

(2007) 08 BOM CK 0030

In the Bombay High Court

Case No : First Appeal No's. 204, 205, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438 and 690 of 1991, 195 of 1992, 378 of 1993, 797 of 1994, 175, 176, 177 and 401 of 1995, 1215 of 1996, 97 of 2000 and 1002 of 2002, Cross Objection No's. 17998, 18000 and 18002

State of Maharashtra

APPELLANT

Vs

Ishwarsharan Kedarnath Bhargava and Others

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 28, 4

Citation : (2008) 1 BomCR 757

Hon'ble Judges : Kumar Swatanter, C.J;Chandrachud D.Y., J

Bench : Division Bench

Advocate : G.P. Mulekar, A.G.P, for the Appellant; Rajesh S. Datar, for the Respondent

Final Decision : Dismissed

Judgement

Kumar Swatanter, C.J.—In the year 1963-64, the Government of Maharashtra took a decision to acquire the lands on eastern and western sides of Thane Belapur Road for a public purpose viz. development and utilisation of the same in Thane Harbour Panvel and Trans Thane Creek, for industrial, commercial and residential development. This project was to be named as New Bombay City Project. In furtherance to this public purpose, notification u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as "the Act", was issued for acquiring different lands belonging to different land owners out of Gate Nos. 14, 28, 35, 39, 166, 170 and 285 of village Rabale in Thane District during the period 13th September, 1968 to 2nd December, 1972. The Land Acquisition Officer, vide his awards of different dates, awarded compensation to the claimants at Rs. 5.40 per sq. metre for acquisition of their respective lands. Different amounts were claimed by the owners of the land in Land Acquisition References. The claimants being dissatisfied with the Award of the Collector preferred applications u/s 18 of the Act and claimed varied amounts of

compensation. The learned Reference Court vide its award dated 17th February, 1990 increased the compensation payable to the claimants to Rs. 12/- per sq. metre, in addition to other compensation payable for construction, etc., depending on the facts and circumstances of each case and also directed the State to pay solatium at the rate of 30 per cent with additional market value and also awarded interest under the provisions of the Act.

2. Aggrieved from the judgment of the Reference Court, the State filed the above 24 appeals before this Court. Some of the claimants, claiming further enhancement of the awarded compensation, have also filed three cross-objections in appeals. Consequently, we would be disposing of all the cases afore referred by this common judgment as common question of fact and law arise for consideration in the present cases.

3. The learned Reference Court, after noticing the pleading of the parties, framed the following issues and answered them as follows:

(1) Do the claimants prove that having regard to the potential value of the land, the land acquired was ideal for residential complex?

(2-a) Are the claimants entitled to claim compensation at the enhanced rate per square metre, if yes at what rate?.

(b) Are they entitled to claim additional compensation? If yes, how much?

(3) Whether the claimants are entitled to claim interest on the enhanced compensation as per Section 28 of the Land Acquisition Act?

(4) What relief and order? Findings on the above issues are:

(1) Yes.

(2a) Rs. 12/- per square metre,

(b) As shown in order.

(3) As shown in order.

(4) As per final order.

4. The learned Assistant Government Pleader appearing for the State contended that there was no evidence before the Reference Court which could justify enhancement of the compensation for acquisition of the land and the compensation fixed by the Reference Court is unreasonable and unfair. The learned Counsel for the claimants has submitted that on the basis of the award and evidence led by the claimants, the claimants would be entitled to enhanced compensation at the rate of Rs. 25/- per sq. metre. It was conceded on behalf of both the claimants and the State that the parties have not produced and proved any sale instances which could be examined by the Court of competent jurisdiction for determining the fair market value of the land payable to the claimants by way of compensation. The evidence on record is in the form of

statements of the witnesses. The claimants relied upon the statements of three witnesses. The claimants, in addition to examining themselves, have examined a Valuer as witness No. 3. In addition to this oral evidence, the claimants produced on record judgments of different courts pertaining to land acquisition matters as well as certain lease deeds. The Reference Court, after discussing certain judgments of the Supreme Court and this Court in relation to determination of market value, noticed that the evidence relating to gradual rise in price of land under acquisition should also be considered in determining the amount of compensation, particularly in the light of the judgment of the Supreme Court in the case of *The All India Tea and Trading Co. Ltd. Vs. The Collector of Darrang and Another*, . In the lease deed which was produced on record as Exhibit 50 it was stated that the land was taken by Roshanlal Lachiram Agrawal from Ramchandra Thanekar as a tenant for 20 years before 1980. Exhibit 54 is a map of the village Rabale which shows that some industries are located on the eastern side of Thane-Belapur Road. This map Exhibit 54 is a composite map of 9 villages. Village Rabale is surrounded by different villages and towards its eastern side is Thane Belapur Road. Relying upon the judgments in Exhibit 24/2, where compensation at the rate of Rs. 7.80 per square meter was determined by the Reference Court for acquisition of lands in the village Chinchavali, which is on the western side of Thane-Belapur Road and considering the oral evidence led by the parties, the Court fixed the compensation at the rate of Rs. 12/- per sq. metre. The Reference Court placed reliance on the case of *State of Bihar Vs. S.K. Thacker and Others etc.*, , wherein it was held that judicial notice should be taken of the fact of continuous rising inflation and rising land values.

5. After determining the market value, the learned Reference Court went into the merits of each case and awarded different compensation to different claimants depending upon the area acquired, the constructed portion and other matters. It is a settled principle of law that onus is upon the Claimants to prove before the Reference Court that they are entitled to enhanced amount of compensation. In *Kiran Tandon Vs. Allahabad Development Authority and Another*, , the Supreme Court held as under:

Before examining the merits of the contentions raised, it will be useful to bear in mind the legal principle in the matter of determination of compensation. The Collector's award u/s 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in the position of a plaintiff. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. The material produced and proved by the other wise will also be taken into account for this purpose.

In the case of Major Pakhar Singh Atwal and others Vs. State of Pujab and others, the Supreme Court held as under:

If we have regard to the above rival contentions, the facts and circumstances of this case do not permit our interference with the order under appeal. It is now settled law that the award is an offer and whatever amount was determined by the Collector is an offer and binds the Improvement Trust. However, the Collector also is required to collect the relevant material and award compensation on the basis of settled principles of determination of the market value of an acquired land. The Improvement Trust, therefore, cannot go behind the award made by the Collector. Reference is not an appeal. It is an original proceeding. It is for the claimants to seek the determination of proper compensation by producing sale-deeds and examining the vendors or the vendees as to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarly of the lands sold and acquired and also by adduction of other relevant and acceptable evidence. In this case, for the Court u/s 18 of the Act, the Tribunal is constituted. Therefore, if the claimants intend to seek higher compensation to the acquired land, the burden is on them to establish by proof that the compensation granted by the Land Acquisition Officer is inadequate and they are entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages. Unfortunately, in this case, no witness had been examined in proof of the prevailing market value of the lands or in the neighbourhood. Only mutation entries were relied upon. They are inadmissible evidence and cannot be relied upon. No doubt, in the award itself, the Land Acquisition Officer referred to the sale transaction. Since the Land Acquisition Officer is an authority under the Act, he collected the evidence to determine the compensation as an offer. Though that award may be a material evidence to be looked into, but the sale transaction referred to therein cannot be relied upon implicitly, if the party seeking enhancement resists the claim by adducing evidence independently before the Court or the tribunal. In this case, since no steps were taken to place the sale transaction referred in the award, they cannot be evidence. So they can neither be relied upon nor can be looked into as evidence.

6. It is also an equally settled principle that the courts, wherever direct evidence is not available, have to take into consideration attendant circumstances and wherever necessary apply certain guess work to determine the fair market value of the land payable to the claimants. Of course, such a guess work has to be applied in consonance with settled principles and on the basis of some material on the Court file. At this stage it will be appropriate to refer to a recent Division Bench judgment of this Court in the case of State of Maharashtra v. Yashwant Kahnu Shirsath First Appeal No. 896 of 2005. The relevant portion reads as under:

Whatever principles of computation for enhancement or otherwise of the

compensation is adopted by the Reference Court it must support such a view by appropriate reasonings. There is documentary evidence on record that the price of the land of adjoining villages has an increasing trend and the sale deeds placed on record of the lands from the adjacent villages reflected much higher price. It may not be necessary in the given facts of the case for the Court to adopt price of adjacent villages but certainly this is not impermissible. Once the instances are comparable, even of the lands acquired from different villages can form the basis of entire market value as held by the Supreme Court in the case of Union of India (UOI) Vs. Bal Ram and Another, . In the present case evidence of sale instances from same village and part of the acquired land had been proved by the claimants. Thus it would not be necessary for the Court to deliberate on the value shown in the sale instances of the adjoining lands in the village. It is an equally known principle of law that the Court while determining the compensation has to refer to the evidence which has greater proximity and is close to the date of notification issued u/s 4 of the Act and some extent of guess work has to be applied by the Court. "In the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , the Court stated the principles beyond ambiguity and the Court capitalised the factors regulating the discretion of awarding compensation by the Court as under:

Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the trial Court has virtually treated the award rendered by the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.

4. The following factors must be etched on the mental screen:

(1) A reference u/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 same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (dates of Notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such

illustrative (not exhaustive) factors:

Plus factors Minus factors 1. smallness of 1. largeness of size area. 2. proximity to a 2. situation in the road. interior at a distance from the road. 3. frontage on a 3. narrow strip of land road. with very small front- age compared to depth 4. nearness to 4. lower level requir- developed area. ing the depressed portion to be filled up. 5. regular shape. 5. remoteness from developed locality. 6. level vis-?-vis 6. some special dis- land under advantageous factor cultivation which would deter a purchaser 7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or short and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

... 9. The more serious grievance of the appellant however is that the High Court has depressed the market value excessively in evaluating the land in question at Rs. 7,000 per acre as compared to the land abutting on the Ganeshkhanda Road valued at Rs. 20,000 per acre, the land abutting in the interior of Survey No. 86 valued at Rs. 16,000, and land abutting on Pashan Road valued at Rs. 12,000 per acre. A glance at the sketch on the record shows that the appellant's land is situated very much in the interior as compared to the other parcels of land. It is in the midst of large blocks of undeveloped land. A hypothetical purchaser would not offer the same market value for lands with such a situation as lands which are nearer to the developed area and abut on a road or are nearer to a road. The development of lands which are nearer to the developed area and nearer to the road can reasonably be expected to take place much earlier. Only after such

lands are developed and construction comes up, the development would proceed further in the interior. It would not be unreasonable to visualize that a considerable time would elapse before development could reach the block of undeveloped land located in the interior. Besides, the land which is situated in the interior does not fetch the same value as the land which is nearer to the developed area and nearer to the road. If a hypothetical purchaser opts to purchase the land situated in the interior in the midst of an undeveloped area, he would doubtless take into account the factor pertaining to the estimated time for development to reach the land in the interior. For, his capital would be unprofitably looked up for a very long time depending on the estimated time required for the development to reach the land in the interior. Meanwhile he would have to suffer loss of interest. It is, therefore, understandable that the land in the interior would fetch much smaller price as compared to the lands situated nearer to the developed locality. More so as all these factors are incapable of precise or scientific evaluation. The valuer has to indulge in some amount of guess work and make the best of the situation. The High Court having accorded anxious consideration to all these factors of uncertainty has arrived at the valuation of Rs. 7000 per acre. Says the High Court in Paragraph 51 of the Judgment:

This brings up for final consideration the plots which we have described as interior plots in all the survey numbers and which do not have a frontage on the roads. A lower price will have to be provided for these plots, since the plot-holders will have to spend moneys for getting water and drainage connections which are given only upto the Municipal Roads. Then again, in our opinion, the interior plots would not be sold at all as long as any of the plots having a frontage on Pashan Road or Baner Road are sold, though once such plots have been disposed of the demand for interior plots would certainly pick up. Here again, it is impossible to be precise in fixing the value; but in our opinion the interior plots may fairly be valued at Rs. 7,000 per acre. As stated earlier, the sales of these plots would commence after all the plots having a frontage on Pashan Road and Baner Road are disposed of i.e., after 12 years, and we may say that those plots would be sold within a period of about 4 years.

10. It is not possible to find fault with the reasoning or conclusion of the High Court. The High Court was day in and day out engaged in valuation of the lands in different parts of the state and was fully aware of the landscape. There is no yardstick by which the future can be foreseen with any greater degrees of preciseness. The High Court has made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment. Having taken into account all the relevant factors, the High Court has arrived at the aforesaid determination. And in doing so, the High Court has not committed any error or violated any principle of valuation. It is purely a question of fact and it is not possible to detect any error even in the factual findings recorded by the High Court. In fact the High Court has been extremely considerate and has approached the question of valuation with sympathy and understanding for the

land owner. The High Court did not opt for an easy way out by taking the view that since there was no comparable instance of undeveloped lands in the interior on the basis of which the valuation of the appellant's land could be made, the Award made by the land Acquisition Officer should remain undisturbed.

7. In the case of O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others, , the Supreme Court, while dealing with the market value of the agricultural land, held as under:

10. When agricultural lands are acquired under the Act, the owners of such lands or persons who have interest in them become entitled to payment of compensation awardable for such lands under the act. The main component of such compensation would be the market value of the acquired agricultural land. Market value of agricultural land has to be determined under the act with reference to the date on which preliminary notification was published in the State Gazette proposing its acquisition and according to the price which a buyer interested in agriculture would have paid for it to the owner having regard to its soil, the irrigation and other facilities, it commanded for its maximum utilisation for agricultural purposes. The highest factor that contributes to the market value of agricultural land, is the irrigation facility it commands, admits of no controversy. Irrigation facility commanded by the agricultural land is that water supply which it can command for crops to be grown on it. Sources of such water supply, apart from rain water, may be river water, tank water, well water etc. Where river water or tank water is unavailable or is insufficient for cultivation of agricultural lands open irrigation wells are sunk. If the soil of the land in which they are sunk is likely to cave in, the same will be prevented by raising stone or brick or cement walls or by use of cement rings. The yield of water in wells vary from well to well. Intensive cultivation of agricultural land is done where the water yield of its irrigation well/wells is high. Such irrigation wells, even if had been dug up and walled effectively, may stop yielding water because of bore wells bored in the neighbouring lands or some other natural causes such as drought. In such events, the irrigation wells will become worthless. Hence, the advantage which an agricultural land may have because of the irrigation facility it had from the irrigation well, could only enhance the value of agricultural land depending upon the water yield from the well. Again when the agricultural land, the irrigation of which was possible from the water of the irrigation well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the well. In this situation the irrigation well in an acquired agricultural land, cannot have a value apart from the value of the agricultural land itself. The LAO, the Civil Court and the High Court, when have determined the market value of the irrigation wells and awarded compensation to the owners of those wells, having determined the market value of the acquired agricultural lands on the basis of nature of crops grown on them obviously taking into consideration, the water facility they had from the irrigation wells situated, in them, they have proceeded on a misconception that the market value of the irrigation wells had to be determined

according to their construction costs and compensation was payable for them under the Act independently of the compensation payable for the agricultural lands. As the award of compensation for the irrigation wells of the appellants by the LAO, the Civil Court and the High Court was, in itself wholly unwarranted, question of granting by us further enhanced compensation for irrigation wells of the appellants situated in their acquired agricultural lands cannot arise. Hence, this appeal of the appellants, the owners of the acquired agricultural lands, must necessarily fail.

8. Yet, in another case decided by the Supreme Court in *Union of India (UOI) Vs. Bal Ram and Another*, , it was held as under:

The High Court taking into consideration that certain other lands coming under different villages which had been acquired for the same purpose, namely Plan Development Area around Palam Airport in the vicinity of Delhi, found that compensation under market value of Rs. 47.224 per bigha would be reasonable and appropriate. In doing so, the High Court followed a decision of this Court in *Satpal and others, etc. Vs. Union of India*, . The ground urged before us is that in view of the decision in *Kanwar Singh and Others Vs. Union of India*, contiguity of villages could not by itself be sufficient to draw an inference of similarity in character of the lands in awarding the compensation and, therefore, the reasoning of the High Court is not correct. The High Court indeed did not rely upon the contiguity of the lands alone but it found that the nature/quality of the lands is by and large similar to those lands considered in *Satpal's* case. If that is the finding of the High Court, we do not think there would be any justification to make any distinction between lands which had been lying in Palam and Shahbad Mohamadpur. Therefore, the view taken by the High Court cannot be faulted with. The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is same and lands are identical and similar, though lying in different villages, we find the judgment of the High Court to be fair and reasonable and no interference is called for.

9. The Supreme Court in the case of *G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel and Others*, stated as under:

While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefore has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the Court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of lands made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert, and other relevant evidence, however, would have only evidentiary value.

Market value is ordinarily the price the property may fetch in open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification u/s 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy, A comparable instance has to be identified having regard to the proximity from time angle as well; as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in just a position.

10. The most particular principle was stated by a three Judge Bench in the case of Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , wherein the Supreme Court has stated as under:

It is, therefore, the paramount duty of the Courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, though some guesswork is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the beneficiaries, the Judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

Whether fair, and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, not facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the armchair of the said willing

buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in termination of the market value of the acquired land and compulsory acquisition

11. Now, we would proceed to examine the merits of the present case in the light of the above settled principles of law. The Claimants admittedly did not produce on record any sale instance either prior to the date of the notification or immediately thereafter which could give an idea as to what was the price of the land which a willing buyer was ready to pay and a willing seller was ready to offer. The lease instances produced firstly relate to a period much prior to the date of notification and secondly they create no transferable title or interest in the acquired land. To some extent it can safely be concluded that the claimants have failed to discharge the onus placed upon them in its entirety. They have primarily relied upon the oral evidence and certain awards/judgments which were produced by them before the Reference Court. Witness No. 3, Ashok Chandrashekhar Vaidya, who claims to be an Architect and Valuer, stated that he had inspected different gat numbers in village Rabale for valuation purposes and he referred to certain lease deeds of the plots abutting Thane-Belapur Road. In his statement, he made reference to a petrol filling station which was in operation since 1956 and stated that the lease deed was executed at the rate of Rs. 400/- per month which was again increased to Rs. 2,250/- per month. He prepared his valuation report which is at Exhibit 40 In his examination-in- chief he stated that the soil of the land was hard and infrastructure facilities like water, electricity and road transport were available. In his cross-examination he conceded that he had no notes about the data collected for valuation purposes and also that he had not considered the sale instances quoted in the award of Land Acquisition Officer and that he had added interest at the rate of 7 per cent.

12. The statement of this witness is hardly of any help to the claimants. Firstly, the material which he considered i.e. running petrol pump was nowhere comparable to the acquired land. It is conceded even before us that the acquired land was agricultural land with partial constructions. In the face of this fact, the statement of this witness cannot further the cause of the claimants for enhancement. The oral or documentary evidence essentially must be one which is comparable and relevant. In our opinion, the statement of this witness is neither relevant nor describes comparable instances.

12.1 Besides the above evidence, various claimants entered the witness box. Witness No. 1, Ishwar Sharan had referred in his statement judgments in LAQ Nos. 34/84 and 48/86 where the compensation was awarded at the rate of Rs. 7.20 per sq. mtr. In his statement he claimed compensation at the rate of Rs. 40/- per sq. mtr. He also stated that the land in question was situate at a distance of about 8-9 Kms. from Thane Creek Bridge connecting Sion-Panvel

Highway. He did say that water, electricity and other facilities were available. He admitted that compared to the Municipal areas, Gram Panchayat taxes were less and the land was situate in Gram Panchayat. As is evident from the above facts, there is hardly any relevant and material piece of evidence which could form basis for awarding any higher compensation. Not only the claimants but even the State has failed to discharge its onus as it was for the State to show that the compensation awarded by the Collector was justified and was the fair market value of the land in question. However, neither of the parties cared to lead proper and cogent evidence, on record to support their respective claims. The primary onus is always on the claimants but the State is not absolved of its liability to bring to the notice of the Court adequate evidence if they pray that the compensation amount awarded by Reference Court should be reduced. In fact, the present case is a case of no evidence other than the judgments of the Court which have been relied upon by the learned Reference Court. It has to be accepted that the judgments or awards of the Courts relating to the same land or the lands surrounding the acquired land are relevant piece of evidence and cannot be a precept to determine fair market value of the land in consonance with the provisions of Section 23 of the Act. The Reference Court, while relying upon judgment in LAR No. 60/83, Exhibit 24/2 and keeping in view the time factor, increasing trend of the value of the land and by applying reasonable guess work, awarded compensation to the claimants at the rate of Rs. 12/- per sq. mtr. We find no reason to interfere with the impugned judgment. The judgment of the Reference Court neither suffers from error of jurisdiction nor error in appreciation of evidence. The order is in consonance with the settled principles of law and calls for no interference by this Court. Consequently, all the appeals, cross-objections and civil applications are dismissed, while leaving the parties to bear their own costs.