

(2010) 10 BOM CK 0043
In the Bombay High Court
Case No : First Appeal No. 42 of 2005

Shrimati Vishwanath Acharya (dead, represented by her legal representatives) APPELLANT

Vs

Special Land Acquisition Officer and Another RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 23(1)(A)

Citation : (2011) 1 ALLMR 293 : (2011) 1 BomCR 133 : (2011) 2 MhLj 118

Hon'ble Judges : Britto N.A., J

Bench : Single Bench

Advocate : Sudesh Usgaonkar, for the Appellant; A.D. Bhobe, for the Respondent

Judgement

Britto N.A. J.

1. Dissatisfied twice, first by award dated 31/03/1994 of the Land Acquisition Officer and then by award dated 7/8/2004 of the learned Reference Court, the applicant (hereinafter referred to as such) has filed the present appeal.

2. Some facts may be stated to dispose of the same.

3. By notification issued u/s 4(1) of the Land Acquisition Act, 1894 (Act, for short), and published on Gazette dated 27/06/1991, the Government acquired 23,900 square metres of the applicant's land surveyed under No. 180/1 admeasuring 77,400 square metres situated at Peddem ward of Loliem Village in Canacona Taluka, for the purpose of the construction of a new broad gauge line for the Konkan Railway. The applicant was also the owner of adjacent Survey No. 172/1 admeasuring about 20,700 square metres, where there was a small house. The Land Acquisition Officer awarded compensation to the applicant as follows:

Rs. 4/- per square metre as the market value of the land;

Rs. 41,433.49 as wood value of 1084 trees,

Rs. 2,26,125/- as fruit value of the trees, total Rs. 2,67,558.49; and

Rs. 40,915/- for the water tank.

4. The applicant was satisfied with compensation paid to her for the trees as she raised no issue about it before the Reference Court. The applicant claimed Rs. 100/- as the market value of the land and Rs. 50,000/- for the tank. The applicant also claimed damages, without quantifying the same, towards loss caused to the remaining part of the applicant's land, as the same was deprived of irrigation facilities on account of the acquisition. (This claim presumably was made for what is known as injurious affection under Clause fourthly of Sub-section (1) of Section 23 of the Act.) No issue was framed nor evidence led to support that claim.

5. The learned Reference Court framed only two issues, namely, whether the applicant was entitled to the market value of the land at the rate of Rs. 100/- per square metre and second Rs. 50,000/- for the tank. The claim under the second issue appears to have been given up.

6. The applicant examined AW 1 / Madhav Acharya in support of her case, who relied upon two sale deeds namely Exhibit 23 - sale deed dated 4/7/1988 by which two plots of land admeasuring 675+75 square metres were sold at the rate of Rs. 64/- per square metre and Exhibit 24 - sale deed dated 7/2/ 1990 by which a plot of land admeasuring 1500 square metres was sold at the rate of Rs. 66/- per square metre. The land of first sale deed was stated to have been located at a distance of 4 kms. from the acquired land while that of the second sale deed was at a distance of about 5 km. from the acquired land. Both were situated in the village of Loliem. The applicant also examined an expert, namely AW2/Vikas Dessai, an engineer, whose evidence the learned Reference Court rejected, for reasons stated in paras 25 to 28 of the judgment regarding which no grievance has been made on behalf of the applicant. The Respondents did not lead evidence.

7. The learned Reference Court then took the second sale-deed Exhibit 24 as a guide for determining the market value of the acquired land. By taking into consideration that the said sale deed was of 7/2/1990 the learned Reference Court gave appreciation at the rate of 10% on compounding basis and determined the market value of land of Exhibit 24 at Rs. 70/- per square metre as on 27/6/ 1991, that being the date of publication of the notification, and after giving total deduction of 70% determined the market value of the acquired land at Rs. 21/- per square metre. Although the evidence of AW2/Vikas Dessai, an engineer was rejected by the Reference Court, the distances mentioned by him appear to have been accepted, on account of concession made by the learned Advocate appearing on behalf of the Respondents.

8. Applicant's acquired property appears to have been a mixed garden land,

bharad type. Whether it was located in a settlement zone was a debatable issue though it was not contested. The learned Reference Court noted that the acquired land was a very big property admeasuring 23,990 square metres and, that for any plot of land above 4,000 square metres, for the purpose of its development, internal roads have to be provided, open spaces have to be left and development costs have to be incurred. The learned Reference Court deducted 15% towards internal roads, 15% for open space, and 10% towards development costs. The learned Reference Court then took another deduction of 30% due to the disadvantageous location of the acquired land, considering that the acquired land was situated at Peddem in Loliem Village about 2 kms away from the Loliem church where all civic amenities were available and at about 5 kms from Maxem junction where the National Highway passes.

9. In taking the said deductions, the learned Reference Court referred to the case of Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, wherein the Apex Court had stated that:

However, if there is dissimilarity in regard to locality, shape, site or nature of land between the land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

10. The learned Reference Court, accepted the Respondents' submission that the market value of the land included the value paid for the trees and relying on State of Haryana Vs. Gurcharan Singh and another etc., divided the value of the trees i.e. Rs. 2,67,558.49 by the area acquired of 23,900 square metres and arrived at Rs. 11/- per square metre and concluded that the applicant was paid Rs. 4/- per square metre for the land and Rs. 11 /- for the trees i.e. Rs. 15/- per square metre. The learned Reference Court after determining the market value, as aforesaid, at the rate of Rs. 21/ - per square metre, then held that the applicant was entitled to only Rs. 6/- per square metre i.e. after deducting Rs. 15/- from Rs. 21/- per square metre and recalculated the balance payable to the applicant at Rs. 92,780/- which the learned Reference Court ordered to be paid with further interest at 9% per year from 18/08/1992 and simple interest at the rate of 15% per year on Rs. 92,780/- from 18/8/1993. The applicant was awarded costs of Rs. 1,000/- to be paid by the Respondents.

11. Shri Usgaonkar, the learned Counsel appearing on behalf of the applicant submits that the deduction of 15% for internal roads and 10% towards development costs might have been justifiable, but another deduction at 15% towards open space was not justifiable as the acquired area did not fall within the PDA regulations. Learned Counsel then submits that the deduction of 30% was also unjustified as there was no evidence that the acquired property could not be developed. This deduction, according to learned Counsel, could not have been more than 5%. Next submission of Shri Usgaonkar is that the case of State of Haryana v. Gurcharan Singh (supra) was not at all applicable in view of Clause secondly of Section 23(1) of the Act. In this context, Shri Usgaonkar has placed

reliance on the very decision of the Apex Court in Gurucharan Singh as well as another decision of the Apex Court in the case of Administrator General of West Bengal Vs. Collector, Varanasi, .

12. Shri Bhobe, the learned Counsel appearing on behalf of the Respondents, justifying the deductions made by the learned Reference Court, has placed reliance on the case of Subh Ram and Others Vs. Haryana State and Another, wherein the Apex Court had observed that:

If the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development), in all two-thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances. Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, the deduction has nothing to do with the purpose for which the land is acquired. On the other hand, where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards "development cost.

13. Shri Bhobe has next submitted that the submission that the value of the trees cannot be included in the market value of land was considered by several Division Benches of this Court and was rejected and, therefore, Shri Usgaonkar cannot have the same submission made all over again before this Court. In this context, Shri Bhobe has placed reliance on the judgments of the Division Benches of this Court dated 25/9/2008 in the case of (State of Maharashtra v. Sahadu Aba Shete and Ors. 2008 B.C.I. 175 : 2009 (1) ALL M.R. 186 in the case of (Rama Apa Faldessai v. Special Land Acquisition Officer and Anr. 2009 B.C.I. (P.B.) 335; dated 16/09/09 (F.A. No. 154/05 in the case of (Shri Sawaivir S. Rajendra Bassavaling Raje Wadiyar (since dec. thro" LR"s. v. Special Land Acquisition Officer and Anr. 2009 B.C.I. 336; dated 5/10/2009 (F.A. No. 159/2005 in the case of (Prabhakar Dayanand Keni Robolo v. Special Land Acquisition Officer and Anr. 2009 B.C.I. (P.B.) 337; dated 21/6/2010 (F.A. No. 240, 252 of 2004 in the case of (Shrimati Shripad Prabhu Dindibagkar v. Special Land Acquisition Officer and Anr. 2010 B.C.I. (P.B.) 2.

14. The determination of market value in many cases depends upon evaluation of many imponderables and so it is to some extent a matter of conjecture or guess work but that does not mean it can be decided on feats of imagination. It can never be a matter of mathematical precision. The market value envisaged in Section 23(1) of the Act is designed to award just and fair compensation for the lands acquired and postulates price of the land prevailing on the date of publication of the notification u/s 4(1). The market value concept is purely a phenomenon evolved by the Courts to fix the price of land arrived at between the

hypothetical willing buyer and willing seller bargaining as prudent person, without a modicum of constraints or without any extraordinary circumstances. The acid test for determining market value of the land is the price which a willing vendor might reasonably expect to obtain from a willing purchaser and which would form the basis to fix the market, value. What is just, reasonable and fair compensation is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. From a catena of decisions of the Apex Court, it can be seen that there are essentially three methods of valuation in awarding compensation namely, (1) comparable sales instances, (2) capitalization of income and (3) opinion of experts. Comparable sales instance is most preferred method. Capitalization of income method comes next and opinion of experts comes last. The evidence of experts is generally of assistance to the Court though the tendency of Courts is to rely more on evidence of sales rather than the opinion of experts who more often than not in such cases go to any extent in supporting the cause of the party who engages them rather than to assist the Court to arrive at correct decision. It is well settled that an opinion of an expert is as good or as bad as the reasons he gives in support of the same. The Apex Court in *Koyappathodi M. Ayisha Umma Vs. State of Kerala*, has stated that:

It is settled law that the methods of valuation to be adopted in ascertaining the market value of the land as on the date of the notification are: (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transaction of the purchase or sale of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the court from taking any other special circumstances obtained in an appropriate case into consideration. As the object being always to arrive as near as possible in an estimate of the market value in arriving at a reasonable correct market value, it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not always possible as two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined.

15. As observed by the Apex Court in *Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others*, , the first preferred choice is sale instance i.e. price paid within a reasonable time in a bona fide transaction or purchase or sale of lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. The income method i.e. the method of capitalizing the actual or immediate prospective profits of the lands acquired of a number of years purchase is generally resorted to if there is no evidence of comparable sales or other evidence for computation of market value and it is resorted only when no method is available.

16. The learned Judge of the Reference Court is expected to sit at the District

head quarters, on an armchair of willing purchaser and assess the compensation payable for acquired lands situated miles away from the head quarters. Applicant's acquired property could not have been at a distance of less than 6/7 kilometres from Maxem junction which is on National Highway 17 where all civic amenities such as electricity, tap water, etc. were available whereas the acquired land had none of such facilities. Some market facilities were available 2 kilometres from Loliem Church. The plot of sale deed Exhibit 24 was closer to Maxem junction where all such facilities were available. The plot of Exhibit 23 was closer to the acquired property than the plot of Exhibit 24. No distances were mentioned in the affidavit of both the witnesses, of the plots of the sale deeds from the acquired land. AW2/Shri Dessai only gave the distance of plot Exhibit 24 as 5 kilometres from the acquired land, but according to AW1 / Acharya this plot was at a distance of 1.5 kilometres from Maxem junction. If that is the case, the acquired land was at least 6.5 kilometres from Maxem junction; and that is, on the basis of self serving evidence of AW1 /Acharya and AW2/Dessai, who was found, by the learned Reference Court, to have made false statements. It appears that the acquired property was serviced by road which started from the said Maxem junction, then went to village Agas, then again to village Loliem and then through the ward known as Peddem, where the acquired property is situated, and then to Gal and then touched the said National Highway at a place known as Shelim. Applicant's expert was asked whether he had prepared any sketch showing the acquired land and its location with reference to the sale deed plots and civic amenities and he replied in the negative.

17. We are living in the 21st century. A great many people in this State go about today with one or two electronic gadgets in their hand but when it comes to Courts, not a plan or a sketch is produced, to assist the Court to determine the compensation payable and this inspite of a party claiming enhancement of compensation engaging the services of an expert! Most of the so called experts also do not bother to place such material before the Court. Reference courts will do well in case they insist from the applicant/s a sketch/or a plan of the acquired land with approximate distances from the plots of sale deeds they wish to rely on in support of their reference, and so also the direction of their location. Such a step will save much of the judicial time of the Court as well as of the parties to the reference. It will also assist the Court in assessing market value in a more meaningful manner sitting on the armchair of a willing purchaser, from a distance. Land Acquisition Officers inspect the acquired sites. Reference Courts do not. It will also help the appellate Court, as well. I have seen Counsels before this Court are at times unable to assist the Court in the absence of a fair idea about location of the acquired property, vis-a-vis the plots of sale deed/s, relied upon. In case of non-compliance, Reference Courts will not be helpless so as to dismiss the reference. Any sketch produced must be to assist, not to confuse the Court.

18. The learned Reference Court found that AW2/Dessai had made false statements and that finding has not been disputed nor can it be disputed. The

learned Reference Court having found that AW2/Vikas Dessai had made false statements ought to have taken appropriate action against him in accordance with law. The learned Reference Court was not powerless in doing that. The Code of Criminal Procedure is resourceful enough. Sanctity of judicial process must be maintained at all costs. More and more people now tend to think that they can tell lies on oath in Court and get away with it. This impression is gaining ground and must be stopped, and sooner the better, and that can be stopped only if the Courts take appropriate action at the appropriate time in accordance with law, whenever such instances occur. This is not a solitary instance. In Rama Faldessai's case (unreported judgment dated 17/09/2009) the learned Division Bench had observed as follows:

The learned Referral Court further suspected the valuer's report dated 11/12/1997 Exhibit 18 for the reason of its making after the period of more than 5 years from the date of the alleged inspection of the land by the Valuer A.W.2 Vikas Dessai. The Referral Court further observed that the rate of the market value of the acquired land as ascertained by the Valuer after the alleged inspection in the year 1992 was not reflected in the application u/s 18 moved by the Appellant on 28/09/1994 despite the alleged communication of the market value by A.W.2 Vikas Dessai to the applicant as deposed to by A.W.2 Vikas Dessai. This discrepancy, the learned Referral Court opined, betrayed the myth of the valuation report Exhibit 18.

and in Raje Wadiyar's case (unreported judgment dated 16/09/2009), the Division Bench had observed that:

The Referral Court rejected the evidence of the valuer AW2/Vikas Dessai as his word was not found trustworthy particularly, for lack of objectivity, professional skill, and diligence in preparing the valuation report.

19. Considering the facts of the case, in my view, there is no question of reducing the deduction taken by the learned Reference Court, any further. What deduction is to be taken in a particular case is not based on any principle of law, but depends from case to case, place to place and variety of other factors, particularly, the disadvantages the acquired land suffered from, when compared to the lands of the sale deeds. In case of Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , the Apex Court had observed that for developmental charges deduction between 33 1/3% to 53% was held to be valid by that Court in several of its judgments. In the case of Ratan Lal Gupta and Others Vs. Union of India (UOI), , a deduction of 78.45% was taken and that was taken because the acquired lands were located in an undeveloped area, though adjacent to a developed area, and as it would take a long time for realisation of potentialities as they would require further development. Now, the Apex Court in Subh Ram and Ors. (supra) has observed that the percentage of deduction would vary from 20% to 75% depending upon several circumstances. No evidence was led before the learned Reference Court to find out whether the acquired land was situated in a panchayat area or P.D.A. area or what were the regulations

governing the same. Submissions cannot be made in the air without material to support the same. Compensation could have been assessed on the basis of award of self same land by which the applicant had obtained compensation at the rate of Rs. 6/- per square metre in the year 1984. Plot of Exhibit 23 which was closer and of lesser price could have been used as the basis, but the Respondents do not seem to have urged these points before the learned Reference Court. The learned Reference Court had taken note of (Panna Lal Ghosh v. Land Acquisition Collector 2003 DGLS 1578 : AIR 2004 S.C.W. 66 where these principles were laid down, but did not follow the same. The learned Reference Court has granted appreciation at 10% on compounding basis. Not that such appreciation cannot be granted but whether it could be granted for undeveloped areas is a debatable proposition. This Court has consistently followed the principle stated by the Apex Court in the The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, that 10% escalation is neither excessive nor unreasonable (see judgment dated 11/12/2008 in First Appeal No. 31/2007 in the case of (Bala Atmaram Sahakari v. Deputy Collector and S.D.O. 2009 (2) Bom.C.R. 660. There is no appeal or cross objections filed by the Respondents and therefore there is no other option than to maintain the market value at Rs. 17/- per square metre.

20. Coming to the core controversy, it appears that the judgment of Gurucharan Singh (supra) is the source of controversy although it ought not to have been. The learned Reference Court has relied upon it and has come to the conclusion that separate compensation for land and fruit bearing trees cannot be awarded. So also the learned Division Benches of this Court. Unreported judgment dated 21/06/2009 in Robolo's case merely grants compensation on the basis of judgment dated 16/09/2009 in Raje Wadiyar's case in First Appeal No. 154/2005. Unreported judgments dated 16/09/2009, 17/ 09/2009 and 5/10/2009 are of the same Division Bench of this Court while judgment dated 25/09/2008 in Sahadu Aba Shete's case is of another Division Bench of this Court. Since three of the judgments are of the same Division Bench, it would suffice, in case only one is referred to, namely judgment dated 16/09/ 2009, but before that, reference could be made to judgment dated 25/09/2008 wherein the learned Division Bench relying on State of Haryana Vs. Gurcharan Singh and another etc., has held that the claimants cannot raise a statutory claim for trees as it is a part of consolidated compensation value arrived at by the Court concerned.

21. In Raje Wadiyar's case (unreported judgment dated 16/09/2009), the learned Division Bench of this Court referred to Sahadu Aba Shete's case and said that the controversy calls for careful scrutiny of the Act. The Division Bench referred to Section 3(a) of the Act which defined expression "land" as the one which includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth i.e. trees, but at the same time held that such meaning can be read into the statute when there is nothing repugnant in the subject or context referred to in the statute. Coming to

Section 23 of the Act, learned Division Bench observed that it was not difficult to see therefrom that it postulated various factors that the Court had to take into consideration while determining the amount of compensation to be awarded for the land acquired and those were with particular reference to the case, (1) the market value of the land on that date of publication of the notification u/s 4 of the Act and (2) the damage sustained by the person interested by reason of taking of any standing crops or trees which may be on the land at the time of the Collector taking possession thereof, and further observed that these two distinct factors were required to be taken into consideration by the Court determining the amount of compensation under the said Act. The learned Division Bench, therefore, proceeded to find out whether the Referral Court had committed any error in amalgamating the market value of the acquired land with the value of the trees standing thereon for the purpose of determining the amount of compensation and thereafter referred to the judgment of the Apex Court in Gurucharan Singh (supra) and then to the judgment of the Division Bench in Sahadu Aba Shette (supra) and claiming to follow the foot steps of the Apex Court held that where the computation of the market value was done after taking into consideration both the said factors, particularly, the yield from the trees, the claimants were barred from raising a statutory claim for trees as it was part of consolidated value arrived at by the Court concerned. The Division Bench then held that the sale deed plot forming the basis for computation of the compensation was not barren land and, in fact, the evidence showed that those were orchid (orchard?) lands with coconut trees. The Division Bench further observed that the evidence showed that the Special Land Acquisition Officer did not take a sale deed plot as a guide for arriving at the amount of compensation and instead added the value of the trees to the estimation of the market value of the acquired land for coming to the figure of consolidated compensation. In re-assessing such consolidated compensation, the learned Division Bench held that the Referral Court considered both the factors and arrived at the consolidated compensation amount and, therefore, the learned Division Bench held that it was of the view that the Referral Court committed no error in amalgamating the market value of the land with the value of the trees standing thereon for arriving at the rational figure of consolidated compensation as follows:

Rs. 4/- per square metre - land price plus Rs. 5/- per square metre - value of trees (value of the trees Rs. 3,55, 448.91 divided by 65,826 square metres of the acquired land i.e. equal to Rs. 5/- per square metre), and concluded that:

Thus the Referral Court was right in holding that the Appellants were paid the cost of compensation of the acquired land at the rate of Rs. 9/- per square metre.

22. With greatest respect, I must say, as rightly contended by learned Advocate Shri Usgaonkar, that Gurucharan Singh(supra) is only an authority to the proposition that when compensation payable has been determined by capitalizing the income that compensation for land as well as fruit bearing trees cannot be determined separately. Even then, the Hon''ble Supreme Court did in unequivocal

terms hold in Gurucharan Singh's case that even when such a method is used for valuation, "then the trees would be valued only as fire wood and necessary compensation would be given". If that is the case Rs. 41,433.49 at least could not have been divided and deducted by the learned Reference Court, towards market value. This point also appears not to have been highlighted before the Hon"ble Division Benches of this Court.

23. In Administration Genl. Of West Bengal (supra), the Apex Court ruled:

It is trite proposition that where land is valued with reference to its potentiality for building purposes on the basis of prices fetched by small sites in a hypothetical layout, the tree-growth on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield. But this principle does not come in the way of awarding the timber-value or the salvage-value of the tree-growth after providing for the cost of cutting and removing.

24. After taking note of Administrator Genl. of West Bengal (supra) the Apex Court distinguished Gurucharan Singh in Koyapathodi (supra) as follows:

It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable" evidence available, on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land.

(emphasis supplied).

25. Koyapathodi was not brought to the notice of the learned Division Benches, of this Court.

26. In Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, Rs. 1,40,000/- was given towards the value of the trees in addition to the market value of the land and the Apex Court observed that when forest officers who are the experts in this behalf estimated the value of the trees, unless there is contra evidence in that behalf, it cannot be said that the award of compensation of Rs. 23,000/- and odd given by the Collector's award was without any evidence.

27. It may also be noted that as regards valuation of the land with the building, the Apex Court in Administrator Genl. Of West Bengal (supra) observed that usually land and building constituted one unit. Land is one kind of property; land and building together constitute an altogether different kind of property. They must be valued as one unit, but, where the property comprises extensive land

and the structures thereon do not indicate a realisation of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures present at that time. In this method, the building-value is estimated on the basis of the prime-cost or replacement-cost less depreciation. The rate of depreciation is generally arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation. At this stage, I may also refer to another Division Bench Decision of this Court in *The Government of Bombay Vs. Esufali Salebhai*, wherein the Division Bench observed that;

The word "includes" in Section 3(a) of the Act shows that the legislature intended to lump together in one single expression "land" several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all of which have separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require.

Let us take a practical example. Three persons A, B & C bought one plot each in a subdivision, of about 500 square metres, 25 years back. Somehow, A's plot remained vacant. B built a house of about 100 metres and started residing in it. C planted some 25 teak trees around the plot with the hope that he would build a house in the middle and proceeded abroad. The trees have now all grown up into seasoned teak. Government acquires all three plots. Will compensation payable for all three plots, will be the same, valuing the plot in each case as one unit? The value of the house and the trees certainly will have to be assessed separately and paid for in case of the plots B and C and that would be in accordance with what the Apex Court has said in *Administrator Genl. of West Bengal (supra)*.

28. Therefore what we see from at least three judgments of the Apex Court is the consistent view that even in a case where market value is determined on the basis of income method, compensation is required to be paid for the timber value which aspect has not at all been considered by the learned Division Benches of this Court.

29. That is not the end of controversy. Section 23 of the Act deals with matters to be considered in determining compensation; Section 24 deals with matters which are required not to be taken into consideration; and Section 25 of the Act provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11 of the Act.

30. Section 23 of the Act provides for matters to be considered in determining compensation and Sub-section (1) thereof, provides that in determining the

amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-first, the market value of the land at the date of the publication of the [notification u/s 4, Sub-section (1)].

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

31. Did the Legislature mandate the Court to take the said matters into consideration for the purpose of including or excluding their value to the market value of the land as on the date of publication of the notification u/s 4(1) of the Act? To cite only two examples, Clause thirdly deals with what is generally known as severance charges and Clause fifthly deals with what is known as disturbance compensation. Compensation payable for these matters cannot be included and have never been included to the market value of the land as contemplated by Clause first, of Sub-section (1) of Section 23 and they are only added to the market value of the land in determining the compensation payable on account of acquisition. As seen from Clause secondly of Section 23(1), the Court is to take into consideration the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof. That the owner of property or a person interested would be entitled to timber value or wood value of the trees existing on the acquired land, minus the cost of cutting and removing is a matter which is no longer res integra, as can be seen from the judgments of the Apex Court cited herein above.

32. In my view, the matters which the Court is required to take into consideration in determining the amount of compensation under Clauses secondly to sixthly of Sub-section (1) of Section 23 are distinct and separate items or components of compensation to be added to the market value of the land under Clause, firstly and not to be deducted therefrom. Compensation payable under Clause secondly being a separate component of compensation has got to be added to the market value of the land. The expression "damage

sustained by the person interested, by reason of the taking of any standing crops or trees" would as well include the value of the coconuts which might have been there on the said trees and the same is to be necessarily added to the market value of the land determined under Clause first of Sub-section (1) of Section 23 of the Act. Fruit value would only mean the value paid for existing fruits, in the absence of any other evidence to the contrary. Applicant had 68 coconut trees, 680 banana plants, etc. Therefore, it is safe to infer in the absence of any evidence led by the Respondents, that Rs. 2,67,125 was paid for the loss or damage caused on account of taking away of the fruits and wood/timber. If severance charges, contemplated under Clause thirdly, or disturbance compensation contemplated under Clause fifthly, have got to be added to the market value under Clause first, there is no reason why the damage caused due to taking of crops i.e. fruits and trees should not be added to the same. In other words, the damage caused on account of taking away of crops/fruits or trees has got to be valued separately and added to the market value. That is what exactly the Land Acquisition Officer had done by awarding separately a sum of Rs. 2,67,125/- to the applicant.

33. Secondly, it may be stated that the applicant was satisfied with the value of the trees as given to her by the Land Acquisition Officer and had raised no issue about it before the learned Reference court and in such a situation the learned Reference Court, in my view, was not justified in deducting the amount paid towards the trees from the market value of the land. The learned Reference Court has proceeded to make the said deduction on the misunderstanding of the ratio laid down in Gurucharan Singh (supra) which had proceeded to determine compensation on the basis of income method but even then it had recognised that fire wood value at least could be paid for.

34. Thirdly, it may also be stated that it is a long standing practice followed in this State of Goa, that Land Acquisition Officers assess the market value on basis of sale deeds and grant a certain amount towards the trees or for structures, if there are any, and the parties who are dissatisfied seek enhancement of the said value in addition to the market value of the land. Sometimes they succeed and sometimes they fail. Here, the Government itself had valued the damage caused and awarded it separately. In the case at hand, no evidence was led at all by the Respondents and, therefore, the fruit value/timber value which was granted to the applicants under Clause secondly to Sub-section (1) of Section 23 could not have been deducted from the market value determined for the land.

35. There is another provision of the Act which needs to be looked into.

36. Section 26 of the Act deals with form of awards and Section 27, with Costs. Sub-section (1) of Section 26 states that:

(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under Clause first of Sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other

clauses of the same subsection, together with the grounds of awarding each of the said amounts.

Sub-section (2) provides that:

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).

(emphasis supplied).

37. Therefore, what follows from Sub-section (1) of Section 26 of the Act, is that market value under Clause first is one of the items or components of compensation payable, along with damage caused on account of taking of crops or trees which requires to be separately compensated under Clause secondly. Compensation payable is the total sum arrived at as per Sub-section (1) of Section 23 of the Act. It will also include additional compensation at the rate of 12% and solatium at the rate of 30%, stipulated by Sub-Sections 1(A) and (2) of Section 23 of the Act, respectively. It may also be noted that Sub-section (2) of Section 27 provides for costs to be paid when an applicant succeeds in a reference. The costs have to be realistic and not nominal as imposed in this case by the learned Reference Court.

38. In my view, a combined reading of Section 23(1) and Section 26 of the Act shows that the damage caused/sustained by reason of taking of standing crops/fruits or trees has got to be valued separately and paid for, and added to the market value determined for the land. What is valued under Clause secondly, cannot be deducted from what is valued under Clause first of Sub-section (1) of Section 23. What is valued under Clause secondly is the damage and not the market value. So also what is valued under other clauses of Sub-section (1) of Section 23. Compensation payable under Sub-section (1) of Section 23 is the sum total of compensation assessed under Clauses first to sixthly and therefore there is no room for any deduction. The learned Reference Court was therefore not right in deducting the compensation payable under Clause secondly from market value payable under Clause 32 first. The judgments of learned Division Benches of this Court have been rendered without taking notice of other judgments of the Apex Court, referred to hereinabove, particularly Koyapathodi (supra) which in turn has proceeded without the provisions of Sections 23(1) and 26 of the Act, being brought to the notice of their Lordship and therefore, the said judgments have to be considered as per incuriam and, hence, my respectful departure therefrom. In this context reference could be made to Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products and Another, wherein in para 13, the Apex Court observed that:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The Hon''ble Apex Court also referred to the words of Lord Denning which as follows:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide case (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

39. In view of the above discussion, I find that the learned Reference Court was not justified in deducting the compensation assessed by the Land Acquisition Officer under Clause secondly from the market value under Clause first, both of Sub-section (1) of Section 23 of the Act. Consequently, I allow the appeal partly, disallow the deduction and fix the compensation payable to the applicants at the rate of Rs. 21 /- per square metre with all consequential statutory benefits.