
(2015) 07 BOM CK 0103

In the Bombay High Court

Case No : First Appeal No. 1310 of 2005, Cross Objection Stamp No. 21961 of 2007 in First Appeal No. 1310 of 2005, Civil Application No. 5791 of 2007 in Cross Objection Stamp No. 21961 of 2007 in First Appeal No. 1310 of 2005, Civil Application No. 4199 of 2008, Fi

State of Maharashtra and Others

APPELLANT

Vs

Shankar Vitthal Gulave and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 142

Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1A), 23(2)

Citation : (2015) 07 BOM CK 0103

Hon'ble Judges : Abhay Shreeniwas Oka, J;Revati Mohite Dere, J

Bench : Division Bench

Advocate : A.R. Patil, AGP, for the Appellant; Shriram S. Kulkarni, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Abhay Shreeniwas Oka, J.

FACTS

1. This group of appeals can be conveniently disposed of by a common Judgment in as much as all the appeals arise out of the same notification dated 24th September 1986 under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (for short "the said Act") in respect of the lands in the village Wadghar, Taluka Panvel, District Raigad. In some of the appeals, there is a common Judgment delivered by the Reference Court.

2. Late in 1960s, the State Government took a decision to set up a satellite city of New Bombay with a view to reduce congestion in the city of Mumbai. On 3rd February 1970, the State Government issued a notification under section 4(1) of the said Act notifying various lands for acquisition for the purpose of setting up

twin city of New Bombay. The said notification was in relation to large tracts of lands situated in 96 villages forming part of Taluka Panvel, District Raigad and Taluka Thane, District Thane. Thereafter, there were further acquisitions in relation to the same villages for the same purpose. Major acquisitions were made subsequently under the aforesaid notification dated 24th September 1986 under sub-section (1) of section 4 of the said Act.

3. The claimants did not accept the Awards made under section 11 of the said Act and at their instance, References under section 18 of the said Act were made to the Civil Court. In different Reference Applications, different rates were granted by way of enhancement by the Reference Court ranging from Rs. 100/- to Rs. 889/- per sq meters. In this group of appeals, there are the appeals preferred by the State Government challenging the Awards. In some cases, the claimants have preferred appeals for enhancement. In other cases, the claimants have filed cross objections. In some of the appeals, there are applications made by the claimants for extension of time to file cross-objections. Moreover, applications have been made by the claimants for amendment of the original claim in Reference Applications under section 18 and/or for amendment of the claims made in the Appeals/cross objections for enhancement. In those appeals or cross objections where there are no applications, market value has been claimed at the rate of Rs. 2000/- per sq meter. There are some applications made by the claimants for grant of permission to lead additional evidence. There are Applications for restoration of Appeals/Cross Objections. There are few applications made by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") for intervention. There is no dispute that the said applications by the CIDCO are not maintainable in view of the law laid down by this Court.

4. Civil applications filed by the claimants for enhancement of the claim for market value are objected to by the learned AGP on behalf of the State Government on various grounds including the ground of delay. However, the law on this point is no longer res integra. The Full Bench in the case of The State of Maharashtra and Others Vs. Sitaram Narayan Patil (since deceased through his L.Rs. Shri Pralhad Sitaram Patil and Others) and Others etc. etc., (2010) 2 ALLMR 508 : (2010) 2 BomCR 366 : (2010) 112 BOMLR 652 : (2010) 2 MhLj 387 held that even after the expiry of period of limitation provided for filing an application under section 18, the claim made in the Reference Applications can be enhanced. The said view has been approved by the Apex Court while holding that the claim can be enhanced even in an appeal against an Award made on a reference under section 18 of the said Act. The said view has been taken by the Apex Court in the case of Shri Ambya Kalya Mhatre (d) through legal heirs and Others Vs. The State of Maharashtra, (2011) 4 RCR(Civil) 767 : (2011) 10 SCALE 296 : (2011) 5 UJ 3322 . Hence, by overruling the objections raised by the learned AGP, civil applications for amendment of appeals/cross objections and/or for enhancement of the claim in references under section 18 of the said Act will have to be allowed. Amendment shall be carried out within a period of eight

weeks from today. Deficit Court fee shall be paid within the same period. The applications made by the some of the claimants for extension of time to file cross-objections deserve to be allowed. Accordingly, the cross-objections filed after the expiry of the stipulated period of time shall be registered. Applications for restoration of Appeals/Cross Objections also deserve to be allowed.

SUBMISSIONS

5. The detailed submissions have been made by Shri Punde and Shri S.S. Kulkarni, the learned Counsel, in support of the appeals/cross objections preferred by the claimants. They have relied upon the Judgment and Order dated 2nd July 2013 of the Apex Court¹. The said appeals were preferred by the claimants in References under section 18 of the said Act against Judgment of this Court in Appeals arising out of the References under section 18. The acquired lands subject matter of the Appeals before the Apex Court were situated in the same village Wadghar which were acquired for the New Bombay project on the basis of the notification dated 3rd February 1970 under sub-section(1) of section 4 of the said Act. The Apex Court fixed the market value of the lands at Wadghar at Rs. 25/- per sq meter. It is pointed out that while deciding the said appeals, the Apex Court relied upon its earlier decision in the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, AIR 2012 SC 2709 : (2012) 6 JT 185 : (2012) 6 SCALE 34 : (2012) 7 SCC 595 : (2012) AIRSCW 3986 : (2012) 4 Supreme 323 . It is pointed out that in the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla, the lands subject matter were situated at village Roadpali (Kolhekar), Taluka Panvel District Raigad which were notified for the same public purpose on 3rd February 1970. The submission of the learned counsel for the claimants is that in case of acquisition of the lands at village Wadghar which commenced on the basis of the notification dated 3rd February 1970, the Apex Court in the case of Ambaji Dharma Pardeshi fixed the market value fixed by it in relation to the acquired lands at village Roadpali which were notified on 3rd February 1970. The learned counsel further invited the attention of the Court to the decision of the Division Bench of this Court in the case of State of Maharashtra Vs. Trimbak Joma Thakur deceased through his legal representatives Dasharath Trimbak Thakur and Others, (2007) 6 ALLMR 827 : (2007) 6 BomCR 609 : (2007) 5 MhLj 187 . They pointed out that the Division Bench decided the appeals arising out of the Awards made in References under section 18 of the said Act in relation to the lands at village Roadpali which were notified under the same notification dated 24th September 1986 for the New Bombay project. It is pointed out that as on 24th September 1986, the market value of the lands at village Roadpali has been fixed by this Court at Rs. 1725/- per sq meter after making all necessary deductions. It was pointed out that the Division Bench in the said decision relied upon two instances of lease in respect of the plots at village Kalamboli, Taluka Panvel, District Raigad wherein the rates of lease premium were Rs. 1873.28 and Rs. 2727/- per sq meter respectively. The submission is that in the case of Ambaji Dharma Pardeshi, the Apex Court while dealing with the market value of

the land acquired for New Bombay project at village Wadghar on the basis of the notification dated 3rd February 1970 applied market value of the lands at village Roadpali which were notified on the same date for the same public purpose. The claimants urged that as in respect of the acquisition on the basis of the notification dated 3rd February 1970, the market value of the lands at Wadghar is fixed on par with the market value of the lands at village Roadpali, the same test will have to be applied to the further phase of acquisition on the basis of the notification dated 24th September 1986.

6. The learned counsel for the claimants pointed out that the two instances of lease which were relied upon by the Division Bench in the case of *State of Maharashtra v. Trimbak Joma Thakur* were produced before the Reference Court in the present cases. In addition, it is pointed out that the instances of leases executed by the CIDCO in respect of the plot of lands in New Panvel were produced in a group of References. It was argued that the sale instances were erroneously discarded only on the basis of the dates on which the agreements were executed. It is argued that the material date will be the date on which the letter of allotment was issued by the CIDCO. Though agreements of lease might have been executed subsequently, the same incorporates the rate of lease premium on the date of the allotment. It was pointed out that the village Wadghar is separated from Panvel Municipal limits only by a river which flows between the boundaries of the Municipal limits of Panvel and the revenue village of Wadghar. It was submitted that since large tracts of lands were acquired on the basis of the notification dated 3rd February 1970 in village Wadghar and other villages, by September 1986, there was enormous growth in the area of New Bombay in terms of availability of infrastructure, residential accommodation, industries etc which lead to rise of rates of real estate.

7. The learned counsel for some of the claimants also placed reliance on the decision of the Apex Court in the case of *Union of India (UOI) Vs. Harinder Pal Singh and Others*, AIR 2006 SC 447 : (2005) 9 JT 280 : (2005) 12 SCC 564 : (2005) AIRSCW 5900 : (2005) 7 Supreme 270 .

8. The learned AGP submitted that there is no evidence on record to show that on the relevant date i.e., on 24th September 1986, acquired lands at village Wadghar were comparable to the acquired lands at village Roadpali. He urged that as regards the sale instances of lands at Kalamboli which were relied upon before the Reference Court and sale instances of lands at New Panvel, there is absolutely no evidence adduced of comparability with the acquired lands. He submitted that neither any expert nor any other witness has deposed that the lands subject matter of the sale instances were comparable to the acquired lands on the relevant date. His submission is that the claimants have not discharged the burden on them by establishing that the compensation offered was inadequate.

9. The learned AGP relied upon the law laid down in the case of *The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel*

and Another, (2008) 9 JT 480 : (2009) 153 PLR 494 : (2008) 11 SCALE 637 . He urged that as the claimants have failed to discharge the burden on them to prove that the amount offered under the Awards was inadequate, the rates fixed by the Reference Court are exorbitant. He urged that in any case, the rate fixed by the Division Bench of this Court in the case of State of Maharashtra v. Tribak Joma Thakur in respect of the lands at village Roadpali has no relevance. He, therefore, urged that the enhancement granted by the Reference Court be set aside. The learned AGP also relied upon the observations made by the Apex Court in paragraph 12 of its decision in the case of Avinash Dhavaji Naik Vs. State of Maharashtra, (2009) 6 JT 125 : (2009) 6 SCALE 146 : (2009) 11 SCC 171 : (2009) 6 SCR 222 : (2009) 6 UJ 2701 : (2009) AIRSCW 3892 . He urged that there cannot be a comparison between the acquired agricultural lands with the plots developed by CIDCO which were leased.

CONSIDERATION OF SUBMISSIONS

10. We have given careful consideration to the submissions. As stated earlier, on 3rd February 1970, the State of Maharashtra issued a notification under sub-section (1) of section 4 of the said Act declaring its intention to acquire large tracts of lands situated in 96 villages of Taluka Panvel, District Raigad and Taluka Thane, District Thane. The purpose of acquisition was for setting up a satellite city of New Bombay with a view to reduce the congestion in the city of Mumbai. It will be necessary to make a reference to the paragraph 15 of the decision of the Apex Court in the case of Avinash Dhavaji Naik which reads thus:

"15. In a case of this nature the Court may proceed on the presumption that such a vast tract of land viz. 96 villages were sought to be acquired at the same time for construction of New Bombay. We are not unmindful of the fact that development in the entire area was not possible at one point of time. Development of the area must have taken place in phases. We are also not unmindful of the fact that the price of land may skyrocket depending upon the development as also future potentiality."

(emphasis added)

11. Hence a judicial notice will have taken of the fact that development of all the lands acquired on the basis of the notification dated 3rd February 1970 at a time was not possible and the same must have taken place in a phase wise manner. But what is important is that the Apex Court observed that the price of lands may skyrocket in view of the development as also future potentiality.

12. As far as the project of New Bombay is concerned, a judicial notice was taken by the Division Bench of this Court in the case of Nama Padu Hudar v. State of Maharashtra (1993)3 Bom C R 54 that the industrial growth in and around this area started in rapid strides, right from 1965 onwards. It was observed by the Division Bench that in fact the growth was by leaps and bounds. This observation of the Division Bench of this Court has been quoted with approval by the Apex Court in the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased

through Lrs.).

13. It must be also borne in mind that in the case of Avinash Dhavaji Nakik which arose out of the land acquired under the notification dated 3rd February 1970 for New Bombay project, the Apex Court in paragraph 14 specifically observed that the potentiality of a land for the purpose of development would depend upon a large number of factors. The Apex Court observed that while considering the potentiality, the purpose of acquisition has to be kept in mind. In this paragraph, the Apex Court observed that even the subsequent events to some extent can be taken into consideration. Considering the fact that the work of setting up the city of New Bombay started in the year 1970 and the fact that industrial growth in the area commenced in the year 1965, the potentiality of the lands notified for acquisition in the year 1986 must be enormous.

14. In some of matters in the group, reliance has been placed upon the instances of letters allotment of plots of lands issued by the CIDCO. The CIDCO was appointed as a New Town Development Authority as well as a Special Town Planning Authority for the development of the twin city of New Bombay by the notification issued by the Government of Maharashtra on 20th March 1970. These were the letters of allotments of lands in New Panvel and in or around Panvel. However, we find from the perusal of the evidence of expert adduced by the Claimants that there is absolutely no evidence of comparability. In fact, it appears that there is hardly any evidence to show that the acquired land as on 24th September 1986 was comparable with the lands subject matter of lease.

15. In one of the groups, the instances of leases executed by CIDCO in relation to the plots of land at Kalamboli which have been considered by the this Court in the case of State of Maharashtra v. Trimbak Joma Thakur have been produced. Hence, at this stage, it will be necessary to make a reference to the decision of the Division Bench in the case of Tribak Joma Thakur (since deceased through Lrs) which continues to bind this Court. As stated earlier, the appeals before the Division Bench arose out of the Awards made in References under section 18 of the said Act in respect of the lands at village Roadpali, Taluka Panvel, District Raigad which were acquired for the New Bombay Project on the basis of the notification dated 24th September 1986 under section 4(1) of the said Act. The Division Bench has noted that the Awards made under section 11 of the said Act provided for market value at a rate of Rs. 200/- to Rs. 230/- per sq meter. Against the grant of enhancement by the Reference Court, there were appeals preferred by the State of Maharashtra. There were appeals preferred by the claimants for enhancement. It will be necessary to make a reference to what is held by the Division Bench. The Division Bench relied upon the two sale instances; one was of a letter of allotment issued by the CIDCO on 16th October 1984 in respect of the area of 420 sq meters being plot No. 413 at Kalamboli in New Bombay. The lease Premium was made payable at the rate of Rs. 1873.28 for grant of lease for sixty years. The second instance relied upon by the Division Bench was in respect of a plot of land admeasuring 1466 sq meters which was

allotted by the CIDCO for setting up a weigh bridge for lease premium at the rate of Rs. 2727/- per sq meter. It will be necessary to make a reference to the paragraph 24 of the said Judgment in the case of State of Maharashtra v. Tribak Joma Thakur which reads thus:

"24. All the above instances relate to village Kalamboli. From Exhibit 15, the map, it is clear that the location of these lands is nearer to the highway and is part of the already developed area, i.e., steel market or industrial area. Certainly, the lands in question are neither developed to that extent nor entire lands abut the national highway. The instances that have been referred to by the acquiring authority related to the lands which are much farther away from the acquired lands and the developed area. The respondents did not lead any evidence before the learned reference Court, and only relied upon the record of the acquiring authority. On the basis of the instances proved by the Claimants, it is clear that there has been an increasing trend in the values of the lands surrounding the acquired lands; but that itself would not entitle the Claimants for the same compensation for which the property was leased out or leasehold rights were created by the Corporation. These lands were given after they were fully developed where commercial development had taken place, water and electricity were available, roads and other essential amenities were duly provided for and that all would form part of the cost of development, which have to be deducted from the compensation to be given to the claimants. The Court would also have to consider that in the award in LAR No. 172 of 1996, the learned reference Court had awarded Rs. 90 per square meter in the year 1977. The lands in question were acquired 7 years later i.e., in the year 1984. Merely three instances referred to by the Claimants as well as petrol pump instance can hardly form the basis for determination of the compensation. Since we have found that the instances referred to are of the lands which are fully developed they cannot be taken into consideration and therefore, we have taken the average of two instances referred to in paragraph 23 above; and have computed the amount of compensation by deducting 25%. That is how the compensation has been worked out by us at the rate of Rs. 1725/- per square meter with statutory benefits as contemplated under sections 23 and 23(1A) of the Land Acquisition Act."

16. That is how the Division Bench of this Court determined the market value of the land at village Roadpali at Rs. 175/- per square meter. This rate was arrived at by taking a mean of Rs. 2727/- and Rs. 1873.28. 25% deduction was made after taking the mean. As far as this Court is concerned, the said decision in the case of Tribak Joma Thakur in respect of the acquisition on the basis of the notification dated 24th September 1986 has become final. The same has not been disturbed by the Apex Court. Now, the question is whether the rate fixed for the lands at village Roadpali can be applied for fixing the market value of the lands at village Wadghar which were notified on the same date for the same purpose.

17. We must note here that large number of lands in both the villages were notified for acquisition under section 4(1) of the said Act on 3rd February 1970. Again vast tracts of lands in both the villages were notified on 24th September 1986 for the purpose of New Bombay project. As stated earlier, the State Government declared its intention to set up satellite city of New Bombay in late 1960s. On 4th February 1970, large tracts of lands in 96 villages including the villages Roadpali and Wadghar were notified for acquisition for the new Bombay project.

18. In support of the submission that the rate fixed by the Division Bench in relation to village Roadpali should be applied to the village Wadghar, the learned counsel for the claimants relied upon the decision of the Apex Court in the case of Ambaji Dharma Pardeshi and others. We have perused the said decision. The land subject matter of the said decision was situated at the same village Wadghar, Taluka Panvel, District Raigad which was notified for acquisition on 3rd February 1970. The Appeal before the Apex Court was preferred by the original claimants. This was a case where higher market value was fixed by the Reference Court which was brought down by the this Court in Appeal. It appears that this Court relied upon the decision of the Apex Court in the case of Avinash Dhavaji Naik. The Apex Court declined to take into consideration the rate fixed in the case of Avinash Dhavaji Naik for the lands acquired situated in village Wahal, District Raigad which were at a distance of 9 kilometers from Panvel Town. The Apex Court observed that the distance between Wadghar and Panvel is only 1.5 kilometers. It will be necessary to make a reference to the relevant part of the decision of the Apex Court in the case of Ambaji Dharma Pardeshi and others:

"It is not in dispute that while Village Wahal which figured in the judgment of this Court in Avinash Dhavaji Naik's case (supra), is situated at a distance of 9 kilometers from Panvel, the distance between Village Wadghar and Panvel is only 1.5 kilometers. It is also not in dispute that various parcels of land situated in 96 villages were acquired for implementation of "New Bombay Project" or for development of satellite town. In some cases where distance between the concerned village and Panvel was more than 5 to 6 kilometers, the Court determined compensation at the rate of Rs. 10/- to Rs. 12/- per sq. mtr but in other cases the Reference Court and the High Court held that the landowners are entitled to compensation at the rate of Rs. 25/- per sq mtr. A number of these judgments and orders were referred to in Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, AIR 2012 SC 2709 : (2012) 6 JT 185 : (2012) 6 SCALE 34 : (2012) 7 SCC 595 : (2012) AIRSCW 3986 : (2012) 4 Supreme 323 and it was held that the landowners of Village Roadpali (Kolhekar), Taluka Panvel, District Raigad are entitled to compensation at the rate of Rs. 25/- per sq mtr. In that judgment, the Court took cognizance of several judgments of the Bombay High Court, whereby the landowners of various villages were granted compensation at the rate of Rs. 25/- per sq mtr., and held that the appellants are entitled to compensation at the same rate..."

19. As far as the decision of the Apex Court in the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased through LRs) is concerned, we find from the said decision that the same was in respect of the lands in village Roadpali, Taluka Panvel, District Raigad, acquired on the basis of the notification dated 3rd February 1970. After taking instructions from the concerned Land Acquisition Officer, the learned AGP states that village Roadpali which is the subject matter of the decision of the Division Bench in the case of State of Maharashtra v. Tribak Joma Thakur (deceased through Lrs.) is the same as the village Roadpali which was the subject matter of the decision in the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased through Lrs.). In the case of Sabhia, the Apex Court allowed the appeal of the claimants and ultimately fixed the market value at Rs. 25/- per sq meters. In the decision of the Apex Court in the case of Ambaji Dharma Pardeshi and others, the decision in the case of the Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased through Lrs.) was extensively quoted by the Apex Court. Ultimately, after quoting the relevant part of the said decision, the Apex Court observed thus:

"Although the judgment in Avinash Dhavaji Naik case (supra) was not noticed in Sabhia Mohammed Yusuf Abdul Hamid Mulla V. Special Land Acquisition Officer (supra), keeping in view large number of judgments and orders passed by the High Court in relation to the acquisition of similar parcels of land whereby market value of the acquired land was fixed at Rs. 25/- per sq mtr., it must be held that the appellants are entitled to similar relief."

20. The perusal of the Judgment in the case of Ambaji Dharma Pardeshi shows that the Apex Court fixed the rate of market value of the land at village Wadghar on par with the rate of market value fixed in the case of Sabina Mohammed in respect of the lands at village Roadpali. Thus, in short, the Apex Court was of the view that the market value of the lands in village Wadghar notified under section 4(1) on 3rd February 1970 was the same as the market value in respect of the lands at village Roadpali which were also notified on 3rd February 1970 under section 4(1). Thus, for determination of the market value as on 3rd February 1970, the Apex Court has proceeded on the footing that the acquired lands at village Wadghar are comparable in all respects with the acquired lands at village Roadpali. Thus, in the case of 1970 acquisition, we will have to proceed on the footing that there is no difference between the market value of the lands in village Wadghar and the market value of the lands in village Roadpali.

21. The Division Bench of this Court in the case of the State of Maharashtra v. Tribak Joma Thakur held that the market value of the lands at village Roadpali acquired for New Bombay project on the basis of the notification under section 4(1) dated 24th September 1986 was at the rate of Rs. 1725/- per sq meter.

22. At this stage, it will be necessary to make a note of the fact that the rate of Rs. 1725/- per sq meter was fixed by this Court for village Roadpali on the basis of the two instances of lease of the developed plots at village Kalamboli. Thus, this Court was of the view that the sale instances of the lands at village

Kalamboli were comparable to the lands at village Roadpali.

23. It will be necessary to consider the oral and documentary evidence on record as regards the location of the village Wadghar. On 3rd February 1970 and on 24th September 1986, the village Wadghar was not situated within the limits of the Panvel Municipal Council. However, the admitted position which was brought on record is that village Wadghar was separated from the Panvel Municipal limits only by a river.

24. In one of the groups, the Reference Court has referred to the Development Plan of New Bombay which shows the location of villages in New Bombay. Village Roadpali is on the northern side of village Kalamboli. In between the two villages, there are few villages. The town Panvel and village Wadghar are on the southern side of village Kalamboli. In between Wadghar and Kalamboli, there are few villages. Thus, village Kalamboli is in between village Roadpali and Panvel town. Village Wadghar appears to be on the western side of Panvel. Village Roadpali, Ambetkhar and Kalamboli are in the area reserved for wholesale market cum warehousing. Village Wadghar is shown in the residential area and the town of Panvel is shown as municipal area.

25. It must be noted here that as on 3rd February 1970 and 24th September 1986, neither the village Roadpali nor the village Kalamboli were part of any municipal area. Whereas, as far as the village Wadghar is concerned, it was very close to municipal limits of Panvel Municipal Council. As compared to village Roadpali, the village Wadghar is much closer to Panval Municipal limits.

26. The Apex Court has repeatedly held that in determination of the market value of the acquired lands in accordance with section 23 of the said Act, some guess work is inevitable. However, the guess work is to be made on the basis of the well known tests and evidence on record.

27. The scenario which emerges from the aforesaid discussion can be summarized as under :

"(I) The first phase of acquisition commenced for the New Bombay Project on the basis of the notification dated 3rd February 1970. The acquisition extended to the vast tracts of lands in 96 villages in Taluka Panvel, District Raigad and Taluka Thane, District Thane including the villages Wadghar and Roadpali;

(II) Thereafter, phase wise development commenced for setting up the city of New Bombay;

(III) The second major acquisition in respect of the lands in villages out of 96 villages was commenced under the notification dated 24th September 1986;

(IV) As observed by the Apex Court in the case of Avinashi Dhavaji Naik, there is a possibility of the price of lands sky rocketing considering the work of development and potentiality;

(V) In the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased

through Lrs.), the Apex Court quoted with approval the observations made by this Court in the case of Nama Padu Hudar that industrial growth in and around the area started in rapid strides from the year 1965 onwards and it increased by leaps and bounds;

(VI) The Apex Court in the case of Ambaji Dharma Pardeshi and others held that the market value of the lands in village Wadghar acquired on the basis of the notification dated 3rd February 1970 was the same as the market value of the lands at village Roadpali notified on 3rd February 1970. As stated earlier, in both the villages, there was acquisition during the subsequent phase on the basis of the notification dated 24th September 1986.

(VII) As far as the village Roadpali is concerned, the decision of the Division Bench of this Court in the case of State of Maharashtra v. Tribak Joma Thakur (deceased through Lrs.) which holds that the market value of the lands at village Roadpali as on 24th September 1986 was Rs. 1725/- has become final as of today;

(VIII) The market value of the lands in village Wadghar and Roadpali acquired for New Bombay project as of 24th September 1986 will be more or less the same considering the test applied by the Apex Court in the case of Ambaji Dharma Pardeshi by determining the market value of the acquired lands at village Wadghar on the basis of the market value of the lands at village Roadpali in case of the acquisition based on 3rd February 1970 notification."

28. Therefore, the only conclusion which can be drawn is that the market value of lands in village Wadghar which were notified on 24th September 1986 for the New Bombay Project will have to be on par with the market value of the acquired lands in village Roadpali notified on the basis of the notification dated 24th September 1986.

29. It is not the case of the State Government that the development in the village Roadpali by the year 1986 was much more than the development in the village Wadghar.

30. The learned AGP placed reliance on the decision of the Apex Court in the case of the General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jaivanbhai Patel and another. His submission is that the market value cannot be fixed as a straight-jacket formula without going into the positive and negative factors in respect of the sale instance lands.

31. In the present case, the decision of this Court fixing the market value of the lands in village Roadpali acquired on the basis of the notification dated 24th September 1986 of fixing the market value of Rs. 1725/- per sq meter has attained finality as of today. The Apex Court by Judgment and order dated 2nd July 2013 in the case of Ambaji Dharma Pardeshi and others to which we have made an extensive reference earlier, came to the conclusion that the rate fixed by it in respect of the lands in the village Roadpali which were notified for the

same public purpose of setting up satellite city of New Bombay on 3rd February 1970 should be applied to the lands in Village Wadghar acquired under the same notification dated 3rd February 1970. Thus, as far as 3rd February 1970 acquisition is concerned, the Apex Court has treated the acquired lands in village Wadghar on par with the lands in village Roadpali.

32. The second acquisition based on the notification dated 24th September 1986 is again for the same public purpose of setting up city of New Bombay. In the decision of this Court in the case of *State of Maharashtra v. Trimbak Joma Thakur*, the Division Bench of this Court relied upon the sale instances of leases of plots at village Kalamboli executed by CIDCO. These two sale instances which were accepted by the Division Bench of this Court while determining the market value of the lands of village Roadpali have been produced and proved by the Claimants before the Reference Court in the present case. The development plan of New Bombay published by the CIDCO has been placed on record which is modified up to October 1993. As stated earlier, the Division Bench while fixing the market value of the acquired lands as on 24th September 1986 for lands in village Roadpali relied upon the aforesaid two instances of leases in respect of the plots of land at Kalamboli. The development plan shows that the village Kalamboli is situated in between the village Roadpali and the village Wadghar. Village Roadpali is on the northern side of village Kalamboli and the village Wadghar is on the southern side of village Kalamboli. From the said development plan, it appears that villages Roadpali and village Kalamboli are situated in area earmarked for wholesale market and warehousing. As pointed out earlier, the village Wadghar which is shown in residential area is separated from the Panvel Municipal Council area only by a river. The lands subject matter of instances of leases at Kalamboli were not situated within the municipal limits as on 24th September 1986. On the other hand, the lands at village Wadghar were near the municipal limits of Panvel Municipal Council. In view of the decision of the Apex Court in the case of *Ambaji Dharma Pardeshi and others v. State of Maharashtra*, the rule which was followed by the Apex Court for the lands at village Wadghar acquired on the basis of the notification dated 3rd February 1970 will have to be followed in the case of the acquisition of lands in village Wadghar commenced on the basis of the notification dated 24th September 1986. We must note here that in exercising power under Article 142 of the Constitution of India, the Apex Court while disposing of the case of *Shri Ambaji Dharma Pardeshi* extended the relief of enhanced rate of market value to the land owners of village Wadghar who had not even approached the Reference Court or High Court or the Apex Court due to sheer ignorance, poverty or other similar handicaps. Thus, for the purpose of fixing the market value of the lands in village Wadghar which were acquired on the basis of the notification dated 24th September 1986 for New Bombay Project, the lands in village Wadghar will have to be treated on par with the lands at village Roadpali. Hence, considering the peculiar facts, the submission of the learned AGP on the basis of the decision of in the case of *General Manager, ONGS* cannot be accepted.

33. In a normal course, the burden is always on the claimants in a Reference under section 18 of the said Act to prove that the market value offered by an Award under section 11 was inadequate. In this case, two sale instances in relation to the lands at Kalamboli were relied upon by the claimants on the basis of which enhancement in the market value has been granted by this Court in respect of the lands at village Roadpali which were notified on 24th September 1986. The burden has been discharged. Therefore, in the light of what is held by the Apex Court in the case of Ambaji Pardeshi, the market value fixed for the acquired lands at village Roadpali will have to be fixed for the lands at village Wadghar.

34. If any other rate is fixed, the same will be contrary to the principles laid down in the case of Ambaji Pardeshi in relation to the lands in village Wadghar. Therefore, there is no choice but to fix the market value at the rate of Rs. 1725/- per sq meter which has been fixed by this Court in respect of the lands in village Roadpali which were acquired on the basis of the notification dated 24th September 1986.

35. Hence, the appeals/cross objections are disposed of by passing the following order:

"(I) The civil applications made by the original claimants for enhancement of the claim in Appeals/Cross Objections/Original References are hereby allowed;

(II) The amendment shall be carried out within a period of eight weeks from today. Deficit the Court fees on Appeals/Cross Objections, as the case may be, shall be paid within a period of eight weeks from today;

(III) We make it clear that unless deficit court fees are paid within stipulated period of eight weeks from today, the decree in the concerned appeals/cross-objections shall not be drawn and the Reference Court shall not implement the directions given in this Judgment and order in relation to the lands subject matter thereof;

(IV) The Civil Applications made by the CIDCO for intervention are hereby rejected;

(V) The Civil Applications for restoration of the Appeals/Cross Objections are allowed;

(VI) The appeals preferred by the State Government are hereby dismissed with no order as to costs;

(VII) The appeals and the cross objections preferred by the original claimants are partly allowed. The impugned Judgment and Awards are modified by directing the claimants will be entitled to the market value in respect of the lands at village Wadghar at the rate of Rs. 1725/- per sq meter. In addition to the market value, the claimants will be entitled to statutory benefits under sections 23(1A), 23(2) and section 28 of the Land Acquisition Act, 1894.

(VIII) The claimants will be entitled to proportionate costs throughout of their appeals or cross objections;

(IX) The Reference Court shall carry out the exercise of computing the amount of compensation payable in terms of modified Awards within a period of four months from the date on which the writ of this Judgment is received by the Reference Court along with the Record and Proceedings;

(X) Before arriving at the final computation of the compensation amount payable in terms of the modified Judgment and Award, the Reference Court shall give an adequate opportunity of being heard to the State of Maharashtra;

(XI) Within a period of four months from the date of adjudication of the amounts payable, the State Government shall deposit the excess amount with the Reference Court;

(XII) The writ of this Judgment along with Record and Proceedings be forwarded to the Reference Court;

(XIII) All other pending Civil Applications are disposed of accordingly."

1Civil Appeal Nos. 5088 and 5089 of 2013 in the case of Ambaji Dharma Pardeshi and others v. State of Maharashtra