

(2009) 06 BOM CK 0062

In the Bombay High Court

Case No : First Appeal No"s. 182, 471 and 678 of 1996

Shalini Vaman Godbole

APPELLANT

Vs

Special Land Acquisition Officer, Special Unit and Others

 Solapur Municipal Corporation Vs Shri Shankar
Ramchandra Mate (deceased) through his heirs 1. Smt.
Umabai Shankar Mate and Others
 The State of
Maharashtra and Others Vs Shri Mahadeo Ramchandra Mate
(deceased) through his Lrs. 1A. Sou. Malati Keshav Bhide and
Others

RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Constitution of India, 1950 — Article 254
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 24, 4
Maharashtra Regional and Town Planning Act, 1966 — Section 126(4), 127
Stamp Act, 1899 — Section 47A

Citation : (2009) 111 BOMLR 2759

Hon'ble Judges : S.J. Vazifdar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : V.Z. Kankaria, in F.A. No. 182/1996, Nitin Jamdar, in F.A. Nos.471/96 and 212/97 and A.R. Patil, AGP in F.A. Nos. 678 and 679/96, for the Appellant; Nitin Jamdar, for Respondent No. 10 in F.A. No. 679/96 and for Respondent No. 2 in F.A. No. 678/96, A.R. Patil, AGP for Respondent Nos. 1 and 2 in F.A. No. 182/96 and for Respondent No. 10 in F.A. No. 471/96 and for Respondent No. 2 in F.A. No. 212/97, P.B. Shah, for Respondent No. 10 in F.A. No. 182/96 and for Respondent No. 1 in F.A. No. 212/97 and for Respondent Nos. 1A to 1F in F.A. No. 678/96 and A.J. Joshi, for Respondent Nos. 1 to 4, 7, 11 and 12 in F.A. No. 471/96, for the Respondent

Judgement

B.H. Marlapalle, J.—All these appeals filed u/s 54 of the Land Acquisition Act, 1894 arise from the common award dated 29/4/1995 rendered by the learned Civil Judge, S.D. at Solapur in L.A.R. Nos. 64 and 65 of 1992. First Appeal No. 182 of 1996 has been filed by one of the claimants in LAR No. 65 of 1992 praying for further enhancement in the market rate as well as for building/structures and

severance. Whereas the Solapur Municipal Corporation has filed First Appeal Nos. 471 of 1996 and 212 of 1997 challenging the market rate fixed at Rs. 600/per sq. mtr. by the Reference Court and similar challenge has been raised by the State Government in First Appeal Nos. 678 and 679 of 1996. Hence, these appeals are being decided by this common judgment.

2. Shri Daji Umbrajkar was the owner of agricultural land in Survey No. 464, which subsequently became a part of the Municipal limits of Solapur. The said land was granted by Shri Daji Umbrajkar to Shri Ganesh Mate in the year 1875, on the condition that he would construct a Shiva Temple and would pay rent equal to the land revenue. Shri Daji Umbrajkar died shortly after the permanent lease was made in favour of Shri Ganesh Mate and Daji's son Venkat Umbrajkar had filed a Civil Suit for taking over possession of the subject land as the main condition of construction of Shiva Temple was not fulfilled. In the suit proceedings, Mate family agreed to construct the Temple and the suit was compromised. The Temple was constructed in the year 1902-1903 and the land remained with Mate family and came to be known as "Mate Baug". On the demise of Shri Ganesh Mate, the land came to be mutated in the name of his son Shri Ramchandra who begot three sons i.e. Mahadeo, Shankar and Vishnu. On the demise of Shri Ramchandra, the names of his legal representatives were entered vide Mutation Entry No. 1518 certified on 29/12/1952 and this clearly indicated that Mahadeo, Shankar and Vishnu, the three sons of Shri Ramchandra, succeeded to the property and their ownership was confirmed in Second Appeal No. 1278 of 1964 and Mahadeo's 1/3rd share was determined in a suit for partition i.e. Civil Suit No. 284 of 1980 decided on 23/9/1982.

3. The claimants before the Reference Court were these three brothers or their legal representatives. Part of the land renumbered as CTS No. 8457 (Part), came to be reserved for a public garden as per the development plan approved by the Government of Maharashtra in the year 1978, under Site No. 276 and Final Plot No. 123 (Part). It appears that Final Plot No. 123 (Part) admeasured 9409 sq. mtrs. and the total remainder portion of CTS No. 8457 admeasured 1 H. 20 R. On 26/10/1989 the Land Acquisition Officer issued the Notification u/s 126(4) of the Maharashtra Regional Town Planning Act, 1966 (the M.R.T.P. Act for short) read with Section 4 of the Land Acquisition Act, 1894 of Final Plot No. 123 (Part) admeasuring 9409 sq.mtrs. The said Notification was published in the Maharashtra Government Gazette on 7/12/1989. Out of 1 H. 20 R. land (12000 sq.mtrs.), 9409 sq.mtrs. was sought to be acquired for garden, whereas 2247 sq.mtrs. was reserved for the acquisition of D.P. Road. The remaining land admeasuring about 344 sq. mtrs. was not under any acquisition and as per the claimants it was not useful to them and being less than 1/10th of the total area they were entitled for severance compensation. The Land Acquisition Officer passed his award on 5/12/1991 and fixed the market rate at Rs. 120/per sq.mtr. after deducting 1789 sq. mtrs. from 9409 sq. mtrs. Thus the compensation was paid by the Land Acquisition Officer for 7620 sq. mtrs. only, but without any consideration for severance of 344 sq. mtrs.

The claimants not being satisfied with the said market rate had submitted an application u/s 18 of the Land Acquisition Act, 1894 for enhancement of compensation and the said claim came to be registered as LAR Nos. 64 and 65 of 1992. In the impugned common award the Reference Court fixed the market rate at Rs. 600/per sq.mtr. for the plotable area of 7620 sq.mtrs. and at the same rate granted compensation for the unacquired land admeasuring 344 sq. mtrs. The Reference Court confirmed the compensation amount paid by the Land Acquisition Officer for building/structure and trees etc. The claimants have been consistently claiming that they ought to have been given the market rate at Rs. 650/per sq. mtr. They also claimed that the deduction of an area of 1789 sq. mtrs. was not just and proper and when the land was being sought for garden, there could not have been any deduction and they ought to have been paid compensation for the total area acquired i.e. 9409 sq. mtrs. plus remaining patch of 344 sq.mtrs. on account of severance.

4. On notice, the State Government appeared before the Reference Court and vide its say at Exh. 47 opposed the Reference for enhancement. It claimed that the compensation granted by the Land Acquisition Officer was just and proper and did not call for any upward revision. The Municipal Corporation, on the other hand, filed its say at Exh. 43 and opposed the claim. It challenged the ownership claim of the claimants and also stated that the remaining area of 344 sq. mtrs. was available for the claimants to utilise and the claim for severance for the said area was not maintainable. It also claimed that the claimants being only the grantees on consideration could not derive the ownership title which, in fact, vested with the Umbrajkar family and, therefore, were not entitled to raise any claim for enhancement of compensation. By consent of the parties, evidence was recorded in LAR No. 64 of 1992 and it was read in LAR No. 65 of 1992 as well (Pursis at Exh.26). The claimants examined Shri K.S. Bhide - PW 1 as the Power of Attorney of Shri Mahadeo Mate, Shri S.M. Parchure - PW 2 and Valuer, Shri Jahagirdar - PW 3 and Mrs. Manjiri Ghatnekar - PW 4, Clerk from the office of Sub Registrar, North Solapur No. I. To oppose the Reference, Shri Prabhkar Shiralkar - DW 1 and valuation expert, Shri Mahadeo Ddhurkhedkar - DW 2 and Shri Malleshwarappa Tanbake - DW 3 were examined. DW 2 and DW 3 were the employees of the Municipal Corporation, whereas DW 1 was the Deputy Director of Town Planning at the relevant time and his valuation report at Exh. 91 has been placed on record. He valued the property at Rs. 350/per sq.mtr. However, the Reference Court considered the valuation report at Exh. 55 submitted by PW 2 - Shri Parchure, the Government Resolution dated 31/10/1994 (Exh. 118), the ready reckoner of land valuation for the year 1989 onwards (Exhs. 78 and 79). As per the report submitted by PW 2, the market rate of the land was required to be fixed at Rs. 650/per sq.mtr., whereas as per the ready reckoner the market rate was fixed by the Government at Rs. 650/per sq.mtr. for payment of stamp duty etc. as noted by the Reference Court and having regard to the sale instances in the adjoining plots from CTS Nos. 8457 and 8458 the market rate was required to be fixed at Rs. 650/per sq.mtr. The Reference Court upheld the

deduction of 1789 sq.mtrs. for the purpose of road and open space for the development of the plot.

5. It was submitted by Mr. Shah the learned Counsel for the appellant in First Appeal No. 182 of 1996 that though only one of the claimants has filed an appeal for further enhancement of compensation, by taking recourse to the provisions of Order XLI Rule 33 of C.P.C. the Appellate Court has powers to enhance the compensation amount even in the absence of any appeals by the other claimants. In support of these submissions he has placed reliance on the decision in the case of S. Nazeer Ahmed Vs. State Bank of Mysore and Others, . Mr. Jamdar the learned Counsel for the Corporation, on the other hand, submitted that the sale instances considered by the Land Acquisition Officer were just and proper and at any rate when the sale instance of 1986 from the neighbouring plot indicated the market rate at Rs. 100/per sq.mtr., the Reference Court fell in error in discarding the said sale instances and relying upon the valuation report at Exh. 55 submitted by PW 2 and the ready reckoner (Exhs. 78 and 79). He also submitted that the G.R. Dated 31/10/1994 was not applicable and the Reference Court could not have placed reliance on the said resolution. As per Mr. Jamdar the financial condition of the Corporation is weak and it cannot bear the financial burden as imposed by the impugned award. In support of the challenge to the impugned award, Mr. Jamdar has placed reliance on the following decisions :

(a) Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, .

(b) Union of India v. Pramod Gupta (dead) by Lrs. and Ors. (2005) SCC 1.

He also placed reliance on a Full Bench decision of this Court in the case of State of Maharashtra Vs. Prashram Jagannath Aute, .

Mr. Patil, the learned AGP, while impugning the award submitted that the burden of proof for enhancement in compensation was squarely on the claimants and they did not bring on record any sale instances which could be termed as comparable and the Reference Court fell in error in relying upon the sale instances which were discarded by the Land Acquisition Officer. He placed reliance on the following decisions:

(a) Cement Corporation of India Ltd. Vs. Purya and Others, .

(b) Kiran Tandon Vs. Allahabad Development Authority and Another, .

6. In the case of AIR 1939 98 (Privy Council) the Privy Council enunciated the principles for determination of the market rate/compensation within the meaning of Section 23 and Section 24 of the Land Acquisition Act and these principles were further expanded by the Apex Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . In the case of Kiran Tandon (Supra) it has been held that where large area, not fully developed, is acquired, normally, deduction of about 33% is permissible and such deduction could be even at 20% where multi storied residential flats are being constructed.

7. So far as the subject land is concerned, it is not in dispute that it is located at a distance of about 1/2 k.m. from Bhagwat Cinema Theater and it is surrounded by public road from three sides and on the fourth side the Housing Societies in CTS No. 8457 (Part) and 8458 have come up. Its N.A. potentiality is admitted and but for its reservation for a garden, the owners could have developed the property by making plots and selling the same for residential or for commercial purposes, depending upon the development plan of the Municipal Corporation. There was no sanctioned lay out plan nor was there any N.A. Conversion obtained by the owners at any time from 1978 till its acquisition in the year 1989 - 90. The deduction of 1789 sq. mtrs. appears to be even less than 20% and the said deduction, as provided by the Land Acquisition Officer, has been confirmed by the Reference Court and the Corporation as well as the State Government have not challenged the said deduction. Even in First Appeal No. 182 of 1996 filed by one of the claimants, the said deduction has not been questioned. Hence, the only issue that remains for our consideration is, whether the market rate fixed at Rs. 600/per sq.mtr. by the Reference Court calls for interference in these appeals.

8. The best evidence of the value of property are the sale transactions in respect of the acquired land or the neighbouring land; the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out, are also relevant factors. In the absence of sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands have to be taken into consideration. Undoubtedly, such transactions must be within a reasonable time of the date of the notification and preferably before such date, the transactions must be bona fide and it should be a sale of the land similar to the land acquired or land adjacent to the land acquired. In the instant case, it is not in dispute that the acquired land is located within a distance of 1/2 k.m. from Bhagwat Theatre, it is surrounded by public road from three sides, it is in the neighbourhood of Ujwal Housing Society and beyond one of the roads there are bungalows. Thus, the land has sufficient access by public roads and undoubtedly it has a very strong N.A. potential. There are residential and commercial buildings on three sides at and beyond the Eastern side road there is a good locality and Solapur Old Mill is in its neighbourhood. At the relevant time it had sufficient access and the amenities like electricity, water, drainage and roads etc. It is an admitted fact that CTS No. 8457 (remaining part) and CTS No. 8458 is on its Southern side. The lay out of the property in CTS No. 8458 was prepared and proved by the Competent Authority and plots were sold to different parties before the notification u/s 126(4) of the M.R.T.P. Act was gazetted on 7/12/1989. While passing his award, the Land Acquisition Officer had before him sale instances of plots from CTS No. 8457/1 and CTS No. 8458. He discarded the sale instances from CTS No. 8458 and accepted the sale instances from CTS No. 8457/1. An open plot admeasuring 1585 sq. mtrs. from CTS No. 8457/1 was sold on 29/1/1986 at the rate of Rs. 100/per sq.mtr., whereas two other sale instances

were of 11/9/1989 from CTS No. 8458 and the average market rate came to Rs. 408/per sq.mtr. The claimants relied upon the valuation report made by Shir Parchure - PW 2. Shri Shiralkar - DW 1 and who was holding the post of Deputy Director of Town Planning, Pune Division, at the relevant time, in his valuation report at Exh. 91 concluded that it would be reasonable to adopt Rs. 350/per sq.mtr. as the average rate for the developed plots. However, he did not give any reasons in support of these conclusions more so when he himself considered the Sathe Khat of 27/4/1988 at the market rate of Rs. 378/per sq. mtr. The said witness in his depositions before the Reference Court clearly admitted that the market rate awarded by the Land Acquisition Officer was inadequate and the acquired land was capable of being developed for residential/commercial purposes, if the same was not reserved or deleted from the reservation. It would be, therefore, safer to discard the valuation report made by Shir Parchure - PW 2 as well as Shri Shiralkar - DW 1.

9. In the evidence of Shri Pandurang Jahagirdar - PW 3 the sale instance at Exh. 74 was proved and it was clear that three plots making a total area of 800.5 sq.mtrs. were purchased for the Cooperative Housing Society and the market rate was Rs. 378/per sq.mtr. The Sathe Khat was signed on 27/4/1988 and this fact is supported in the valuation report at Exh. 91 and submitted by Shri Shiralkar - DW 1. From April 1988 to December, 1989, the time gap is about one and half years and even if we presume 10% increase every year in the land value, 15% increase as in December, 1989 can safely be claimed on the market rate of Rs. 378/per sq.mtr. (rounded off at Rs. 380/) and thus an increase of Rs. 57/can be granted so as to make the market rate at Rs. 417/per sq. mtr. as on 7/12/1989. This sale instance is very much comparable because it is from the neighbouring land i.e. CTS No. 8458 and was prior to the date of notification. The Reference Court has not accepted the same and has instead supported its award mainly on two grounds. The valuation report of PW 2 which indicated the average market value at Rs. 650/per sq. mtr. And the ready reckoner valuation as fixed by the State Government at Rs. 650/. However, the Reference Court fixed the market rate at Rs. 600/per sq. mtr. No reasons have been set out as to why the market rate was fixed at Rs. 600/per sq. mtr. The Reference Court considered the evidence of Shri Jahagirdar - PW 3 and by giving 20% rise in the market rate at Rs. 408/, it concluded that the market rate will be at Rs. 500/per sq. mtr., as in December, 1989. The Reference Court, as noted earlier, has also relied upon the GR dated 31/10/1994 laying down the guidelines for offering compensation to the land owners. Para 2 and 3 of the said GR read as under:

2. An issue as to whether the ready reckoner should be used or else, while preparing the awards of the land under acquisition, was under the reconsideration of the Government. In this regard, upon making the inquiry from the legal view point following things have become clear:

A) Ready reckoner has been prepared in a scientific manner by obtaining the information about the geographical condition of each area, big roads, railways

etc. and by making inspection (visiting site) in that regard and by collecting the sale purchase transaction information.

B) The rates in the ready reckoner have been prepared (determined) by considering Taluka as a component (unit) in the rural area and by dividing into different parts of the city in the case of urban area. Therefore, the valuation being determined as per ready reckoner of a particular property becomes the market value of the said land from the comprehensive view point.

3. Considering the status in the aforesaid para 2, the Government has taken following decision:

A) While preparing the award on the date of notification u/s 4 of the Land Acquisition Act, the valuation of the land by way of sale purchase transaction method, income capitalization method wherever necessary and the valuation being accrued as per ready reckoner, out of which whichever market value is greater, the same should be held valid.

B) On the date of publication of notification u/s 4 of the Land Acquisition Act, a copy of the ready reckoner being required for valuation of the land in accordance with the ready reckoner should be made available by the Land Acquisition Officer from the concerned Assistant Director, Town Planning (Valuation).

C) Orders in the Government Circular, Revenue and Forest Department, No. LQN 1890/(4746)/A2, dated 26/9/1990 have been withdrawn.

10. It was submitted by Mr. Jamdar as well as Mr. Patil, AGP, that the Reference Court was in error in relying upon the GR dated 31/10/1994. We do not find any force in these submissions. If the Government of Maharashtra in its wisdom has laid down a policy for offering compensation to the owners of the land which has been acquired for public purposes, it would be proper for the Reference Court to rely upon such a policy as well. The said GR clearly states that the compensation for the acquired land is to be granted on the basis of the valuation of the land by way of sale purchase transaction method and the valuation as per ready reckoner, whichever is higher. On the date of the publication of the notification u/s 4 of the Land Acquisition Act, 1894, the rate prescribed in the ready reckoner by the Government is found to be higher than the market rate as reflected in the sale transactions, it would be necessary that the Reference Court grants market rate on the basis of the valuation as appearing in the ready reckoner. The Government Resolution clearly speaks of the State's intention to offer a better/higher price of land which is acquired for public purposes. It would be, therefore, appropriate that the market rate in the instant case is fixed by following the GR dated 31/10/1994 and in our opinion the Reference Court did not commit any error in relying upon the same.

11. Mr. Jamdar submitted that the ready reckoner cannot be relied upon as evidence of the value of the acquired land. He relied upon the judgment of the Supreme Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer,

Adilabad, A.P. and Others, whereof read as under :

5. The question, therefore, is whether the Basic Valuation Register is evidence to determine the market value. This Court in *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification u/s 4. The methods of valuation may be (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. Same was the view in *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, . It was reiterated in catena of decisions, vide, *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, . Therefore, it is settled law that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value. Generally the second method of valuation is accepted as the best. The question, therefore, is whether the Basic Valuation Register would form foundation to determine the market value. The Indian Stamp Act, 1899 provides the power to prescribe stamp duty on instruments, etc. Entry 44 of List III, Concurrent List, of the VIIth Schedule read with Article 254 of the Constitution empowers the State Legislature to amend the Indian Stamp Act, 1899. In exercise thereof all the State Legislatures including the Legislature of A.P. amended the Act and enacted Section 47A empowering the registering officer to levy stamp duty on instruments of conveyance, etc., if the registering officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift, release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value. Section 47A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block, district or the region and to maintain Basic Valuation Register for levy of stamp duty for registration of an instrument, etc. No other statutory provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on the basis of valuation maintained in the Basic Valuation Register, came up for

consideration in *Sagar Cements Ltd. v. State of A.P.* (1989) 3 A L.T. 677, B.P. Jeevan Reddy, J., as he then was, considered the question and held that the Government has unilaterally fixed the valuation of the lands, the Basic Valuation Register had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the vendor is bound by it. The market value of the land for proper stamp duty has to be determined as per the law u/s 47A itself. That view was followed by another learned Single Judge in *Ponnavolu Sasidar Vs. Sub-Registrar Hayatnagar, and others*, . It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value u/s 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value. The Division Bench followed, in support of its view a decision of another Division Bench in *Land Acquisition Officer v. Venkateswara Prasad A.S. No. 880 of 1980*, decided on 11.11.1981, which also decided that Basic Valuation Register cannot be relied on to determine the market value. It would appear that in *Govt. of A.P. v. Sohan Lal* (1988) 2 A LT 206, a Division Bench of that High Court, without noticing these two binding decisions, held that the Basic Valuation Register would form foundation to determine the market value and directed to determine the compensation on that basis. The entire controversy was considered by yet another Division Bench in *Vasireddi Bharata Rao and Another Vs. Revenue Divisional Officer*, . The Division Bench, after considering the case law disagreeing with *Sohan Lal*8 view as per incuriam, also reiterated that the Basic Valuation Register maintained by the registering authority has no statutory foundation to determine the market value and cannot form the base u/s 23(1) to determine the market value. This Court in *Gulzara Singh and Others Vs. State of Punjab and Others*, , held that mutation entries of the land transactions in the revenue records are not evidence unless the parties to the transactions have been examined in proof of documents. In *Director of Surveycum LAO v. Mohd. Ghouse* (1985) 1 MLJ 116 , relied on by Mr Ganguli, the Division Bench of Madras High Court, relying upon the instructions issued by the Government to determine the market value for the purpose of registration of the instrument u/s 47A, held that it would form basis to determine the market value u/s 23 in an appropriate case, subject to proof of the market value. What were the instructions issued by the Government and whether they had any statutory foundation, have not been stated by the Division Bench. If the broad proposition of law that u/s 47A of Stamp Act such instructions could be issued, as contended for the appellant herein, as appears to be the view of the High Court, it is not correct law. As we have already noted, Section 47A being local amendment, made by each State Legislature did not find any such statutory basis. Like A.P. Act, Tamil Nadu Act is also referable to transactions intra vivos and not as general guidelines. If they

are based on evidence inter parts it would be consistent with Section 47A. Accordingly we hold that the basic value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands u/s 23 of the Act. The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette u/s 4 of the Act with reference to the sale deeds of the same lands or neighbour s lands possessed . of same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the reference court. The State did not file any appeal against the award of the reference court which itself is a matter gone in favour of the appellant. We do not find any justification to further enhance the market value.

12. Mr. Jamdar submitted that the court cannot abdicate its jurisdiction and go by the circular of 1990. The value of the acquired land, according to him, must be decided only on the basis of the three criteria stipulated in the judgment and not by the price indicated in the ready reckoner. He further submitted that the policy is not binding on the Acquiring Body or of any assistance for determining the price of the acquired land under the Land Acquisition Act.

13. We do not read the judgment of the Supreme Court as prohibiting the Government from making an offer on such terms and conditions as the Government desires. There is nothing in the Act that prohibits a party from negotiating the price without having determined the same by following the procedure under the Act.

14. What is stated in the policy relied upon by the Appellant is, in effect similar to an offer. An award in itself is an offer. There is nothing to suggest that the award cannot be based on the policy of the Government. Indeed, the policy being binding on the Government, the offer must be based thereon. The policy has not been challenged by any party including the Acquiring Body. The error in Mr. Jamdar's submission is equating the offer in the policy with a mere determination of the price of the acquired land on the basis of the ready reckoner. Mr. Jamdar did not dispute the fact that unless challenged and set aside, the policy must be given effect to. He however submitted that that can be done only by the concerned parties/the owner by filing a Writ Petition and not under the provisions of the Land Acquisition Act. We are unable to agree. We do not find anything in the Land Acquisition Act which prohibits the reference court or the SLAO from implementing this policy. This is despite the fact that the policy cannot bind a stranger thereto including the owner.

15. Exhibits 78 and 79 which are the extracts of ready reckoner have been perused by us. The Reference Court has relied upon the ready reckoner at Exh. 79 which does give the market rate at Rs. 650/per sq. mtr. but that rate is applicable for the year 1992 (T.P. Scheme No. 4, Final Plot Nos. 159, 160 and 157, 164, 165 in the neighbourhood of Laxmi Vishnu Mill Chawl). It was necessary for the Reference Court to decide the market rate as in December, 1989 and not in the year 1992. Exh. 78 has set out the ready reckoner market

rate as applicable/prevaling in the year 1989. The first entry in the said document clearly indicates that for the T.P. Scheme No. 4 Plot No. 159, 160, 156, 157, 164, 165 (in the neighbourhood of Laxmi Vishnu Mill Chawl), the market rate was Rs. 500/per sq.mtr. The Reference Court ought to have considered the same document at Exh. 78 and fixed the market rate at Rs. 500/per sq. mtr. by following the market rate or valuation fixed by the State Government at Rs. 500/per sq.mtr. read with GR dated 31/10/1994. By its own reasoning set out by the Reference Court, the market rate fixed at Rs. 600/per sq. mtr. or anything beyond Rs. 500/per sq. mtr. is unsustainable in the instant case. When the State Government has laid down a policy in its GR dated 31/10/1994, it is bound by the same. The acquisition of the land, though at the instance of the Solapur Municipal Corporation, was done by the State Government and it is required to offer the market rate to the land owner and recover the same from the Municipal Corporation. The arguments advanced by Mr. Jamdar regarding the poor financial condition of the Municipal Corporation is no ground to deny market rate as per the GR dated 31/10/1994 read with the ready reckoner valuation for the year 1989 (Exh. 78). It also must be noted that if the land reserved in the development plan for any public purpose is not required, the owner of the land has the remedy to issue purchase notice u/s 127 of the M.R.T.P. Act and get the land released. In such a situation he is free to dispose off the land for development depending upon the zoning system for usage of the land. So far as the claimants are concerned, we are satisfied that they cannot ask for anything beyond Rs. 500/per sq.mtr. which market rate is higher than the sale transactions proved through the evidence of Shri Jahagirdar - PW 3 and these sale transactions are most comparable as they are from the neighbouring plot.

16. So far as the area of 344 sq. mtrs. is concerned, nothing has been brought before us either by the State Government or by the Municipal Corporation to point out that the said plot has an independent access and could be used by the owners. We have also to keep in mind that the number of owners have gone up now and the marketability of the said plot cannot be assessed unless there was evidence that it has an independent access from any of the roads surrounding the plot. Under such circumstances, the conclusion drawn by the Reference Court that an area admeasuring 344 sq. mtrs. has been lost by the claimants and, therefore, they are entitled for compensation on the ground of severance cannot be faulted with.

17. For the forgoing reasons, First Appeal No. 182 of 1996 fails and the same is hereby dismissed. First Appeal Nos. 471, 678 and 679 of 1996 and 212 of 1997 are partly allowed. The market rate is hereby fixed at Rs. 500/per sq. mtr., in place of Rs. 600/per sq. mtr. and the impugned award stands modified to that extent only. The said market rate will be payable for the area admeasuring 7620 sq. mtrs. Save and except the market rate reduced from Rs. 600/per sq. mtr. to Rs. 500/per sq. mtr., the remaining part of the impugned award hereby stands confirmed. The payment of arrears, if not cleared earlier, is directed to be cleared within a period of three months from today.

Parties to bear their own costs.