

(2008) 06 BOM CK 0037

In the Bombay High Court

Case No : First Appeal No's. 961, 962, 963, 964, 965, 971, 1003, 1005, 1006 and 1007 of 2007 and 349, 350, 351, 352 and 476 of 2008 and Civil Application No. 8595 of 2007 in First Appeal S.T No. 13723 of 2007

Mahadeo Rama Vaidya and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-06-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 23, 24, 4

Maharashtra Industrial Development Act, 1961 — Section 3(2), 32, 32(1), 32(2), 32(3)

Citation : (2008) 5 ALLMR 342 : (2008) 6 BomCR 463 : (2008) 6 MhLj 659

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : Anjan De and K. Satpute, in F.A. Nos. 961 to 965, 971, 1003, 1005, 1006 and 1007/2007 and M.M. Agnihotri, in F.A. No. 349, 350, 351, 352, 476/2008 and in C.appln. No. 8595/2007 in F.A. ST. No. 13723/2007, for the Appellant; Anjan De and K. Satpute, in F.A. Nos. 349, 351/2008 for respondent No. 1 and in F.A. No. 350, 352, 476/2008 and in C.Appln. No. 8595/2007 in F.A. ST. No. 13723/2007 for respondent Nos. 1 and 2, M.M. Agnihotri in F.A. Nos. 961 to 965, 971, 1003, 1005, 1006, 1007/2007 for respondent No. 2 and A.G.P. in F.A. No. 961 to 965, 971, 1003, 1005, 1006, 1007/2007 and in F.A. Nos. 349 and 351/2008 for respondent No. 2 in F.A. No. 350, 352, 476/2008 and in C. Appln. No. 8595/2007 in F.A. ST. No. 13723/2007, for the Respondent

Judgement

Dharmadhikari B.P., J.—Parties had stated that all these Appeals u/s 54 of Land Acquisition Act, 1894 (hereinafter referred to as 1894 Act) are connected and can be decided together finally at the stage of admission itself. Accordingly they have also filed written notes of argument and have also supplied Xerox copies of citations and also addressed this Court orally in brief. It is not in dispute that acquisition in this case has been at the instance of Maharashtra Industrial Development Corporation, M.I.D.C. for short, a statutory body under the provisions of Maharashtra Industrial Development Corporation Act, 1961 (hereinafter referred to as 1961 Act). Land Acquisition Officer of State

Government at Chandrapur has conducted the acquisition proceedings in Land Acquisition Case 11/ 65-91/92 in respect of lands situated at village Yerur, District Chandrapur u/s 32/33 of 1961 Act. Agricultural lands of Appellants/ landowners have been acquired by M.I.D.C. for purpose of establishing additional Industrial area. Notification u/s 32(2) of 1961 Act came to be published on 19/3/1992 (equivalent to one u/s 4 of 1894 Act) and final order of acquisition/ award has been passed on 10/1/1995. Land Acquisition Officer has sanctioned compensation between Rs. 22,000/- per Hectare to Rs. 33,000/- per Hectare for the dry crop land and irrigated/ Paddy land to these landowners. They then approached Collector for making reference as required by Section 34 of 1961 Act and accordingly the proceedings reached Joint Civil Judge (Senior Division) Chandrapur. Said Court decided all reference proceedings together on 19/4/2007 sanctioning rate of Rs. 37,000/- per Hectare for dry crop land and Rs. 45,000/- per Hectare for irrigated land. Present Appeals are thereafter filed by land owners seeking rate of Rs. 1 lakh per Hectare for dry crop land and Rs. 1.5 lakh per Hectare for irrigated land. M.I.D.C. has also filed Appeals for quashing the enhancement granted.

2. First Appeal No. 961/2007 is filed by landowners against adjudication in Land Acquisition Reference 78/1996. First Appeal No. 962/2007 is filed by landowners against adjudication in Land Acquisition Reference 77/1996. First Appeal No. 351/2008 is filed by M.I.D.C. against said adjudication. First Appeal No. 963/2007 is filed by landowners against adjudication in Land Acquisition Reference 58/1996. First Appeal No. 964/ 2007 is filed by landowners against adjudication in Land Acquisition Reference 69/ 1996 while First Appeal No. 350/2008 is filed by M.I.D.C. against very same adjudication. First Appeal No. 965/2007 is filed by landowners against adjudication in Land Acquisition Reference 70/1996. First Appeal No. 971/ 2007 is filed by landowners against adjudication in Land Acquisition Reference 74/ 1996. First Appeal Stamp No. 13723/2007 is filed by M.I.D.C. against this adjudication in Land Acquisition Reference 74/ 1996. As there is delay of 33 days in filing it, C.A. 8595/2007 is preferred by it. seeking its condonation. First Appeal 1003/2007 is filed by landowners against adjudication in Land Acquisition Reference 5/ 1996 & First Appeal No. 476/2008 is filed by M.I.D.C. against it. First Appeal No. 1005/2007 is filed by landowners against adjudication in Land Acquisition Reference 72/1996. First Appeal No. 349/2008 is filed by M.I.D.C. against adjudication in Land Acquisition Reference 72/ 1996. First Appeal No. 1006/2007 is filed by landowners against adjudication in Land Acquisition Reference 59/1996. First Appeal No. 1007/2007 is filed by landowners & First Appeal No. 352/2008 is filed by M.I.D.C. against adjudication in Land Acquisition Reference 75/1996 .

3. In First Appeal Stamp No. 13723/2007 filed by M.I.D.C. against the adjudication in Land Acquisition Reference 74/1996 there is delay of 33 days & C.A. 8595/2007 is for its condonation. In view of First Appeal 971/2007 filed by landowners against that adjudication which is yet to be admitted and as all matters are being disposed of finally at the stage of admission, landowners have

given their no objection to condone said delay of 33 days as after admission of landowners First Appeal, M.I.D.C. could have very well filed cross Appeal. Accordingly C.A. 8595/2007 is allowed and office is directed to register First Appeal Stamp No. 13723/2007.

4. Accordingly all first appeals are Admitted & heard finally by consent of the parties.

5. I have heard Advocate Shri Anjan De with Advocate Ms. Kirti Satpute for landowners, Advocate Shri M.M. Agnihotri for M.I.D.C. and learned Assistant Government Pleader for Land Acquisition Officer. The landowners as also acquiring body have already placed their written notes of argument on record & hence, at the stage, I only briefly mention their respective contentions below.

Advocate Shri De with Advocate Ms. Satpute has argued that the potential of land for non-agricultural purposes/Industrial purpose or commercial purpose has been lost sight of by Court below. By pointing out that acquisition was for additional Industrial area, learned Advocate urges that the potential therefore already existed and lands ought to have been valued accordingly. He invites attention to sale instances and also oral evidence on record to point out that even for agricultural purposes, dry crop land should have been valued as sought for at Rs. 1 lakh per Hectare and irrigated land at Rs. 1.5 lakh per Hectare. According to him compensation for irrigated land has to be twice the compensation for dry crop land. He further states that the lower Court has rightly held that reference application was not barred by time (limitation) and no evidence about knowledge of order determining/fixing the compensation amount is placed on record by M.I.D.C. Landowners were never noticed after the amounts of compensation were quantified in their matters by Collector/Land Acquisition Officer. He also points out that no records of Land Acquisition Officer were either produced or proved and only evidence available on record is of landowners and their witness. In support of his contentions about limitation, about burden of proof and about admissibility of Land Acquisition Officers records, he has relied upon 3 judgments.

Advocate Shri Agnihotri for M.I.D.C. on the other hand has contended that scheme of 1961 Act is distinct and unique, and in view of express language of Section 34 therein, application for reference must be moved within 60 days of the order of Collector and its knowledge is not essential. He has contended that view taken by Division Bench of this Court in case Maharashtra Industrial Development Corporation Vs. Shaikh Khatinabi, The Land Acquisition Officer and Sub-Divisional Officer, The Collector and The State of Maharashtra, runs contrary to express words in said section and the fact that 1961 Act is "complete code" in itself. According to him present landowners were aware of proceedings before Land Acquisition Officer and participated in the same. He has further pointed out that ready reckoner on which landowners wish to rely to point out rate at which compensation should have been worked out is not having any legal sanction and by inviting attention to various judgments of Hon"ble Apex Court he attempted

to demonstrate how comparable sale instances are only relevant for that purpose. Government resolution dated 31/10/1994 according to him has no legal sanctity. He points out that witnesses examined were only interested persons and sale transaction could not have been viewed as independent or impartial one showing any market trend. He further states that mere fact that M.I.D.C. or Land Acquisition Officer did not lead any evidence, is not by itself detrimental to the interest of M.I.D.C. and trial Court ought to have correctly appreciated the evidence adduced by landowners as burden of proof was always upon them. He states that what shifts is only onus of proof and not the burden of proof. He attempts to point out how lands are not comparable and still trial Court has utilised sale instances of such lands to compute market value of lands involved in these Appeals. According to him sale instance dated 25/4/1988 in which claimant Mahadeo Vaidya purchased land at the rate of Rs. 14,049/- per Hectare was the best piece of evidence available on record and still lower Court ignored it. He contends that hike granted by Reference Court is exorbitant and arbitrary. According to him there is no material on record to disclose any inflationary trend in market prices and all sale instances relied upon by lower Court are of different villages. According to him at the most 10 percent inflation could have been added in land price of Rs. 14,049/- and even if this 10 percent is compounded every year rate of land works out to Rs. 27,000/- per Hectare. He points out that inflation rate has to be flat rate and can not be compounded annually. He concludes this point by urging that Reference Court has only reproduced sale instances without evaluating their evidential value as also impact, and value of land has been fixed abruptly in mechanical manner. He lastly stated that in view of statutory provisions; Area manager, M.I.D.C. was incompetent to represent M.I.D.C. and being artificial person, M.I.D.C. was not party before Reference Court at all.

Learned A.G.P. has supported the arguments of M.I.D.C. and contended that all Appeals filed by landowners need to be dismissed and the Appeals filed by M.I.D.C. deserve to be allowed.

6. In view of these arguments following questions crop up for determination before me:

- A) Whether determination of compensation by lower Court is just and legal?
- B) Whether References as sought were beyond limitation?
- C) Whether M.I.D.C. is joined as party before lower Court?

7. In view of various judgments cited before me it would be first proper to appreciate case law cited so as to facilitate the consideration of arguments advanced and also evidence/material on record. In recent judgment Full Bench of this Court has in State of Maharashtra Vs. Prashram Jagannath Aute, , has held that market value in each case has to be decided on its own facts, existing statutory guidelines and in the backdrop of judicial pronouncements and it is neither permissible nor proper for the Court to lay down any straitjacket formula

universally applicable. Onus to prove entitlement to receive higher compensation is upon the claimants and wherever claimants have led evidence some onus lies on the State to produce any counter evidence if it so desires, but primarily the onus always lies on the claimants. The evidence led by the parties and, particularly the claimants, would have to be scrutinized so as to arrive at a just, fair and adequate compensation. Hon''ble Full Bench has observed that another facet of this aspect of acquisition law is what kind of methodology the Court would adopt while arriving at a conclusion. Should it adopt capitalization method, multiple method, belting system or evolve any other method which necessarily would have to depend on record before the Court. Location and potential of the land cannot be a question of law; it would ever be a matter of fact. The enunciation of principle of law which, de hors the evidence on record, can be applied to every case, is not only improbable but is even impermissible. Before me Advocate Shri De has argued that Court below should have allowed double rate for paddy land. The Hon''ble Full Bench has resolved controversy in this respect by holding that "Parties have to lead evidence to show that the lands have greater potential and value, which is higher than the agricultural land. In those circumstances the Court would have to consider the entire matter objectively and may be in all probability the bagayat land may get higher compensation than the agricultural land. Thus it cannot be stated as an universal Rule that irrigated agricultural land must always get price higher or the double compensation than the non irrigated agricultural land." It is also noted therein in para 7 that. "The Court has to determine the amount of compensation/ market value of the land at the date of publication of the notification u/s 4 in consonance with the statutory provisions of Sections 23 and 24 of the Act read in conjunction with the various judicial pronouncements for arriving at such determination with reference to the facts and circumstances; as also evidence led by the parties in each case-It is neither permissible nor proper for the Court to lay down any straitjacket formula universally applicable to all land acquisition cases at any level of proceedings.

8-A. Because of this Full Bench pronouncement delivered after considering all most all precedents, I prefer to briefly point out what the various judgments cited before me declare to be the law. In the case of Cement Corporation of India Ltd. Vs. Purya and Others, cited by Advocate Shri Agnihotri, Hon''ble Apex Court has held that u/s 51-A of 1894 Act the certified copies of sale deeds which are otherwise secondary evidence may be brought on record evidencing a transaction. Such transactions in terms of the aforementioned provision may be accepted in evidence. Acceptance of an evidence is not a term of art. It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Only by bringing a documentary evidence in the record it is not automatically brought on the record, for bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a Court to accept a sale deed on the record evidencing a transaction, nothing further is required to

be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word "may." A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Hon"ble Apex Court states that it is therefore incorrect to say that the contents of a sale deed should be a conclusive proof as regard the transaction contained therein or the Court must raise a mandatory presumption in relation thereto in terms of Section 51-A of the Act. It is discretionary in nature. Same view is followed in *Ranvir Singh and Another Vs. Union of India (UOI)*, . In said judgment it is further observed that the market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is right that the nature of the land plays an important role. View that price fetched after full development cannot be the basis for fixing compensation in respect of land which was agricultural expressed in *Bhim Singh and Others Vs. State of Haryana and Another*, is reiterated. Hon"ble Apex Court found that the High Court did not consider any relevant criteria on the basis whereof it could come to the conclusion that the value of the freehold lands would be double of the value of the leasehold lands. The relevant criteria were terms of the brochure, the terms and conditions set out for sale by the Delhi Development Authority on behalf of the President of India. About potential Hon"ble Apex Court notices that a large amount of money was spent for development of Rohini over a period of 20 years. A large area has been earmarked for schools, hospitals, community halls, etc. Many other advantages were also provided. In law it may be perceived that the scheme floated by the D.D.A. may not be viable and as such the possibility of reduction of the rate at a future date could not be ruled out. Hon"ble Court found it unnecessary to dilate on the relevant criteria for determining the market value as the same were no longer res integra. The relevant factors which were to be taken into consideration for determining the market value have recently been stated by it in *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat*, . Apex Court expressed that it is well-settled that the sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands and has pointed out *Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Ors.*, (2002) 10 SCC 570 . For the purpose of determining the market value, even market conditions prevailing as on the date of notification are relevant. It relied upon earlier view expressed in case of *Jawajee Nagnatham*, case of *P. Ram Reddy* and case of *Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others*, to notice that the burden of proof that the acquired land and the land covered by sale transaction bear similar or same potentialities or advantageous

features is also on the claimant.

B. Advocate Shri Agnihotri has placed reliance on judgment in the case of Smt. Saraswati Devi and others Vs. U.P. Government and another, where the view of High Court that the market value shall be determined according to the use to which the land was put on the date of Notification u/s 4 of the 1894 Act, has been approved M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, relied upon by him states that if "Comparable Sales Method of Valuation of land" is adopted for determining the market-value of an acquired plot of land, it generally holds good for determination of the market-value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary Notification. But, if any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s) of acquired land(s), then the market-value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same preliminary notification. The reason, Hon''ble Apex Court mentions, is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factor of different acquired plots of land, which greatly affects their value is ignored or is not taken into consideration by the Court while determining the market-value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands. The evidence in the case before Hon''ble Apex Court established that the different plots of lands of three claimants acquired, varied greatly as to their sizes, shapes and location (situation) they could not have fetched a uniform rate, if the same had been sold in the open market by each of the claimants. Therefore Hon''ble Apex Court held that determination of the market-value of almost all the acquired plots of lands at a uniform rate, on the wrong assumption that all the 5 plots of acquired lands would have fetched the same rate if sold in the open market was not proper. However, in present matters there is no such attempt undertaken by M.I.D.C. to point out individual or unique features of any acquired land. Court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefore. If the sale is found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary notification under the 1894 Act in respect of the acquired land, the market-value of which has to be determined, the Court has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by

the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale or the market-value determined for the land in the award could be taken by the Court as the "price basis" for determining the market-value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the "price basis" to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different "price basis". This difficulty cannot overcome by averaging the prices fetched by all the comparable sales or awards for getting the "price basis" on which the market-value of the acquired land could be determined. It is so for the obvious reason that such "price basis" may vary largely depending even on comparable sales or awards. Moreover, "price basis" got by averaging comparable sales or awards which are not of the same kind, cannot be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. Hon"ble Apex Court has clarified that therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market-value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market-value of the land under consideration.

C. He also cited Ravinder Narain and Another Vs. Union of India (UOI), wherein Hon"ble Apex Court has held that where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be safe criteria. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/ adjustments have to be made while determining the prices. While narrating factors essential for a sale to be "comparable case" Hon"ble Apex Court has laid down that the value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality. However, the element of speculation is reduced to minimum if the four principles of fixation of market value with reference to comparable sales are observed. Those principles are:

- (i) when sale is within a reasonable time of the date of notification u/s 4(1);
- (ii) it should be a bona fide transaction;
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

It is only when these factors are present, a sale instance can merit consideration as a comparable case.

D. P. Ram Reddy v. Land Acquisition Officer (supra) cited by Advocate Shri Agnihotri lays down that acquisition of land for building purposes by itself is not sufficient to support finding about its building potentialities and inference of its user for such purpose in near future can be drawn on the basis of material placed on record supported by reliable documentary evidence. Possibility of such user of land in immediate or near future is regarded as its building potential. Hon"ble Apex Court also states that while working out market value of land with building potential price fetched by similar land with building potentiality on relevant date as per Section 4(1) of 1894 Act is relevant. In absence of such sale instance sale by willing seller to willing buyer of building plots laid out in similar lands on or near about the relevant date needs to be considered by preparing a hypothetical but similar layout. Hon"ble Apex Court also holds here that whenever statements made by landowners or their witnesses are not got over by Collector or LAO by effective cross-examination or by not adducing evidence in rebuttal, courts are not always obliged to accept such statements as true. Such evidence is to be tested on touchstone of probabilities calling into aid experience of life, men & matters. In (Land Acquisition Officer v. Ramanjulu and Ors.) reported at 2005(9) S.C.C. 594 which is relied on by acquiring body, Hon"ble Apex Court has laid down that where market value fixed for lands acquired 2 years before attained finality, while arriving at market price of similar lands acquired for same purpose, escalation at the rate of 10% for 2 years needed to be added. Here Hon"ble Apex Court has also taken note of the fact that lands were being acquired for third phase or expansion of industrial purpose and hence deducted only 15% towards development charges.

E. Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , is being relied upon by both the sides. Advocate Shri Agnihotri relies on it to point out factors either way relevant for determination of market value while Advocate Shri De & Advocate Ms. Satpute rely on it to show that records of Land Acquisition Officer are not admissible in reference proceedings unless proved as per law. Hon"ble Apex Court observes there that while disposing of a reference, the following factors must be etched on the mental screen.

(1) A reference u/s 18 is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning or correct its error or affirm modify or reverse the conclusion reached by the Land

Acquisition Officer, as if it were an Appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court.

Of course the materials placed and proved by the other side can also be taken into account for this purpose. Following are stated as guiding factors to be borne in mind while determining market value of land:

(1) Determined as on the crucial date of publication of the modification u/s 4 of the Land Acquisition Act (dates of Notification under Sections 6 and 9 are irrelevant).

(2) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(3) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(4) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of Land).

(5) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(6) The most comparable instances out of the genuine instances have to be identified on the following considerations: (i) proximity from time angle. (ii) proximity from situation angle.

(7) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(8) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors evaluated in terms of price variation as a prudent purchaser would do.

(9) The market value of the land under acquisition has thereafter to be deduced

by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

The exercise indicated in Clauses (1) to (10) has to be undertaken in a common sense manner as a prudent man of the world of business would do. Hon''ble Apex Court states that the evaluation of these factors of course depends on the facts of each case. Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

9. Lower Court has tried and decided all cases together. Evidence has been recorded jointly in L.A. Case No. 73 of 1996. All landowners have examined themselves including Shri Govindrao Virutkar i.e. claimant in L.A. Case No. 73 of 1996 on merits and as also on the point of limitation. They have examined one Dadaji Chokhare as witness No. 2 while M.I.D.C. has examined Shri Ajit Pawar as it is only witness. It also is apparent that all lands were dry crop land and landowners Govindrao Tukaram Virutkar (L.A. Case No. 73/1996) and Zibla Bhojar (Appellant in F.A. 1005 of 2007) were claiming compensation at the rate of Rs. 1,50,000/- per Hectare for their paddy/irrigated lands. Relevant purchase deeds (certified copies) are at exhibit numbers 64 to 68 and 71 in relation to village Umari Rith, Exhibit. 69, 70 and 72 for villages Yerur and Tadali. Exhibit Nos. 64 to 68 and 71 of village Umari Rith show price of Rs. 50,000/- per Hectare on 18/11/1988. Exhibit 71 is for 0.81 Hectares and for consideration of Rs. 50,525/- i.e. @ Rs. 62,500/- per Hectare on 27/1/1989. These lands are purchased by Indian Oil Corporation for establishing their oil depot and are adjacent to railway line. Considering the purpose for which the lands are purchased by oil Corporation, facility of approach by existing railway line is of great significance. But material on record shows that rate was settled through mediation of revenue authorities and does not, upon overall consideration, appear to be exorbitant at-least in Exhs. 64 to 68. Last transaction vide Exh. 71 appears to be a distress purchase. Also these transactions are between needy buyer, a strong vendee and from adjacent village. It therefore cannot help the landowners here as "comparable sales" and consideration by lower Court on these lines cannot be faulted with. The land acquired in present matters is not adjacent to any railway line. It appears to be near main road or highway and there is no industrial colony or area or factory nearby. Only fact that lands have been acquired for expansion of industrial area therefore cannot be of much assistance to stake a claim for very same rate. Though witness No. 2 - Dadaji has stated on oath that quality and yielding capacity of these lands and lands acquired by M.I.D.C. were the same and though he was not cross-examined in this respect, still in view of this material, the unchallenged testimony cannot be relied upon as this Court has to evaluate it in the background of other evidence on record. Some of the landowners have themselves stated there was difference in nature/type of lands at Yerur and lands at Umari Rith or Tadali. Evidence shows that there was no relevant change affecting value of lands of village Yerur since last 10-20 years and there were no civic facilities, except roads, in the

vicinity of lands acquired. Lower Court has considered this aspect in paragraph 24 of its judgment to conclude that market value of land having railway line must be higher than the acquired land. This observation upon consideration of advantage of railway line to Oil Corporation and its savings thereby, does not seem to be and is not shown to be perverse at all. However adjacent railway line by itself may not be very relevant for undertaking expansion of an existing industrial area.

10. Sale deed Exhibit 69 is dated 20/5/ 1991 from village Tadali and in respect of the 0.48 Hectares of agricultural land. Total sale consideration reflected therein is Rs. 96,000/-. The government valuation as per ready reckoner is shown to be Rs. 3,43,500/- only. Sale deed Exhibit 70 is also of same date, of same village and for 0.63 Hectares of agricultural land for total consideration of Rs. 45,800/- while as per government rate, valuation shown is Rs. 5,02,200/- only. Thus though governmental rate has increased with increase in area, market rate sought to be relied upon by landowners has decreased and the sale instances are from same village and are of same date. Lower Court has in paragraph 26 of its judgment considered this vast deference and refused to rely upon it for determination of market value of acquired land. I also find it unsafe to rely upon these documents. It also shows that it would be imprudent to rely on Government decision dated 31/10/1994 directing to accord primacy to government ready reckoner while fixing the market value in such situation. Moreover the lands are from other village which is on highway and nearer to district place i.e. Chandrapur.

11. Evidence of Shri Virutkar shows that village Yerur is two kilometers away from village Tadali. He also accepted that residential locality of Yerur has not undergone any change in past 10-20 years. Though he claimed that there were several sale transactions from his village in the preceding one year prior to acquisition and of large as also small portions of land, he could not substantiate it as is apparent from paragraph 3 of his cross-examination. His First Appeal, if any, is not before me and hence portion of his evidence individual to his case need not be considered here. Examination in chief of all other claimants filed on affidavit is on same lines & their cross is also not much different. Though according to him Nagpur Chandrapur Road passes by the side of his field, he accepted that way to Chandrapur is Yerur-Tadali-Merwah-Padali-Chandrapur by vehicle. Earlier in chief, he stated that village Yerur was situated on Chandrapur Nagpur Road and by the side of village there is Ghugus Wani road. Said Road originates from Chandrapur Nagpur Road by bifurcation near village Tadali. He stated that biggest thermal power station in Asia was established at Durgapur in 1981-82 and its boundary is within one km., of acquired land. The depot of Indian Oil Corporation is established adjacent to acquired land in 1988. Central workshop and residential colony of W.C.L. was established at Tadali in 1985 at half km. from his acquired land. He stated that boundary of new Chandrapur locality was near his village and land of old M.I.D.C. was also adjacent to the acquired land. The village of Ghugus was a distance of 5 km. from acquired land.

The boundary of village Umari Rith 8s Tadali are adjacent to boundary of his village. There is no residential localities at Umari Rith and cultivators there reside at Yerur. Locality of Tadali is at distance of two kms., from his village. Nothing has been brought out in his cross-examination to disbelieve this version. In cross-examination he admitted that 1.08 Hectare of land of Kh. 259 of Yerur was purchased by Ramaji More from Shioram Jogi for Rs. 19,500/- per Acre and it was at a distance of 2 to 3 fields from his acquired land. In chief he had already deposed on same lines & asserted that his lands & land from Kh. No. 259 were similar. That Sale deed dated 21/ 4/1986 is at Exhibit. 72. Evidence of individual landowners also establish same facts. All of them, except Shri Zibla Bhoyar, have stated that their lands were dry crop lands and they depended on rains for cultivation. Shri Zibla Bhoyar has denied that his land was dry crop land but then he could not produce any documents showing facility for irrigation or nature of crops sown and sold. Appellants in F.A. No. 964/2007 admitted that in 1991 there was no ready reckoner for Yerur. Appellants in F.A. Nos. 962,1003 & 1006/2007 have accepted that nature & type of their lands were different than the lands acquired earlier. Appellants in F.A. No. 971/2007 have admitted that Oil Depot as also village Tadali are 2 K.Ms. away from Yerur. Mahadeo, appellant in F.A. No. 963/ 2007 accepted that after 1985 on Nagpur road beyond village Padali no new industry was established. Witness No. 2- Dadaji has stated in cross-examination that railway line does not go through village Yerur but through its agricultural lands. He also accepted that when Indian Oil Corporation procured lands at village Umari Rith there was no ready reckoner prepared for that area. Evidence adduced by M.I.D.C. through Shri Ajit Pawar does not speak of geographical locations but only of service of notice on landowners i.e. about limitation. Perusal of copy of order dated 10/1/1995 passed by Land Acquisition Officer in respect of lands at village Yerur shows that in paragraph 10 thereof about 12 sale instances collected from Talathi are mentioned and price per Hectare has been worked out. The sale instances are from April, 1988 to March 1992 and Land Acquisition Officer has fixed the rate between Rs. 16,000/- to Rs. 33,000/- per Hectare. But then these sale instances are not proved by examining anybody and are not even put to any landowner or witness No. 2- Dadaji. It is apparent that in view of judgments mentioned above this material in award is not admissible. Moreover rate fixed in paragraph 11 is between margin of Rs. 16,000/- to Rs. 33,000/- per Hectare which is very vague. The difference between minimum and maximum is more than 100% and it is difficult to accept such an exercise as undertaken for determination of market value. The award at least does not show particular rate to be used for any specific land or landowner and basis therefor. In view of specific case of landowners about development in the area, about relative placement of acquired lands qua railway line, National and State highway nearby as also development in surrounding areas, burden was also upon M.I.D.C. to show that picture being projected was incorrect. It is apparent that some development had already taken place in surrounding villages, and acquired lands therefore had inherent commercial or industrial potential because of nearness to developed area. Public roads, railway line,

thermal power station and coal were/ are all available in vicinity. It cannot be forgotten that M.I.D.C. has acquired these lands for expansion of their existing industrial area. Hence, reliance by Advocate Shri Agnihotri on sale instances mentioned in his award by L.A.O. is misconceived & so is his contention about absence of proof of non agricultural potentiality of acquired lands.

12. Even if price fetched by lands at Umari Rith and Tadali are ignored, there is one sale deed of village Yerur itself on record. Sale deed dated 21/4/1986 at Exhibit 72 relied upon by landowners is in relation to land in Block Number 259 of Yerur. Its area is 1.08 Hectare and it has been sold for Rs. 50,000/- . The consideration also includes consideration towards one-fourth share in mango tree. Lower Court has found that sale deed does not disclose types and number of trees available on land and hence did not accept it. Sale instance dated 25/4/1988 in relation to land Survey No. 212 (acquired from Mahadeo Vaidya claimant in L.A. Case 58/ 96 and appellant in First Appeal No. 963/ 2007 is being pressed into service by M.I.D.C. to point out that rate per Hectare then was Rs. 14,049/- as best evidence in view of judgment of Hon"ble Apex Court in case reported at Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, . Hon"ble Apex Court has held that in determining the market value of the land, the price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. Where there were bona fide and genuine sale transactions in respect of the same land under acquisition wherein the claimant who was vendee had sold at Rs. 5 per sq. yard, the Hon"ble Apex Court has laid down that High Court would not be justified in excluding such transaction and placing reliance on compensation at the rate of Rs. 10 per sq. yard, within a time lag of nine months from the bona fide transaction by seller. However here neither said sale deed dated 25/4/1988 is produced on record by M.I.D.C. nor anybody is examined to prove such instance. The ruling therefore has no application in present facts. Moreover Mahadeo Vaidya - claimant in L.A. Case 58/96 and appellant in First Appeal No. 963/2007 has entered the witness box to support his demand for enhanced compensation and he has been subjected to long cross examination by acquiring body as also State. But then for reasons best known, this sale instance which as per award shows that he had purchased acquired land from one Janardhan on 25/4/1988 at rate of Rs. 14,049/- per Hectare has not been put to him at all. He as also all claimants have relied on sale deed Exh. 72 by which Ramaji More has purchased from Shioram Jogi land at the rate of Rs. 46,296/- per Hectare in 1986. This Ramaji Kisan More is appellant in F.A. No. 971/2007 and claimant in L.A. Case No. 74/1996. He also has expressly relied upon same sale deed Exh. 72 to seek hike. He himself is party to Exh. 72 and nothing is asked to him about it so as to enable any Court to ignore that document. Exh. 31 in his case is 7/12 form i.e. revenue record for years 1990-1991 and 1991-1992. It shows complete

1.08 Hectares area to be under cultivation of Cotton and Tur- a type of gram. Perusal of Ex. 72 reveals that there is only one mango tree in which purchaser was given 1 /4th share. It uses singular number for tree and had there been more than one tree, the number thereof would have been expressly mentioned in Exh. 72. Reason given by lower Court to discard Exh. 72 is therefore not correct. Considering the fact that said sale is dated 21/4/1986 i.e. 6 years before the preliminary notification of acquisition in present matter, I find that rate of Rs. 46,296/- per Hectare flowing from it deserves to be accepted. Said sale is proved to be a bona fide transaction between two willing persons. Area of agricultural land forming its subject matter and areas of fields under acquisition is more or less similar/comparable. Location and the features like the size, shape, potentiality etc. of this land (advantages and disadvantages) covered by the sale are identical with lands covered by impugned award. It can therefore safely be used as "price basis" or "comparable sale instance". No arguments to show why Exh. 72 should not be relied upon or about any distinct features of acquired lands distinguishing it from Kh. No. 259, advantages or otherwise, are advanced before me by M.I.D.C. Erroneous reason assigned by lower Court for not accepting Exh. 72 is the only defence even before this Court inspite of arguments of landowners. Effort of Advocate Shri Agnihotri to persuade this Court to accept sale instance dated 21/4/ 1988 between Mahadeo and Janardhan, to add annual inflation at 10% to rate therein and to fix market rate at Rs. 27,000/- per Hectare (according to him) therefore can not be countenanced.

13. In Moreshwar Shankar Phatak and Another Vs. State of Maharashtra and Others, and pressed into service by the landowners, the Division Bench of this Court has held Reference to be within limitation. There the award was declared on 18-2-1992 in the absence of the parties. Appellants/landowners contended that notices u/s 12(2) of 1894 Act were received by them on 29-4-1992 and Reference was filed on 6-6-1992. Authorities did not produce any evidence to prove bar of limitation. Division Bench held that the trial Court erred in dismissing the reference as barred by limitation holding that since appellants failed to get the records produced, the burden of proof placed on the appellants was not discharged. High Court held that even if the burden of proof does not lie on a party, the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at the issue. In this case for reasons best known to it, M.I.D.C. has not brought on record the relevant material either by producing & proving it or then through cross-examination of landowners.

14. Argument of Advocate Shri De about primacy given to higher rate fixed by ready reckoner vide government notification dated 31/10/1994 is contrary to declarations of Hon"ble Apex Court in Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another, , Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, and P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , all cited by Advocate Shri Agnihotri. It has

been held by Hon''ble Apex Court that market value u/s 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register i.e. ready reckoner maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes was found clearly erroneous. For the purposes of Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands. Primacy therefore is to sale instances and said government notification therefore can not be of any help to the landowners. Moreover Sale deeds Exhs. 69 and 70 (considered below) prove that though governmental rate has increased with increase in area, market rate sought to be relied upon by landowners has decreased and these sale instances are from Tadali and are of same date.

15. Lower Court has found it necessary to sanction enhancement after considering entire material on record. It can not therefore be urged by M.I.D.C. that higher rate has been fixed abruptly. However, as it discarded sale deed Exh. 72 erroneously, it has granted enhancement at lesser rate. In view of findings reached above, I hold that rate worked out on the basis of Exh. 72 i.e. Rs. 46,296/- per Hectare needs to be allowed after suitable annual inflation. The sale is of year 1986 and acquisition here has commenced in 1992. Advocate Shri Agnihotri has himself added inflation at rate of 10% per annum to canvass rate of Rs. 27,000/- per Hectare. Hon''ble Apex Court has also accepted very same rate of inflation. Even if inflation at 10% is granted on lands procured in 1988 by Indian Oil Corporation, its price in 1992 will work out to Rs. 70,000/- per Hectare. Market price of acquired lands in these Appeals has to be less than Rs. 70,000/-. Hence, even in absence of any evidence on record to show specific appreciation or non agricultural improvement in vicinity of acquired lands, rate of 7.5% per year can be allowed here in view of potentiality established. Thus calculating said inflation at flat rate of 7.5% for 6 years on Rs. 46,000/- per Hectare, the rate works out to Rs. 67,300/- per Hectare. As all lands involved in these Appeals are found to be dry crop lands, there is no question of attempting to find out whether any higher rate needs to be granted to irrigated lands. Similarly as basic rate taken into account is of agricultural/undeveloped land, it is apparent that there is no question of effecting any deduction towards development charges. Though commercial or industrial potential existed, no evidence in relation to market price of such lands has been tendered on record by the landowners and I hold that 7.5% appreciation granted is sufficient to absorb even the reimbursement for potentiality established. Point No. "A" formulated above is answered accordingly. Rate of Rs. 37,000/- per Hectare sanctioned by lower Court stands increased to Rs. 67,300/-. Accordingly figure and words Rs. 37,000/- (Rs. Thirty Seven Thousand only) in operative part Clause 2 of judgment of lower Court stands substituted by figure and words Rs. 67,300/- (Rs. Sixty Seven Thousand Three Hundred only).

16. Though in memo of Appeal it is contended by M.I.D.C. that Reference u/s 34 of 1961 Act is in fact an appeal, no such contention is raised in written notes of

arguments by it or even orally. In written notes it is contended that the Section 34 envisages filing of reference before Collector within sixty days from the date of passing of award and only after such application is filed, Part III of 1894 Act becomes applicable. According to Advocate Agnihotri scheme of 1961 Act does not contemplate issuance of any notice to landowners after passing of award as is required by Section 12(2) of 1894 Act. Hence period of sixty days needs to be counted from the date of award and not from the date of knowledge, else, provisions of Section 34 become redundant. It is being pointed out that all landowners were served with various notices of proceedings undertaken by LAO and they were aware of proceedings & the passing of award. In any case it was their obligation to keep track of matter and to follow it after service of notice and they cannot be permitted to take advantage of their own wrong by pointing out ignorance. It is also contended that though this objection has been specifically raised before lower Court, it has not been considered at all by it. I find that the lower Court did frame additional point/issue "1-A" to find out whether cases were within limitation and it is considered said aspect in paragraph 7 to paragraph 13 of its judgment. It has also reproduced relevant part of Section 34 and found that award has been passed on 10/1/1995 and it was not the case of M.I.D.C. that landowners were present at the time of pronouncement of award. It further found that order-sheet at Exhibit. 115 also did not show such presence. It found that the landowners accepted compensation on 5/5/1995 and then filed cases before it on 19/6/1995 i.e. within prescribed time limit. It found that said time limit can not begin to run unless and until landowners learn about passing of compensation award by Collector. It has considered various precedents to conclude that the actual or constructive knowledge of award is must for time to start running. It found that all applicants have stated that they got knowledge of passing of award only after they received notice to collect compensation. Some landowners got notices on 4/5/1995, 17/ 5/1995 and 22/5/1995 and in their cross-examination M.I.D.C. could not establish that they received such notices immediately after pronouncement of award. It also concluded that the M.I.D.C. did not lead any evidence to prove that landowners got knowledge of judgment/ award on 10/1/1995 itself. Order sheet at the Exhibit 115 maintained by Land Acquisition Officer also did not disclose that the landowners were informed about passing of judgment or award immediately. All these findings are not assailed before me as erroneous or perverse. Only contention before me is that there is no obligation upon Land Acquisition Officer or M.I.D.C. to inform landowners about passing of award and landowners themselves have to be vigilant and keep track of the proceedings.

17. I find the above arguments misconceived. Land Acquisition Officer or M.I.D.C. have to first demonstrate that the landowners were present on the date on which acquisition case was closed for award and that some date was given for its pronouncement/ delivery which was noted by such landowners. If no such date is given, Land Acquisition Officer cannot dispute his obligation to inform landowners about passing of award or delivery of judgment. Issuance of such

notice is requirement of fair play and of principles of natural justice. Absence of express provision mandating issuance of such notice in 1961 Act is not sufficient to construe that such notice has been dispensed with by legislature. Right to hold and enjoy property is now considered to be not only a constitutional right but also a human right and the citizen has right to claim compensation as per relevant law for property compulsorily acquired in public interest. Landowners are not expected to continue to visit the office of Land Acquisition Officer again and again, and fate of their important right to approach Civil Court for determination of just market price cannot be made dependent upon result of such oral inquiry. The uncertainty of such result upon oral inquiry, various mistakes or mischief possible in the matter itself necessitate forwarding of written notice of delivery of award/judgment. Certainty is the soul of justice administration and when it can be achieved by following normal process, the contention that landowners are duty bound to keep track of matter needs to be rejected as it tends to introduce confusion and uncertainty. Creation of such situation leading to confusion or uncertainty can never be the intention of any legislature.

Section 34 of the 1961 Act is as under:

34(1): Any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect thereof. (2) The decision of the Court (on such reference), and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final.

Any person aggrieved by the decision of the Collector" determining the amount of compensation may, within sixty days from the date of such decision, "in so far as it affects him" are the keywords in scheme of Section 34(1) of 1961 Act. Unless and until order determining the amount of compensation is known, person can neither be "aggrieved" nor can he find out the "extent to which it affects him/his interest". Thus by using these words, legislature has intended communication of decision to individuals affected thereby. In present facts also forwarding of such notices in the month of May 1995 and its receipt thereafter by landowners is accepted by lower Court and reference applications are found to be filed within sixty days of such service of individual notice.

18. Division Bench judgment in case M.I.D.C. v. Shaikh Khatinabi (supra) is pointed out by Advocate Shri De with Advocate Ms. Satpute to substantiate their stance that knowledge of impugned determination to landowners is must. In order to comprehend the contentions raised in this respect by the learned advocate for the appellant therein (Advocate Shri Agnihotri only) the Division

Bench has first reproduced the arguments in paras 9-10 and then recorded its conclusions in para 17 as:

17. Therefore, in our view, if a claimant, whose land is acquired under the Land Acquisition Act, can make an application for reference within stipulated time from the date of his acquiring knowledge of the award, there is no reason why a different yardstick should be applied to a claimant whose land is acquired under the provisions of the ME) Act. This is apart from the fact that it is elementary that a person would not be able to file an application for enhancement if he did not at all come to know of the award passed.

The judgment very succinctly lays down the law on the point. The finding of lower Court that reference applications are filed within sixty days of deriving the knowledge of decision of Land Acquisition Officer is neither erroneous nor perverse.

19. It is admitted position that preliminary notification u/s 32(2) of 1961 Act [treated as equal to Section 4(1) of 1894 Act by its Section 33(5)] is issued on 19/3/1992 and final notification u/s 32(1) of acquisition is dated 27/10/1993. M.I.D.C. has pointed out that LAO has delivered award on 10/1/1995. Scheme of Sections 32 and 33 show that Collector or LAO has to only decide compensation when the same is not settled by agreement between parties. Section 34 contemplates reference to Civil Court against such determination. Without any express plea thereabout, in written arguments M.I.D.C. has stated that all claims lodged by the landowners were submitted to State Government which rejected the same on 29/6/ 1993 since the same were of ordinary nature. The said claims, if considered by State, were obviously u/s 32(3) of 1961 Act and challenged only the proposal to acquire. Process for determination of compensation begins only after publication of notification u/s 32(1) thereof. Section 33(3) obliges government to refer the unacceptable claim for compensation to Collector/LAO and statute does not permit it to reject any such claim. Such case about rejection of compensation claim is not put forth even in deposition of Shri Ajit Pawar. There is no scope for such rejection in scheme of 1961 Act and in case of dispute, the compensation amount is to be determined by LAO whose decision thereabout is expressly made final subject to adjudication by Court its u/s 34(2). Hence even on facts M.I.D.C. has failed here to plead and prove starting point of limitation. Point "B" framed above is thus answered in favour of landowners and against M.I.D.C.

20. M.I.D.C. being acquiring body must be joined as party defendant in reference proceedings and has been joined but through its Regional Officer or area manager. It is true that as per Section 3(2) of 1961 Act M.I.D.C. is a body corporate and may sue or be sued in its corporate name. Accordingly it has been so sued i.e. was made party in reference by the landowners. However Advocate Shri Agnihotri insists that it should have been arrayed as party through its Chief Executive Officer who is principal officer in-charge for all purposes. But then no such legal provision is being pointed out. Section 4(f) only stipulates that Chief

Executive Officer shall be its ex officio Secretary. Thus non-compliance with Section 3(2) is not demonstrated. Even before lower Court no objection was raised in this respect and it was not urged that its Regional Officer through whom it was impleaded, was not competent to represent it. Further no prejudice suffered by it on that count is demonstrated to this Court. Not only this but all First Appeals presented to this Court on behalf of M.I.D.C. and being considered here, are filed by M.I.D.C. through its Regional Officer only. In these circumstances I do not find any merit in this belated objection raised after 12 years. Point "C framed above is thus answered in affirmative i.e. against M.I.D.C. and in favour of the landowners.

21. In view of discussion above, I proceed to pass the following order:

i) All Appeals filed by landowners i.e. First Appeal No. 961/2007, First Appeal No. 962/ 2007, First Appeal No. 963/2007, First Appeal No. 964/2007, First Appeal No. 965/ 2007, First Appeal No. 1003/2007, First Appeal No. 1005/2007, First Appeal No. 1006/ 2007 and First Appeal No. 1007/2007 are hereby partly allowed. Rate of Rs. 37,000/- per Hectare sanctioned by lower Court stands increased to Rs. 67,300/-. Accordingly figure and words Rs. 37,000/- (Rs. Thirty Seven Thousand only) appearing in Clause 2 of operative order of impugned judgment of Joint Civil Judge (Senior Division) dated 19/4/ 2007 stands substituted by figure and words Rs. 67,300/- (Rs. Sixty Seven Thousand Three Hundred only). Its said judgment and decree impugned in these First Appeals and delivered in Land Acquisition Reference No. 78/1996, in Land Acquisition Reference No. 77/1996, in Land Acquisition Reference No. 58/1996, in Land Acquisition Reference No. 69/1996, in Land Acquisition Reference No. 70/1996, in Land Acquisition Reference No. 74/1996, in Land Acquisition Reference No. 5/1996, in Land Acquisition Reference No. 72/1996, in Land Acquisition Reference No. 59/1996 & in Land Acquisition Reference No. 75/1996 stands modified only to that extent. Rest of judgment and decree is maintained as it is. Rule is made absolute accordingly in these matters.

ii) Civil Application No. 8595/2007 in First Appeal Stamp No. 13723/2007 for condonation of delay is allowed. Office to register said first Appeal.

iii) All Appeals i.e. First Appeal No. 351/2008, First Appeal No. 350/2008, First Appeal Stamp No. 13723/2007 (being registered as per directions above), First Appeal No. 476/ 2008, First Appeal No. 349/2008 and First Appeal No. 352/2008 filed by M.I.D.C. are hereby dismissed. Rule discharge therein accordingly.

iv) However in the circumstances of the case parties to bear costs as incurred.

v) Decrees be drawn accordingly.