

(2007) 12 BOM CK 0010

In the Bombay High Court

Case No : First Appeal No. 444 of 2007 (Arising out of L.A.C. No. 55 of 1997)

Maharashtra Industrial Development Corporation APPELLANT

Vs

Shaikh Khatinabi, The Land Acquisition Officer and Sub-Divisional Officer, The Collector and The State of Maharashtra RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 18, 18(2), 4, 51(A), 6
Maharashtra Industrial Development Act, 1961 — Section 32, 32(1), 34, 34(1), 39
Maharashtra Regional and Town Planning Act, 1966 — Section 126, 126(3)
Nagpur Improvement Trust Act, 1936 — Section 39

Citation : (2008) 1 ALLMR 654 : (2008) 2 BomCR 34 : (2008) 110 BOMLR 63 : (2008) 1 MhLj 813

Hon'ble Judges : R.C. Chavan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : M.M. Agnihotri, for the Appellant; R.S. Parsodkar and T.R. Kankale, A.G.P. for Respondent Nos. 2 to 4, for the Respondent

Judgement

R.C. Chavan, J.—This appeal by the acquiring body is directed against the judgment of 9th Adhoc Additional District Judge, Nagpur in Land Acquisition Case No. 55 of 1997, whereby the learned Judge granted enhanced compensation to respondent No. 1 for 5.28 hectares of respondent No. 1's land bearing Gut No. 72 in village Dhurkheda, Tahsil : Umred, District : Nagpur.

2. The appellant Maharashtra Industrial Development Corporation is a statutory Corporation established under the Maharashtra Industrial Development Act, 1961 (hereinafter referred to as MID Act.). The MID Act provides for acquisition of lands for industrial development of undeveloped areas. Clause (2) of Section 32 of the Act provides for publication of a notice which corresponds to notice u/s 4 of the Land Acquisition Act. In respect of the land in question such notice under Clause (2) of Section 32 of the MID Act was issued on 16.08.1989 and published in the official gazette on 14.09.1989. A further notice to be published by the

State Government under Clause (1) of Section 32 corresponds to notice u/s 6 of the Land Acquisition Act. The notification u/s 32(1) of the Act was published on 24.05.1990. By an award dated 13.05.1996 the Land Acquisition Officer awarded compensation to the land owner " Rs. 19,000/- per hectare, amounting to Rs. 1,02,960/- for 5.28 hectares of the land. According to the land owner on 06.07.1996 notice Exh.20 in respect of this award was sent by the Land Acquisition Officer which was received by him on 17.07.1996. The land owner sought compensation of Rs. 16,27,700/- by applying on 17.08.1996 u/s 34 of the Act for reference to Court.

3. The appellant Corporation objected to the tenability of reference, first on the ground that it was barred by limitation, prescribed u/s 34 of the MIDC Act and secondly because the compensation awarded by the Land Acquisition Officer was just and proper.

4. Upon considering the evidence tendered before him in light of the issues which he has framed, the learned Judge held against the Corporation and proceeded to hold that the land owner was entitled to compensation " Rs. 75,000/- per hectare minus amount, if any, already received. The claimant had also sought compensation for trees etc. which the Court did not grant and about which no grievance has been made by the claimant in the present appeal.

5. We have heard learned Advocate Shri Agnihotri for the appellant acquiring body and learned Advocate Shri Parsodkar for respondent No. 1 claimant.

6. The learned Advocate for the appellant/ Corporation submitted that though the Corporation had specifically raised question of limitation prescribed u/s 34 of the Act, the learned Judge of the reference Court misdirected himself by framing an issue as to whether the reference was barred u/s 18(2)(a) of the Land Acquisition Act. Learned Advocate Shri Agnihotri, further submitted that the entire discussion by the learned Judge of the reference Court proceeded on the foundation that limitation as prescribed u/s 18 of the Land Acquisition Act was applicable resulting in the learned Judge rendering negative finding on the issue framed.

7. According to learned Advocate Shri Agnihotri provisions of Section 18 would apply to the proceedings only after an application for reference is made. He stated that the phraseology used in Section 34 of the Act is very clear and there cannot be any other interpretation.

8. In order to comprehend the contentions raised in this behalf by the learned Advocate for the appellant it may be useful to reproduce the provisions of Section 34 of the MID Act, 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..

9. Learned Advocate Shri Agnihotri submitted that a person aggrieved by the decision of the Collector has to apply within sixty days of such decision to the Collector to require the matter to be referred for determination by the Court. Clause (1) of Section 34 further provides that when any such application is made, provisions of part III of the Land Acquisition Act were to apply mutatis mutandis to the further proceedings in respect thereof. Therefore, according to the learned Advocate, first, because conjunction .and. separates the two clauses of Section 34(1) and since second clause specifically uses the words further proceedings., it is clear that the provisions of Land Acquisition Act would apply only after the application is made and not to the making of the application. Therefore, according to the learned Advocate, the learned Judge of the reference Court was in error in relying on the provisions of Section 18(2)(a) of the Land Acquisition Act for computing limitation.

10. Learned Advocate Shri Agnihotri submitted that Section 34 of the MID Act refers to Part-III of the Land Acquisition Act only for the purpose of further proceedings, after an application is made to the Collector within sixty days from the decision by the Collector. He submitted that amendment to Section 18 of the Land Acquisition Act, which provides for a reference to be made by a person within six weeks of the award, if such person was present at the time of making of award, or in other cases within six weeks of receipt of notice of award, would not apply to the present case. He submitted that a person aggrieved will have to make an application in writing within sixty days of the date of decision irrespective of whether he was present when the decision was taken by the Collector or the date on which he received notice of such decision from the Collector. Therefore, according to him, issuance of notice by the Collector on 06.07.1996 or its receipt by the respondent on 17.07.1996 are totally irrelevant and do not bring respondent's application dated 17.08.1996 within limitation of sixty days prescribed u/s 34 of the MID Act.

11. The learned Advocate for the appellant sought to support his argument on the basis of some celebrated judgments of the Apex Court, considering the question of applicability of amended provisions of one Act referred to in another Act. In Nagpur Improvement Trust Vs. Vasantrao and Others and Jaswantibai and Others, the Apex Court considered extensively the question of legislation by incorporation or by reference. The case had arisen out of provisions of Nagpur Improvement Trust Act and two similar pieces of legislation in Punjab and Utter Pradesh. In this respect the Apex Court observed as under:

4. In the appeals which relate to the acquisitions under the Nagpur Act, the appellant, namely the Nagpur Improvement Trust, has impugned the judgment and order of the High Court of Bombay (Nagpur Bench), Nagpur, holding that the Land Acquisition Act is merely referred to in the Nagpur Act and, therefore, the provisions of Section 6 including the proviso thereto apply to acquisitions under the Nagpur Act. Since the notice u/s 39 of the Nagpur Act corresponding to the Notification u/s 4 of the Land Acquisition Act was first published in the Official Gazette on 25th December, 1969 and the subsequent Notification u/s 45 corresponding to the declaration u/s 6 of the Land Acquisition Act was published on 18th September, 1974 i.e. after more than three years, the same deserves to be quashed since the notice published u/s 39 of the Act lapsed on expiry of three years from the date of its publication, and no action pursuant to the said notice could have been taken thereafter.

...

14. Section 60 provides for the constitution of Tribunal for the purposes of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

...

31. We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the Land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute, in a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

36. It is also well settled that the question as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the

earlier decision and other relevant circumstances.

45. ...In this connection this Court relied upon the following passage from the judgment in Nagpur improvement Trust and Anr. v. Vithal Rao and Ors. (supra):

Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

* * * * *

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14..

...

54. In any event in Nagpur Improvement Trust (supra) this Court negated the contention that different principles of compensation can be laid if the land is acquired for or by the Improvement Trust or Municipal Corporation or the Government. This Court held that as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other. Thus, viewed from any angle, the submission must be rejected.

12. The learned Advocate Shri Parsodkar, for respondent No. 1 claimant also drew our attention to another judgment of the Apex Court considering the question of legislation by incorporation or reference in the context of provisions of Section 126 of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as MRTP Act.) in Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others, . It may be useful to extract paragraphs 8, 11, 15 and 20 of this judgment as well, as under:

8. It is well-established legislative practice to borrow the provisions of an earlier Act on a particular subject by making a broad reference to the earlier Act or some or most of its provisions therein so as to make them applicable to the relevant subject-matter dealt with by the later statute. This is done primarily as a matter of convenience in order to avoid verbatim repetition of the provisions of the earlier Act. Very often such reference is followed by certain modifications subject to which the earlier Act should apply. Those modifications may be few or

numerous. When such legislative device is adopted, the relevant provisions of the earlier Act will apply *mutatis mutandis* to the matters governed by the later Act. But the difficulty in construction would arise when the earlier Act is repealed or amended/modified. The intricate question then would be whether the repeal or amendments should be ignored and the borrowed provisions should be read as they were at the time of enactment of the later Act OR the provisions of the earlier Act should be applied subject to subsequent amendments/ modifications. If there is a definite indication in the later Act as to the applicability or otherwise of subsequent amendments in the Act referred to, no difficulty arises; but, the problem arises when there is no such indication. It is here that we come across two allied but qualitatively different concepts of statutory interpretation known as incorporation by reference and mere reference or citation of earlier statute in the later Act. In the former case, any change in the incorporated statute by way of amendment or repeal has no effect on the incorporating statute. In other words, the provisions of the incorporated statute as they stood at the relevant time when the incorporating statute was enacted will ever continue to be read into that later statute unless the legislature takes a positive step to amend the latter statute in tune with the amendments. However, the legal effect is otherwise in the case of a statute which merely makes a reference to the provisions of an earlier statute. In that case, the modification of the statute from time to time, will have its impact on the statute in which it is referred to. The provisions in the earlier statute with their amendments will have to be read into the later enactment in which they are referred to unless any such subsequent amendment is inconsistent with a specific provision already in existence.

11. The distinction between incorporation by reference and adoption of provisions by mere reference or citation is not too easy to highlight. The distinction is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/ or taking an insight into the working of the enactment if one or the other view is adopted. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. The distinction often pales into insignificance with the exceptions enveloping the main rule.

15. We are of the view that the issue arising in the present case can be decided on a different principle in the light of two recent decisions of this Court without undertaking an exercise of placing Section 126(3) into one or the other category of legislation.

20. ...In our view, the provisions contained in Section 126 or any other provisions occurring in Chapter VII (discussed *supra*), far from manifesting an intention not to apply the provisions of the LA Act as amended from time to time vis-a-vis compensation seem to suggest that the legislature did not intend to

make a marked departure from the LA Act on the subject of compensation and other allied monetary benefits. Reiterating the observation made in U.P. Avas Parishad case in para 31, we hold that there is nothing in the M R T P Act which precludes adopting the construction that the provision of the LA Act, as amended by the 1984 Act relating to award of compensation, would apply with full vigour to the acquisition of land under that Act. Unless such interpretation is placed on Section 126(3) the acquisition under the MRTTP Act will be afflicted with the vice of invidious discrimination and palpable arbitrariness hit by Article 14 of the Constitution. If the interpretation which is sought to be placed by the appellant is accepted Section 126(3) itself is liable to be struck down as violative of Article 14, in which case the entire process of acquisition contemplated by Chapter VII will become unworkable and ineffectual. The landholders whose lands are acquired under Chapter VII of the MRTTP Act cannot, in our view, be subjected to a disability or disadvantage in the matter of obtaining monetary recompense for the deprivation of land depending upon the nature of public purpose or the authority for whose benefit the land is acquired.

13. In the light of observations of the Apex Court extracted above (particularly paragraph 31 of judgment in N.I.T. v. Vasantrao) there can be no doubt that as far as Section 34 of the MID Act is concerned, it is the case of legislation by reference. The legislature has simply made provisions of Part-III of Land Acquisition Act applicable to the further proceedings in respect of the application made to the Collector within sixty days of determination. Therefore, as far as such proceedings are concerned subsequent amendments to Part-III of Land Acquisition Act would also apply to them. Arguments of Shri Agnihotri, learned Advocate for the appellant to the contrary have therefore, to be rejected. The learned Advocate Shri Agnihotri for the appellant next contended that the use of conjunction .and. and the word further. for describing the proceedings in respect of such application would indicate that the legislature intended to make provisions of Part III of the Land Acquisition Act applicable to the proceedings after an application is made to the Collector. Therefore, technically the learned Advocate for the appellant may be right in contending that as far as making of application is concerned there is no need to have recourse to the provisions of Section 18 of the Land Acquisition Act and consequently a person aggrieved by the decision of the Collector would have to apply within sixty days of such decision irrespective of whether he was a person when the decision, was made or when he had notice of such decision.

14. Such a conclusion would, however, be unjust and would do harm to the very object of enabling a person aggrieved by the Collector's decision to make an application. If the Collector was to keep the decision made in wraps for sixty days then the person aggrieved would be left with no remedy. Therefore, though phraseology similar to that used in Section 18 of the Land Acquisition Act is not incorporated in Section 34 of the MID Act it would have to be read into it in order to avoid making remedy provided u/s 34 meaningless.

15. Though the decisions of the Apex Court referred to in foregoing paras may not be directly on the question as to whether such stipulations could be read in a provision like Section 34 of the MID Act, In Nagpur Improvement Trust v. Vasantrao (referred above) while setting aside a judgment of this Court, the Apex Court, amongst other things, quoted from an earlier judgment in Nagpur Improvement Trust v. Vitthalrao reported at AIR 1973 SC P.689 to the following effect:

It is equally immaterial whether it is one Acquisition Act, or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim protection of Article 14.

16. Similar observations are to be found in Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others, on which the learned Advocate for the respondent placed reliance. In paragraph 20 while preferring interpretation of Section 126 of the Maharashtra Regional and Town Planning Act (for short MRTP Act.) the Court observed as under:

Unless such interpretation is placed on Section 126(3) the acquisition under the MRTP Act will be afflicted with the vice of invidious discrimination and palpable arbitrariness hit by Article 14 of the Constitution.

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 MID 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.

18. Learned Advocate Shri Agnihotri for the appellant drew our attention to the evidence tendered on behalf of the claim by holder of Power of Attorney Shri Ayyubkhan Ahmed Khan. The said Power of Attorney had stated in his cross examination, on behalf of the appellant, that his father used to attend the proceedings before the Land Acquisition Officer and that his father had sufficient knowledge about the proceedings. He, therefore, submitted that an inference that claimant was not aware of the award could not be drawn on the basis of this evidence. We are not inclined to accept this submission because, first, the circumstances in which Shri Ayyubkhan's father was not examined have not been brought on record. Secondly, the question as to whether Shri Ayyubkhan's father had such a knowledge could be resolved even by the appellants, by demonstrating that the claimant was aware of the award when it was made. In this case, the Land Acquisition Officer Shri Bhugaonkar was himself examined. He did not state that the parties were present when the award was made.

19. In view of this, though the learned Judge of the reference Court framed issue relating to limitation, in a language which was not warranted by the pleadings, in

itself, it does not vitiate the findings on limitation recorded by the learned Judge. For the reasons mentioned above, we are not inclined to accept the appellant's contention that the application for reference u/s 34 of the MID Act was barred by limitation prescribed therein. We hold that such limitation would commence from the date of knowledge.

20. Next, we come to the question of compensation awarded by the learned Judge of the reference Court. The learned Judge of the reference Court relied on instance of sale of 1.21 hectares of the land at village Belgaon for a sum of Rs. 1,27,000/- on 30th May, 1989. The land was sold to one Shri Dwivedi by Shri Arvind Ladekar. The claimant's land is situated in village Dhurkheda. Land Acquisition Officer Shri Bhugaonkar stated in his evidence that lands of village Belgaon, Dhurkheda and Kumbhari which are adjacent to Umrer town had been acquired. A map of lands acquired is at Exh.40 of the record. It also shows the location of land of Shri Ladekar which was sold to Shri Dwivedi. According to the Land Acquisition Officer this land is within the municipal limits of Umrer (and possibly, therefore, he had not considered the instance of sale of this land).

21. The learned Advocate for the appellant submitted that on behalf of the claimant there was no evidence before the reference Court for arriving at any conclusion about the inadequacy of the price of land acquired or price of land in the surroundings, in view of the categorical admission of the Power of Attorney Shri Ayyubkhan that not he, but his father, had knowledge about the proceedings before the Land Acquisition Officer. The learned Advocate submitted that Shri Ayyubkhan was a student at the relevant time and, therefore, his evidence about the price of land is irrelevant and could not have been relied upon. He drew our attention to a judgment in Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, , in order to exclude evidence of Shri Ayyubkhan from consideration since according to the learned Advocate Shri Ayyubkhan was not conversant with the facts. There can be no doubt that a holder of Power of Attorney can depose to only facts within his knowledge and cannot depose about the facts within knowledge of the person who has given him power of attorney. However, in this case, we do not see as to how exclusion of evidence of Shri Ayyubkhan, or for that matter tendering of evidence of the claimant herself, would change complexion of the case. The question whether the land acquired was appropriately valued by the Land Acquisition Officer would have to be decided with reference to the consideration of instances of sale, proximate in point of time as well as space, to the land in question. Therefore, we see no force in the objection of the learned Advocate for the appellant to the judgment in question on the ground that the claimant herself was not examined.

22. It is not in dispute that Shri Ladekar's land was purchased by Shri Dwivedi and that copy of Index II in respect of the sale is placed on record at Exh.32. The learned Advocate for the appellant submitted that for relying on the sale instances the party ought to have been examined. Such a view undoubtedly held field even after insertion of Section 51A of the Land Acquisition Act. In Special

Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., the Apex Court held that the sale instance can be proved only by examining the vendor or vendee. However, subsequently, in State of Haryana Vs. Ram Singh, the Apex Court held that the registered documents can be seen even without examining the parties. In Cement Corporation of India Ltd. Vs. Purya and Others, , all these authorities, were considered and it was held that certified copy of document registered under the Registration Act, including copy given u/s 57 of the Act, may be accepted as evidence of the transaction recorded. In view of this objection of non- examination of the vendor or vendee cannot be sustained.

23. As held in Cement Corporation of India v. Puriya (referred above) admissibility of copies of such sale deeds does not amount to acceptance of such evidence in the sense of reliability of such evidence. It, however, does not follow that without anything more such documents are to be looked at with suspicion.

24. The appellant, in this case, has been pointing to the locational difference in the land under acquisition and one whose sale is evidenced by document at Exh.32. It is not that the appellant contends that sale was overvalued for the purpose of securing for claimants higher amount of compensation. Therefore, it may not be appropriate to assail acceptance by the learned trial Judge of the instance of sale evidenced by Exh.32.

25. It would be obviously impossible to have evidence of sale instances so proximate in the point of time and space as to provide an exact guide for ascertaining price of land under acquisition. Therefore, if instance of sale of a land nearby is placed on record, with necessary adjustments it be relied on for coming to proper conclusion about the price of land acquired. In Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, the Apex Court held that dissimilarity in the land under sale instance and the land acquired can be taken care of by proportionately reducing the price evidenced in the sale instance.

26. There can be no doubt as contended by the learned Advocate for the appellant that higher compensation to lands in the neighbourhood cannot be a ground to claim higher compensation even for the land in question. All the same, the fact that higher compensation had been awarded for lands acquired in the neighbourhood would not become totally irrelevant. The learned Advocate for the appellant submitted that while the learned Judge of the reference Court has relied on the instance of sale of Shri Ladekar's land he has not given any reason as to why he came to fix the price of land acquired " Rs. 75,000/- per hectare. Relying on the judgment of the Supreme Court in Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, the learned Advocate submitted that the learned Judge of the reference Court was obliged to pass speaking order by giving relevant reasons. Absence of reasons as to how he reached the figure of Rs. 75,000/- makes the judgment vulnerable to attack that inference drawn is arbitrary.

27. As already observed by us in the foregoing discussion, there cannot be an

exactly identical instance which would be a just guide for fixing the price for land under acquisition. Some guess work and some adjustments would be inevitable. It would also be improper to expect a land owner to tender evidence about instances unfavourable to him. In order to obtain higher compensation he would obviously tender evidence about the instances of sale which favoured such higher compensation. The acquiring body too could have tendered evidence to show as to which was the most appropriate instance of sale which can provide a good guide for arriving at the price of the land acquired. In the absence of any material indicating any other sale instance it may not be appropriate to reject the instance evidence by Exh.32.

28. The learned Advocate for the appellant objected to reliance on this sale instance first, because the land happened to be within the municipal limits of Umrer and was from village Belgaon, as against the acquired land which was in village Dhurkheda out side the municipal limits of Umrer. Secondly, the acquired land was about 2 kms. away from the land, sale whereof was evidenced by Exh.32. Thirdly, while the land acquired was 5.28 hectares and the land sold vide Exh.32 was just 1.25 hectares, a small piece as compared to the land acquired. Lastly, he submitted that map at Exh.40 would show that the land under sale instance at Exh.32 bearing Survey No. 152 of village Belgaon has full frontage on a state highway, whereas the land under acquisition has only a small frontage with major portion of the land being behind Survey No. 75 which has full frontage of the road.

29. Map at Exh.40 would show that villages Belgaon, Dhurkheda and Kumbhari from where the land was acquired for developing industrial estate was just on outskirts of Umrer town. While the land evidenced by sale instance at Exh.32 is within Umrer municipal limits, the land under acquisition is not too far away. Therefore, even if on account of disadvantages which the acquired land suffers as compared to the sale instance, a discount is made, as has been in fact done by the learned Judge of the reference Court, the price can not be as low as awarded by the Land Acquisition Officer " Rs. 19,000/- per hectare. The question is, what should be the discount that may be made in the price of about Rs. One Lac per hectare evidenced by the instance of sale at Exh.32 for the disadvantage of being out side the municipal limits, being 2 kms. away from the land sold, being almost four times in area, and having lesser frontage ? If deduction of 10% is made for each of these factors price may come to about Rs. 60,000/- per hectare, as against Rs. 75,000/- per hectare awarded by the learned Judge of the reference Court.

30. The learned Advocate for the appellant claimed further deduction on account of development charges and for this purpose relied on the judgment of the Supreme Court in Shimla Development Authority and others Vs. Smt. Santosh Sharma and another, . In that case a piece of land has been acquired by the Shimla Development Authority. The Land Acquisition Officer awarded compensation of Rs. 4,000/- per Bigha whereas the District Court has awarded

compensation of Rs. One Lac per Bigha. The High Court confirmed this award by the District Court but ordered deduction of 40% on account of development charges. While refusing to interfere the Supreme Court held that the deduction of 30 to 40% for development charges would be appropriate.

31. In our view the judgment does not lay down the proposition that a deduction of 30 to 40% should be made for development charges in all cases. When price of the land acquired is calculated on per square meter or per square foot basis (or on the basis of a smaller unit of area like a bigha) it may be appropriate to make deduction towards development charges. But when price is calculated per hectare i.e. for a large chunk, of deduction of development charges may not be warranted. This is so because when the price of a large chunk of land is calculated on per square feet basis without making any deduction for the land occupied by the roads or other utilities the price would be unreal. Therefore, we do not find it necessary to make any further deduction on account of the development charges.

32. In view of the foregoing, we hold that the reference before the learned District Judge was within limitation, and, therefore, was rightly entertained by him. But he was not justified in awarding compensation " Rs. 75,000/- per hectare. Instead, the compensation should have been awarded " Rs. 60,000/- per hectare.

33. Respondent No. 1 would be entitled to receive compensation calculated " Rs. 60,000/- per hectare plus statutory additives like solatium, component, interest etc. Respondent No. 1 would be entitled to receive the amount so calculated from the amount in deposit in this Court. Balance be refunded to the appellant.

34. The appeal is, thus, partly allowed with corresponding costs.