

(2008) 04 GUJ CK 0053

In the Gujarat High Court

Case No : First Appeal No's. 5028, 5029 and 5030 of 2007

Dy. General Manager

APPELLANT

Vs

Patel Anil Bachubhai and Another

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, 2, 2(12), 53, 54
Land Acquisition Act, 1894 — Section 18, 2(12), 23, 23(1), 23(2)

Citation : (2008) 04 GUJ CK 0053

Hon'ble Judges : M.R. Shah, J;J.R. Vora, J

Bench : Division Bench

Advocate : Ajay R. Mehta, for the Appellant; Sunit Shah, Govt. Pleader, A.J. Desai and Dipen Desai, AGPs for Defendant 2, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—As common question of law and facts arise in this group of First Appeals, they are being disposed of by this common judgment and order.

2. Present Appeals are filed by the appellant - acquiring body - original opponent No. 2 - ONGC u/s 54 of the Land Acquisition Act challenging the judgment and award passed by the learned Principal Senior Civil Judge, Gandhinagar dated 12.09.2006 in L.A.R. Nos. 168 of 2002 to 170 of 2002 (main LAR No. 168 of 2002) by which the learned Reference Court has partly allowed the aforesaid reference cases directing the appellant to pay additional amount of rental compensation at the rate of Rs. 5.00 paise per Sq. Mtr. per year from the date of taking possession with interest at the rate of 9% per annum for the additional amount of rent from the date of rent becomes due till realization and also to go on to pay increased rate of rent as per the decision of the ONGC taken on administrative side from time to time. The appellant is also directed to pay aforesaid amount of rent from the date of taking possession till possession is handed over back to the original claimants - respondents herein.

3. Private respondents - original claimants (herein after referred to as

"claimants") are the owners of the agricultural lands (herein after referred to as "lands") at Village - Shertha. As the land was required for drilling oil - wells, Dy.General Manager, Ahmedabad Project submitted proposal for temporary occupation of the lands. Since, it appeared to the appropriate Government that land was needed for public purpose, said proposal was accepted by it and pursuant thereof exercised powers u/s 35(1) of the Land Acquisition Act (hereinafter referred to as "the Act") and directed the Collector to procure occupation of the lands. After complying with necessary formalities, the Collector procured occupation of the lands in the month of December, 1988. That thereafter, claimants / lands owners were called upon to appear before the Dy. Collector and Special Land Officer (ONGC-Ahmedabad) for determining rental / compensation and declared award u/s 35(2) of the Act on 07.12.1988 declaring rental / compensation at the rate of Rs. 1.00 paise per Sq. Mtr. per annum. Since claimants were dissatisfied with the rate of compensation / rental fixed by the Dy. Collector and Special Land Acquisition Officer, they raised dispute by submitting application before the Special Land Acquisition Officer on 15.12.2000 purporting to be under subsection (3) of Section 35 of the Act before the Dy. Collector and Special Land Acquisition Officer and requested to refer the dispute to the Reference Court. In the said Reference Application, the claimants claimed compensation / rental at the rate of Rs. 20/- per Sq. Mtr. Per year. The Collector referred difference as to the sufficiency of the compensation to the Court for its decision u/s 35(3) of the Act. Proceedings were numbered as Land Acquisition Reference Cases Nos.168/2002 to 170/2002. Before the Reference Court the claim was made for Rs. 19.00 paise per Sq.Mtr.Per year (in all Rs. 20/- per Sq. Mtr. per year). It was the case on behalf of the claimants that compensation / rental awarded to them were totally inadequate and the Land Officer has not properly determined the market rate so far as the acquired lands are concerned. It was also stated by the claimants that acquired lands were of great potential and fetch more value. It was submitted that Land Acquisition Officer committed an error in determining actual rent of the acquired lands. It was also averred that the villages where the lands are situated has various facilities such as electricity, water supply, school, hospital etc. According to them annual income from the agricultural produce after deducting 1/5th expenses is Rs. 50,000/- to Rs. 60,000/- per vigha per year. Therefore, it was requested to award rental / compensation at Rs. 10/- per Sq.Mtr.Per year. Claimants also claimed solatium, 10% price rise and the interest at the rate of 12% p.a.

4. Aforesaid cases of the claimants were resisted by the original respondents inclusive of the appellants by filing written statement and they denied the averments of the claimants. On behalf of the Special Land Acquisition Officer, objections were submitted at Ex.07. It was submitted on behalf of the Special Land Officer that rental/compensation awarded to the claimants are neither at low rate nor inadequate in any way. It was stated that Special Land Officer has considered all the relevant factors while fixing rental / compensation. Therefore, it was requested to dismiss the Reference Cases.

5. On behalf of the appellant - original opponent No. 2- ONGC written statement was filed at Exh.9. It was stated that Special Land Officer has unnecessarily referred the cases and therefore, same is not tenable in the eye of law. It was submitted that reference is barred by the principles of res-judicata and estoppel. It was stated that rent awarded by the Special Land Officer is just and proper and based on the contemporaneous evidence and that they cannot be awarded additional compensation without cogent evidence in support of the claim for additional rent. It was submitted that rent is based on yield. Therefore, there cannot be increase at the rate of 10% on the basis of the market value of the land and therefore, it was requested to dismiss the Reference cases. It was submitted on behalf of the appellant that the reference applications are not maintainable and are barred by limitation and/or they are required to be dismissed on the ground of delay and laches.

6. All the five Reference Cases were consolidated and common evidence was recorded in LAR No. 168/2002. Reference Court framed the issues at Exh.10. On behalf of the claimants one - Patel Kantibhai Laljibhai - claimant of LAR No. 168/2002 came to be examined at Exh.16. He relied upon the judgment and award passed by the Reference Court in LAR Nos.417/1998 and 780/1998 with respect to land acquired for the same purpose of Village Shertha, whereby the Reference Court determined the compensation / rental at the rate of Rs. 9.50 per.Sq.Mtr.per year and Rs. 10.00 per Sq.Mtr.Per year respectively. The certified copies of the said judgment were produced at Exh.14 and 15. Though in the examination-in-chief, it was deposed by the witness who was examined on behalf of the claimants that they were earning Rs. 50,000/- to Rs. 60,000/- per vigha per year after deducting 1/5th expenses and that they were taking three crops a year, in the cross-examination he has admitted that they have not produced any documentary evidence at the time of acquisition of the lands. He also admitted that he has not produced any report of the expert to prove his land is fertile. He also admitted that he was not maintaining books of accounts. He has also admitted in the cross-examination that he has not produced bills of agricultural produce. He has also admitted that he has not produced extract of village form 7/12. On behalf of the original opponent one - Kamlesh Haribhai Goradiya came to be examined at Exh.18. He was working as Special Land Officer - ONGC, Sabarmati. On behalf of the claimants they heavily relied upon the judgment and award passed by the Reference court in another case with respect to lands of Village - Shertha at Exh.14 and Exh.15. By relying upon the decision of this Court in the case of Shivilal v. Additional Special Land Acquisition Officer reported in (9) GLR 752, it was submitted on behalf of the claimants that as held by this Court in the aforesaid decision while determining compensation similar award passed by the Court or Land Acquisition Officer can be taken into consideration. Accepting the same, Reference Court held that earlier award passed by the Court of 3rd Additional Sr. Civil Judge, in LAR No. 321/2000 can be looked into for the purpose of determining actual rent compensation of the acquired lands.

7. On behalf of the original opponent - appellant, decision of the learned Single

Judge of this Court in the case of Oil and Natural Gas Commission Ltd. Vs. Pandya Prahladbhai Manilal and Others, was relied upon in support of their submission that Reference Court has no jurisdiction to determine / award rental/ compensation for the period beyond the period of three years from the date of taking possession. It was also submitted on behalf of the original opponent that rental / compensation with respect to temporary acquisition of the land can be determined only on yield basis and no evidence has been adducted by the claimants to prove agricultural income.

8. On the basis of the material produced before it, the Reference Court by impugned judgment and award dated 12.09.2006 partly allowed the Land Reference Cases solely relying upon the judgment and award passed by the learned 3rd Addl. Senior Civil Judge, Gandhinagar passed in LAR No. 312/2000 dated 29.05.2006 with respect to the lands situated in the village - Shertha by which the learned Judge fixed rental / compensation at Rs. 5.50 per Sq.Mtr.per with respect to award of 1988 and considering the time gap of about one year between the said two awards, the Reference Court held that the claimants would be entitled to 10% price in rise per each year and thus determined market value of the land in question at Rs. 6.00 per Sq.Mtr.per year (Rs.5.50 already awarded in LAR Nos.312/2000 + Rs. 0.50 paise - 10% price rise for ten months) and considering rental / compensation already paid at Rs. 1.00 per.Sq.Mtr., the Reference Court directed the appellant to pay additional compensation at Rs. 5.00 paise per Sq.Mtr.Per year from the date of taking possession with interest at 9% per annum for the additional amount of rent from the date of rent becomes due till realization and also to go on to pay increased rent as per the decision taken upon administrative side from time to time.

9. Being aggrieved and dissatisfied with the impugned judgment and award dated 12.09.2006 passed by the learned Principal Senior Civil Judge, Gandhinagar in Land Reference Cases Nos.168/2002 to 170/2002 (main LAR No. 168/2002), the appellant - original opponent No. 2 - ONGC has preferred the present appeals.

10. Learned Advocates appearing on behalf of the respective parties have produced paper book and have taken us to the documentary as well as oral evidence produced and we have gone through the same in detail. We have also called for Record and Proceedings of the respective land reference cases from the learned Reference Court which has been received and we have perused the same. Mr. Ajay Mehta, learned Advocate has appeared on behalf of the respective appellant - ONGC and Mr. A.J. Patel, learned Advocate has appeared on behalf of the respondents - original claimants - land owners.

11. Learned Advocates appearing on behalf of the appellant - ONGC have vehemently submitted that impugned judgment and awards passed by the learned Reference Court in respective LARs are wholly untenable in law and contrary to the provisions of Section 35 of the Land Acquisition Act. Mr. Mehta, learned Advocate appearing on behalf of the appellant has heavily relied upon

two decisions of this Court in the case of Patel Shambhubhai Bhaichanddas Vs. State of Gujarat and Another, and in the case of Oil and Natural Gas Commission Ltd. Vs. Pandya Prahladbhai Manilal and Others, and relying upon the aforesaid decisions, it is submitted that the Reference Court would not have any jurisdiction to award compensation / rental for any period beyond three years from the date of taking possession. It is submitted that in the present case, Reference Court has awarded compensation for the entire period which is contrary to the above referred judgments. It is submitted that as provided u/s 35 of the Land Acquisition Act temporary acquisition can be maximum for a period of three years and therefore, the Reference Court would have jurisdiction to award compensation / rental / damages only for a period of three years and therefore, any award awarding rental beyond period of three years by the Reference Court would be illegal and contrary to provisions of Section 35 of the Act. It is also submitted that even the appellant - ONGC has increased rent by giving periodical rise even after three years and the said amount of enhanced rental paid on the basis of administrative instructions have been accepted by the respective claimants - land owners without any objections meaning that there is implied extension of contract and / or agreement and that respective claimants have never objected to continuance of possession of the ONGC beyond period of three years. It is submitted that on the contrary by accepting enhanced rental on the basis of administrative decisions beyond period of three years, they have permitted ONGC to continue with the possession and therefore, also it cannot be said that possession of the ONGC beyond period of three years is unlawful and / or unauthorized occupation. It is also further submitted by Mr.Mehta, learned Advocate appearing on behalf of the appellant submitted that even the order passed by the Reference Court directing the appellant not only to pay additional amount of rental compensation but also to pay increased rate of rent as per decision taken up on administrative side from time to time is also beyond reference and even awarding rental beyond the claim of the respective claimants. It is submitted that the Reference Court ought not to have passed order to pay additional amount of rental compensation and also to pay increased rate of rent as per decisions taken on administrative side from time to time. It is submitted that as per decision taken upon administrative side, ONGC has paid Rs. 2.50 paise per Sq. Mtr. from 01/01/1997; Rs. 5.00 per sq. mtr. from 01/01/2003 and Rs. 7.50 per sq. mtr. from 01/01/2006. It is submitted that jurisdiction of the reference Court arise from statutory provisions and the Reference Court is creature of statute and therefore, Reference Court cannot act de hors the statute and exercise power beyond statutory provisions. Therefore, in exercise of power beyond statutory provisions would be illegal. It is further submitted that as held by this Court in the aforesaid two decisions in the case Patel Shambhubhai (supra) and in the case of Pandya Prahladbhai (supra), the Collector u/s 35 of the Act and /or Reference Court in a case of temporary acquisition has no jurisdiction to award rental compensation beyond period of three years. It is submitted that as held by this Court in the aforesaid decisions, in a case of temporary acquisition u/s 35 the Collector is empowered to refer dispute as to

compensation for the agreed term and maximum period of three years only. It is submitted that in the present case the Reference court has awarded rental beyond period of three years i.e. from the date of taking possession till possession is handed over back. It is submitted that in the present case periodical rent has been revised and increased by the ONGC from time to time and the said revision has been accepted by the persons interested in the land. Therefore, ONGC has retained possession with the consent of interested persons in the land and thus upon accepting enhanced amount of rental and by implication new agreement has come into existence and/or there is an implied extension of contract. Therefore, it cannot be said that after expiry of agreement period and / or after expiry of three years ONGC is in unauthorized occupation. It is submitted that even otherwise for any dispute with respect to rental beyond period of three years the Collector and / or Reference Court would not have any jurisdiction and if the claimants are aggrieved they can approach Civil Court and pray for damages. It is further submitted that even otherwise the Reference Court has materially erred in determining additional compensation / rental solely relying upon earlier awards with respect to another village. The Reference Court has erred in coming to the conclusion that annual rent would be Rs. 5.00 per Sq. Mtr. from the date of taking possession. It is submitted that the reference court has materially erred in relying upon the judgment and award with respect to land situated in the Village - Shertha in LAR No. 312/2000 dated 29.05.2006, though the same has not been exhibited. It is submitted that the Reference Court ought to have appreciated that while determining rental / compensation with respect to the temporary acquisition of the land, principles applied for determining compensation for permanent acquisition of land cannot be made applicable. It is submitted that rental / compensation with respect to temporary occupation of the land can be determined only on leading proper evidence with respect to income derived from the lands in question and only on yield basis. It is submitted that the Reference Court has materially erred in adopting principles of determining market value for the purpose of permanent acquisition by granting 10% price rise per year and relying upon the judgment and award passed by the Reference Court dated 29.05.2006 in LAR No. 312/2000 with respect to village Shertha. It is submitted that the Reference Court has materially erred in relying upon the decision of this Court in the case of Shivilal (supra). It is submitted that decision in the case of Shivilal(supra) is with respect to permanent acquisition. It is submitted that fertility of the lands vary from village to village and even land to land. It is submitted that the reference court ought to have appreciated that rental can be based only considering yield and considering it Land Acquisition Officer has rightly awarded Rs. 1.00 sq.mts. as market rent. It is submitted that as held by the Hon'ble Supreme Court in the case of State of Maharashtra and Others Vs. Maimuma Banu and Others, and this Court in the case of Patel Shambhubhai (supra), provisions of part III of the land acquisition act would not apply to temporary acquisitions. Therefore, it is submitted that assessment of market value by the reference court is thoroughly untenable in law. It is submitted that even witness who has been examined on behalf of the claimant

has deposed and has so admitted in the cross examination that there is no evidence led qua yield to prove the income of Rs. 50,000/- to Rs. 60,000/- per vigha per year. Even it is admitted in the cross examination by the claimants that they have accepted the increased rent of compensation from time to time. It is also further submitted that even the appellant - ONGC has increased rent and has paid rent at the rate of Rs. 2.50 per Sq. MTr. per annum with effect from 01.01.1997; Rs. 5.00 from 01.01.2003 and Rs. 7.50 from 01.01.2006, which has been accepted by the claimants - respondents. Therefore, also award of Rs. 6.00 per sq. mtr. for the aforesaid period is not justified. It is therefore, submitted that assessment of rent compensation at the rate of Rs. 6.00 per sq.mtr. is wholly unjustified and unsustainable in law and requires to be quashed and set aside.

It is submitted by Mr. Mehta, learned Advocate appearing on behalf of the appellant that as such the reference applications itself were not maintainable in as much as nothing is on record to suggest that any dispute with regard to sufficiency of compensation was raised by the land owners at the time of award dated 07.12.1988. It is further submitted by him that award was declared by the Special Land Acquisition Officer on 07.12.1988 declaring rental / compensation at the rate of Rs. 1.00 paise and the reference applications are filed by the claimants on 15.12.2000 i.e. after a period of 12 years from the date of award as well as taking possession, raising dispute for the first time with respect to sufficiency of compensation / rental. Therefore, the Reference Court / Civil Judge ought not to have entertained said reference cases and ought to have dismissed the same by holding that they are barred by limitation and/or on the ground of delay and laches. It is further submitted that as the reference applications were submitted after almost 12 years, even the Collector / Land Acquisition Officer ought not to have referred the dispute to the reference court. It is submitted that it seems that the reference applications are referred to the reference court mechanically without even satisfying itself that any dispute was raised by the land owners with regard to sufficiency of rental / compensation at the time of award / taking possession. It is further submitted that even looking to Sub-section (3) of Section 35 of the Act, said reference applications by the claimants are not maintainable and as such there is no provision under Sub-section (3) of Section 35 of the Act permitting the claimants to submit reference applications like reference applications u/s 18 of the Act i.e. with regard to permanent acquisition. It is also submitted that even the Reference Court has not properly framed the issues and though a specific objection was raised with respect to limitation, no issue has been framed by the learned Reference Court with regard to limitation.

12. It is also submitted that even decision of this Court in the case of Patel Shambhubhai (supra) on the point of limitation and /or on the point of jurisdiction of the Reference Court to award rental beyond the period of three years has not been properly appreciated and considered by the Reference Court. Making above submissions, it is requested to allow the present appeals and to

quash and set aside impugned judgment and awards. Learned Assistant Government Pleader appearing on behalf of the Special Land Officer has adopted the submissions made on behalf of the appellant and has submitted that the impugned judgment and award passed by the Reference Court is not tenable in law and is without jurisdiction, which requires to be quashed and set aside.

13. All these appeals are opposed by Mr. A.J. Patel, learned Advocate appearing on behalf of the claimants. It is submitted that impugned judgment and award passed by the learned Reference Court and the amount of compensation is worked out on the basis of the earlier award of the same village which have been accepted by the ONGC and payment has already been made by the ONGC and no appeal has been preferred before this Court and therefore, fixation of the amount is not required to be altered and/or interfered with.

14. So far as the contention on behalf of the appellant that the Reference Court has no jurisdiction to determine the amount of compensation / rental for the period beyond three years, Mr. Patel, learned Advocate appearing on behalf of the original claimants has submitted that considering Section 35 of the Act, ONGC can retain possession for a maximum period of three years only and any occupation and/or possession of the ONGC after a period of three years from the date of taking possession would be unlawful possession and ONGC can be said to be in unauthorized possession of the land. It is submitted that Section 53 of the Act provides that save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under the Act. He has placed reliance on the provisions of Order XX Rule 12 of the CPC and has submitted that just as the Civil Court has power to pass order regarding rent or mesne profits in a suit for recovery of possession of immovable property, the Reference Court, even assuming that it has no power to award compensation after a period of three years, it can award the mesne profits which could be equivalent to the just compensation. In support of his submission Mr. Patel, learned Advocate appearing on behalf of the claimants has relied upon following decisions:

- (1) Gopalakrishna Pillai and Others Vs. Meenakshi Ayal and Others,
- (2) Shyam Charan Vs. Sheoji Bhai and Another,
- (3) Lucy Kochuvareed v. P. Mariappa Gaunder and Ors. Reported in AIR 1979 SC 1214.

It is submitted that if a person is in unauthorized possession of the land and continues to be in possession, then during the time the unlawful possession is continued, mesne profit will have to be paid as per the law laid down by the Hon"ble Supreme Court in the aforesaid decisions and as per the definition of "mesne profit" occurring in Sub-section (12) of Section 2 of the CPC as well as Order XX, Rule 12 of the Code. It is submitted that it would not be open to contend by the ONGC that though they continue to be in unlawful possession, but for the purpose of recovery of mesne profit, the claimants have to go before

the Civil Court and file a suit. It is submitted that the machinery that is provided in the Act is enough to meet such an eventuality. The provisions of CPC are applicable in the context of fixation of rent or for compensation under Sections 35 and 36 of the Act, Section 53 and 54 of the CPC apply. Therefore, it is submitted that the amount fixed beyond the period of three years would be considered as mesne profit for unlawful occupation on the part of the ONGC. It is also further submitted that it would not be open to the ONGC to continue to be in unlawful possession and to come before this Court and to obtain order that what it is ordered to pay is illegal though legality of their own possession of the land of an agriculturist is to be ignored. It is submitted that ONGC being in illegal possession cannot contend that the order passed by the Reference Court to pay mesne profit is without jurisdiction. It is submitted that driving an agriculturist to go before a Civil Court is something, which would do tremendous injustice to the claimants if the possession is retained by the ONGC unlawfully. It is submitted that when the amount is paid by the ONGC, payment made is to be considered mesne profit and therefore, the question of considering lawful and unlawful possession cannot be implied. It is submitted that merely because the claimants have accepted enhanced rent / compensation paid by the ONGC on the basis of their administrative decisions in that case no contract and/or extension of agreement / contract would be implied. It is submitted that when a person receives money for the occupation of his land and if the possession is continued after a period of three years and payment made is to be considered as mesne profit, then no extension of contract could be implied.

15. In the alternative, it is further submitted that if this Court comes to the conclusion that no award could be made for a period beyond three years, in that case also the Reference Court can award compensation / rent which can be termed as mesne profit. He has placed reliance upon following two decisions in support of his above submission.

(1) R.L. Jain (D) by Lrs. Vs. DDA and Others,

(2) Land Acquisition Officer & Assistant Commissioner and Anr. v. Hemanguoda and Ors. Reported in (2005) 12 SCC 443.

It is submitted that whatever amount is given to the claimants, which may be called mesne profit or rent or damages, it would make no difference whatsoever. It is further submitted by Mr. Patel, learned Advocate that such final order and the directions issued by the Reference Court has been misconstrued by the ONGC. It is submitted that final order in the award first determines the amount of compensation that is to be paid by the ONGC and then there is further direction that if the amount is increased on administrative side by the ONGC, it would go on to pay the increased rate of rent. If the amount is increased on the administrative side, they have to be awarded amount. If the amount is increased beyond Rs. 6.00 paise then it is the only increased amount that is to be given on determination of administrative side of the ONGC. It is submitted that infact when the ONGC makes payment, it takes into consideration the amount fixed by

the Court and the amount so paid is deducted. When the ONGC deposits the amount it takes into consideration Rs. 6.00 paise and what is given to the claimant is in all awarded amount and interest. But, in case, the ONGC decides to give something more than Rs. 6.00 paise it would be only the amount that is determined on the administrative side, would be given. Therefore, the bogey of double payment that has been raised is of no consequence whatsoever. By making aboves submissions and relying upon decisions referred to herein above, it is requested to dismiss present appeals.

16. Heard the learned Advocates appearing on behalf of the respective parties.

17. At the outset, it is required to be noted that the award was declared by the Special Land Acquisition Officer as back as on 07.12.1988 determining rental / compensation at the rate of Rs. 1.00 Sq.Mtr. and the reference applications have been submitted by the land owners on 15.12.2000 raising dispute with regard to sufficiency of the compensation for the first time. Nothing is on record that at the time of taking possession and paying rental / compensation on the basis of award dated 07.12.1988 any dispute was raised by the land owners before the Collector with respect to sufficiency of compensation / rental. On the contrary it appears from the deposition of the witness examined on behalf of the claimants that the Collector declared award and determined rental / compensation on the basis of the material before him and considering fertility of the lands in question and price of grains at the relevant time. It is also admitted by him in the cross examination that he is asking for rent as per the price prevailing in the year 2006. Looking to Sub-section (3) of Section 35 of the Act, there is no provision which permits the claimants to submit the reference applications like u/s 18 of the Act with respect to the permanent acquisition. On fair reading of Sub-section (3) of Section 35 of the Act if at the time of taking possession and/or entering into agreement and/or declaring award determining rental / compensation, dispute is raised with respect to sufficiency of the compensation, then and then the Collector is required to refer the said dispute to the Reference Court and not otherwise. Thus, considering above and deposition of witness - Patel Kantibhai Laljibhai examined on behalf of the claimants at Exh.16, such reference cases were not maintainable and the Reference Court ought to have dismissed the same. Even otherwise, the Reference Court / Civil Judge ought to have appreciated that even the Reference applications were made after a period of 12 years from the date of taking possession and award and therefore, also same were required to be dismissed on the ground of delay and laches. As held by the Division Bench of this Court in First Appeal Nos.790 of 2007 and other cognate matters, dated 13.03.2008, even the reference applications u/s 35 of the Act are required to be submitted within reasonable time and if the same are not submitted within reasonable time, they were required to be dismissed on the ground of delay and laches. Under the circumstances, the Reference Court has materially erred in entertaining reference applications / reference cases which as stated above were not maintainable and in the alternative they are required to be dismissed on the ground of delay and laches. It is also required to be noted

that though a specific objection was raised on behalf of the appellant with respect to the limitation and that the reference applications are barred by limitation and/or delay and laches, the learned Judge has even not framed the issue with respect to limitation. Even considering the fact that the award was declared u/s 35 on 07.12.1988 and the applications for reference were submitted on 15.12.2000 i.e. after a period of 12 years, even the Special Land Acquisition Officer was not justified in referring the dispute to the Reference Court. It appears that Special Land Acquisition Officer has referred the reference applications mechanically and without even considering the fact whether the land owners had raised the dispute with respect to rental / compensation at the time of award and / or taking possession or not. He has also not appreciated that even such type of reference applications u/s 35(3) of the Act are not maintainable. Therefore, even the reference made by the Special Land Acquisition Officer itself are illegal. The decision of the learned Single Judge of this Court in the case of Patel Shambhubhai (supra) on the point of limitation and/or on the point of jurisdiction of the Reference Court has not been properly appreciated and considered by the learned Civil Judge. While dealing with the question of limitation, the Reference Court has held that as nothing is on record when award declared by the Special Land Acquisition Officer was served upon the claimants, therefore, the Reference applications are within the period of limitation. The learned Judge has committed an error in arriving at said conclusion. There is no provision u/s 35 like service of award as provided u/s 18 i.e. with regard to permanent acquisition. It appears that the learned Judge has forgotten that he was dealing with temporary acquisition and not permanent acquisition. Therefore, the finding of the learned Reference Court i.e. Reference applications are within the period of limitation is absolutely illegal.

18. It is required to be noted that in all these appeals, land has been acquired by the ONGC for public purpose u/s 35 of the Act and the Reference Court was dealing with reference u/s 35(3) of the Act. u/s 35 of the Act, claimants are entitled to be paid compensation by way of rental and same cannot be equated with compensation paid while awarding compensation for the land permanently acquired. Aforesaid point is now not res-integra.

In the case of Brij Behari Sahai Vs. State of Uttar Pradesh, the Hon"ble Supreme Court has observed as under:

We agree with the view indicated in Tan Bug Taim Vs. Collector of Bombay, that temporary occupation of land provided in Part VI is distinct from, and is not included in acquisition of land. We have already pointed out that clause "secondly" in Section 23(1) of the Act is not applicable to temporary occupation covered by Section 35 of the Act. Statutory solatium as provided in Section 23(2) of the Act does not apply to a case of damage covered by clause "secondly" in Section 23(1) itself. "Market value" occurs in the first clause of Section 23(1) of the Act and Sub-section (2) of Section 23 refers to market value. Solatium has reference to market value and the mandate to pay solatium. is only in respect of

market value. Compensation u/s 35 of the Act has no reference to market value and the actual loss sustained by the persons interested in the land is intended to be compensated. In that view of the matter, to a case of compensation u/s 35 of the Act the provisions of Section 23(2) of the Act cannot be applied. The claimant is thus not entitled to any solatium on the compensation determined by the High Court in this case.

Similar view is also taken by the Hon'ble Supreme Court in the case of State of Maharashtra and Others Vs. Maimuma Banu and Others, . Even Division Bench of this Court has also taken similar view in the case of Patel Govindbhai Ambaram Vs. Spl. Laq Officer and Another, . It is required to be noted that the dispute referred to the Reference Court u/s 35(3) of the Act is the dispute as to sufficiency of compensation / rental and no other dispute has been referred to the Reference Court. Even otherwise considering Sub-section (3) of Section 35 of the Act, no other dispute can be referred to the Reference Court except dispute as to sufficiency of the compensation. Considering above, the contentions raised and submissions made on behalf of the respective parties are required to be considered and appreciated.

19. It is the contention on behalf of the appellants - acquiring body that the Collector is empowered to refer the dispute as to sufficiency compensation only for a maximum period of three years and thereby the Reference Court has jurisdiction to decide the dispute as to compensation/ rental for maximum period of three only meaning thereby the Reference court has no jurisdiction to decide the dispute and / or award compensation / rental for period beyond three years from the date of taking possession as statue permits occupation u/s 35 of the Act for maximum period of three years. It is the contention on behalf of the appellants - acquiring body that any dispute beyond period of three years, the claimants have to take recourse to remedy provided under the common law by filing the suit for damages and /or any other similar recourse. On the other hand it is the contention on behalf of the claimants that any occupation of the acquiring body beyond period of three years would be illegal and ONGC being in unlawful occupation and in unauthorized possession is not entitled to question the judgment and award passed by the Reference Court. It is also the contention on behalf of the claimants that as ONGC is being in unauthorized occupation, compensation awarded by the Reference Court be treated as "mesne profits" and for that purpose the learned Advocate appearing on behalf of the claimants has relied upon aforesaid decisions as well as Sections 53 and 54 of the Land Acquisition Act and Section 2(12) as well as Order XX, Rule 12 of the Civil Procedure Code. It is required to be noted that all these submissions were made by the very learned Advocate appearing on behalf of the original claimants in the case of Patel Shambhubhai Bhaichanddas Vs. State of Gujarat and Another, The learned Single Judge of this Court has considered and dealt with the same in detail. This Court in the case of Patel Shambhubhai (supra) in a similar set of facts and considering the very submissions has held that the Collector under Sub-section (3) of Section 35 gets power to refer dispute as to sufficiency of

compensation which may arise within the agreed term or maximum period of three years. Any dispute which crosses the said time limit cannot be the subject-matter of the decision of the Court. It is also held that in other words the Collector's reference has to confine itself to the controversy arising within the prescribed period u/s 35(1) of the Act. In such reference, therefore, the Court is required to give its decision in relation to difference as to the sufficiency of compensation only for maximum period of three years and not beyond that even the reference is made within stipulated period. It is further held that any decision on the reference beyond period of three years cannot be termed as legal and in accordance with the provisions of the Act, and hence, it is without jurisdiction. It is also further held by this Court in the aforesaid decision that in case of temporary occupation of land for public purpose u/s 35 of the Act remedy of owners when occupant is in unauthorized possession beyond permissible period of three years would be to take recourse to the remedy provided under the common law i.e. by way of filing suit. In the facts of that case as after period of three years periodical enhanced compensation / rental was paid by the ONGC which has been accepted by the claimants, the learned Single Judge in the said decision has held that even occupation / possession of the ONGC after a period of three years cannot be termed as unauthorized or illegal therefore, there is no question of even considering compensation determination and ordering to pay by the Reference Court beyond the period of three years as mesne profits. Similar view is also taken by this Court in another decision in the case of ONGC v. Pandya Prahladbhai Manilal (supra). In the aforesaid decision considering decision of the Hon'ble Supreme Court as well as decision of the Division Bench of this Court, this Court held that in case of compensation u/s 35 of the Act, Reference Court cannot adopt principles of determining for the purpose of permanent acquisition. Therefore, this Court even negated the submission on behalf of the claimants to give 10% rise every year. We are in complete agreement with the decisions of this Court in the case of Pandya Prahaladbhai Manilal (supra) and Patel Shambhubhai Bhaichanddas (supra) except with respect to reasoning of this Court in the case of Patel Shambhubhai Bhaichanddas (supra) with respect to submissions and contentions on behalf of the claimants with respect to mesne profits which shall be dealt with herein after.

20. Thus considering aforesaid two decisions, impugned judgment and award of the Reference impugned in the present appeals awarding compensation / rental beyond period of three years from the date of taking possession is without jurisdiction which requires to be quashed and set aside.

21. In the alternative it is argued on behalf of the claimants that if this Court comes to the conclusion that the Reference Court has no jurisdiction to determine and award compensation / rental beyond period of three years from the date of taking possession in that case, possession and occupation of the ONGC beyond period of three years can be said to be unauthorized and illegal and therefore, the rental / compensation beyond three years be treated as mesne profits. In support of this submission, learned Advocate appearing on

behalf of the claimants has relied upon Sections 53 and 54 of the Act and Section 2(12) as well as Order XX, Rule 12 of the CPC and also relied upon decision of the Hon"ble Supreme Court in the case of R.L. Jain(D) by Lrs.(supra) and in the case of Hemangouda (supra). On the other hand, it is submitted on behalf of the appellants - ONGC- acquiring body that rent has been revised by the ONGC periodically at interval of every three years on the basis of their administrative decisions and the claimants have been paid revised rent at the rate of Rs. 2.50/- per Sq. Mtr. per annum from 01.01.1997; Rs. 3.75/- per Sq. Mtr. per annum from 01.01.2000; Rs. 5.00/- per Sq. Mtr. per annum from 01.01.2003 and the same has been accepted by the claimants without raising any dispute and /or objections, therefore, there will be implied agreement / contract and therefore, possession of the ONGC beyond period of three years cannot be termed as unauthorized or illegal. Therefore, there is no question of payment of any mesne profits.

22. To consider above rival submissions with respect to whether possession of the ONGC beyond period of three years can be said to be illegal and /or unauthorized and with respect to the mesne profits first of all it is required to consider whether the Reference Court in reference u/s 35(3) of the Act and even this Court in an appeal u/s 54 of the Act has any jurisdiction to decide such dispute ?

23. As stated above what was referred to the Reference Court is reference u/s 35(3) of the Act and the dispute as to sufficiency of the compensation and there is no other dispute which can be referred to the Reference Court. Even in the reference application submitted by the claimants and /or even deposition of the witness / claimants examined on behalf of the claimants it is not the case of the claimants that ONGC is in illegal unauthorized occupation and possession of the lands in question.

24. While dealing with and considering the scope, duties and powers of the reference Court u/s 18 of the Act, the Hon"ble Supreme Court in the case of Balram Chandra Vs. State of U.P., , has held that the District Court (Reference Court) has no jurisdiction to declare notification under Sections 4(1) and 6 to be null and void and/or illegal and he is required to make award with reference to the objections raised by the claimants in respect of area of land or amount of compensation or persons entitled to receive compensation and his duties are confined to the provisions contained in Sections 11, 18 and 20 to 23. It is also further held by the Hon"ble Supreme Court in the said decision that the reference court cannot go beyond the reference and give a declaration that the notifications under Sections 4(1) and 6 are illegal or null and void. It is also held that the reference court would not traverse beyond his powers.

While taking a similar view, the Hon"ble Supreme Court in the case of P.K. Sreekantan and Others Vs. P. Sreekumaran Nair and Others, , considering the decision of the Privy Council and earlier decisions of the Supreme Court in para 14 has observed as under:

14. Every tribunal of limited jurisdiction is not entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal deserves its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan* LR (1955) 6 M.I.A. 134 (PC) , whether jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act, it is a universal picture that these terms must be complied with the jurisdiction does not arise [See: *Mohammed Hasnuddin Vs. State of Maharashtra*,

In an another decision in the case of *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. Vs. Allahabad Vikas Pradhikaran and Another*, the Supreme Court has observed and held that Reference Court has no jurisdiction to decide a matter not referred to it.

25. Thus considering above decisions, the Reference Court has jurisdiction only to decide dispute referred to it i.e. dispute with sufficiency of compensation and rental only and the Reference Court has no jurisdiction to decide any other dispute i.e. whether possession by ONGC beyond period of three years is illegal and/or unauthorized and/or any other dispute.

All these aspects are required to be considered in an appropriate proceedings under the common law. Thus, according to us when the Reference Court has no jurisdiction to decide the dispute as to legality of the possession of acquiring body or otherwise, there is no question of considering amount awarded by the Reference Court beyond three years as mesne profits as contended on behalf of the claimants. Even otherwise the Reference Court has no jurisdiction to determine award as mesne profits. It cannot be disputed that the Reference Court has no jurisdiction to pass order restoring possession to the land owners in reference under Sub-section (3) of Section 35 of the Act. As observed and held herein above the Reference Court has jurisdiction to decide dispute as to sufficiency of compensation / rental that too for the period of three years from the date of taking possession. The learned Advocate appearing on behalf of the claimants and has relied upon Section 12(2) as well as Order XX, Rule 12 of the Code of Civil Procedure. Relevant provisions with respect to mesne profits in the C.P.C. i.e. Section 12(2) and Order XX, Rule 12 of the CPC are as under:

Section 2(12) of the Code defines mesne profits as under:- (12) "mesne profit" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due

to improvements made by the person in wrongful possession.

Order 20 Rule 12. Decree for possession and mesne profits:- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree,

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until:

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree- holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

26. Learned Advocate appearing on behalf of the claimants has relied upon Sections 53 and 54 of the Act by submitting that provisions of the CPC would be applicable to proceedings under the Land Acquisition Act and therefore, reference be treated as suit and therefore, the Reference Court would have jurisdiction to award mesne profits for the illegal and unauthorized occupation of the lands by the ONGC. Order XX, Rule 12 of the CPC provides "Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree, for the possession of the property; for the rents which have been accrued; for the mesne profits or directing inquiry as to such mesne profits; directing an inquiry as to rent or mesne profits from the institution of the suit until the delivery of possessions to the decree holder etc.

27. From the aforesaid provisions, it appears that only that Court can pass a decree for mesne profits which has jurisdiction to pass a decree for possession and in case where decree for possession is prayed. In the present case proceedings before the Reference Court is reference under Sub-section (3) of Section 35 of the Act for determining dispute as to sufficiency of the compensation only. It is not a suit and/or proceedings for recovery or possession. The Reference Court has no jurisdiction to pass an order for restoring possession in the reference under Sub-section (3) of Section 35 of the Act. Therefore, reliance placed upon Section 2(12) as well as Order XX, Rule 12 of the CPC and Sections 53 and 54 of the Land Acquisition Act on behalf of the claimants are

misplaced. Therefore, submission on behalf of the claimants that amount of compensation determined by the Reference Court beyond period of three years be treated as mesne profit cannot be accepted. Such a finding would be without jurisdiction. Similarly, even the dispute whether the occupation and possession of the ONGC beyond period of three years would be illegal or not and/or whether they can be said to be unauthorized or illegal possession beyond period of three years, such dispute also cannot be decided by the Reference Court in a reference u/s 35(3) of the Act and this Court in an appeal u/s 54 of the Act. All these questions are required to be decided and considered in an appropriate proceedings only on leading proper evidence. It is the contention on behalf of the ONGC that claimants have been paid periodical rise in compensation / rental every three years and same has been accepted by the claimants without any objection and raising any dispute, therefore, it can be said that there is implied extension of contract / agreement. On the other hand it is the contention on the claimants that merely because the claimants have accepted rental there cannot be implied extension of contract / agreement. Such dispute is also not within the jurisdiction of the Reference Court. Whether there is implied extension of agreement / contract or not can be decided only on leading evidence in an appropriate proceedings but certainly such dispute cannot be decided by the Reference Court in the reference u/s 35(3) of the Act and even by this Court in an appeal u/s 54 of the Act. Even on plain reading of definition of Section 2(12) of the Act, it is clear that wrongful possession is very essential for mesne profits. Therefore, unless on facts and on leading proper evidence, it is held that ONGC is in wrongful possession of the lands in question, there is no question of awarding any mesne profits. Therefore, the contention and submission on behalf of the claimants that the amount awarded by the Reference Court beyond period of three years be treated as mesne profits cannot be accepted as the same would be without jurisdiction and even beyond the scope of the reference.

28. Now so far as the amount of compensation / rental determined by the Reference court even for the period within three years i.e. to pay additional amount of compensation at the rate of Rs. 5.00 per Sq.Mtr. is concerned, it appears that while fixing said rental compensation the Reference Court has relied upon the judgment and award passed by Reference Court with respect to the lands of Shertha, dated 29.05.2006 passed in LAR No. 312/2000, in which the award was passed on 30.01.1988, by which the Reference Court has fixed the rental compensation / market value at the rate of Rs. 5.50 paise per Sq.Mtr. The Reference Court in the present case considering the award 07.12.1988 i.e. after a gap of about 1 year, also held that the claimants would be entitled to 10% price rise per year and accordingly has fixed / determined market value of the land at Rs. 6.00 per Sq.Mtr. and considering the fact that the claimants were already paid compensation / rental at Rs. 1.00 paise pursuant to the award declared by the Collector under Sub-section (2) of Section 35, the Reference Court passed an order that the claimants are entitled for an amount of additional rental compensation at the rate of Rs. 5.00 paise per Sq.Mtr. per year, over and

above enhanced compensation / rental paid by the ONGC to the claimants by periodical rise paid on the basis of administrative decision. On considering the impugned judgment and award, the Reference Court has failed to appreciate that it was dealing with temporary acquisition. On considering Para - 12 to 14, it is noticed that for computing annual rent of the lands acquired, the learned Civil Judge has adopted the principles of determining market value / compensation for the purpose of permanent acquisition. While relying upon the judgment and award of LAR No. 312/2000 with respect to lands of Village - Shertha, which was even not exhibited, learned Civil Judge has relied upon the decision of this Court in the case of Shivilal (supra) by observing that this Court held that while determining the amount of compensation, similar awards passed by the Court or Land Acquisition Officer can be taken into consideration. It is required to be noted that in the case of Shivilal(supra) this Court was dealing with the case of permanent acquisition. Thus, learned Civil Judge committed an error in relying upon the decision in the case of Shivilal (supra).

29. Looking to the deposition of the witness, it appears that the Reference Court has materially erred in determining fixing rental compensation solely relying upon the judgment and award passed by the learned 3rd Senior Civil Judge (Exh.14 and Exh.15) and considering the same as comparable instance and that too further giving 10% price in rise for each year. It is also required to be noted that rental compensation u/s 35 of the Act is not required to be determined / considered on the market price. For computing annual rent of the land acquired u/s 35 of the Act, principles of determining market value / compensation for the purpose of permanent acquisition are not required to be adopted. Even as held by the Hon''ble Supreme Court in the case of Brij Behari Sahai (supra), temporary occupation of land provided in Part - VI is distinct from, and is not included in acquisition of land. Even the submission on behalf of the claimants with regard to 10% rise every year has been negated by this Court in the case of Patel Shambubhai (supra). No other documentary evidence has been produced on record on behalf of the claimants to prove agricultural income and yield. The claimant has admitted in the cross- examination that he has not produced any documentary evidence like bill expenditure, income from agricultural lands. As stated above, the learned Reference Court has solely relied upon the judgment and award passed by the Reference Court with respect to the land of Village - Shertha and considering the same as base has awarded compensation / rental at the rate of Rs. 6.00 per Sq.Mtr. There is no evidence on record that the lands with respect to LAR No. 312/2000 are similarly situated with respect to fertility etc. it is also required to be noted that even the judgment and award passed by the learned 3rd Additional Senior Civil Judge, Gandhinagar dated 29.05.2006 passed in LAR No. 312/2000 relied upon by the Reference Court while determining rental / compensation at the rate of Rs. 6.00 per Sq.Mtr.per year, was relied upon by the learned Advocate appearing on behalf of the claimants at the time of making oral submissions. Neither certified copies of the said judgment and award is exhibited nor same is produced on record. Under the

circumstances, the learned Judge ought not have even relied upon the judgment and award passed by the Reference Court in LAR No. 312/2000. Therefore, the Reference Court has committed error in determining and awarding rental compensation relying upon the said award passed in LAR No. 312/2000.

30. It is required to be noted that rental / compensation to be paid u/s 35 of the Act with respect to temporary acquisition is by way of loss / damages suffered by the land owners for the period they are deprived of occupation / possession of their lands. Rental compensation u/s 35 of the Act cannot be determined / fixed on the basis of market price and/or adopting principles of determining market price / compensation for the purpose of permanent acquisition. Rental compensation u/s 35 of the Act with respect to temporary acquisition is required to be determined considering extent of loss / damages suffered by the owners for the period they are deprived of occupation and possession of the lands in question and for that purpose they are required to prove and establish actual loss / damages suffered by them on leading proper evidence with respect to income / yield and the loss suffered. In the present case looking to the deposition of the witness, examined on behalf of the claimants, the claimants have miserably failed to prove any documentary evidence to establish actual loss / damages caused to them. There can be different loss / damages with regard to different lands and same can vary from land to land and that depends upon the fertility of the particular land and income derived from the same. Therefore, also rental/ compensation with respect to particular land and loss / damages suffered by one person cannot be same as to loss / damages suffered by another person with respect to another land. Under the circumstances, to determine rental compensation u/s 35(3) of the Act relying upon rental compensation fixed by the Reference Court in another case with respect to another lands is not justified and same cannot be the base to fix rental / compensation. Therefore, the Reference Court has committed an error in determining rental compensation in the present case solely relying upon rental compensation (market price) determined by the Reference Court in case with respect to other lands.

31. Mr. A.J. Patel, learned Advocate appearing on behalf of the claimants has heavily relied upon the decision of the Hon''ble Supreme Court in the case of R.L.Jain(D) (supra) and Hemanguoda and Ors. (supra). However, it is required to be noted that in both the decisions, the Hon''ble Supreme Court was dealing with the question of permanent acquisition and as held earlier principles of determining compensation with respect to permanent acquisition cannot be made applicable while determining rental / compensation of temporary acquisition. Even otherwise, in the case before the Hon''ble Supreme Court admittedly possession was taken prior to issuance of notice u/s 4(1) of the Act which was found to be illegal and on equitable grounds the Hon''ble Supreme Court directed the Collector to determine rental / damages for the use of the property for that period. In the present case after a period of three years enhanced rental / compensation has been paid by the ONGC by giving periodical rise on the basis

of administrative decision at the rate of Rs. 2.50 paise per Sq. Mtr. Per annum from 01.01.1997; Rs. 5.00 from 01.01.2003 and Rs. 7.50 from 01.01.2006 which have been accepted by the claimants without raising any protest. Therefore, in the facts and circumstances and as stated above, it cannot be said that in the present proceedings possession of the ONGC beyond the period of three years is unauthorized and/or illegal. Therefore, aforesaid decisions are not of any assistance to the claimants.

32. While passing the final order the Reference Court has not only directed the appellants to pay additional amount of rental compensation at the rate of Rs. 5.00 per Sq. Mtr. (over and above Rs. 1.00 paise awarded by the Collector) but has also passed an order to go on to pay increased rate of rent as per decision taken up at administrative side from time to time. It is required to be noted that Mr. A.J. Patel, learned Advocate has fairly conceded that such a direction could not have been issued by the Reference Court i.e. to pay additional amount of rent at Rs. 5.00 paise and also to go on to pay increased rate of rent as per the decision taken at administrative side from time to time. In view of above, this Court is not dealing with the said aspect. At this stage it is required to be noted that and it is not in dispute that ONGC is paying enhanced rental compensation by giving periodical rise every three years and has been paying Rs. 2.50 paise per Sq.Mtr. Per annum from 01.01.1997; Rs. 5.00 from 01.01.2003 and Rs. 7.50 from 01.01.2006 which the claimants have accepted without raising any objections and/or any protest.

33. To sum up entire discussions, our conclusions are that:

(i) The reference cases itself were not maintainable considering Sub-section (3) of Section 35 of the Act as well as on the ground of delay and laches;

(ii) The Collector and/or the Reference Court in a reference application under Sub-section (3) of Section 35 of the Act would have no jurisdiction to determine and decide rental compensation beyond the period of three years from the date of taking possession;

(iii) The Reference Court has no jurisdiction to award mesne profits for the occupation and possession of the lands by the ONGC beyond period of three years unless in an appropriate proceedings under the common law and that too in an appropriate proceedings for which possession is proved that ONGC is in unauthorized and illegal possession of the lands in question;

(iv) The Reference Court has committed error in determining rental compensation with respect to the lands in question solely relying upon the judgment and award of the Reference Court passed in LAR No. 312/2000 which was not even exhibited;

(v) The Reference Court has also committed error in passing order directing to pay additional amount of compensation / rental at the rate of Rs. 5.00 paise per relying upon the judgment and award passed by the Reference Court in LAR No.

312/2000 and giving 10% price rise;

(vi) The Reference Court has also committed error directing to pay additional compensation and also to go on to pay increased rate of rent as per the decision taken on administrative side from time to time.

34. For the reasons stated above, all the appeals succeed fully. The judgment and award dated 12.09.2006 passed by the Reference Court in L.A.R. Nos. 168 of 2002 to 170 of 2002 (main LAR No. 168 of 2002) impugned in the First Appeal Nos. 5028 of 2007 to 5030 of 2007 are hereby quashed and set aside. However, there shall be no order as to costs.