as a document of marketable title between a prudent and willing seller and purchaser and secondly whether the Expert Valuer has broadly undertaken the exercise of comparison of the sale instance land with the acquired land based on the fundamental principles of valuation. Essentially, this means that it is the substance which would matter rather than the form. Every Expert Valuer's attempt to give his opinion for arriving at the market value, if it conforms to the above broad parameters needs to be accepted. In the present case the exercise adopted by the Expert Valuer of Claimants is in consonance with the principles of valuation and deserves to be accepted with some caveats delineated herein below.

40. I have perused Exhibit "Z-13" i.e. the transactional document in question. Reading of the document clearly suggests that there is no encumbrance or distress involved in executing the said transaction between the parties. Rather it is a clean transaction, a marketable transaction of purchase of built-up property i.e. eight (8) flats by the purchaser which has been fructified between the parties. There is no

clause or covenant in the said transactional document which would point a finger to the fact that it is hit by any encumbrance or condition. Hence, Sale Instance No. 2 namely Exhibit "Z-13" passes the first test of consideration as a comparable sales instance / transaction in the present case. The Sale Instance date is also within the acceptable range in proximity to the relevant date. The time difference between the two dates is merely five (5) and half months. And most importantly this Sale Instance is in respect of a built-up property located in close proximity to the acquired land at a distance of 1500 meters only. Hence this Sale Instance passes the test of a comparable sale instance. Thereafter it is seen that the Expert Valuer has adopted the exercise of derivating the market rate of the land of the sale instance transaction from its consideration which normally is the yardstick adopted by Valuers while valuing the immovable property. The Expert Valuer is correct on this aspect in determining the land value from its built-up value. He has undertaken the exercise of determining the land value of the Sale Instance from the market value determined by correctly applying the triple test formula of development by opining that the value of the built-up property will include cost of land, cost of construction and developer's profit put together. He has give the necessary deductions for cost of construction and developer's profit and an additional deduction for the built-up area which would include the area under the balcony upto 10% of the FSI component to arrive at

the land value of the Sale Instance on its transaction date.

41. The aforesaid exercise cannot be faulted with since broadly the Expert Valuer has given his Expert opinion for arriving at the market value of the acquired land.

42. Before I give my imprimatur on accepting the market value, I would like to briefly refer to the cross-examination of the Expert Valuer in this regard for the reason to ascertain whether it withstands his deposition. It is seen that the Expert Valuer has been grilled and quizzed during his cross-examination by the Acquiring Body and the SLAO at length. It is seen that the deposition of the Expert Valuer is based upon the information gathered from the evidence of CW-1, Mr. K. P. Shah, the SLAO's Award, his Valuation Report and the Sale Instances referred to and relied upon by Claimants. Additionally, the Expert Valuer has also relied upon a location and situation map prepared by him depicting the acquired land and the three (3) sale instances / lands which is taken on record below Exhibit "25". Cross-examination of the Expert Valuer on Sale Instance No.2 namely Exhibit "Z-13" is relevant for consideration as this Sale Instance is accepted as the most comparable sale instance. This is so because Sale Instance No.1 is rejected as it is a distress transaction and further on considering Sale Instance No.3, it is seen that the actual transaction document is not placed in evidence and only the Index-II document of

registration is exhibited as Exhibit "Z-14". Answers to Question Nos.309 to 322 in cross-examination of the Expert Valuer are directly relevant, *inter alia*, pertaining to the Sale Instance No.2 i.e. Exhibit "Z-13". They are reproduced below to ascertain whether the deposition in cross of the Expert Valuer is correctly done and whether it deserves to be accepted. The relevant Questions put and Answers given read thus:-

"Q.309: The instance No.2 i.e. Agreement dated 8th February 1996 (Exh.Z-13), you have not taken into consideration the Articles of Agreement which is marked by the Hon'ble Court as Exh.Z-13 and which is produced by the Claimants.

Ans: I had considered the same and is mentioned in my report.

Q.310: Is it correct that you have referred to MOU dated 20th April 1995 in your report, but it was not produced by the Claimants?

Ans: It will be verified and if not, it will be produced on the next date.

Q.311: Is it correct that one of the documents covered by Sale Instance No.2 is MOU dated 20th April 1995?

Ans: Yes.

Q.312: Is it correct that the MOU dated 20th April 1995 refers to the Agreement dated 14th November 1981 between 19 joint owners and others granting development rights to M/s Dattani Construction in respect of property mentioned in the First Schedule i.e. the land admeasuring 6889 sq.mtrs. in Survey No.143, Hissa No.1 and Survey No.144, Hissa No.1/CTS No.552 and 552/1 to 20?

Ans : This is so, as mentioned in the MOU.

Q.313: Is it correct that you did not have and you are not aware regarding terms and conditions mentioned in the Agreement dated 14th November 1981 between the joint owners and Dattani Constructions?

Ans: I am not supposed to know it, on the basis of Clause No.22 on page 9 of MOU.

Q.314: Is it correct that Clause No.22 at page 9 refers to handing over vacant and peaceful possession of the property mentioned in

the First Schedule and confirmed in the Declaration dated 17th August 1985?

Ans :Yes, it is so mentioned in the MOU.

Q.315: *Is it correct that you have not procured and taken into consideration the Declaration dated 17th August 1985 by which the possession of the said land was given to M/s. Dattani Constructions and Suraj Estate Developers Pvt. Ltd.?*

Ans: It is not having any relevance.

Q.316: *Is it correct that clause No.22 does not mention any consideration paid in respect of grant of development rights?*

Ans: Yes.

Q.317: *I put it to you that your evidence that non-procurement of Agreement dated 14th November 1981 and Declaration dated 17th August 1985 is not relevant, is not correct, as there is no evidence as to consideration paid by the developers to the owners for grant of development rights.*

Ans : I do not agree.

Q.318: *In your valuation report (Exh.Z-22), while recording valuation in respect of the value of the property sold to SCICI Ltd., you have not taken into consideration the consideration for value in respect of development rights of the developers?*

Ans: It is not necessary.

Q.320: *Is it correct that you have taken into consideration the instance in respect of the flat sold to SCICI Ltd. for the purpose of valuing the acquired land admeasuring about 1792.48 sq.mtrs. ?*

Ans: Yes.

Q.321: *Is it correct that the built up area of the flat worked out by you of 735.46 sq. ft. is not based upon any documentary evidence, to which SCICI Ltd. and the Developers are parties?*

Ans : In the Agreement dated 8th February 1996, carpet area of the premises is mentioned as 612.88 sq.ft. As per the general formula, as stipulated by the Government in the Ready Recknor, the built-up area is 1.2 times of the carpet area. The figure that I have referred to in my report is 1.2 times of 612.88 sq.ft.

Q.322: *In your report, in respect of the Sale Instance No.2, there is no specific reference to the Ready Recknor. Is it correct?*

Ans: It is not necessary."

43. Further cross-examination of the Expert Valuer on the specific issue of built-up area, construction cost and contents of the

Memorandum of Understanding are contained in Question Nos.323, 327, 328, 332 and 336 and answers given thereto. The same are reproduced below for immediate reference:-

"Q.323: Can you tell the basis on which the rate is worked out by you to Rs.2970/- per sq.ft., as mentioned in your report (Exh.Z-22)?

Ans: The total consideration for one flat is Rs.21,84,400/-. This is divided by the built-up area of the flat, which is 735.456 sq.ft. that works out to Rs. 2970/- per sq.ft.

Q.327: Your evidence regarding the deduction of the construction cost of Rs. 400/-. Is it per sq.ft or sq.mtrs.?

Ans: It is per sq.ft.

Q.328: Is it correct that you do not have any basis of evidence regarding construction cost on the date Rs.400/- per sq.ft. ? of construction being

Ans: These figures are mentioned in the State Government's Ready Reckoner.

Q.329 to Q.331 xxxxx

Q.332: I put it to you that the market value worked out by you in respect of the land covered by the sale instance No.2 at Rs.22,300/- per sq.mtrs. as on 20th April 1995, is not the correct value and is not valid.

Ans : Whatever I have stated in my report is correct.

Q.333 to Q.335 xxxxx

Q.336: Is it correct that Agreement dated 8th February 1996 for sale of the flat refers to the value of the flat as per MOU of 20 April 1995, which is a Development Agreement between the owners and the developers ?

Ans : The MOU dated 20th April 19995 is not the Development Agreement between the original owners and the developers but it is MOU between the Developers and the Purchasers."

44. From the above, it is seen that there is nothing brought out in the cross-examination of the Expert Valuer which shakes his credibility or which denotes that Sale Instance No.2 namely Exhibit "Z-

13" should not be considered as relevant comparable sale instance. In that view of the matter, I am inclined to accept Sale Instance No.2 as a Comparable Sale Instance adopted by the Expert Valuer for the purpose of determining the market value of the acquired land on the relevant date.

45. Having done so and accepted Sale Instance No.2 as Comparable Sale Instance, let us distinguish the exercise of comparison of factors adopted by the Valuer to arrive at the market value of the acquired land. Insofar as the broad consideration of factors affecting market value are concerned, the Expert Valuer is right in his approach that the market value would include cost of land, cost of construction and developer's profit. This is the correct proposition of valuation. Generally, it is seen that the aforesaid three factors are interchangeable in terms of their denomination. In an urban area like the city of Mumbai, value of cost of land would sometimes be on the higher side depending upon its location / area and cost of construction would always depend upon the status / nature of construction but it would also include several other costs like premium paid, statutory fees / payments, professional fees of architects, lawyers etc. and it is only after the aforesaid two expenses are deducted, the balance would determine the developer's profit. In this case, cost of construction is taken at Rs.400/- by the Expert Valuer being the prevailing rate at that time which is an opinion expressed by him. Any opinion expressed by

the Valuer ought to be based on some facts. All that the Valuer had to do was to take inspection of the said building called 'Suraj Heights' and then opine as to what would be the cost of construction since the Valuer's Expert eye would be able to opine the cost of construction once it inspects the subject building / flat. That exercise has not been done. However, because such an exercise is not done the Valuer's Comparable Sales Method cannot be rejected or faulted with. The Valuer because of his experience as an Expert witness has opined that the cost of construction prevailing as per the PWD rate / normal market rate at that time for built-up area was Rs.400/- per square feet. There is no effective, rather no cross-examination on this aspect also, and therefore his opinion needs to be accepted unless proved to the contrary. In the witness action of the Acquiring Body, there is no evidence placed on record to the contrary by the Deputy Director of Town Planning with respect to the cost of construction *qua* Sale Instance No.2 in question. Therefore, I have no hesitation in accepting the cost of construction opined by the Expert Valuer @ Rs.400/- per square feet for the built-up area in his computation of market value.

46. Cost of construction as opined by the Expert Valuer is always divided into two components namely; the actual cost of construction and the other incidental and ancillary expenses which include statutory fees, professional costs and other miscellaneous charges / cost. Unfortunately, there is no bifurcation indicated by the Valuer in this

regard and he merely states that the cost of construction of Rs.400/- prevailing at that time which is inclusive of the above expenditure. That would apply in a standard case generally prevailing at that time as construction cost. Since there is no break-up opined by the Valuer, I am inclined to add an additional cost of Rs.200/- per square feet of built-up area to the sale value of the subject flat in question towards computing the cost of construction inclusive of all additional expenses after reading the Sale Instance transaction which *prima facie* appears to be of a high end residential construction offering reasonably good amenities.

47. Thus, on deduction of the cost of construction as determined above towards the sale value of the flat / Sale Instance No.2, the value of Rs.2,250/- per square feet would be arrived at ($2850 - 400 = 2450$; $2650 - 200 = 2250$). Out of this amount, the Developer's profit will have to be deducted to arrive at the cost of the land. Generally, the Developer's profit varies between 25% to 33% in the given facts of a particular case depending upon the tenure of the project, bank rate interest, etc. If there are adequate details placed on record then the same can be calculated somewhat precisely. Once again the Expert Valuer has opined that Developer's profit would be at 25% of the cost of land and cost of construction taken together. If the opinion of the Expert Valuer is accepted, then on deduction of 25% of the Developer's profit from the aforesaid amount of Rs.2,250/- would result in the

market value of Rs.1,687.50/- per square feet of built-up area. This needs to be accepted as there is no evidence / data placed on record to the contrary. Thereafter the Expert Valuer has correctly reduced the cost of built-up area by 10% of the FSI component for the area under the balcony which in his opinion would be 10% of the FSI component. If that deduction is made, then the market rate that would be arrived at would be Rs.1,518.80/- per square feet. This market rate would be translated into Rs. 16,348.36/- per square meter on the relevant date of the sale instance i.e. 20.04.1995 which is the date of the Memorandum of Understanding i.e. date on which the parties agreed to the transaction and rate between them in question. I am also inclined to accept the opinion returned by the Expert Valuer that the proximity of time between the two dates is less than six (6) months and therefore there should not be any deduction of the land rate on this count. There is also no data placed on record in rebuttal on the issue of rise in the prices of land placed by the Acquiring Body and therefore I am inclined to accept the same.

48. In so far as Sale Instance No.3 is concerned, it is seen that the said sale instance pertains to sale of commercial premises in a building known as 'Udyog Bhavan' for an area admeasuring 672.72 sq. ft. for a total consideration of Rs. 14,18,500/-. That apart, it is seen that the date of execution of the transaction of the said document is 05.12.1995 and its date of registration is 06.09.1996. The date of

execution of the document is itself fourteen (14) months after the relevant date. The said document is marked as Exhibit "Z-14". It is appended at page Nos.320 and 321 of Volume III. Claimants have produced only the Index-II copy of the said transaction in question. The aforementioned information is derived from the said Index-II document only. In my opinion, the Index-II document does not give the details of the transaction so as to consider whether the said transaction would be a marketable transaction between a willing seller and a willing buyer. None of the terms and conditions of the agreement / transaction in question are before the Court to assess the suitability of the said transaction.

49. Though Section 51 of the said Act states that certified copy of Index-II can be considered in evidence, it can undoubtedly be considered but in my opinion only for the purpose of corroboration of the market value determined by the Valuer on the basis of proven transactions and not solely as an independent indicator of market value to be accepted in the absence of the transaction document itself. The Index-II statement merely gives the aforesaid information in its statutory format. The intention of the parties in executing and fructifying the said transaction in question, the terms and conditions etc. can only be gathered after the registered Agreement for Sale / Sale Deed is placed on record and not otherwise. Merely accepting the Index-II document on its own, in my opinion is a dangerous

proposition and cannot be considered as a true indicator of market value of the said transaction for the purpose of comparing the same with the acquired land. The rights governing the parties would be contained in the various covenants and terms and conditions of the registered document. Nothing prevented the Claimants or their Valuer to place on record the registered document of which all details were available including the serial number, volume and page number, registration number and date of registration as stated in the Index-II document itself. It is seen that though its execution is after 14 months from the relevant date, its date of registration is 7 months beyond that. Hence there is a proximity of time gap of 21 months from the relevant date. However, in the absence of the transactional document being placed before me, I am not inclined to accept the Index-II document solely i.e. Exhibit "Z-14" on its own strength as an indicator or market value being a comparable sale instance for arriving at the market value of the acquired land. There are three fold reasons why I do so; firstly the transaction is of a commercial property, details of which are not available, secondly details of transaction document are not placed before the Court for ascertaining whether a marketable title has passed between the parties despite they being available and this raises a doubt and thirdly because of the proximity in time between the date of execution, date of registration and the relevant date. Hence Exhibit "Z-14" stands rejected as a comparable sale instance.

50. In so far as deposition of the Valuer of the Acquiring Body is concerned, it is seen that he has stated that it was not possible for him to visit the site i.e. acquired land before submitting his Valuation Report. His Valuation Report appended to his Affidavit-in-lieu of examination-in-chief below Exhibit “Z-37” at Page No.1377 is merely a commentary on the facts of the case and nothing more. The Valuation Report of the Acquiring Body rather refers to one and only one fact namely availability of the Ready Reckoner for the year 1994. Without referring to any comparable / non-comparable sale instance, it proceeds on the basis that the Award given by the SLAO is on the lower side. It finds fault with the Award of the SLAO and suggests that the Ready Reckoner Rate for the year 1994 should be considered as a yardstick for determination of market value of the acquired land by this Court. The Report of the Deputy Director of Town Planning giving his opinion on market value of the Acquiring Body opines that if the Ready Reckoner Rate for the year 1994 is taken into consideration then the SLAO should have awarded market value @ Rs.4,500/- per square meter and not Rs.2,800/- per square meter as awarded and declared in his Award. Though the said Report of the Deputy Director of Town Planning fairly states the above fact, I am not inclined to accept the same for the reason that derivation of market value merely on the basis of Ready Reckoner Rate for the relevant year is not an appropriate exercise prescribed by the principles of valuation for

arriving at the market value of an immovable property and the same is also not accepted by the Supreme Court.

51. The Supreme Court in a catena of cases has ruled that the Basic Valuation Register or Ready Reckoner for the subject year in question cannot be taken as a determinant for arriving at the market value of the acquired land. One of the principle reason for not accepting the Ready Reckoner Rate is the fact that Ready Reckoner Value is designed to apply to all immovable properties in a given area for the entire year or until it is modified / changed. This is so because not all properties in the entire area would be exactly identical and same. Every immovable property is governed by its own intrinsic and extrinsic features, its plus and minus factors, the rights of the parties to the transaction which would either enhance or reduce the valuation of the subject property in question. This is further so because no two properties are alike and same and therefore it would be a dangerous proposition to merely accept on face value the Ready Reckoner Rate of an immovable property to determine its market value. The Supreme Court categorically states that the purpose of Ready Reckoner Rate is for fiscal purposes namely computation of stamp duty value and charges required to be paid to the Government and in view thereof, it cannot be a determinant of true and fair market value between a willing buyer and a willing seller in respect of an immovable property. In this regard, reliance is placed on the decision of the Supreme Court

in the case of *Bharat Sanchar Nigam Limited Vs. Nemichand Damodardas and Anr.*⁴ which quotes with authority all previous decisions of the Supreme Court on the aforesaid proposition.

52. Further it is seen that the Acquiring Body's witness Mr. Chetankumar B. Kalamthekar does not dispute the *inter se* arrangement between the Claimants on the basis of the Release Deeds which are placed on record in evidence by Mr. K.P. Shah and therefore there is no dispute on this issue either. That apart, the initial case of the Claimants seeking TDR in lieu of compensation under the SLAO's Award also need not be gone into as the jurisdiction of this Court pertains to determination of enhanced compensation / market value under Section 18 of the said Act.

53. The observations and findings with regard to Sale Instance No.2 being the most comparable Sale Instance comparable with the acquired land is thus accepted by the Court. The evidence which has come on record *qua* Sale Instance No.2 i.e. Exhibit "Z-13" is accepted subject to the modifications stated and market value arrived at for determining the market value on the relevant date herein above. Exhibit "Z-13" is held to be the most Comparable Sale Instance and determinant for arriving at the market value of the acquired land as it is in close proximity of time and distance to the relevant date i.e. 27.10.1994 of the acquired land. The exercise adopted by the

⁴ (2022) 14 SCC 60

Claimants' Expert Valuer in his Valuation Report below Exhibit "Z-22" subject to the modification and further deductions stands accepted. The Claimants shall therefore be entitled to market value of Rs.1518.80/- rounded off to Rs.1520/- per square feet which translates to Rs.16,361.28/- per square meter (rounded of Rs.16,360/- per square meter) as on the relevant date for the acquired land. Award to be made accordingly.

54. In view of the above findings and observations, Reference stands allowed in the above terms with the following directions:-

- (i) Claimants are entitled to market value of Rs.16,361.28/- per square meter rounded off to Rs.16,360/- per square meter on the relevant date;
- (ii) Claimants are entitled to the statutory benefit under Section 23(1-A) of the said Act @ 12% per annum on the enhanced market value from the date of Notification to the date of possession;
- (iii) Claimants are entitled to 30% solatium on the enhanced market value under Section 23(2) of the said Act;
- (iv) Claimants are entitled to statutory interest under Sections 28 and 34 of the said Act as applicable on the enhanced market value until payment;

- (v) Payment already made to Claimants by SLAO under the Award passed under Section 11 shall be adjusted from the market value awarded by this Court in this Reference Award;
- (vi) SLAO shall compute the balance amount and pay it to the Claimants as directed in this judgment;
- (vii) Claimants are directed to file calculation and computation of the aforesaid market value and statutory benefits payable with the SLAO and Acquiring Body within two weeks from the date of this Reference Award;
- (viii) The SLAO and Acquiring Body, after making due adjustment of the amounts already paid to Claimant under the statutory Award passed under Section 11 of the said Act, shall pay the balance amount to the Claimants within the period of four weeks from the date of submission of calculation for the market value payable alongwith all statutory benefits as directed herein above in accordance with the provisions of the said Act;
- (ix) Notice of Motion No.604 of 2000 is filed by Claimants seeking a direction to deposit amount of

Rs.1,33,33,009/- as per its claim for interest under Section 34 of the said Act. Affidavit in support of the Notice of Motion refers to the computation of interest calculation under Section 34 of the said Act. Affidavit-in-Reply is filed to oppose the said claim of interest. Parties will have to be heard for adjudication of this Application. In view of the Reference being disposed of list Notice of Motion No.604 of 2000 for hearing separately on its own merits before the Reference Court after six weeks on 13th February 2025;

- (x) Judges Order Nos.417 of 2007 and 418 of 2007 for issuance of witness summons having been allowed by order dated 12.10.2007 do not survive in view of disposal of the Reference;
- (xi) Notice of Motion No.1014 of 2007 for extension of time to complete recording of evidence before Commissioner does not survive and stands disposed of in view of this judgment; and
- (xii) Interim Application (L) No.4713 of 2023 for bringing legal heirs on record is already allowed and disposed of on 22.02.2023.

55. With the above directions, Land Acquisition Reference No.04 of 1999 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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