

(1990) 12 BOM CK 0020

In the Bombay High Court

Case No : Writ Petitions No"s. 381 of 1983 and 6399 of 1987 (converted into First Appeal No"s. 903 and 937 of 1990)

State of Maharashtra and another

APPELLANT

Vs

Chandrakant " Pomaji Vasudev Somshetti (since deceased by LRS) and others

RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 7
Civil Procedure Code, 1908 (CPC) — Section 110, 2(2), 9
Constitution of India, 1950 — Article 226, 226, 227
Land Acquisition Act, 1894 — Section 18, 23, 24, 26(2), 28A
Maharashtra Industrial Development Act, 1961 — Section 33, 34, 34(1)

Citation : AIR 1991 Bom 245 : (1991) 93 BOMLR 927

Hon'ble Judges : V.P. Tipnis, J;M.L. Pendse, J

Bench : Division Bench

Advocate : C.J. Sawant and R.D. Soni, Asstt. Govt. Pleader, for the Appellant; R.S. Bhonsale, Mrs. V.R. Bhonsale and Moss Chhaya Deshmukh, for the Respondent

Judgement

Pendse, J.—This petition filed by the State of Maharashtra under Article 227 of the Constitution and the group of companion writ petitions filed by the State Government and various claimants are directed against judgment dated July 6. 1982 delivered by Assistant Judge, Solapur, in proceedings commenced under chapter VI of the Maharashtra Industrial Development Act, 1961, for acquisition of large tracts of land admeasuring 540 acres, 26 gunthas and 34 annas situate adjoining the boundary of Solapur Municipal Corporation and within the compass of Solapur revenue village.

The Maharashtra Legislature passed the Maharashtra Industrial Development Act, 1961, being Maharashtra Act No. III of 1962 (hereinafter referred to as the "Act") to make special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organisation thereof, and for that purpose to

establish an Industrial Development Corporation. The Act came into force on March 1, 1962 but chapter VI can come into operation only from such date as the State Government notifies in the official gazette. Section 3 provides for establishment of corporation by the name of Maharashtra Industrial Development Corporation for the purpose of securing and assisting in the rapid and orderly establishment and organisation of industries in industrial areas in the State of Maharashtra. Chapter VI deals with the subject of acquisition and disposal of land. Section 32 inter alia provides that if at any time the State Government is satisfied that any land is required for the purpose of development by the Corporation, then the State Government may acquire such land by publishing in the official gazette a notice specifying the particular purpose for which such land is required and stating that the Government has decided to acquire the land. The section demands that before publishing a notice, the State Government shall by another notice call upon the owner of the land or any other person who is interested therein, to show cause why the land should not be acquired. After considering the cause, if any shown by the owner of the land, the State Government is authorised to pass appropriate orders. Sub-section (4) of section 32 provides that the land shall vest absolutely in the State Government free from all encumbrances when notice under sub-section (1) is published in the official gazette. Section 33 deals with the liability of the State Government to pay compensation for acquisition of the land. The section inter alia provides that amount of compensation can be determined by agreement between the State Government and the person to be compensated. In case the agreement cannot be reached, then the State Government shall refer the case to the Collector for determination of the amount of compensation to be paid for such acquisition and the person or persons to whom such compensation shall be paid. Sub-section (5) of section 33 provides that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894. It further prescribes that the date of publication of notice under sub-section (2) of section 32 shall be treated as the date of publication of the notification u/s 4 of the Land Acquisition Act while the notice under subsection (1) of section 32 shall be considered as publication of declaration u/s 6 of the Land Acquisition Act.

2. Initially, Section 34 of the Act read 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, appeal if the land acquired is situate in Greater Bombay to the City Civil Court, and elsewhere to the District Court (hereafter in this chapter referred to as the Court).

(2) The decision of the Court on such appeal, and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final."

The Maharashtra Legislature passed the Maharashtra Industrial Development

(Amendment) Act, 1974, and the Act received the assent of the President on June 17, 1975. Sub-section (1) of section 34 was substituted and it now reads as under :--

"Any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, insofar 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."

The statement of objects and reasons sets out that sub-section (1) of Section 34 was substituted to bring the provisions of the Act on par with the corresponding provisions of the Land Acquisition Act, 1894.

3. The Government of Maharashtra, Industries and Labour Department under notification dated September 6, 1969 prescribed September 18, 1969 as the date from which chapter VI of the Act shall take effect in the area declared in the notification and situate in village Solapur, tahsil north Solapur, District Solapur. The area covered by this notification admeasures 540 acres, 26 gunthas and 34 annas. On April 2, 1970, the Government of Maharashtra published notice under sub-section (2) of section 32 and called upon the owners of these lands to show cause why the lands should not be acquired for the purpose of development by the Corporation. After considering the cause shown by the owners of the lands the State Government decided to acquire the lands by publishing in the official ga/.ette a notice specifying the purpose and stating that the State Government has decided to acquire the lands in pursuance of sub-section (1) of Section 32. In accordance with sub-section (4) of Section 32, the lands vested in the State Government free from all encumbrances on October 15, 1971. In exercise of powers under sub-section (5) of Section 32, the State Government recovered possession of these lands on December 25, 1971. A joint meeting of the land owners, representative of the Corporation and the Special Land Acquisition Officer, Solapur, was held on February 11, 1971 for the purpose of determination of valuation of acquired lands by agreement as contemplated u/s 33 of the Act. The Corporation initially offered the rate of Rs. 3,000/-, but increased the same to Rs.4,000/- per acre while the owners demanded compensation at the rate of Rs. 80,000/- per acre and, ultimately, came down to the rate of Rs. 50,000/- per acre. As an agreement could not be reached, the Government decided to refer the issue of determination of amount of compensation to the Collector and by notification dated January 14, 1972, the Sub-Divisional Officer, Solapur, was appointed to perform the functions of the Collector u/s 33 of the Act. The Special Land Acquisition Officer declared his award on March 31, 1973 holding that the

lands acquired are jirayat lands but are adjacent to the Corporation limits of Solapur Municipal Corporation and the adjoining area being in the process of development has building potentialities. The Land Acquisition Officer noted that a spinning mill, a huge weaving mill, Solapur College, Polytechnic, Viko-process and handloom factories are just near the acquired lands. The Land Acquisition Officer held that though the lands are used for agricultural operation and are not converted for non-agricultural use, still the lands have got building potentiality. The Land Acquisition Officer concluded that compensation should be awarded at afloat rate of Rs. 2,474/- per acre to various land owners. The Land Acquisition Officer also directed payment in respect of trees, wells and some structures standing on the acquired lands.

4. In accordance with the provisions of sub-section (1) of S. 34 of the Act, the claimants approached District Court, Solapur, for enhancement of compensation offered by the Land Acquisition Officer. The District Judge, Solapur, ignoring the amendment to S. 34 of the Act, proceeded to dispose of the reference as it was only an appeal against the order of the Special Land Acquisition Officer. Consequently, the District Judge did not permit the claimants to lead evidence to establish the market value of the lands on date of notification under sub-sec. (2) of S. 32 of the Act and which is equivalent to S. 4 of the Land Acquisition Act. The District Judge, on perusal of whatever material was relied upon by the Special Land Acquisition Officer and some documents produced by the claimants, came to the conclusion that the proper compensation would be Rs. 8,000/- for the lands situate in the interior and Rs. 10,000/- for lands which have frontage on Akkalkot road and Kumbhari road. The decision of the District Judge was challenged both by the State Government and by the claimants by filing 45 petitions under Art. 226 of the Constitution and those petitions were allowed by Division Bench by judgment dated July 27, 1981 and to which one of us (Pendse, J.) was a party. The Division Bench held that sub-sec. (1) of S. 34 provides that the proceedings should be treated as a reference as contemplated under S. 18 of the Land Acquisition Act and the provisions of Part III of the Land Acquisition Act are applicable to the reference made under sub-sec. (1) of S. 34 to the District Court. The order passed by the District Judge was, therefore, set aside and the proceedings remitted back to the District Court with a direction that opportunity should be given to the parties to lead evidence and then the proceedings should be decided by treating as a reference under S. 18 of the Land Acquisition Act.

On remand, the claimants led oral as well as documentary evidence and the Assistant Judge by the impugned judgment dated July 6, 1982 came to the conclusion that the proper compensation would be Rs. 15,000/- per acre in respect of the lands and an additional amount of Rs. 500/- per acre in respect of lands bearing survey Nos. 202, 190, 169, 199, 198 and 773. The Assistant Judge granted additional compensation to the owners of these lands on the ground that these lands have a frontage on Akkalkot road and Kumbhari road. The Assistant Judge also increased the valuation of well and structure of one of the claimants. The decision of the Assistant Judge is under challenge in these petitions filed by

the State of Maharashtra as well as the claimants. The claim of the State Government is that the compensation awarded is excessive and the rate is arrived at without any evidence whatsoever while, on the other hand, the claimants are asserting that the compensation should have been granted at a rate far higher than Rs. 15,000/-per acre.

5. The first question which falls for determination is whether the petitions filed under Arts. 226 and 227 of the Constitution to challenge the judgment of the Assistant Judge, Solapur, are maintainable. The issue arises because it is claimed that an appeal is permissible against the decision recorded by the District Court under sub-sec. (1) of S. 34 of the Act. Sub-sec. (1) of S. 34 confers right upon the claimant to seek reference to the Court as defined in the Land Acquisition Act and to such reference, the provisions of part III of the Land Acquisition Act apply *mutatis mutandis*. Part III of the Land Acquisition Act deals with the subject of reference to Court and procedure thereon and Ss. 18 to 28A are included in this part. S. 18 provides for reference to Court by any person who has not accepted the award made by the Special Land Acquisition Officer. The expression "Court" is defined in S. 3(d) and means a principal Civil Court of original jurisdiction. S. 7 of the Bombay Civil Courts Act, 1969 prescribes that the District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure. S. 26 of the Land Acquisition Act deals with the form of awards to be passed by the Court on reference and provides that every award shall be in writing signed by the Judge and shall specify the amount awarded under clause first of sub-sec. (1) of S. 23, and also the amounts respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. Sub-sec. (2) of S. 26 reads as under :--

"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 S. 2, Cl. (2), and S. 2, Cl. (9), respectively, of the Code of Civil Procedure, 1908."

As sub-sec. (1) of S. 34 of the Act provides that the provisions of part III of the Land Acquisition Act shall apply to the proceedings in respect of reference to be made to the Court and consequently the award to be passed by the Court shall be deemed to be a decree and the grounds of award a judgment as contemplated under the Code of Civil Procedure.

Once the award passed by the District Judge under sub-sec. (1) of S. 34 becomes a decree, then such decree would be appealable under S. 96 of the Code of Civil Procedure. The section *inter alia* provides that an appeal shall lie from every decree passed by any Court exercising jurisdiction to the Court authorised to hear appeals from the decisions of such Court, unless expressly prohibited by the Code or by any other law for time being in force. S. 54 of the Land Acquisition Act prescribes that subject to the provisions of the CPC applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only be, in

any proceedings under the Land Acquisition Act, to the High Court from the award, or from any part of the award. The section further provides that from any decree of the High Court passed on such appeal, an appeal shall lie to the Supreme Court subject to the provisions contained in S. 110 of the Code of Civil Procedure. S. 54 is included in part VIII of the Land Acquisition Act and the said part is not made applicable to the award to be declared by the District Judge under sub-sec. (1) of S. 34 of the Act, but once such an award becomes a decree, then it would be appellable and the appeal would lie to the High Court under S. 96 of the Code of Civil Procedure.

6. Reference is required to be made to sub-sec. (2) of S. 34 which provides that 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. It was suggested that sub-sec. (2) of S. 34 makes the decision of the District Court on reference final and, therefore, appeal is not permissible against the said decision. It is not possible to accede to the submission. The State Legislature by substituting sub-sec. (1) of S. 34 of the Act made its intention clear that the provisions of part III of the Land Acquisition Act shall *mutatis mutandis* apply to the proceedings of reference to the District Court under sub-sec. (1) of S. 34. The State Legislature was fully conscious that the decision of the Court would be a decree under the CPC and the grounds for the award a judgment under the Code. Once the award becomes a decree and the grounds become a judgment, then such award or judgment would be appealable under S. 96 of the Code of Civil Procedure, if delivered by a District Court and under Cl. (15) of the Letters Patent, if delivered by a single Judge of the High Court. The reference under sub-sec. (1) of S. 34 of the Act is to be made to the "Court" as defined in the Land Acquisition Act and that means a principal Civil Court of original jurisdiction. In our judgment, the expression "decision of the Court" under sub-section (2) of S. 34 of the Act cannot be restricted only to the principal Civil Court of original jurisdiction, but extended to the decision of the Court in accordance with the hierarchy of Courts. The appeal against the decree or judgment of the principal Civil Court of original jurisdiction is nothing but a continuation of proceedings commenced by reference to the original Court. The appeal being continuity of the original proceedings, the expression "decision of the Court" on such reference under sub-sec. (2) of S. 34 brings within its sweep not only the decision of the District Court but also the decision of the High Court in appeal and further the decision of the Supreme Court. The State Legislature in its wisdom retained the provisions of sub-section (2) of S. 34 after substituting sub-section (1) and thereby made it clear that the expression "decision of the Court" on such reference should not be construed in an artificial manner so as to prevent either the claimant or the State Government from filing an appeal to the High Court. In our judgment, sub-sec. (2) only provides that the decision of the Court on such reference whether by the trial Court or by the appellate Court or by the Supreme Court shall be conclusive and shall not be questioned in any other forum by filing any other proceedings. This construction would subserve

the intent of the Legislature and would advance the cause of justice. We are conscious that the right to an appeal is a creation of statute, but on a plain reading of the provisions of sub-sec. (2) of S. 26 of the Land Acquisition Act and the provisions of S. 34 of the Act, it is clear that the decision of the District Court is subject to an appeal to the High Court and further to the Supreme Court.

Accordingly, we hold that the impugned judgment of the Assistant Judge is open to an appeal and the writ petitions filed by the State Government and the claimants are not maintainable. Mr. Sawant, learned counsel appearing for the Government, and Mr. Abhyankar, Mr. Bhonsale and other counsel appearing on behalf of various claimants, seek permission to convert the writ petitions into appeals. Permission granted on the counsel giving an undertaking to pay the requisite Court-fees within a period of four weeks from today. Mr. Mengane, learned counsel appearing for the petitioner in Writ Petition No. 1023 of 1984 sought permission to withdraw the petition and that permission being granted, conversion is not sought in that matter.

7. The principal question which requires determination in these appeals is what is the fair market value of the lands under acquisition. Before we examine the evidence led by the claimants before the District Court, it is necessary to examine the location of the lands under acquisition. The market value of the lands is to be determined with reference to the value as on April 2, 1970, that being the relevant date in accordance with the provisions of sub-section (2) read with sub-section (5) of Section 32 of the Act. The provisions of this sub-section provides that the date of publication of notice under sub-sec. (2) is equivalent to the date of publication of notification under sub-sec. (1) of S. 4 of the Land Acquisition Act. The claimant before the District Court produced map at exh. 52 and the sketch gives vivid and clear picture about the situation of the Solapur city, Municipal boundary limit and the acquired lands. All the acquired lands are situate at one place and they form a homogeneous extensive plot admeasuring over 540 acres. Some of the lands are adjoining or touching the boundary of Solapur Municipal Corporation limit. To the north of the acquired lands runs Akkalkot road east-west and Akkalkot road is a State highway. None of the acquired lands have any frontage on Akkalkot road save and except a part of land bearing survey No. 169 touches Akkalkot road. On the southern side of the acquired lands is Kumbhari road and, according to the State Government, it is a cart-track or foot-way while according to the claimants, it is a road leading to village Kumbhari. It is not in dispute that Kumbhari road is neither highway nor a road maintained by the Municipal Board. The sketch also indicates that about two furlongs from the acquired lands, there is a spinning mill, weaving mill, polytechnic and school, Solapur College and some other industrial buildings. It is not in dispute that all the acquired lands are agricultural and some of the lands are black soil while others murrom (containing stones). On some of the lands, there are bunds constructed and so also farm-houses. The Land Acquisition Officer observed in the award that some lands on Solapur-Akkalkot road are converted for non-agricultural user and, therefore, even though the lands under

acquisition are purely agricultural lands, it will have to be concluded that the acquired lands have building potentially. Curiously, the Land Acquisition Officer at a later stage in the award observed that the lands cannot be valued on the basis of non-agricultural potentially. The District Judge in reference at the behest of the claimants came to the conclusion that the lands have building potentially and Mr. Sawant learned counsel appearing on behalf of the State Government, did not dispute that finding and, in our judgment, very correctly. The evidence led by the claimants unmistakably indicates that there is gradual development towards the north from Solapur city and leading to the limits of Corporation, though the growth is gradual and not at a rapid pace. The evidence led by the claimants at the trial thus indicates that towards the north beyond Akkalkot road, some lands are converted for non-agricultural user and some powerloom factories have commenced business. In these circumstances, though the acquired lands are purely agricultural lands on the relevant date i.e. April 2, 1970, the valuation is required to be determined by taking into consideration the building potentially.

8. The Assistant Judge while arriving at the conclusion that the market value of the acquired lands was Rs. 15,000/- per acre save and except some pf the lands which are entitled to higher price of Rs. 500/- due to its peculiar situation, has relied upon instance taken into consideration by the Land Acquisition Officer as well as the instance to which reference was made by the claimants without proving the said instances. The trial Judge in para 13 of the judgment referred to 27 instances from December 23, 1965 to February 19, 1971 and relied upon the same without appreciating that mere production of the documents does not establish its proof. The trial Judge curiously relied upon some of the entries in the village form and assumed that the transactions referred to therein were duly proved. It is obvious that the approach of the learned Asstt. Judge was clearly erroneous. A reference under S. 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the said material is produced and proved before the Court. The award of the Land Acquisition Officer is not a judgment open to challenge in reference. The award is merely an offer made by the Land Acquisition Officer and the material utilised by him cannot be used by the Court unless the same is produced and proved in accordance with the Evidence Act. The reference to the Court is an original proceeding and the market value is to be determined on the basis of evidence produced by the claimants, the only limitation being that the market value can never be less than that offered by the Land Acquisition Officer. The trial Judge, in our judgment, has clearly failed to determine the reference in accordance with law and, consequently, the determination of the trial Judge cannot be sustained and it is necessary to reappreciate the evidence led by the claimants in reference proceedings.

9. The claimants have led common evidence in two reference marked as Civil Appeals Nos. 356 of 1976 and 435 of 1976 by the District Court. The claimants had demanded compensation at the rate of Rs. 50,000/- per acre before the

Land Acquisition Officer as well as in the reference and in respect of the claim, the claimants led oral as well as documentary evidence. We will hereafter examine the oral evidence along with documents which are duly proved. There is no dispute between the parties in these appeals about the documents duly proved and exhibited by the trial Judge. In addition, by consent of the parties, we have exhibited two more documents marked as exhibits X-1 and X-2 in the appeals and to these documents also reference will be made in due course. The claimants examined Vijaykumar Shrikisan Bhayya (exh. 51) and who is one of the claimants, being owner of lands bearing survey Nos. 165, 166/A, 166/B, 167 and 196. Bhayya deposed that in a portion of his land, he was growing onion, plantage, lemons and garlik. Bhayya claims that survey No. 165 is immediately adjoining Solapur Municipal Corporation limits. Bhayya deposed that his father had prepared the layout plans in respect of survey No. 165 and in 1967, 276 plots were carved out for the purpose of disposal. Bhayya claimed that after the death of his father in the year 1970, he started negotiations for disposal of the plots and the rate in January, 1970 varied from Re. 1/- to Rs. 2/- per square foot. Bhayya claimed that he had agreed to sell some plots to witness Ramayya Kondayya Kondale (exh. 60) and to Ambaji Mangayya Gundeti (exh. 145). The agreements with Kondale were alleged to be of February 14, and January 22, 1970 while that of Gundeti on February 16, 1970. According to Bhayya, if the value of the plots was Re. 1/- to Rs. 2/- per square foot in the beginning of the year 1970, then the market price of all the acquired lands should have been determined at that rate i.e. between Rs. 50,000/- to Rs. 80,000/-. Bhayya conceded in the cross-examination that there was no electric power available in the acquired lands and though Bhayya produced the accounts book where there is an agricultural khata had to concede that there are no entries in that khata in respect of the alleged transaction with Kondale and Gundeti. Bhayya accepted that he had made no development in the land in which the plots were laid and had no idea of the expenses of development or construction of roads and drainage. Bhayya denied that the agreements of sale are got up documents and are prepared only for the purpose of claiming more compensation. Bhayya further conceded that even till the date of his evidence in April, 1982, only about 30 plots out of 276 plots were sold. Bhayya did not produce a single sale deed even in respect of the alleged sale of 30 plots. Bhayya conceded that till the date of his deposition, neither the roads nor drainage work was carried out. The deposition of Bhayya that layout plans were prepared in respect of survey No. 165 by his late father prior to the year 1967 is supported by the testimony of Ramchandra Deshrath Dhere (exh. 58) and Sidram Narayan Ganappa (exh. 140) who are working in the Municipal Corporation.

Ramayya Kondayya Kondale (exh. 60) deposed that he had powerlooms and a spinning mill and on February 14, 1970, he had entered into an agreement of sale of subplots Nos. 41, 42, 47 and 48 and final plot No. 30 and the total area agreed to be purchased was 22,380 sq. feet. The document is produced and marked as exh. 48 by the trial Court. Kondale further claims that though the

prevailing price was Rs. 1.50 per sq. foot, as he knew the family of Bhayya, the agreement was entered into at the rate of Re. 1/- per sq. foot. The claim of Kondale on this aspect is not even corroborated by Bhayya. Kondale further claims that he had entered into an agreement with Bhayya for purchase of 30 or 40 more plots, but as Bhayya did not lay out drainage, he opted to purchase some other premises. Kondale claims that sale deeds in respect of none of these plots were secured, because the proceedings before the authority under the Urban Land (Ceiling and Regulation) Act were not completed. It is impossible to place any reliance upon the testimony of Bhayya and Kondale to hold that the prevailing price of the plots in survey No. 165, a portion of which is acquired, was Re. 1/- to Rs. 2/- per sq. foot. It is necessary to bear in mind that the lands under acquisition were declared as part of industrial area on September 18, 1969 and everyone became aware that the Corporation was going to acquire the lands for setting up an industrial estate. After such declaration under sub-sec. (1) of S. 32 of the Act, the alleged agreements of sale were entered into by Bhayya in favour of Kondale. The area agreed to be purchased is less than one acre and we are not impressed by the claim of Bhayya or Kondale that the agreements of sale were genuine. Kondale produced only one agreement at exh. 48 and the area covered is only 22,380 sq. feet. Even in respect of this agreement, it is not in dispute that no steps were taken till year 1982 to obtain the sale deed. The excuse put forward by Kondale that permission was not granted by the Urban Land Ceiling Act authorities is not convincing as neither Bhayya nor Kondale deposed as to what steps were taken to secure such permission. It appears that Bhayya in collusion with Kondale prepared an agreement of sale in February, 1970 only with the object of claiming that the lands were sold out in the year 1970, the relevant date for determining compensation being April 2, 1970. It is required to be reiterated that right from the year 1967 onwards, Bhayya had made no efforts for development of the plots or for undertaking water and drainage connection till the date of deposition in the year 1982. Indeed, out of 276 plots, Bhayya claimed that only 30 to 40 plots were sold till the year 1982. We are unable to place any reliance even on his claim in the absence of any documentary evidence to establish that in fact, such number of plots were sold. That is also indicative as to how difficult it is to sell the plots in survey No. 165 which is right adjoining the limits of Solapur Municipal Corporation. We are unable to place any reliance upon the testimony of Bhayya or Kondale to hold that the prevailing prices at the relevant date were between Re. 1 and Rs. 2/- per sq. foot.

10. The testimony of Ambaji Gundeti (exh. 145) with whom Bhayya claims to have entered into an agreement of sale (exh. 147) on February 16, 1970, establishes that efforts were made to create evidence by Bhayya in collusion with Gundeti. Gundeti claims that he had entered into an agreement of sale and the rate agreed was Rs. 2/- per sq. foot. Gundeti conceded in examination-in-chief that sale deed was not obtained and claimed that it was for the reason that neither road nor drainage connections were laid. In cross-examination, the claim

of Gundeti was exposed to the hilt. Gundeti admitted that he was working in Laxmi Vishnu Mill on salary of Rs. 200/- per month and he had left the job because his health was indifferent. Gundeti admitted that he had no regular job from the year 1970. Gundeti did not know what was the prevailing market rate and accepted that he did not even demand back the amount of Rs. 1,500/- which was paid as part-consideration. Gundeti admitted that he had never carried on any business and he did not know who had written the agreement of sale. In re-examination, Gundeti admitted that he could not read or write but can only put his signature. In our judgment, the testimony of Gundeti is entirely unreliable and it is difficult to accept that the alleged agreement of sale (exh. 147) between Bhayya and Gundeti was a genuine one. It is obvious that Bhayya had prepared the agreement of sale with Kondale and Gundeti who seems to be his minions. It is impossible to place any reliance on these agreements, apart from the fact that these agreements are for purchase of very small area compared to the acquisition of lands of 540 acres. The testimony of Bhayya, Kondale and Gundeti is of no assistance whatsoever to the claimants.

11. The claimants examined Chandrakant Vasudev Somshetti (exh. 138) and the witness claimed that he was running a shop of paints and has also brought agricultural lands bearing survey No. 170 which is a part of the acquired lands. Somshetti claimed that on February 9, 1968, he had entered into two separate agreements with Gandevar and Kulgulwar (exh. 137) for sale of land admeasuring 2 acres and 1 guntha each from survey No. 170 for a consideration of Rs. 70,000/-. Somshetti claims that the land was agreed to be sold at the rate of Rs. 35,000/- per acre and Rs. 2,000/- each was received from Gandevar and Kulgulwar. Gandevar was not examined nor the agreement entered into with Gandevar was produced or proved. Kulgulwar (exh. 137) was examined and he deposed that he had entered into an agreement with Somshetti. Kulgulwar claims in the examination-in-chief that the original agreement is not available as the same was handed over to one Bhalkikar, Advocate, but it is not traceable. Kulgulwar claims that the two agreements of sale executed by Somshetti were registered and produced the photostat copy of the registered agreement between Somshetti and kulgulwar. Kulgulwar claimed in examination-in-chief that as the land was acquired by the State Government, sale deed was not executed, but he had issued notice to Somshetti to execute the sale deed but did not receive any reply. Somshetti stated in cross-examination that he did not know Gandevar and it is not correct that he received the part-consideration in cash. Somshetti further stated that Rupees 2,000/- was returned by him to Gandevar and Kulgulwar, but he did not obtain any receipt from them or made any entry in his account books. Somshetti denied that he was in need of money and, therefore, the agreements were entered into with both Gandevar and Kulgulwar and Somshetti claimed that he cannot state when the agreements were cancelled. Somshetti also claimed that at the time of cancellation of the agreement, the possession of the lands was with him and he had handed over possession to the Land Acquisition Officer. We are unable to accept the assertion of the claimants that the agreement

between Somshetti and Kulgulwar is a genuine transaction. In our judgment, the alleged transaction is not at all genuine, but on the other hand, there is intrinsic evidence to hold that the transaction is bogus and the documents were created for ulterior purpose. The agreements between Somshetti and Kulgulwar and Gandevar of February 9, 1968, being registered agreements, it is not possible to dispute the factum of the agreements, but the question for determination is whether the agreements were genuine transaction for sale of land. The agreement with Gandevar is not on record and the original agreement with Kulgulwar was not produced on the specious plea that the same is missing after being handed over to an Advocate. As the document was a registered one and photostat copy was produced before the District Court, we felt it proper to admit the copy in evidence and accept the same in appeal. Accordingly, by consent of parties, we took the document on record and marked as exh. X-1 in appeal. Though the document was admitted and executed in appeal, we are unable to conclude that the agreement of sale between Somshetti and Kulgulwar is genuine or reflects the correct prevailing market price of the lands in the vicinity. The first circumstance is that it is unusual that an agreement of sale is registered. The second circumstance is that an identical area of 2 acres and 1 guntha is agreed to be sold to Kulgulwar and Gandevar and an identical amount of Rs. 2,000/- was paid by the two proposed purchasers as part-consideration. A persual of the sketch indicates that the land agreed to be sold is not at the corner of land bearing Survey No. 170 but somewhere in the centre of the land. It is impossible that a purchaser would agree to purchase 2 acres of land in the centre of large area of agricultural land. The next circumstance completely expose the falsity of the transaction. The agreement recites that the sale deed will be secured within 11 months from the date of the agreement and that period of 11 months would be over on January 10, 1969. On that date, the acquired lands were not declared as industrial area and that declaration came only on September 18, 1969 and obviously there was no impediment in concluding the sale. Neither Somshetti nor Kulgulwar could give any satisfactory explanation as to why the agreement of sale was not concluded by obtaining the sale deed, save and except claiming that the sale deed was not executed because the lands were acquired. There is one more circumstance which makes the whole transaction highly suspicious. As mentioned hereinabove, the original agreement between Somshetti and Kulgulwar was not produced by claiming that Kulgulwar had handed it over to his Advocate and it was misplaced. Believing in the claim and as the document was a registered one, we admitted the photostat copy and marked it as exhibit in appeal. Mr. Bhonsale, learned counsel appearing on behalf of some other claimants, filed compilation including the copy of the award, deposition of witnesses and copies of the agreements. The compilation includes copy of the agreement between Somshetti and Kulgulwar. At the foot of the copy of the agreement, we notice an endorsement dated December 30, 1968 which sets out that as the sale deed could not be concluded before expiry of 11 months i.e. on January 10, 1969, both the parties decided to extend the time limit for execution of sale till May 1, 1970. The endorsement then claims that as Somshetti was in

need of additional amount, Rs. 2,000/- more was paid as part-consideration and as part performance possession of the land referred to in the agreement of sale was bended over to Kulgulwar. Neither Somshetti nor Kulgulwar in the deposition had referred to this subsequent transaction and, therefore, we enquired from the learned counsel for the claimant as to how this endorsement was made and why it was not referred to. The learned counsel then mentioned that the endorsement is not found on the photostat copy. We repeatedly asked the learned counsel to explain as to where the endorsement was found and how it was included in the compilation. The counsel was unable to give any answer. The endorsement was probably made on the original document after securing a photostat copy and to avoid attention of the Court to this endorsement, a claim was made that the original is misplaced. The testimony of Somshetti indicates that possession of the land was never handed over to Kulgulwar and the document was cancelled after return of Rs. 2,000/- by Somshetti. We are unable to appreciate how the endorsement could have been made on a registered agreement and the agreement could have been cancelled without any endorsement to that effect. Somshetti did not claim that he had received Rs. 2,000 - in addition to the amount of Rs. 2,000/- paid at the time of the execution of the agreement and he had handed over possession. It is obvious that the bogus document was made on December 20, 1968 only with a view to suggest that sale deed was not obtained within stipulated period of 11 months i.e. before January 10, 1969. The endorsement suggesting extension up to May 1, 1970 is only for the purpose of asserting that sale deed was not obtained because the lands were notified for acquisition on April 2, 1970. In our judgment, Somshetti and Kulgulwar had colluded to prepare false evidence to support their claim that the price prevailing in February, 1968 was Rs. 35,000/- per acre. It is impossible to place any reliance on such evidence and more, so when there is not a single instance to indicate that the prices were anywhere near the amount of Rs. 35,000/- per acre at the relevant time. In these circumstances, the reliance by the claimants on the evidence of Somshetti and Kulgulwar is of no assistance whatsoever to hold that the price of the acquired land was Rs. 35,000/-per acre in February, 1968.

12. The claimants then relied upon agreement of sale dated November 14, (1969 (exh. 144) between Krishnahari Gullapalli (exh. 152) and Krishnahari Bhumaiya, the owner of land bearing survey No. 155. This land is immediately north to Akkalkot road and is separated from the acquired lands by short distance. Land bearing survey No. 155 is a huge plot and Gullapalli claims that by agreement dated October 17, 1969 (exh. 51), an area of 70 feet x 70 feet was agreed to be purchased for a consideration of Rs. 8,500/-. In pursuance of this agreement, sale deed was obtained on November 14, 1969 and the same is produced at exhibit 154. Gullapalli claimed in the witness-box that he had purchased the land for constructing a building in which business of power-looms was to be carried on. Gullapalli in fact, carried on the business after construction of building from the year 1972 onwards. The distance between the property purchased by Gullapalli and the acquired lands is about one furlong. Strong reliance was placed

on behalf of the claimants to urge that the rate paid by Gullapali on October 16, 1969 was Rs. 1.73 per sq. foot and the acquired lands should be valued accordingly. It is not possible to place any reliance upon the transaction. In the first instance, the land purchased by Gullapalli is only 3 gunthas and transaction of such small area is not at all comparable for determining the value of the acquired lands which are over 540 acres. Secondly, Gullapalli deposed in the cross-examination that the price of Rupees 8,500/- was settled, but at that time the land was not converted for non-agricultural use nor arrangement was made for roads or drainage and the said work was carried out by Gullapalli as it was agreed between the vendor and the purchaser that the vendor would bear the expenses. Gullapalli deposed that the expense was to the extent of Rs. 1,215/- and that amount was to be deducted from the purchase price. It is, therefore, obvious that the value of the land purchased by Gullapalli was only Rs. 7,285/-. It is also necessary to bear in mind that the area purchased by Gullapalli is extremely advantageous as it is situated immediately adjoining Akkalkot road and very close to Akkalkot naka. Gullapalli admitted in the cross-examination that he did not enquire about the prevailing price but he accepted the rate mentioned by the broker. We are unable to conclude that this instance on which reliance is placed by the claimants is of any assistance to arrive at a conclusion about the fair market value of the acquired lands.

13. Reliance was also placed on behalf of the claimants on copy of award dated March 19, 1968 given by the Special Land Acquisition Officer for acquisition of an area of 30 gunthas out of survey No. 135/2A. Copy of the award was produced before the trial Court and the trial Court made reference to the same but the document was not exhibited. It is now well settled that award passed by the Land Acquisition Officer is a relevant instance to be used for ascertaining the market value. We, therefore, by consent of parties, took on record copy of the award and marked it as exh. X-2 in appeal. A perusal of the copy of the award indicates that S. 4 notification was published on September 17, 1967 and the Special Land Acquisition Officer was required to determine the market value with reference to that date. For an area of 30 gunthas which was acquired, the Land Acquisition Officer determined the price by calculating at the rate of Rs. 10,800/- per acre. It is not possible to hold that the price determined by the Land Acquisition Officer is relevant for determining the price of the acquired lands. A perusal of the map indicates that land bearing survey No. 135 is adjoining Akkalkot road but is separated by distance of more than a mile from the acquired lands. Again, the area acquired is a small piece of 30 gunthas and can have no bearing while determining the market value of a huge plot of lands measuring more than 540 acres. The land is further towards east from the acquired lands and, in our judgment, the price settled by the Land Acquisition Officer for an area of 30 gunthas is not helpful in arriving at the market value of the acquired lands.

14. That leaves for consideration the instance of sale dated December 23, 1965 of land bearing town planning final plot No. 32/2 out of survey No. 203. This transaction of December 23, 1965 evidenced by sale deed (exh. 70) is of an area

of one acre and this area was purchased by Mrs. Nirmalabai Anant Joshi from Gurusiddappa Shivappa Patil for a consideration of Rs. 19,000/-. The land purchased by exh. 70 is immediately adjoining the boundary of Solapur Municipal Corporation and is also adjoining the acquired lands. The sale deed was proved by Chitranshan Joshi, who is the son of the purchaser. Joshi deposed that the land was purchased by his father in the name of his wife Nirmalabai in the year 1965. The witness gave his age as 32 years on April 15, 1982 and, therefore, in the year 1965, the witness was hardly 15 years old. Joshi claimed in examination-in-chief that the land was purchased with a view to commence industry and industries were growing at Hotgi road and Akkalkot road. In cross-examination, the witness deposed that his father was a practicing Doctor and he died in the year 1981. Joshi admitted that the family knew Patil for several years prior to the date of purchase. Joshi conceded in the cross-examination that he had not made enquiry about the prevailing rate of lands in the year 1965. The witness claimed that their relations were carrying on agricultural operations, but denied that the land was purchased because the family lands at Kagwad village were in possession of the tenants and could not be recovered back. Joshi admitted that he did not convert the agricultural land which is purchased in the year 1965 to non-agricultural user or carried on any industry or power-loom business. Mr. Abhyankar placed strong reliance on this instance to urge that the land purchased by Joshi is immediately adjoining the acquired lands and there cannot be any dispute that the transaction was a genuine one. It is undoubtedly true that nothing is brought out in the cross-examination to indicate that the transaction is not a genuine one, though we are not sure whether the price paid by Dr. Joshi in the year 1965 reflects the true marked value prevailing in the neighbourhood. The difficulty in holding that the price of Rs. 19,000/- per acre reflects the market value is that neither the vendor nor the purchaser was examined and, therefore, it is difficult to ascertain whether the purchaser was a prudent purchaser who had made the purchase after ascertaining the prevailing price in the area. Even though the transaction is a genuine one, it is also necessary to establish that the purchaser is a prudent purchaser and who has made necessary enquiries and assured himself that the price paid is one which is prevailing in the area at the relevant time. We are conscious that Dr. Joshi who purchased the property in the name of his wife not alive at the time of recording of evidence, but no explanation is offered as to why the vendor Patil was not examined. We also cannot overlook the fact that no other transaction in the adjoining area of a date prior to the year 1965 or between the years 1965 and 1969 was produced to indicate that the price of Rs. 19,000/- per acre reflected the prevailing market price in the area.

In spite of all these observations as to whether the price mentioned in the sale deed (exh. 70) reflects the correct prevailing price in the area, we proceed to treat this instance as a genuine one only because there is no other acceptable instance available for determination of the market value. At one stage, we were considering whether we should determine the market value of various pieces of

lands by adopting different tests, but both the counsel unequivocally stated that that would be an extremely cumbersome procedure which may lead to injustice to some claimants and it is desirable that the Court should determine a flat rate applicable to all the acquired lands irrespective of their location. We have also realised that could be the best course, in the facts and circumstances of the case. We will, therefore, proceed to determine the price for the acquired lands with reference to the instance of sale deed (exh. 70), which was executed on December 23, 1965.

15. The area covered by exh. 70 is only one acre and this being a small plot, the price of Rs. 19,000/- per acre paid by Dr. Joshi cannot be the basis for determining the price of large area of land admeasuring over 540 acres. The determination of market value of a land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The determination of market value is the prediction of an economic event i.e. the price-outcome of a hypothetical sale, expressed in terms of probabilities. The Supreme Court examined the question of determination of market value of large extent of land with reference to prices fixed for small developed plots in Administrator General of West Bengal Vs. Collector, Varanasi, . Mr. Justice Venkatachaliah speaking for the Bench observed (at Pp. 947-948 of AIR) :--

"It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land with potentialities for urban use has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes, that building plots that could be laid-out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the out-lays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. Deductions for land required for roads and other developmental expenses can, together, come up to as much as 53%. Accordingly, the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price."

The Supreme Court referred to the decision of this Court in Bombay Improvement Trust Vs. Mervanji Manekji Mistry, with approval and the simple

rule suggested by Chief Justice Macleod was found to be appropriate. The Supreme Court quoted the following observations made by Administrator General of West Bengal Vs. Collector, Varanasi,

"..... A very simple method of valuing land wholesale from retail prices is to take anything between one and half to one-third, according to circumstances of the expected gross valuation, as the wholesale price....."

In the case before the Supreme Court, large area of land was acquired and instances of small pieces of land were relied upon in the land acquisition proceedings.

It is now well-settled that prices fetched for small plots cannot form basis for large tracts of land as the two are not comparable properties. The Supreme Court in the decision (supra) observed that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building plots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture, etc. are to be made must be borne in mind.

16. Bearing the principle laid down by the Supreme Court in catena of decisions, in our judgment, it would be proper to ascertain the market value of the acquired lands initially by fixing one-third of the price mentioned in the sale deed dated December 23, 1965 (Exh. 70) in favour of Joshi. This land is immediately adjoining the acquired lands and the price paid was Rs. 19,000/- per acre. As the area purchased is only one acre and the acquired land admeasures 540 acres, in our judgment, it would be fair to fix the market value of the acquired lands at the rate of one-third of the price mentioned in Exh. 70. The said price would come to Rs. 6,333/- approx. In Exh. 70, purchaser Joshi had agreed to get the agricultural land converted for non-agricultural purpose at his cost. We also cannot overlook the fact that the prices of the land around the acquired lands are gradually increasing. It is not a secret that the value of rupee is going down every year and what the claimants realise is not the accurate value of the money which they were entitled to on the date of Section 4 notification. Taking into consideration the diverse factors and the economic criteria, in our judgment, ends of justice would meet if the price of the acquired land is fixed at the rate of Rs. 8,000/- per acre and we do so accordingly. We are conscious that we have to adopt a rough and ready measure in absence of reliable evidence about the prices prevailing in the market, but it is not possible to determine the market

price with mathematical accuracy and some area of discretion is required to be exercised.

A faint attempt was made on behalf of the claimants to urge that some of the lands are advantageously located having a frontage on Akkalkot road and Kumbhari road and, therefore, as done by the trial Court, some additional value should be fixed in respect of those lands. We are unable to find any merit in the submission. None of the lands has any frontage on Akkalkot road, save and except a small area of land forming part of survey No. 169 touches Akkalkot road. As regards frontage on Kumbhari road, we find that Kumbhari road is not a regular road at all and Mr. Abhyankar, with his usual fairness, stated that the alleged frontage on Kumbhari road cannot be taken into consideration for giving additional price to some of the survey numbers. We also find on perusal of the sketch that the lands which enjoy alleged frontage on Akkalkot road have got great depth and it is impossible to give additional value for the entire area covered by this survey number. None of the lands is entitled to any additional amount on the ground of alleged frontage either on Akkalkot road or Kumbhari road and all the lands will have to be valued at a flat rate of Rs. 8,000/- per acre.

17. Accordingly, we hold that the claimants are entitled to compensation for the acquired lands at the rate of Rs. 8,000/-per acre. In addition, the claimants are entitled to solatium at the rate of 30 per cent in accordance with sub-section (2) of Section 23 of the Land Acquisition Act. Mr. Sawant, learned counsel appearing for the State Government, made a statement that the claimants would be entitled to the amount of interest in accordance with the provisions of Section 28 of the Land Acquisition Act, 1894 and the Government would not insist that the claimants are entitled to interest only at the rate set out in Section 38 of the Act. The claimants would be entitled to proportionate costs in the trial Court. The State of Maharashtra is entitled to proportionate costs of the appeal while there will be no order as to costs in respect of appeal filed by the claimants.

18. Accordingly, appeal preferred by the State of Maharashtra is allowed while cross-appeal preferred by the claimants who are legal representatives of Chandrakant alias Pomaji Vasudev Somshetti is dismissed and the following decree is passed :--

The claimants are entitled to compensation of Rs. 2,97,400/- for the lands plus Rupees 20,977.17 for tal, bund, etc., totalling to Rs. 3,18,377.17. In addition, the claimants are entitled to solatium of Rs. 95,513.10 making a total of Rs. 4,13,890.27. The claimants are entitled to interest on this amount from the date of taking possession until the amount is paid or deposited and in accordance with the rate fixed by Section 28 of the Land Acquisition Act. The claimants would be entitled proportionate costs in the trial Court. The State of Maharashtra is entitled to proportionate costs of the appeal while there will be no order as to costs in respect of appeal filed by the claimants.

19. Appeal allowed.