

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

LAND ACQUISITION REFERENCE NO. 11 OF 1990

Special Land Acquisition Officer (4)  
Mumbai Suburban District,  
Tahsildar Office Compound, D. N. Road,  
Andheri, Mumbai – 400 058.

AND

1. Smt. Shamsida Wd/o Mohd. Iqbal Abdul Hamid,
    - 1(a) Imran Mohd. Iqbal Abdul Hamid
    - 1(b) Irfan Mohd. Iqbal Abdul Hamid  
Since deceased through his  
Heirs and Legal Representatives
      - 1(b)(a) Nikhat Mohammed Irfan Ansari,  
Aged 33 years, Occ. Housewife,
      - 1(b)(b) Anas Mohammed Irfan Ansari,  
Aged 10 years, Occ. Study.
      - 1(b)(c) Lyaba Mohammed Irfan Ansari,  
Aged 8 years, Occ. Study,
      - 1(b)(d) Mohammed Ali Irfan Ansari,  
Aged 2 years, Occ. Nil
- Claimant nos. 1(b)(b) to 1(b)(d) being  
minors through Claimant no. 1(b)(a)  
being their Mother and natural guardian

All no. 1(b)(a) to 1(b)(d) residing at  
Room no. 56-57, B. M. C. Building no. 5,  
Baba Siddique Road, Ground Floor,  
Musafirkhana, Mumbai

1(c) Rizwan Mohd. Iqbal Abdul Hamid  
All adults, Indian Inhabitants,  
Residing at room no. 56-57,  
B. M. C. Building no. 5,  
Baba Siddique Road, Ground Floor,  
Musafirkhana, Mumbai

2(a) Tahera Wd/o Ibrahim Zariwala

2(b) Shafi S/o Ibrahim Zariwala

2(c) Shahnaaz Hussain

2(d) Nilopher Balooch D/o Ibrahim

2(e) Nazib S/o Zariwala

2(f) Nazeer S/o Zariwala

3. Ahmed I. Zariwala

4. Aminabibi W/o Abdul Aziz

5. Hafizabibi W/o N. Khan

6. Navid Farid Edras

All residing at C/203, Gurukrupa,  
2<sup>nd</sup> Floor, Evershine Nagar,  
Malad (west), Bombay – 400 064.

... Claimants.

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Mr. Pradip Kadam a/w Mr. Hemant Hasnale for Claimant no. 1(a) to 1(c).  
Mr. Niranjan Shimpi a/w Ms. Purnima Awasthi for Acquiring Body.

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**CORAM : FARHAN P. DUBASH, J.**

**RESERVED ON : 23<sup>rd</sup> MARCH 2026**  
**PRONOUNCED ON : 23<sup>rd</sup> JUNE 2026**

**JUDGMENT :**

1. The present proceedings arise out of the acquisition of property under the provisions of the Land Acquisition Act, 1894 (hereinafter, the "*said Act*"). The acquired property comprises land bearing Survey No. 91 and Survey No. 91 (part), situated at Village Malad, Taluka Borivali, Mumbai Suburban District, admeasuring about 11,565 square meters, together with the bungalow / structure standing thereon. The said land had been requisitioned since the year 1942 and was in possession of the Ministry of Defence, being used for the purposes of the Central Ordnance Depot.
2. The present Reference was initially made under Sections 18 and 30 of the said Act. The dispute under Section 30 pertained to apportionment and entitlement to receive compensation between Claimant No.1 and the rival Claimants who claimed through one, *Smt. Fatimabai*. However, the said dispute under Section 30 came to be disposed of by this Court vide order dated 19<sup>th</sup> December 2006, pursuant to consent terms that came to be filed between the said parties. Accordingly, what survives for consideration in the present Reference is only the claim for enhancement of compensation

under Section 18 of the said Act, that has been filed at the instance of Claimant No.1 and her legal heirs.

3. The Special Land Acquisition Officer (*SLAO*) awarded compensation at the rate of Rs. 20/- per square meter. The original Claimant, *Mohd. Iqbal Abdul Hamid* had claimed compensation at the rate of Rs. 90/- per square meter. Thereafter, the Claimants have sought enhancement of compensation on the footing that the market value of the acquired land should be Rs. 495.20 per square meter. The principal issue therefore, which arises for consideration, is whether, the compensation awarded by the SLAO at Rs. 20/- per square meter is just, proper and adequate, or whether, the Claimants have proved their entitlement to enhancement in compensation.

#### BRIEF FACTS

4. Before advertng to the merits of the present Reference, a brief recital of facts, insofar as they are relevant for adjudication of the present proceedings, is set out hereinbelow:
  - a) The present Reference pertains to land bearing Survey No. 91 and Survey No. 91 (part), situated at Village Malad, Taluka Borivali, Mumbai Suburban District (hereinafter, the "*acquired land*"). As

per the Award, the acquired land admeasures 11,565 square meters, comprising 10,680 square meters from Survey No. 91 and 885 square meters from Survey No. 91 (part).

- b) The land in question was requisitioned in or about the year 1942. The requisition also included land bearing Survey No. 11 Hissa No. 2 admeasuring 0-8-12 and Survey No. 91 (part) admeasuring 3-18 at Village Malad. The land was thereafter put in possession of the Ministry of Defence and was being used for storage and distribution of M.T. parts, tyres, tubes and other materials connected with the Central Ordnance Depot.
- c) On 16<sup>th</sup> July 1943, the Collector, Bombay Suburban District, passed an order fixing monthly compensation in favour of *Smt. Fatimabai* in respect of the structure / bungalow standing on the requisitioned property.
- d) Thereafter, on 10<sup>th</sup> April 1944, an agreement came to be executed between *Smt. Fatimabai* and the Governor General in Council in respect of payment of compensation / rent for the requisitioned land and the trees standing thereon.

- e) The record indicates that the village Malad was an unsurveyed Khoti village and that the lands in possession of the Defence authorities could not be properly surveyed for a considerable period. The records of rights in respect of the lands under possession of the Defence Ministry were not prepared, and such lands were also excluded from the City Survey.
- f) Prior to the present acquisition, a portion of adjacent land admeasuring 3,284 square meters out of Survey No. 91 had been acquired (together with other lands) pursuant to a Section 4 notification dated 28<sup>th</sup> July 1972. An Award under Section 11 of the Act came to be passed on 28<sup>th</sup> March 1973 in LAQ/SR/416 (hereinafter, the “*earlier Award*”), wherein compensation was awarded at the rate of Rs. 12/- per square meter in respect of the adjoining land.
- g) In respect of the present acquisition, Notification No. LAQ-B4969 dated 24<sup>th</sup> October 1975 under Section 4 of the Land Acquisition Act came to be published in the Government Gazette on 4<sup>th</sup> December 1975. This was followed by an erratum bearing No.

LAQ-B-5357 dated 3<sup>rd</sup> January 1976 which came to be published on 26<sup>th</sup> February 1976.

- h) It further appears that subsequent notifications were issued, including inter alia, notification bearing No. GB-DESK I LAQ-B-6/1525 dated 22<sup>nd</sup> November 1978 and the declaration under Section 6 bearing No. GB-DESK I LAQ-B-1526. The dates of publication of the Section 6 notification appear from the record as 22<sup>nd</sup> November 1979.
- i) *Smt. Fatimabai* is stated to have gifted the remaining property to *Mohd. Iqbal Abdul Hamid* by way of *hiba* on 16<sup>th</sup> November 1975. The said gift was supported by a joint declaration of the donor and the donee dated 21<sup>st</sup> November 1975, executed before the Metropolitan Magistrate, Bombay.
- j) The claim of *Mohd. Iqbal Abdul Hamid* was that, by virtue of the said *hiba* / gift, he became entitled to the land and the bungalow standing thereon. The Collector, Bombay, by communication / order dated 24<sup>th</sup> September 1976, accepted the joint declaration /

gift and directed payment of recurring compensation / rent to the said *Mohd. Iqbal Abdul Hamid*.

- k) The relatives of *Smt. Fatimabai*, including Claimant Nos. 2(a) to 2(f), disputed the title of *Mohd. Iqbal Abdul Hamid* and claimed rights in the acquired property, on the footing of succession to *Smt. Fatimabai*. It appears that the Collector had rejected the claims of the said relatives for bringing their names on revenue and requisition records by letter dated 20<sup>th</sup> September 1976 addressed to *Shri A.N. Bantawala*.
- l) During the acquisition proceedings, *Mohd. Iqbal Abdul Hamid* addressed a letter dated 23<sup>rd</sup> June 1986 to the SLAO claiming compensation in respect of the acquired land. In the said letter, he claimed compensation at the rate of Rs. 90/- per square meter for the land, besides further compensation for bungalow and trees.
- m) By an Award dated 23<sup>rd</sup> September 1986, as amended on 26<sup>th</sup> November 1986, the SLAO awarded compensation to the tune of Rs. 6,59,892.60 in respect of the acquired land. The compensation was determined at the rate of Rs. 20/- per square meter. The

amount was not paid directly to *Mohd. Iqbal Abdul Hamid*, as there existed a dispute regarding the title of the acquired land between him and the relatives of the donor, *Smt. Fatimabai*. The amount was accordingly deposited in the Court.

- n) Notice under Section 12(2) of the Act was issued on 1<sup>st</sup> January 1987, recording that the Award in respect of acquired land admeasuring 11,565 square meters had been declared on 23<sup>rd</sup> September 1986 and that possession of the acquired land would be taken on 6<sup>th</sup> January 1987.
- o) Being dissatisfied with the Award dated 23<sup>rd</sup> September 1986, as subsequently amended on 26<sup>th</sup> November 1986, *Mohd. Iqbal Abdul Hamid* sought the present Reference under Section 18 of the said Act. Under these circumstances, the present Reference was made pursuant to the letter dated 6<sup>th</sup> June 1990 and came to be registered as Land Acquisition Reference No. 11 of 1990.
- p) *Mohd. Iqbal Abdul Hamid* passed away on 7<sup>th</sup> August 1989. Thereafter, his legal heirs, including *Shamshida Begum*, were brought on record and continued the proceedings. *Shamshida*

*Begum* also addressed a letter dated 8<sup>th</sup> September 1989 in respect of rental arrears.

- q) Since rival claims were raised by the relatives of *Smt. Fatimabai*, including Claimant Nos. 3 to 5 and other Claimants, the Reference also involves a dispute under Section 30 of the Act. However, by order dated 19<sup>th</sup> December 2006, passed by this Court upon consent terms dated 18<sup>th</sup> December 2006, the dispute regarding apportionment came to be settled between Claimant No.1, Claimant Nos. 1(a) to 1(c), Claimant Nos. 2(a) to 2(f) and Claimant No.6.
- r) Claimant Nos. 3 to 5 remained absent from the inception of the proceedings, despite service. Consequently, the proceedings under Section 30 stood disposed of by the said order dated 19<sup>th</sup> December 2006. Under the said Consent Terms, the parties agreed that Claimant Nos. 2(a) to 2(f), and Claimant No. 6 shall have no right, title and interest in the acquired property, in exchange for a 1/3<sup>rd</sup> share in the amount determined under the Award to each of the said parties, namely, Claimant Nos. 1, 1(a) to 1(d) on the one hand, Claimant Nos. 2(a) to 2(f) on the other hand and Claimant No. 6 on

the third hand. It was further agreed that only Claimant Nos. 1, 1(a) to 1(d) would pursue the present Reference and be entitled to the amounts that may be enhanced thereunder. Thus, the only surviving issue in the present Reference is the claim for enhancement of compensation under Section 18 of the said Act.

- s) Accordingly, pursuant to the application made by *Shamshida Begum*, Claimant No. 1, on behalf of herself and Claimant Nos. 1(a) to 1(d), the SLAO made the present Reference before this Court. In view of the order dated 19<sup>th</sup> December 2006 disposing of the proceedings under Section 30, the present Reference now survives only for consideration of the claim for enhancement of compensation under Section 18 of the said Act. After the present Reference was filed, Claimant No. 1(d) had passed away.

SUBMISSIONS OF CLAIMANT NOS. 1, 1(A) TO 1(C)

5. Mr. Pradip Kadam, learned Counsel appearing for Claimant Nos. 1 and 1(a) to 1(c) (***“Claimants”***), submits that the compensation awarded by the Special Land Acquisition Officer (***“SLAO”***) at the rate of Rs. 20/- per square meter is wholly inadequate, arbitrary and contrary to the material

available on record. It is pointed out that the acquired land is situated at Village Malad, Taluka Borivali, Mumbai Suburban District, and admeasures 11,565 square meters out of Survey No. 91 and Survey No. 91 (part). According to Mr. Kadam, the acquired land, along with the bungalow and other appurtenant structures standing thereon, possesses substantial non-agricultural and development potential and therefore could not have been valued at the nominal rate awarded by the SLAO.

6. Mr. Kadam points out that the Section 4 notification is dated 24<sup>th</sup> October 1975 and was published in the Government Gazette on 4<sup>th</sup> December 1975. He submits that the relevant date for determination of market value is therefore the date of publication of the Section 4 notification. He contends that the SLAO has failed to determine the true market value of the acquired land as on the relevant date and has instead adopted a depressed and unrealistic rate.
7. He further submits that the acquired land is situated in a developed locality within Mumbai Suburban District. He emphasizes that the Award itself records that the land is within walkable distance from Malad and Kandivali Railway Stations, is near the Western Railway line and possesses very high non-agricultural potentiality. These factors, according to him, are material

and were required to be given due weight while determining the market value of the acquired land.

8. Mr. Kadam further points out that the Acquiring Body itself had placed material before the SLAO showing that the market value of the acquired land was higher than the rate ultimately awarded. He draws attention to the evidence of the Acquiring Body which records a rate of Rs. 27.50 per square meter in respect of a notification of the year 1970. It is therefore urged that if Rs. 27.50 per square meter represented the market value in or about 1970, then the fixation of compensation at Rs. 20/- per square meter for an acquisition notified in 1975 is *ex facie* absurd and unsustainable.
9. He points out that the Award proceeds on an erroneous basis inasmuch as, the SLAO merely considered Rs. 15/- per square meter that was determined in respect of the adjoining land which formed part of the earlier Award, added a 15% increase to the said amount (on the basis of 5% increase per annum) and arrived at the rate of Rs. 17.25 per square meter and thereafter, merely increased the rate to Rs. 20/- per square meter in respect of the acquired land. According to Mr. Kadam, such valuation ignores the location, potentiality, passage of time, and the escalation in land prices between the earlier acquisition and the present acquisition. He therefore

submits that the SLAO has failed to apply correct principles for determining market value under the Land Acquisition Act, 1894.

10. Mr. Kadam also invites attention to the fact that, adjoining land comprising of an area admeasuring approximately 3,284 square meters out of Survey No. 91 had been acquired by the Ministry of Defence pursuant to the earlier Award dated 28<sup>th</sup> March 1973. He however submits that market value of the adjoining land that was determined as on 28<sup>th</sup> July 1972 in the earlier acquisition cannot be mechanically relied upon so as to depress the market value of the acquired land in the present case. He points out that the present acquisition is pursuant to a later Section 4 notification and, therefore, the claimants are entitled to compensation as per the market value prevailing on the date of the present Section 4 notification.
  
11. Mr. Kadam submits that in the earlier Award, the SLAO had himself observed, in respect of some portion of the lands that the developed plots would fetch Rs. 45/- per square meter. However, after applying a hypothetical plotting scheme and deducting various amounts, the SLAO arrived at a much lower rate for that land, which method of valuation is assailed by Mr. Kadam as being unscientific, artificial and arbitrary, primarily on the ground that different rates were computed and granted for

different portions of the adjoining land. He submits that once the SLAO had noted that developed plots could fetch a rate as high as Rs. 45/- per square meter, the adoption of a much lower rate by applying deductions under a hypothetical plotting scheme is unjustified.

12. He submits that the Acquiring Body cannot justify the low rate computed in the Award on the ground that the adjoining land was previously requisitioned by the Ministry of Defence. According to him, requisition or occupation by the Defence authorities of such adjoining land does not extinguish the intrinsic market value or potentiality of the acquired land and he urges that what is required to be assessed is the fair market value of the land as on the relevant date under Section 4, having regard to its situation, potentiality and surrounding development.
  
13. He submits that the comparative chart of sale instances annexed to the Award indicates that there were no sale transactions produced for the years 1973 to 1975. He submits that the absence of sale instances for the said period cannot be used to the prejudice of the Claimants, particularly when the market was affected by several external factors during that period. Learned Counsel submits that the absence of sale transactions for the years 1973 to 1975 has to be appreciated in the context of prevailing

circumstances which resulted in this position including inter alia, the 1971 India-Pakistan War, the 1972 drought in Maharashtra, the Proclamation of Emergency in 1975, the Maharashtra Vacant Lands (Prohibition of Unauthorized Occupation and Summary Eviction) Act, 1975, and the enactment of the Urban Land (Ceiling and Regulation) Act, 1976. He submits that these factors had an impact on land transactions and market behavior during the said period. He therefore contends that the absence of sale instances between 1973 and 1975 should not lead to an inference that the market value of the acquired land was low. On the contrary, he argues that the earlier instances and the location and potentiality of the land indicate that the market value was substantially higher than Rs. 20/- per square meter.

14. Mr. Kadam submits that the comparative chart of sale instances shows that the rates varied substantially over the earlier years. He points out that in the year 1970 itself, some properties had fetched as high a rate as Rs. 77.38 per square meter. According to Mr. Kadam, this demonstrates that the rate of Rs. 20/- per square meter awarded for the present acquisition, which relates to a later Section 4 notification, is grossly inadequate.

15. He also points out that there is a discrepancy in the area of the acquired land. He submits that the joint measurement of the acquired land indicated an area of 12,925 square meters, whereas the Award only considers and values the acquired land to be only 11,565 square meters. It is therefore urged that an area of approximately 1,360 square meters has been excluded from acquisition / valuation and therefore the Claimants would also be entitled to appropriate relief and compensation in respect of such excluded area.
16. He further submits that *Mohd. Iqbal Abdul Hamid* had, by his application/claim dated 23<sup>rd</sup> June 1986, specifically claimed compensation at the rate of Rs. 90/- per square meter for the land, Rs. 60,000/- towards the bungalow and Rs. 25,000/- towards trees. The said claim, according to him, was supported by instances from the years 1970 to 1975 and a chart was submitted in that regard before the SLAO.
17. Mr. Kadam relies upon the sale / acquisition instances and the comparative chart forming part of the acquisition record in support of the claim for enhancement. He submits that the said material shows that lands in Malad and surrounding areas had fetched rates substantially higher than Rs. 20/- per square meter even prior to the present Section 4 notification. He points

out that the chart refers to several transactions between the years 1967 and 1974, including instances registered in the years 1973 and 1974, where the rates ranged from approximately Rs. 25.11/- per square meter to Rs. 59.80/- per square meter. According to him, these instances demonstrate that the rate of Rs. 20/- per square meter awarded by the SLAO is wholly inadequate and does not reflect the true market value of the acquired land as on 4<sup>th</sup> December 1975. He thereafter contends that the instances relied upon by the Claimants demonstrate that the market value of the acquired land is substantially higher than Rs. 20/- per square meter. On this basis, he submits that the Claimants have established that the compensation awarded by the SLAO is inadequate and requires enhancement.

18. He further submits that the Claimants are not restricted to the rate of Rs. 90/- per square meter mentioned before the SLAO. In the present Reference, he points out that *Mohd. Iqbal Abdul Hamid* had filed an application dated 9<sup>th</sup> February 1987 seeking reference under Section 18 of the said Act claiming compensation at the rate of Rs. 495/- per square meter, besides compensation for the bungalow, trees and the balance land admeasuring 1,360 square meters. According to him, the said claim is required to be considered in the present Reference. It is urged that after the amendment to

the said Act, the Court is not restricted by the amount claimed by the Applicant and is empowered to award just compensation on the basis of the evidence and material on record together with all statutory benefits under the said Act, including solatium, additional component and interest.

19. He accordingly submits that the rate of Rs. 495/- per square meter claimed by *Mohd. Iqbal Abdul Hamid* in the application for reference is reasonable and deserves consideration. In the alternative, he submits that this Court may determine such fair and just, market value of the acquired land, as is warranted by the material on record, after giving due weight to the potentiality, location, comparable material, escalation and the special circumstances affecting transactions during the relevant period.
  
20. In support of his submissions, Mr. Kadam places reliance on the judgment of the Hon'ble Supreme Court in *Ashok Kumar and another v. State of Haryana*<sup>1</sup>, to submit that after the 1984 amendment to the said Act, the earlier cap restricting the Court from granting compensation beyond the amount claimed by an Applicant has been omitted. Mr. Kadam submits that the statutory duty of the Court is to award just compensation, and not merely to confine itself to the figure mentioned in the initial claim.

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1 2016 4 SCC 544

21. Mr. Kadam also places reliance on the judgment of the Hon'ble Supreme Court in *P. R. Reddy v. Land Acquisition Officer*<sup>2</sup>, to submit that building potentiality of land is a relevant factor while determining its market value. He contends that in the present case, the location of the acquired land, its proximity to railway stations, its situation in Mumbai Suburban District and its non-agricultural potential clearly justify enhancement.
22. He further relies upon the decision in *Deputy Collector, Land Acquisition, Gujarat v. Madhubhai Gobarbhai*<sup>3</sup>, to submit that the existence of railway stations, roads, educational institutions, hospitals and other civic amenities are relevant factors while assessing the potentiality and market value of acquired land. According to him, the acquired land is situated in a developed and developing urban locality and therefore cannot be valued as ordinary or undeveloped land.
23. Reliance is also placed on the decision in *M. Kabra and others v. State of Maharashtra*<sup>4</sup>, to submit that annual escalation / increase is permissible while determining market value where the exemplar or earlier instance is of a prior date. Mr. Kadam submits that even if the SLAO or the Acquiring

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2 1995 2 SCC 305  
3 2009 SCC 15 125  
4 2018 SCC 1 140

Body relies upon earlier instances, appropriate escalation ought to have been granted up to the date of the present Section 4 notification.

SUBMISSIONS OF THE ACQUIRING BODY

24. At the outset, Mr. Niranjan Shimpi, learned Counsel appearing for the Acquiring Body concurs that the scope of adjudication in the present Reference is now confined only to the question of enhancement of compensation from the rate of Rs. 20 per square meter computed and determined in the Award.
25. In this regard, he points out that the land was requisitioned, as far back as in 1942 and was put in possession of the Military authorities for the purpose of the Central Ordnance Depot of the Ministry of Defence. He asserts that this fact has a material bearing on the nature, use and valuation of the acquired land. He therefore submits that unlike other land, the acquired land was not open, freely marketable land in ordinary possession of the owner. On the contrary, it had remained under requisition and in possession of the Defence authorities for several decades. He therefore submits that the Claimants cannot seek enhancement in its valuation on the footing that it was freely available for commercial or residential development.

26. Keeping this in mind, Mr. Shimpi submits that the Claimants have failed to discharge the burden of proving that the compensation awarded by the SLAO is inadequate. He submits that in a reference under Section 18 of the said Act, the burden lies on the Claimants to establish, by cogent evidence, that the market value of the acquired land is higher than the value determined in the Award. He submits that this position can be established by the Claimants by leading cogent evidence in that regard. According to him, in the present case, the Claimants have failed to lead such evidence which therefore, disentitles them to any reliefs.
27. Mr. Shimpi submits that the SLAO has followed due process of law while determining the compensation in the Award dated 23<sup>rd</sup> September 1986 which takes into account, the relevant material, including inter alia the nature of the land, the fact that it was already under requisition since 1942, the earlier acquisition of the adjoining land, the valuation material available before the SLAO, etc. He therefore submits that the Award is legal, proper and does not warrant any interference.
28. Mr. Shimpi relies upon the earlier Award passed in LAQ/SR/416 dated 28<sup>th</sup> March 1973 in respect of adjoining land admeasuring 3,284 square meters in Survey No. 91 and other lands. He submits that under the said earlier

Award, compensation was awarded at the rate of Rs. 12/- per square meter. He submits that such earlier acquisition was relevant in the present case because both acquisitions concern lands from Survey No. 91 of Village Malad and also because both lands were under requisition for the purpose of the Central Ordnance Depot.

29. It is submitted that the present Award dated 23<sup>rd</sup> September 1986 only grants compensation at the rate of Rs. 20/- per square meter. According to Mr. Shimpi, this represents an enhancement over the rate granted in the earlier Award and is therefore fair and reasonable in the facts and circumstances of the case.
30. He submits that the claimants cannot rely upon general assertions of potentiality without proving the same by evidence. He contends that the mere fact that the land is situated in Mumbai Suburban District or is near railway stations does not automatically establish that it had commercial potential or that it would necessarily fetch the exorbitant rate, as claimed by the Claimants.
31. Mr. Shimpi contends that the Claimants have failed to prove that the acquired land was used for any commercial purpose since the same was

admittedly in the possession of the Defence authorities and was used as part of the Central Ordnance Depot. He submits that in the absence of evidence showing actual commercial use, development permissions, comparable transactions or any reliable valuation evidence, the claim for commercial or high non-agricultural rate, as sought by the Claimants, cannot be accepted.

32. Mr. Shimpi points out that the Claimants have also failed to prove any comparable sale instance in accordance with law. According to him, the alleged instances relied upon by them have not been proved and cannot be treated as comparable instances. He further points out that Claimants have not established the location, area, nature, date, genuineness or comparability of the various comparable instances which they seek reliance upon and as a result, the said material cannot form the basis of their claim for enhancement.
33. Mr. Shimpi therefore submits that the Claimants' reliance on the alleged chart of instances for the years 1970 to 1975 does not assist them since the underlying documents and transactions have not been duly proved by them. He argues that a mere reference to certain instances in a claim/application before the SLAO does not amount to proof of their market value.

34. In support, he places reliance upon the judgment of the Hon'ble Supreme Court in *Shaji Kuriakose and Anr. v. Indian Oil Corporation Ltd. and Ors.*<sup>5</sup> to submit that though comparable sale instances may constitute a recognised method for determining market value, such instances can be relied upon, only when, the transaction is genuine, proximate to the date of the Section 4 notification, relates to land situated near the acquired land, and is comparable in respect of nature, size, situation and potentiality. He submits that the Claimants have failed to establish these foundational requirements in respect of the alleged sale instances relied upon by them. According to him, the sale instances in the chart cannot therefore be adopted mechanically for determining the market value of the acquired land.
35. He further submits that, *Mohd. Iqbal Abdul Hamid* had himself, by his letter dated 23<sup>rd</sup> June 1986, claimed compensation only at the rate of Rs. 90/- per square meter and contends that since *Smt. Shamshida Begum* is his legal representative, and merely steps into his shoes upon his demise, she cannot be permitted to claim compensation beyond what was claimed by *Mohd. Iqbal Abdul Hamid*.

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5 (2001) 7 SCC 650,

36. Mr. Shimpi therefore contends that the subsequent claim by *Smt. Shamshida Begum* of Rs. 495.20/- per square meter is merely an afterthought and is unsupported by cogent evidence. According to him, there is no material on record which justifies such a steep enhancement from Rs. 20/- per square meter to Rs. 495.20/- per square meter. He submits that no reliable calculation, comparable sale deed, valuation report or expert evidence has been produced to justify the said figure. He therefore submits that the said claim deserves to be rejected.
37. In support, Mr. Shimpi relies upon the evidence of *Smt. Shamshida Begum* (CW-1) and argues that the same also does not support her claim for enhancement. He points out that in cross-examination, CW-1 has expressly admitted that she had neither personally visited the acquired land, nor did she have any proper knowledge of its location, surroundings or market value. He points out that CW-1 also admitted to not being in possession of the 7/12 extracts of the acquired property but has instead, fairly admitted that her testimony is based, primarily on the information provided to her by third parties. By virtue of such admission, he strenuously submits that the Claimants has not led satisfactory evidence in support of their case of enhancement.

38. In so far as the Claimant's contention of the Award excluding an alleged area of land admeasuring 1,360 square meters is concerned, Mr. Shimpi vehemently submits that such issue is outside the scope of the present Reference which is restricted to the issue of enhancement, as provided under Section 18 of the said Act, which empowers the Court to only determine compensation in respect of the land actually acquired under the Award and cannot take into consideration and/or direct acquisition of additional land and/or grant compensation for any land which does not form part of the acquired land under the Award. In the present case, Mr. Shimpi points out that the acquired land under the Award is admittedly only 11,565 square meters and hence, the present Reference is restricted only to these lands/area.
39. In so far as the Claimant's claim for separate compensation towards the bungalow, trees and structures is concerned, Mr. Shimpi submits that the same has not been proved. He submits that the Claimants have failed to establish the nature, extent, condition and valuation of the alleged structures and trees, as on the relevant date and therefore, they are not entitled to any compensation / additional compensation under these heads. On the contrary, he contends that the Award has considered the existing material in relation

to the structures and has awarded compensation in accordance with the material and evidence on record.

40. Mr. Shimpi points out that the Acquiring Body has led the evidence of two witnesses, both of whom were Defence Estate Officers, namely, *Smt. Gita Kashyap Perti* (RW-1) and *Smt. Meenakshi Lohia* (RW-2) in support of the awarded compensation. He points out that the evidence led by these witnesses established that the acquired lands were being used as the Central Ordnance Depot, which is a restricted area and therefore, the public could not freely enter or inspect the same. He therefore submits that such restricted character of the acquired property was a relevant consideration whilst determining its valuation.
41. Mr. Shimpi therefore submits that the compensation awarded at Rs. 20/- per square meter is just, proper and reasonable, having regard to the totality of facts, including inter alia, the earlier acquisition of the adjoining land and does not call for any interference by this Court.

#### ANALYSIS, REASONS AND FINDINGS

42. I have heard the learned Counsels appearing for the Claimants and the Acquiring Body. I have also perused the pleadings, the Award, the oral and

documentary evidence led by the parties and the written submissions tendered on their behalf.

43. At the very outset, it is necessary to clarify the scope of the present adjudication. The present Reference was initially made under Sections 18 and 30 of the said Act. The dispute under Section 30 pertained to apportionment of the awarded amount and the entitlement to receive it, between the Claimants. However, the said dispute was amicably settled between them and pursuant to consent terms filed by the parties, the same stood disposed of by order dated 19<sup>th</sup> December 2006 passed by this Court. By consent, the parties have agreed that only the Claimants herein, namely, Claimant Nos. 1, 1(a) to 1(c) would be entitled to prosecute and receive the amounts that may be determined and granted in this Reference under Section 18 of the said Act. Therefore, the only issue which now survives for determination in the present Reference is the claim for enhancement of compensation by the Claimants.
44. At the outset, it is held that the grievance of the Claimants regarding the alleged exclusion of land admeasuring approximately 1,360 square meters cannot be adjudicated upon, in the present Reference. The jurisdiction of the Reference Court under Section 18 of the said Act is confined to

determining compensation in respect of the land actually acquired under the Award, which, in the present case, concerns land admeasuring only 11,565 square meters and cannot travel beyond such area. Admittedly, even the Section 4 notification, which is reproduced in the Award, clearly mentions the area of the acquired land as only 11,565 square meters and not 12,925 square meters, as now alleged by the Claimants.

45. Hence, it is revealed that, from the very inception, the Claimants were aware of the exact area of the acquired land and which exact area is the subject matter of the Award. There is no discrepancy in this regard. Instead, the argument that is now sought to be canvassed by the Claimants is that the Central Ordnance Depot is supposedly in occupation of an additional 1,360 square meters of land (in addition to the 11,565 square meters which has been acquired) and which additional land also, ought to have been included in the Award and compensated to them. Such argument cannot be countenanced in the present Reference under Section 18 of the said Act. The remedy of the Claimants in that regard is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a Writ Petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, malafide or without the authority of law,

and seek an appropriate direction that such additional land should also be acquired in a manner known to law, as has been laid down by the Supreme Court in *Syed Maqbool Ali vs. State of Uttar Pradesh and Anr.*<sup>6</sup>

46. The relevant date for determining the market value of the acquired property is the date of publication of the Notification under Section 4 of the said Act. In the present case, the Section 4 Notification is dated 24<sup>th</sup> October 1975 and was published in the Government Gazette on 4<sup>th</sup> December 1975. As a result, the market value of the acquired land is required to be determined with reference to the said date. It is now well settled that a Reference under Section 18 of the said Act is in the nature of an original proceeding where the burden lies upon the Claimants to establish that the compensation awarded by the Special Land Acquisition Officer is inadequate. At the same time, the Court is also required to independently determine just and fair compensation of the acquired land on the basis of the material before it. The Court is not bound merely by the conclusion reached in the Award, nor is the Court required to accept the claim made by the Claimants unless the same is supported by cogent evidence.

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47. It is now trite law and well settled by several judicial pronouncements that the determination of market value is not a matter of mathematical precision. It is an exercise of judicial assessment based on comparable material, potentiality, location, nature of the land, existing advantages and relevant disadvantages. While comparable sale instances may provide guidance, the Court must also consider whether such instances are truly comparable and whether any adjustment is required having regard to the facts of the acquired land.
48. In the present case, the acquired land admeasures 11,565 square meters and forms part of Survey No. 91 and 91 (Part), of Village Malad, Taluka Borivali, Mumbai Suburban District. The SLAO has awarded compensation at the rate of Rs. 20/- per square meter. In the present Reference, the Claimants seek compensation at Rs. 495.20 per square meter. The said claim must therefore be tested against the evidence on record and the settled principles governing determination of market value.
49. However, before proceeding to such adjudication, it would be apposite to deal with the contention of the Acquiring Body, which urges that since the original Claimant, *Mohd. Iqbal Abdul Hamid* had earlier claimed compensation at the rate of Rs. 90/- per square meter by his letter dated 23<sup>rd</sup>

June 1986, the Claimants are now precluded from seeking any higher compensation. I am unable to accept this argument. In *Ashok Kumar* (supra), the Supreme Court has held that after the amendment of the said Act, the Reference Court is not mechanically restricted to the amount claimed by the Applicant and is required to award fair and just compensation on the basis of the material on record.

50. However, the principle in *Ashok Kumar* (supra) does not mean that the Claimants are relieved of the obligation of proving the market value of the acquired property that is claimed by them. The deletion of the earlier statutory restriction only enables the Court to award fair and just compensation where the evidence justifies such position. It does not authorise the Court to grant an amount unsupported by evidence. Thus, in the present case, whilst the claim of Rs. 495.20 per square meter is not liable to be rejected merely because the original Claimant had claimed Rs. 90/- per square meter before the SLAO, the Claimants are still required to establish and prove the said higher rate, by leading cogent evidence in that regard.
51. The Award dated 23<sup>rd</sup> September 1986 indicates that the SLAO had considered the material placed before him whilst determining the market

value of the acquired land. The Award records the reliance of the Acquiring Body to the rate of Rs. 27.50/- per square meter which had been offered by the Collector of Bombay in respect of lands at Survey No. 93 on 2<sup>nd</sup> November 1970. The SLAO, however, declined to adopt the said rate as the basis for determining the market value of the acquired land. The reason recorded in the Award is that the said rate had been offered in proceedings under a different Act, namely, the Requisitioning and Acquisition of Immovable Property Act, 1952, and therefore could not be treated as a proper basis for determining the market value in the present acquisition under the said Act.

52. The Award considers the prices determined in earlier awards for similar lands that were acquired. In this context, the SLAO noted the highest rate of Rs. 15/- per square meter that had been computed and awarded therein and since the acquired land was also situated in the same vicinity and locality of such lands, the SLAO treated the earlier awards as relevant comparable material. He allowed escalation of 15% on this rate (at the rate of 5% per annum) and arrived at the rate of Rs. 17.25/- per square meter. The SLAO then considered the peculiarities of the acquired land, including inter alia,

its proximity to the railway station and the Western Express Highway and thereafter, fixed its market value at Rs. 20/- per square meter.

53. In the present Reference, the SLAO has led the evidence of two witnesses, RW-1 and RW-2, both being Defence Estate Officers. Whilst the witness statement of RW-1 is dated 16<sup>th</sup> December 2011, that of RW-2 is dated 1<sup>st</sup> January 2015. However, ultimately, the SLAO did not present RW-1 for cross-examination and only RW-2 was cross-examined. Hence, the testimony contained in the witness statement of RW-1 cannot be considered in support of the SLAO and only the evidence of RW-2 will have to be considered. A perusal of the witness statement of RW-2 would reveal that she not only deposed on the facts pertaining to the acquired property but also on the valuation that was arrived at in the Award. However, as disclosed in the further examination-in-chief, her entire testimony is based on her knowledge that she derived from perusing the records from the office. They are not to her personal knowledge. Moreover, in the very first Q&A in cross-examination, she candidly confirmed that she joined the services of the Ministry of Defence only on 13<sup>th</sup> April 2011. She therefore cannot possibly be said to have any personal knowledge about the

acquisition proceedings and/or about the condition of the acquired property as on 4<sup>th</sup> December 1975.

54. On the other hand, the Claimants led the evidence of Claimant No. 1 (CW-1). A perusal of the witness statement of CW-1 dated 21<sup>st</sup> January 2011 would reveal that she has merely stepped into the shoes of her husband, the original Claimant who passed away in 1989. As a result, her entire testimony reveals that she had no personal knowledge in the matter, considering that her husband was looking after the affairs and her knowledge is derived from the documents that have been perused by her, after his demise. It is in this manner that she seeks to produce and prove the five instances of sale that were initially submitted by her husband to the SLAO, vide his letter dated 23<sup>rd</sup> June 1986. She has also tendered a certified copy of the corresponding agreements in respect of these five instances of sale that were obtained by her husband from the Sub-Registrar of Assurances and sought to prove the market value of the said five instances of sale. However, during cross-examination, she has candidly admitted to her lack of personal knowledge in the matter. So much so that, she has in fact, admitted that, she has never even seen the acquired property and her

only knowledge in that regard is gathered from a map thereof that is stated to be in her possession.

55. The relevant details of the five instances of sale that are sought to be relied upon by CW-1 are summarised hereunder:

Sr. No.	Registration No./Date	Area	Consideration	Rate per sq. mtr.	Seller	Purchaser	Remarks
1.	184/73 dated 21.04.1973	1571.6 3 sq. mtrs.	Rs. 40,000/-	Rs. 25.45/-	Issondas & Ors.	K.V. Pai & Anr.	Reserved for garden
2.	1646/74 dated 26.04.1974	1266.6 8 sq. mtrs	Rs. 50,000/-	Rs. 39.47/-	V.S. Parikh & Ors.	Rashid Hussain & Ors.	Agreement for sale of 1970
3.	1699/74 dated 30.04.1974	4017.4 6 sq. mtrs.	Rs. 2,40,250/-	Rs. 59.80/-	Maneckbai H. Sahar & Ors.	R.H. Ramajiya & Ors.	Agreement for sale of 1972
4.	513/74 dated 30.03.1974	1755.8 7 sq. mtrs.	Rs. 44,100/-	Rs. 25.11/-	Rajabhalli Dandawal	Tukaram Salvation Trust	Agreement for sale of 1972
5.	337/74 dated 28.02.1974	699 sq. mtrs.	Rs. 19,999/-	Rs. 28.61/-	Sayab- hanma Parab & Ors.	Arvindbhai Patel	Tenanted property

56. However, besides producing the corresponding documents / agreements for sale, etc. in respect of the five instances of sale, CW-1 has not satisfactorily led any evidence as to how any of the instances can be treated as a comparable sale instance. Admittedly, she is not an expert on valuation. She has neither deposed as to the location of the five instances and established their proximity to the acquired property nor has she proved the rate which emerges from the said instances and/or the manner in which such rate can be considered for the purposes of comparison in the present Reference for determining the fair market value of the acquired property.
57. The judgments relied upon by the Claimants support the broad proposition that location, development potential and surrounding amenities are relevant factors whilst determining the fair market value. In *P. R. Reddy* (supra), the Supreme Court has recognised building potentiality as a relevant factor while determining market value whilst in *Madhubhai Gobarbhai* (supra), surrounding development and amenities have been treated as relevant circumstances while assessing potentiality. Similarly, *M. Kabra* (supra) supports the principle that where an earlier instance is relied upon, reasonable escalation may be considered, depending upon the facts and evidence.

58. These judgments, however, do not lay down that the highest rate claimed by a Claimant must be granted merely because the land is situated in an urban or developing locality. The said authorities require the Court to consider potentiality, surrounding development and escalation where the foundational facts are established. In the present case, however, they assist the Claimants to the extent that the acquired land cannot be valued as land having no development potential merely because it was under requisition or because it was in possession of the Defence authorities. However, it is reiterated that these decisions do not dispense with the requirement of the Claimants proving comparable material or reliable evidence to support the enhanced rate claimed.
59. The Acquiring Body has, on the other hand, emphasised that the land was under requisition since the year 1942 and was in possession of the Defence authorities for the purposes of the Central Ordnance Depot and therefore there was no development potential. However, they have not led any cogent evidence in this regard. Nonetheless, since the possession of the Defence authorities is not disputed by the Claimants, the same would certainly be treated as a relevant circumstance and operate as a moderating factor. This

is moreso since the acquired land was not freely available to the Claimants for immediate sale, occupation or development in the open market.

60. In the landmark decision in *Chimanlal Hargovinddas v. Special Land Acquisition Officer*<sup>7</sup>, the Supreme Court has held that while determining market value, the Court must consider the relevant plus and minus factors. In the present case, the location of the land, proximity to railway station and non-agricultural potentiality would be relevant positive (plus) factors. On the other hand, the large area of acquisition, long-standing requisition, possession of the Defence authorities, restricted access and absence of immediate free-market development would be relevant negative (minus) factors.
61. In *Shaji Kuriakose* (supra), the Supreme Court held that the comparable sales method is generally preferred for determining market value, since it provides evidence of the price which a willing purchaser would pay for similar land in the open market at or about the time of the Section 4 notification. However, the Court has also cautioned that the said method is not conclusive in every case. It has been held that, before a sale instance can be safely adopted, the Court must be satisfied that the sale transaction is

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<sup>7</sup> (1988) 3 SCC 751

genuine, that it is proximate to the date of the Section 4 notification, that the land covered by the sale is situated in the vicinity of the acquired land, that the land covered by the sale is similar to the acquired land, and that the size of the plot covered by the sale is comparable to the land acquired. It has been further held that where there are dissimilarities in locality, shape, site or nature of land, it is open to the Court to proportionately reduce the compensation having regard to the disadvantages attached to the acquired land.

62. Applying the aforesaid principles to the present case, the sale instances relied upon by the Claimants cannot be adopted. On the one hand, the said instances vary in area, date, nature and surrounding circumstances with some of them being based on agreements for sale of earlier years though registered in 1974. One instance concerns land reserved for garden and another concerns tenanted property. Further, the acquired land in the present case is a large parcel admeasuring 11,565 square meters, whereas the sale instances relied upon relate to smaller parcels. The acquired land was also under requisition since 1942 and was in restricted possession of the Defence authorities. These circumstances are material disadvantages which prevent the Court from adopting the highest sale instance as it stands. On

the other hand, and more importantly, the only deposition on these five instances of sale have come from the testimony of Claimant No. 1 (CW-1) who is admittedly not an expert valuer nor stated to have knowledge about the same. She has not deposed on these five instances nor shown how they can be treated as comparable sale instances for determining the fair market value of the acquired property. Hence, this Court has no other option but to discard these five instances of sale completely. They cannot be treated as comparable instances of sale.

63. The Claimants also rely upon the observation in the earlier Award that developed plots from F. E. Dinshaw Trust land could fetch Rs. 45/- per square meter. This circumstance is relevant because it indicates that developed plots in the vicinity were considered to have a substantially higher value. However, the acquired land in the present case cannot be treated on par with fully developed plots that were observed in the earlier Award, especially considering the various differences with regard to the size of the acquired land, its requisition since 1942, its restricted possession and the absence of immediate free-market development. The earlier Award dated 28<sup>th</sup> March 1973, cannot control the determination in the present Reference. The earlier acquisition was based on a different Section 4

notification. The present acquisition has to be valued with reference to the Section 4 notification published on 4<sup>th</sup> December 1975. Thus, the earlier rate of Rs. 12/- per square meter may provide historical context, but cannot be treated as a binding benchmark for the present acquisition.

64. In the premises, this Court concludes that neither party has led proper and/or effective evidence in the matter which can be considered by this Court in order to arrive at and determine the fair market value of the acquired property. However, this would not result in an automatic dismissal of the claim for enhancement. The Court is still required to consider the documentary material, the Award, the earlier acquisition, the location and potentiality of the acquired land and the surrounding circumstances and determine the fair market value. Considering the above findings, and in the absence of any evidence on record, this Court cannot entertain the claim for enhancement of the valuation of the bungalow/structures standing on the acquired land and also towards compensation for trees that are stated to be on the acquired land.
65. It is in the light of the aforesaid material that the adequacy of the rate of Rs. 20/- per square meter awarded by the SLAO is required to be examined. The Claimants have not proved the claimed rate of Rs. 495.20/- per square

meter. There is no expert valuation or other reliable material which would justify such a steep enhancement. Equally, the rate of Rs. 20/- per square meter awarded by the SLAO in the Award also does not appear to reflect the fair market value of the acquired land as on 4<sup>th</sup> December 1975. The earlier Award also records that developed plots in the vicinity could fetch around Rs. 45/- per square meter. The acquired land had locational advantages and non-agricultural potentiality. Therefore, the rate awarded by the SLAO requires reconsideration. The material on record therefore presents two extremes. On one hand, the claim of Rs. 495.20/- per square meter is not supported by any comparable sale instance, expert valuation or cogent calculation. On the other hand, the rate of Rs. 20/- per square meter awarded by the SLAO does not adequately reflect the location, potentiality and surrounding valuation material. The task of this Court is therefore to arrive at a reasonable figure which does not accept the exaggerated claim of the Claimants, but at the same time, also does not affirm an inadequate award.

66. In such circumstances, and having regard to the totality of the material on record, the relevant date of valuation being 4<sup>th</sup> December 1975, the location of the acquired land, its potentiality, the earlier acquisition from Survey No.

91, the observation regarding developed plots at Rs. 45/- per square meter, the fact that the land was under requisition since 1942, the large area of acquisition, the restricted possession with the Defence authorities and the absence of reliable proof for the exaggerated claim of Rs. 495.20/- per square meter, I am of the view that the market value of the acquired land deserves to be fixed at Rs. 27.50 per square meter.

67. The said rate strikes a fair balance between the competing contentions. It rejects the exaggerated claim of the Claimants, but also recognises that the Award of Rs. 20/- per square meter does not reflect the fair market value of the acquired land. The rate of Rs. 27.50 per square meter is supported by the surrounding material and also factors in necessary moderation on account of requisition, size of the land and lack of immediate free-market development. The Claimants are therefore entitled to enhanced compensation by determining the market value of the acquired land admeasuring 11,565 square meters at the rate of Rs. 27.50 per square meter, instead of Rs. 20/- per square meter awarded by the SLAO in the Award.
68. In view of the above findings and observations, the present Land Acquisition Reference No. 11 of 1990 is partly allowed and disposed of in the following terms:

- (a) The Claimants are entitled to enhanced compensation towards market value of the acquired land admeasuring 11,565 square meters at the rate of Rs. 27.50 per square meter as on the relevant date, namely, 4<sup>th</sup> December 1975.
- (b) The Claimants shall be entitled to an additional amount / component under Section 23(1-A) of the said Act, at the rate of 12% per annum on the enhanced compensation from the date of notification till the date of taking possession, as applicable.
- (c) The Claimants are entitled to Solatium at the rate of 30% on the enhanced compensation under Section 23(2) of the said Act.
- (d) The Claimants are entitled to interest under Sections 28 and 34 of the said Act, as applicable, on the enhanced compensation until realisation.
- (e) The amounts, if any, already paid to the Claimants under the Award passed under Section 11 of the said Act shall be adjusted against the compensation awarded by this Court in the present Reference.
- (f) The SLAO shall compute the balance amount payable to the Claimants and ensure disbursement thereof in accordance with law.

- (g) The Claimants shall submit their calculation and computation of the compensation and statutory benefits payable to the SLAO and the Acquiring Body within a period of two weeks from the date of uploading of this Judgment.
- (h) The SLAO and the Acquiring Body, after making due adjustment of amounts, if any, already paid under the Award under Section 11 of the said Act, shall pay the balance amount to the Claimants within a period of four weeks from the date of submission of such calculation, along with all statutory benefits as directed hereinabove, in accordance with law.
- (i) The present Land Acquisition Reference No. 11 of 1990 is accordingly disposed of. There shall be no order as to costs.

**( FARHAN P. DUBASH, J. )**

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