(2017) 05 BOM CK 0053

In the Bombay High Court

Case No : 7 of 2000

The Special Land Acquisition Officer — APPELLANT

Vs

Dy. Chief Engineer, Metropolitan Transport Project — RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Land Acquisition Act, 1894, Section 23, Section 18, Section 9(3)(4) - Matters to be considered In determining compensation - Reference to Court - Notice to persons interested

Citation : (2017) 05 BOM CK 0053

Hon'ble Judges : K.K. Tated

Bench : SINGLE BENCH

Advocate : Jyoti Chavan, T.J. Pandian, Milind Jadhav, M.G. Gawde

Judgement

1. Heard the learned counsel for the parties. This is a Reference under section 18 of the Land Acquisition Act, 1894 (said Act) for detaining the compensation in respect of the acquired land. 2. Few facts of the matter are, as under: The Dy. Chief Engineer, Construction, Metropolitan Transport Project (Railways), Vashi, Navi Mumbai had forwarded a proposal to the Collector, Mumbai Suburban District by letter dated 05.11.1996 for acquiring the claimant''s land admeasuring 800.70 sq.mtr. from CTS No.90 (pt) of village Vikhroli, Tq. Kurla, Mumbai Suburban District for laying of 5th and 6th railway line between Kurla and Thane for Central Railways. Pursuant to the said request, the Special Land Acquisition Officer (SLAO), after following due process of law issued Notification under section 4 dated 1st September, 1997 of the said Act. Same was published in Government Gazette, Konkan Division Supplement dated 25.09.1997 at page Nos.704 and 705. Same was also published in daily news papers "Loksatta" dated 22.09.1997 and "Indian Express" dated 24.09.1997. Thereafter a public notice was posted at Chavdi on 14.10.1997, on notice board of Tahasildar''s office on 17.10.1997, on the site of acquired land on 15.10.1997 and notice board in the Collector''s Office on 18.10.1997. 3. After following due process of

law, the SLAO issued Notification under section 6 of the said Act dated 01.01.1998 and same was published in Maharashtra Government Gazette, Konkan Division, (Supplement) dated 22.01.1998 at page Nos.92 and 93. It was also published in news paper known as "Navnagar" on 09.01.1998, "Indian Express" dated 12.01.1998 and in "Mahanagar" dated 10.01.1998 with corrigendum dated 06.02.1998. Same was also published on 23.07.1998 at chavdi, on 07.08.1998 on notice board of Tahasildar office, on 23.07.1998 on the site by the Talathi and on 22.07.1998 on the notice board in the Collector''s Office. Thereafter, the SLAO issued notice under section 9(3)(4) of the said Act. 4. The situation and description of the acquired land, is as under: "The land under acquisition is a strip shaped land running parallel to the existing Central Railway Land. The land is sandwitched between existing Railway Line and land used for Godrej Staff Quarters. It is practically open and levelled. There is no tree or well except the masonary compound wall to its west side. The land is situated in "Residential Zone" of revised sanctioned Development Plan of Greater Mumbai, it is at a distance of 800 to 900 mtrs. i.e. a walkable distance of @ 5 to 10 minutes from Vikhroli Station on Central Railway. The Eastern Express Highway is about 1/2 to 3/4 KM away from land under acquisition. The land under acquisition is surrounded by Godrej Co''s land used for Staff Quarters and manufacturing purposes. The land under acquisition has access from the internal layout roads of Staff Quarters." (From Award) 5. Before the SLAO, the claimant, vide his letter dated 17.08.1998 has claimed that, the compensation should be paid as per the TDR rate of Rs.600/per sq.ft. which was at the time of issuing Notification under section 4 of the said Act. In the said letter, the claimant placed on record that, they require the acquired land for shifting their existing boundary wall to the revised boundary of their property and as such the Central Railway must shift and build the new compound wall at its own cost to the specifications as per the existing wall. In the alternative, the Central Railway to pay cost of construction of new wall. The claimant also by their letter dated 23.09.1998 placed on record the certified copy of agreement with M/s. Mayfair Housing Corporation, in support of their claimant @ Rs.600/per sq.ft. They also placed on record other relevant documents for fixing the market value of acquired land. 6. The acquiring body i.e. the Central Government has neither submitted the valuation report nor offered remarks on the claim made by the claimant. The Land Acquisition Officer (LAO), out of three sale instances placed on record by the claimant, considered only 3rd sale instance i.e. in respect of Flat No.502 in the building known as Akhilesh Kunj, constructed on land being sy.No.29/7 (part) CTS No.272 of Village Hariyali for total consideration of Rs. 6,00,000/- as on 25.01.1995 to some extent in situation, location, user (actual) permitted. The area of the flat was 730.37 sq.ft. (built up) i.e. 67.88 sq.mtr. which shows the rate of Rs.8839 per sq.mtr. The said flat was on East of Vikrholi Railway Station, whereas the acquired land was on West. Instead of deciding the market value of acquired land on the basis of the sale deeds produced by the claimant, the LAO determined the market value of the acquired land only on ready reckoner. After following due process of law, the SLAO declared the award dated 09.06.2000 holding that the claimants were entitled to compensation in respect of the acquired land @ Rs.3220/per sq. mtr. 7. In the present proceedings, the vacant possession of the land was taken over and handed over to the acquiring body under the urgency clause under section 17 of the said Act on 04.06.1999 on payment of 80% compensation to the claimant. 8. The SLAO issued notice dated 09.06.2000 under section 12(2) of the said Act. Same was duly served on claimant. Being aggrieved by the said Award, the claimant made Reference dated 20.07.2000 under section 18 of the said Act claiming compensation of the acquired land @ Rs.825/per sq.ft. Pursuant to the said application under section 18 of the said Act made by the claimant, the SLAO made the present Reference before this court. 9. The learned counsel for the claimant made a statement before this court that though they claimed compensation in respect of the acquired land in the Reference @ Rs.825/per sq. ft i.e. Rs.8880.03 per sq. mtr., on the basis of the evidence on record they restrict their claim @ Rs.6,300/per sq.mtr. 10. The learned counsel for the claimant submits that the LAO failed to consider the relevant facts at the time of determining the market value of the acquired land. He submits that though the market value of the land on the date of issuing Notification under section 4 of the said Act was more than 8880.03 per sq. mtr, they are restricting their claim in the present LAR to the extent of Rs.6,300/per sq. mtr. only. 11. The learned counsel for the claimant, in support of their enhanced claim, examined two witnesses and placed on record certified copies of sale instances, valuation report, location map etc. The claimant filed affidavit of examination in chief of Mr. Dilip D. Kamlapurkar - P.W.1 and also an affidavit of evidence of an Architect and Valuer Mr. Bhalchandra Dattaram Wadke (Exhibit-T). He has also placed on record certified copy of agreement dated 22.02.2000 (Exhibit-M), certified copy of Index-II of agreement dated 22.02.2000 (Exhibit-N), property plan dated 20.10.2007 (Exhibit-O), valuation report prepared by the Valuer dated 28.11.2007 (Exhibit-U), location plan dated 20.10.2007 (Exhibit-V), land acquisition plan dated 20.10.2007 (Exhibit-X), potential user plan of the acquired land dated 20.10.2007 (Exhibit-Y), certified copy of the deed of confirmation dated 20.05.1998 in respect of the flat being No.1102 on the 11th floor in Building B of Presidential Tower, LBS Marg, Ghatkopar, Tq. Kurla, Dist. Mumbai - 86, (Exhibit - "Z") certified copy of Index-II of Flat No.1102 (Exhibit-AA) and other documents in support of their case. 12. The learned counsel for the claimant submits that as per the market value on the date of issuing Notification under section 4 of the said Act i.e. 18.10.1997, the claimants are entitled to compensation in respect of the acquired land @ Rs.6300/per sq. mtr. He submits that P.W. 1 Mr. Dilip D. Kamlapurkar has brought on record that the acquired land is situated at the distance of 800 mtr. from Vikhroli Railway Station and 500 mtr from Eastern Express Highway. He further submits that P.W. 1 has specifically stated in his evidence that in the area adjoining CTS No.90 (Part) (acquired land) claimant company is situated. The area adjoining the acquired land is fully developed residential locality and had several buildings used for residential purposes, school etc. The claimant company has also, along with railway lines, built several structures for residential purposes, which are immediately next to the acquired land and forming part of same CTS No.90 of which part land is under acquired. The said witness further stated that the acquired land forms part and parcel of a developed layout forming part of CTS No.8 to 13, 25 to 29, 56 to 61, 66 Part, 90 to 92 of village Vikhroli. He further placed on record the location plan being Exhibit-E showing the properties of the claimant company which are in existence, as also showing the road from the station, 60'' wide road going from Express Highway upto Vikhroli Railway Station and connecting the internal 12 mtr. road. He submits that the witness has specifically stated in his deposition that even on the West of Railway track the area was fully developed on the relevant date i.e. 18.10.1997 with all sorts of shops located along with railway station. There were also several residential houses and bus routes as public transport going from LBS Marg through various locations and extending upto railway track on west. 13. The learned counsel for the claimant further submits that P.W. 1 Mr. Dilip D. Kamlapurkar in his deposition stated that civil amenities were also within the close proximity of the acquired land. A secondary school and primary school are located at a distance of 500 mtrs., Temples and a Church existing within a walking distance of 750 mtrs from the acquired land. The claimant''s factory and company premises are at a distance of 200 mtrs. from the acquired land. The area on both sides of the acquired land is completely developed, both for residential colonies and commercial establishments, shop line and offices. There are several restaurants viz. Satkar, Akarshan and Mohini Vilas and others are abutting the Vikhroli Railway Station. The market selling vegetables, fruits and other provision articles are situated at a distance of 300 mtrs. from the acquired land. The acquired land, therefore, had a tremendous potentiality for development due to the steep increase in the land prices on the relevant date. 14. The learned counsel for the claimant submits that P.W. 1 stated in his deposition that the acquired land had full frontage of about 300 mtrs. on the Central Railway line and had a very high degree of commercial potential for display of sign boards. The acquired land is situated in a well developed locality with residential buildings/complexes and commercial/industrial premises. He submits that P.W. 1 has stated in his deposition that the LAO has been awarded the market value of the acquired land @ Rs.3,220/per sq.mtrs. which is very low and not as per market value on the date of issuing notification under section 4 of the said Act. 15. The learned counsel for the claimant submits that the plan produced by P.W. 1 clearly shows that the acquired land comes within the purview of developed area. He submits that all amenities were available for the acquired land on the date of issuing Notification under section 4 of the said Act. He submits that the plan clearly shows that the LAO has failed to consider the relevant factors at the time of determining the market value of the acquired land. 16. The learned counsel for the claimant submits that though the counsel for the SLAO as well as the acquiring body cross-examined P.W.1 in detail asking several questions, they were unable to extract any contrary from his cross-examination. 17. The learned counsel for the claimant submits that considering the deposition of Mr. Dilip D. Kamlapurkar, the following points emerge from his evidence : "(a)

The acquired (800.70 sq.mtrs.) land was notified for acquisition in the year 1997. This land was part of CTS 90(pt) which totally admeasured 20860.10 sq.mtrs. Prior to the present acquisition an area of 2982 sq.mtrs. out of CTS No.90(pt) was acquired sometime in 1970 for arterial railway siding. (b) The acquired land including CTS No.90(pt) was a levelled land with a proper compound wall surrounding it. (c) The access to CTS No.90(pt) including the acquired land was from an existing 12 mt. wide road which commenced from Vikhroli Railway Station. This road was further joined to the Eastern Express Highway by another 18 mt. wide road on which public transport i.e. BEST Buses, Taxies, Rickshaws, Trucks, private cards plied. (d) The acquired land was at a distance of about 800 mts. From Vikhroli Railway Station and about 500 mtrs. from the Eastern Express Highway. Thus it was accessible by two roads viz. the 12 mtr wide road and the 18 mtr wide road. (e) The area adjoining the acquired land was a fully developed residential locality and had several buildings used for residential purposes, schools etc. These buildings were built by the claimant company itself much prior to the present acquisition proceedings and were in existence on the relevant date. (f) The acquired land had closed proximity and availability of buses, taxis & rickshaws for movement towards both the East and West side of Vikhroli Railway Station. Vikhroli Railway Station was at a walking distance of 5 to 7 minutes, whereas the Eastern Express Highway was at a distance of 500 mtrs. Public transport was available from near the acquired land to all the destinations in Mumbai City, Western Suburbs, Eastern Suburbs, Thane & Navi Mumbai. (g) Civil amenities were also in very close proximity of the acquired land. Primary and Secondary School built by the Claimant Company several years prior to the present acquisition was at a distance of 500 mtrs from the acquired land. Temples and church were located within walking distance of 750 mtrs. from the acquired land. There were residential colonies and commercial establishments, restaurants, markets situated at a distance of 300 mtrs from the acquired land. (h) The acquired land had a frontage of 300 mtrs on the Central Railway line and thus had a high degree of commercial potential for display of sign boards." 18. The learned counsel for the claimant submits that the evidence of Mr. Dilip Kamlapurkar has not been shaken in any manner in the cross-examination. The evidence is wholly passed the test of cross-examination. 19. The learned counsel for the claimant submits that P.W.2 Bhalchandra Dattaram Wadke, Valuer, placed on record location plan dated 20.10.2007 (Exhibit ''V''), sanctioned D.P. Sheet E/19 of Greater Mumbai for the year 1981-2001 (Exhibit ''W''), land acquisition plan dated 20.10.2007 (Exhibit ''X''), potential user plan of acquired land dated 20.10.2007 (Exhibit ''Y''), certified true copy of agreement dated 20.05.1998 (Exhibit ''Z'')along with certified copy of Index-II (Exhibit ''AA''). He has also placed on record valuation report (Exhibit ''U'') prepared by him for determining the true market value of the acquired land on the date of issuing Notification under section 4 of the said act. 20. The learned counsel for the claimant submits that the Valuer, on the basis of the evidence collected by him and report prepared by him, held that the LAO ought to have awarded compensation in respect of the acquired land @ Rs.6,300/sq. mtr. He submits that at the time of preparing valuation report dated 28.11.2007 (Exhibit-U), the Valuer mainly relied upon a certified copy of agreement for sale dated 02.06.1998 of flat admeasuring 80 sq mtr. on 11th floor of Building B of Presidential Tower, LBS Marg, Ghatkopar, Tq. Kurla, Dist. Mumbai - 86 on the land being Sy.No.160 and CTS No.167, 167/1 to 167/22 from village Ghatkopar and sold by M/s. Ashford Investment and Treading Co. Pvt. Ltd. to Mr. Pachyabhai Premji Patel and others for consideration of Rs.8,81,250/. He also placed on record certified copy of true copy of Index-II issued by the Sub Registrar of Assurances in respect of the said flat. The market value of the built up property i.e. Flat worked out to Rs. 11,015.63 per sq.mtr. on the built up area on the date of agreement. On the basis of the sale instances, the Valuer calculated the market value of the acquired land on the date of issuing Notification under section 4 of the said Act is Rs.6300/per sq.mtr. 21. The learned counsel for the claimant submits that the Valuer has specifically made a statement in his deposition that the sale instances of the vacant land were not available from the said locality where the acquired land is situated. Hence, on the basis of the constructed property i.e. flat he calculated the market value of the acquired land. He submits that the Valuer has prepared his valuation report scientifically, taking each and every factor required for fixing the market value. He submits that though the said witness was cross-examined by the State as well as the acquiring body asking more than 150 questions, they were unable to extract any admission from the Valuer contrary to the valuation report. 22. The learned counsel for the claimant submits that valuer Mr. B. D. Wadke is very important in deciding the market value of the acquired land. He submits that Mr. Wadke has produced his valuation report dated 28.11.2007 which has been marked Exhibit-U. He submits that Mr. Wadke has made valuation on the basis of comparable sale instance registered on 02.06.1998. The date of sale instance is 20.05.1998. The relevant date for valuation is 18.11.1997. The sale instance is having close proximity of time i.e. 7 months, from the relevant dates of the valuation. 23. The learned counsel for the claimant submits that Mr. Wadke has carried out a detail exercise in his valuation report by briefly giving description of the acquired land and its locality, details of acquisition, description of development plan relating to the acquired land and the computation of rate of the acquired land. Therefore, Mr. Wadke made a detail exercise of comparing the sale instance with the acquired land by first arriving at market value of the built up property and thereafter deriving the land value of the sale instance of plot by deducting various factors like construction cost, development charges, profit, miscellaneous charges, detailed comparison with the acquired land on the basis of 10 important features and factors by assessing positive allowances and negative deductions to arrive at a market value of the acquired land on the relevant date. 24. The learned counsel for the claimant submits that Mr. Wadke''s credential as an expert Valuer is impeccable, since he has been practicing as an Architect and Valuer in Mumbai from 1965 onwards. He has also personally inspected and surveyed the acquired land for the purpose of the present exercise. He has employed the comparable sales method in all its facts to arrive at the market value of the acquired land @ Rs.6300/per sq.mtr. Mr. Wadke has produced a location plan which has been marked as Exhibit" V". He has also produced a D.P. Sheet showing the location of the acquired land which has been marked as Exhibit "W". Mr. Wadke has also produced a plan of the acquired land, a potential user plan of the acquired land if developed, certified copy of the agreement i.e. sale instance dated 20.05.1998 which was registered on 02.06.1998 and certified copy of Index-2 of the said sale instance which have been marked as Exhibits "X" "Y" "Z" & "AA" respectively. The cross examination of Mr. Wadke has also stood the test of cross-examination. 25. The learned counsel for the claimant submits that following factual position emerges from the evidence of Mr. Wadke. Mr. Wadke has based his valuation upon Registered Deed of Confirmation dated 20.05.1998 (Exhibit-Z). This Deed of Confirmation is based upon an earlier agreement for sale dated 07.10.1995 between the same parties in respect of the same property. On the basis of this document Mr. Wadke''s valuation of the land under acquisition comes to Rs.6300/per sq.mtr. as on the relevant date. The comparative analysis of the acquired land and the sale instance has been duly explained in clause 8 of the Valuation Report. Clause 83 and 84 a, b, c, e and f are as follows: "(8-3) I have followed the following steps in order to have a realistic picture of the true market value of the strip of the acquired land. A) I have analysed the sale instances as per the Annexure ''I'' of the built up property which is a comparable sale instance and arrived at the market value of the built up property on the date of the sale instance. B) From the aforesaid market value in Annexure (I) I have derived the land value of the plot of land on which the said built up property (comparable sale instance) is standing upon. By a detailed analysis of the land value, construction cost, nature of construction, type of construction, development profit, miscellaneous charges, etc. C) The next step carried out by me involves bringing the market value of land of the said sale instance at part with the relevant date i.e. 18-10-1997. D) Finally I have compared the sale instance plot with the acquired land out of CTS No.8, 9, 10, 11, 12, 66(PT), 90 (PT) on the basis of several important features and factors by giving positive allowances and negative deductions to arrive at the market value of the larger plot of CTS No.8, 9, 10, 11, 12, 66(PT), 90(PT)" "(8-4) I shall now in detail state the above exercise of comparison:- a) The comparable sale instance as per Annexure (I), considered by me is an agreement for sale dated 2-6-1998 of a flat admeasuring 80.00 sq.mtrs. on the 11th floor in building ''B'' Presidential Tower-B on land bearing survey No.160 and CTS No.167, 167/1 to 167/22 from village Ghatkopar and sold by M/s. Ashford Investment & Treading Co. Pvt. Ltd. To Mr. Pachyabhai Premji Patel and another for to consideration of Rs. 8,81,250/- . I tender the certified true copy of the above registered agreement. I also tender a certified true copy of Index II given by sub registrar of assurance in respect of above agreement. After perusing the document, the market value of the built up property i.e. flat works to Rs.11,015.63 per sq.mtrs. of built up area on the date of agreement (Annexure A6 & A5). b) The above sale agreement is genuine sale agreement without any special conditions affecting the market value. I have taken inspection of the building in which the said flat is located. The said building known as Tower ''B'' comprises of stilt plus 14 floors and is part of a cluster of 4 numbers of tower buildings standing on the plot of land admeasuring 23,875.60 sq.mtrs. The building is provided with 2 Nos. of lift of Otis make with 8 passenger capacity and there is 4 numbers of flats on each floor. I have prepared a drawing i.e. location plan showing sale instance property which shows the area of plot bearing CTS No.167, 167/1 to 167/2 on which the said presidential Tower ''B'' is standing. On visual survey, it seems that the entire FSI of CTS No.167, 167/1, 167/22 has been utilized by the developer. Hence, the market value of the built up property i.e. Rs.8, 81,250/or Rs. 11,015.63/ per sq.mtrs. for sale instance includes the land component i.e. the proportionate rate of land of CTS No.167, 167/1 to 167/22 of sale instance property as on the year 2-6-1998. c) The construction of the said building is of RCC type with internal and external plaster. As per the said agreement and my visual inspection of the said concern building it is stated that the amenities provided by the developer to the purchaser are of standard type. There is mosaic flooring in the 3 BHK flat. The doors and windows are of standard type i.e. windows having aluminium frame with glazed shutters to other rooms. Doors are of teak wood frame and ply wood shutters. On the whole the appearance of the per sale is of a standard type. The said CTS No.167, 167/1 to 167/22 has been given amenities such as garden of the required area as per D.C. rules which has many number of grown up trees and uneven grass. Apart from the garden the other amenities include parking space for cars. In view of the above, after looking after construction and amenities available, from my experience in the field of valuation, I have included in the construction viz. Cement, steel, sand, metals, bricks, tiles, teak wood, shutters, etc. and the most important factors i.e. the cost of labours. According to me the cost construction has to be rounded up at Rs.6,000/per sq.mtrs. as on 1998. e) Apart from the above, another important fact is the developer''s profit. I have considered the developer''s profit to be 15% of the total value which according to me is on the higher side. The developer''s profit could include from 10% to 20% which would depends on the various factors such as time consumed in a project, availability of finance through loans and interest payable, etc. To be on the safer side I have taken developer''s profit to be 15% which according to my experience as a valuer is a safe figure. f) I here below give the comparison of sale instance property.

Details Instance property as on 2-6-1998

A Gross rate of flat per sq.mtrs. of B.U.A. Rs.11,015.00

I Construction costmaterial plus labor per sq.mtrs. of B.U.A. Rs. 6,000.00

II Misc.Expens.Per sq.mtrs. of B.U.A. Rs. 200.00

III Builder''s profit at 15% on I + II Rs.9,300.00

B Total of I + II + III Rs. 7,130.00

C Cost/value of land component per sq.mtrs. of B.U.A. Rs. 3,885.00

say 3,900/-

Deduct 5% as year gap to arrive value } Rs.200

As on 18-10-1997 i.e. 195 say Rs.200/- }

Net value of land component as on 1-8-1097 Rs. 3,700.00

26. The learned counsel for the claimant, in support of his contention for determining the market value of the acquired land @ Rs.6300/- relied upon following authorities: (a) Viluben Jhalejar Contractor (Dead) By Lrs. v. State of Gujarat (2005) 4 SCC 789, wherein the Apex Court held that the amount of compensation cannot be ascertained with mathematical accuracy. Comparable instance has to be identified having regard to the proximity from the time angle as well as proximity from situation angle for determining the market value of the land under acquisition, suitable adjustment having regard to the various positive and negative factors para 18 to 20 of the judgment read thus: "18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. 19. Market value is ordinarily the price the property may fetch in the 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 under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. 20. 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- '' -vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors

Negative factors

(i) smallness of size (i) largeness of area

(ii) proximity to a road (ii) situation in the interior at a distance from the road

(iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth

(iv) nearness to developed area (iv) lower level requiring the depressed portion to be filled up

(v) regular shape (v) remoteness from developed locality

(vi) level vis'' vis land under acquisition (vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage

(b) The Apex Court in the matter of Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Another (1988) 3 SCC 751 held that principles to be kept in mind by court in determining the value of land reads thus: "(4) The following factors must be etched on the mental screen: (1) A reference under section 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 535 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 under section 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 under section 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 there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors (14) (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 size. 1 largeness of area.

2 proximity to a road 2 situation in the interior at a distances from the Road.

3 frontage on a road 3 narrow strip of land with very small frontage compared to death.

4 nearness to developed area 4 lower level requiring the depressed portion to be filled up.

5 regular shape. 5 remoteness from developed locality.

6 level vis-a-vis land under acquisition 6 some special disadvantageous factor 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 shorter 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." (c) Government of Bonbay v. Merwanji Muncherji Cama 1908 Vol X BLR 907. In this authority, the Bombay High Court held that at the time of determining the market value of the acquired land, the inspection report/ valuer report is required to be considered. (d) M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (Deceased) by Lrs. and Ors. AIR 1994 SC 1160. In this authority the Apex court held that the comparable sale instances are more important for deciding the market value of the acquired land under the said Act. Para 8 and 9 are relevant on which the learned counsel for the claimant relied upon, which read thus: "8. If ''Comparable Sales Method of valuation of land'' is adopted for determining the market-value of an acquired plot of land, it generally holds goods determination of the market-value of several acquired plots of land if acquisition of all such plot of land is made pursuant to the same preliminary Notification. But, if any of the factors, such as, location shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s), acquired land(s) then the market-value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same preliminary Notification. The reason is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factors of different acquired plots of land, which greatly affects their value is ignored or is not taken into consideration by the Court while determining the market-value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands. 9. Whether the High Court has, in valuing several plots of acquired lands with differing salient factors, ignored the aforesaid principle of valuation of such acquired lands is the point which needs our consideration now. The locations, sizes and shapes of the several acquired plots of land, the market value of which had to be determined by the High Court were not at all comparable, becomes apparent from its judgments. The concurring judgment of Mr. Justice Bhopinder Singh Dhillon, shows that several acquired plots of land with the market-value of which he was concerned were different, for be states that : Another relevant question, which has to be considered is whether the entire block of the acquired land could be assessed at a flat rate of there is justification for assessing at a flat rate or there is justification for assessing the market value by dividing the land into blocks." (e) The Apex Court in the matter of The Dollar Company, Madras v. Collector of Madras AIR 1975 SC 1670 held that if the property situated near highway, then the valuation is required to be decided on higher side, considering the distance between the acquired land and highway. Para 10 of the judgment which reads thus: "10. Propinquity to highway or ports and many industrial and social imponderables enter the verdict of evaluation. So much so we cannot automatically assert, with reference to a piece of land a mile-and-half away, that it serves as a guide for fixing the price of the suit plot. What the High Court has done is to have at the back of its mind the various sales, Exhibits R2 to R7, which fall far below the value demanded by the claimant and the high prices awarded by the same High Court in regard to other lands distances away, have regard to the then growing industrial potential and make an intelligent guess. May be as the learned Advocate General has pointed out, in the light of evidence regarding the precise land and the particular owner, there was no justification for awarding such a high price as has been done but the State has not bothered to come up in appeal and we cannot hold that the High Court was in error in making out of the totality of materials available, a best judgment assessment of the market value. No serious flaw in principle, no omission to consider important material or like infirmity has been pointed out to fault the judges on the appraisal." (f) The Apex Court in the matter of P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors. 1995(2) SCC 305 wherein it is held that at the time of calculating the market value of the acquired land, the court has to consider the evidence on record, whether the acquired land is situated within a developed area. If the acquired land is situated within the developed area, then at the time of calculating the market value, to keep in mind the building potentiality of the acquired land. The Apex Court also held in this authority that the parties can rely on certified copies of the documents produced by either party under section 51-A of the said Act. Para 12 to 14 and 19 of the said judgment read thus: "12. Hence, whether the acquired land has building potentiality or not, while has to be decided upon reference to the material to be placed on record or made available by the parties concerned, the market value of the acquired land with building potentiality, is also required to be determined with reference to the material to be placed on record or made available in that regard by the parties concerned and not solely on surmises, conjectures or pure guess. 13. Value of building plots found in the Basic Valuation Register - That the value of building plots mentioned in the Basic Valuation Register can be of no assistance in determining the market value of the land acquired under the LA Act is no longer res Integra. In Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. and Others (1994) 4 SCC 595, it has been ruled by this Court that the value of lands mentioned in the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty since lacks statutory base, the same cannot form the foundation to determine the market value of the lands acquired under the LA Act by observing thus: "It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc." 14. Therefore, the value of building plots as found in the Basic Valuation Register maintained under the Stamp Act cannot form the basis for determining the market value of the lands acquired under the LA Act. 19. Certified copy of a document registered under the Registration Act, 1908, but for the above provision could have been only secondary evidence which could have accepted by the court when primary evidence relating to the original documents were shown to be unavailable. Section 51-A of the LA Act, as seen there from, is enacted to enable the parties in land acquisition cases, to produce certified copies of documents, to get over the difficulty of parties, in that, persons in possession of the original documents would not be ready to put them in courts, for when once they are put in Court, they cannot be sure, when they could take their return from Court. However, the mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not dispense with the need for a party relying upon the certified copies of such documents produced in court in examining (witnesses connected with documents to establish their genuineness and the, truth of their contents. Therefore, the certified copies of registered documents, though accepted as evidence of transaction recorded in such documents, the court is not bound to act upon the contents of those document unless persons connected with such documents given evidence in court as regards them and such evidence is accepted by the Court as true. But, when the LAO or the Collector has made his award, based on the contents of documents, as found in the registers kept under the Registration Act and produces registration copies of such documents in support of his award in Court, they could be regarded acceptable as evidence by Court given in support of the award unless it is shown by contra-evidence on behalf of the claimants that such documents could not have been relied upon by the Collector or LAO in making the award, It would be so for the reason that when the LAO produces in court Registration (certified) copies of those documents which he had made the basis for determining the market value, that would be only to support his award and not to establish something independent of the award. If that be so, when such documents are produced on behalf of the LAO in court, they cannot be rejected on the ground that the witnesses associated with those documents cannot be examined by the LAO, inasmuch as; even without producing such documents he can rely upon the award made by him to show that he had looked into those documents and he had determined the market value on their basis. Hence, the mere fact that witnesses associated with such certified copies of documents produced as evidence in court were not examined on behalf of the LAO will not in any way affect the award of the LAO, if he has determined the market value of the acquired land having perused those documents as found in the Registers kept under the Registration Act or their certified copies, before determining the market value of those lands on the basis of such documents." (g) State of Maharashtra v. Ismile Abdul Gafur Patel 2006(2) Mh.L.J. 323 Bombay High Court held that the testimony of the valuer is important for determining the market value of the acquired land. Para 15 of the said judgment, which reads thus: "15. The next point which arises for consideration relates to the testimony of the valuer. Perusal of the testimony of the valuer apparently discloses a clear statement to the effect that he had inspected the site on 4th May, 1989 to assess the market value as on 4th February, 1970 i.e. the date of notification. In other words, the land in question was sought to be inspected nearly 19 years after the date of issuance of notification. Obviously, the valuer had no personal knowledge about the situation in loco in the year in which the notification under section 4 was issued in relation to the land in question. Undisputedly, the valuer had not disclosed any documentary material regarding the situation in loco in the said year, either in his testimony or in his valuation report. His testimony regarding the factual situation at the site in relation to the plot in question in the year 1970 is purely hearsay evidence, which cannot be given any credibility." (h) State of Maharashtra v. Posha Rangu Mhatre 2006(2) Mh.L.J. 149 Bombay High Court held that each factor needs to be considered at the time of fixing the market value of the acquired land. Para 7 of the said authority reads thus: "7. Upon hearing the learned advocates for the parties and on perusal of the records, the first point which arises for our consideration is as to whether the impugned award discloses correct procedure having been followed in evaluating the market value of the land in the facts and circumstances of the case? The Reference Court, after referring to the decision of the Apex Court in The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty reported in AIR 1959 SC 429 and after noting the methodology prescribed under the said decision of the Apex Court for the purpose of ascertaining the market value of the land acquired under the said Act, has proceeded to observe that in order to ascertain the market value, it is necessary to adopt one or more of those methods in land acquisition proceedings. In our considered opinion, this observation by the Reference Court apparently discloses misconstruction of the ruling of the Apex Court in the matter of evaluating the market value of the land acquired under the said Act. The methodology laid down under the said ruling does not give an option to the Reference Court to choose one or more methods as sought to be observed by the Reference Court but ruling clearly lays down the method to be adopted in evaluating the market value. The ruling reads thus :- The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) and the methods of valuation may be (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. (Emphasis supplied) In fact, all the three factors are necessarily to be considered while evaluating the market value of a piece of land under acquisition. Undoubtedly, if there is no evidence available in relation to one of the factors, certainly it would not be a hurdle for the Reference Court to ascertain the market value on the basis of remaining two factors in respect of which evidence is available on record. But that does not mean that the Reference Court will have an option to choose any one of the factors to be sufficient to decide the market value. When the evidence on all the three factors or more than one factor is available on record, it is necessary for the Reference Court to analyse all such evidence in a proper perspective in order to arrive at the market value of the land. Considering the approach adopted by the Reference Court to choose only one method i.e. the evidence of the expert, which is apparent from the plain reading of the impugned award, it is evident that the same is contrary to the law laid down by the Apex Court in Ravinder Narain''s case (supra). That itself would be sufficient to interfere in the impugned award. Whether the ultimate finding regarding valuation is justified or not is totally a different issue but the approach of the Reference Court cannot be approved." (i) State of Maharashtra v. Trimbak Joma Thakur deceased through his legal representatives Dasharath Trimbak Thakur and others, 2007 (5) Mh.L.J. 187. In this authority, Division Bench of Bombay High Court provided guidelines, if no direct sale instance is available for fixing the market value of open plot of land. Paragraph Nos.3, 5, 7, 21 and 22 read thus: "3. Before the learned Reference Court, parties led documentary and oral evidence. The Claimants examined experts, as well as placed on record and proved lease-deeds, allotment letters, etc., and on the strength of the expert evidence, had prayed for further enhancement. On behalf of the State Government, a plea was taken that the claim of the Claimants is exorbitant, unprecedented and based on instances which are neither comparable, nor have a bearing on the matter in controversy. Keeping in mind the pleadings of the parties, and the pleas taken by them, the learned Reference Court framed the following three issues: Issues 1) Whether the Claimants prove that the compensation amount granted by the Opponent is inadequate, improper and not as per the sale statistics in view of the situation, location and N.A. potentiality of the acquired lands? 2) Whether the Claimants are entitled to get enhancement in compensation amount? If yes, what quantum? 3) What order and award? The issues were answered by the Reference Court primarily in favour of the Claimants, and compensation awarded to them was enhanced, as noticed above. 5. The above reasoning and findings of the learned Reference Court have been challenged on behalf of the State on the ground that there was no admissible and relevant evidence which, in law, would form the basis for awarding enhanced compensation. The instances of lands referred to in the judgment relate to different villages, and these were neither relevant, nor comparable, sale instances. No evidence was led by the Claimants to show similarity with regard to the acquired lands to the lands of which instances were relied upon. According to the State, in fact, there are no similar instances. They are merely lease-deeds and cannot be equated to sale-deeds in terms of evidentiary value or law. The Claimants having failed to discharge the onus placed upon them, the prayer for enhancement of compensation should have been declined by the learned Reference Court. The judgment under appeal, thus, according to the State, is liable to be set aside. The Claimants have advanced the arguments that the development of the New Bombay area started in the year 1970 when the lands were acquired for that purpose for the first time. As per the Development Plan prepared by the City Industrial Development Corporation (CIDCO), the original purpose was residential; but in terms of the Notification issued under Section 4 of the Act, the purpose was stated to be warehousing, etc. The lands had potential as on the date of acquisition. No sale instances could be proved on record despite exercise of due diligence by the Claimants, inasmuch as there were no sale instances right from the year 1970 to 1976 because of the issuance of the Notification under Section 4 of the Act. On the basis of the expert evidence of S. Bahuleyan and S.V. Surve, and various documentary evidence, including the lease-deeds, as well as the documents executed by CIDCO in favour of the lessees, the Claimants are not entitled to claim enhancement of compensation and thus, enhancement of compensation at the rate of Rs. 2000/ per square yard was declined. 7. It is an undisputed case that there are no sale instances vide which the freehold rights have been transferred between the private parties and for that matter, even between the State, its Corporations, on the one hand, and private individuals or Companies, on the other. The learned Counsel appearing for the State, as already noticed, had argued that the Claimants have failed to produce some record of sale instances, and they have failed to discharge the onus placed upon them for determination of a fair market value of the land at the time of acquisition; as such their claim should be dismissed. This argument appears to be somewhat strange, but it is examined in its proper perspective, and has to be noticed only to be rejected. It is a conceded case before us that the lands for the first time were acquired in the year 1970 and the acquisition, of course, was permitted to lapse and fresh Notification was issued in the year 1986. In other words, the lands all throughout this long period, remained the subject-matter of Notification under Section 4 of the Act, thus necessarily debarring transfer of lands. The Claimants cannot be blamed for not producing on record the sale instances for the relevant period. They have produced their own best evidence which was available to them in the form of lease-deeds, vide which CIDCO has transferred the lands to the Companies or individuals for different amounts. They have to be treated as evidence admissible in law and relevant for determining the question in controversy. The potential of the acquired lands is the relevant consideration. The potential has to be determined on the basis of factors available and existing as on the date of issuance of the Notification under Section 4 of the Act. The future potential of the lands i.e. what the land price would be after a lapse of one year or more, would hardly be a relevant consideration. The potential cannot be treated as a mere expectation of future, but should be close to reality at site at the time of acquisition of the lands. The potential itself has to be on the basis of the existing evidence which will reflect the potential and scope of development of the area with reference to the surrounding area. 21. The Court would have to apply the principle of guess work which is permissible in law, particularly keeping in mind the fact that there are no direct sale instances available on record of the acquired lands or adjacent villages. Thus, the Court would have to essentially apply some guess work to determine the fair market value of the lands. In the case of Risal Singh and Ors. (Sh) v. Union of India and Anr. reported in 2006(VII)(Delhi) 665 Admit. Appellant is directed to file private paper book within one year from today, failing which, First Appeal shall stands dismissed without referring back to the court. Printing and filing of Roznama dispensed with. The learned Counsel for respondent waives service, the Court has taken a view on the above principle and held as under: Insofar as the rejection of sale deeds Ex PW1/1 and Ex.PW2/1(Ex PW1/3) by the learned Reference Court is concerned, we can hardly find any fault in the impugned judgment. But there could be no reason before the reference Court for not relying upon Ex. PW1/2 which related to a sale transaction of village Bamnoli and was sale of a reasonably large piece of land admeasuring about 3 bigas 15 biswas. The reasoning given by the learned reference Court for rejecting this evidence is not sustainable in law. The best method of computing the compensation payable to the claimants is the sale instances relating to the land in question. A willing buyer and a willing seller would offer what price of the land at the time of acquisition or immediately thereto would be a definite guide for determining the fair market value of the land on the date of the notification. Once such an evidence is available on record, there is hardly any need for the Court to advert itself to any other method of computation. This principle was clearly stated by the Supreme Court in case of ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. 2005(VII) AD(SC) 126 : (2005) 6 SCC 454. The Supreme Court...also clearly stated that the Court has to apply some kind of guess work in computing the compensation payable to the claimants for acquisition of their respective lands. It may not be always possible to grant compensation arithmetically correct to the decimals. The counsel appearing for the claimants referred to various judgments of this Court wherein for acquisition of land in village Bamnoli or other surrounding villages during the year 1982-86, compensation was awarded by the Court for acquisition of the agricultural land @ Rs. 21,000 per bigha to Rs. 47,000 per bigha and even more and submitted that in the present case, they would be entitled to get compensation @ Rs. 70,000 per bigha at least. They claim enhancement even on Ex. PW1/2 as it is stated to be a sale deed more than six months prior to the date of acquisition. We have already noticed that the reference Court could not have out rightly rejected Ex PW1/2 as it was a sale instance of a reasonably large piece of land and the sale transaction had been executed more than six months prior to the date of notification. There was no reason for the Court and in fact no evidence had been led that the transaction Ex PW1/2 was a sham transaction and its genuineness was doubted for any reason whatsoever. The judgments of this Court in RFA 565/99 and 481/99 are a merely guiding factor and cannot be taken as a determinative basis in regard to fixation of compensation payable to the claimants. These awards and judgments relate to different villages which may be adjacent but once the sale deed of the same village is available, we find that it would be unnecessary to travel into this controversy. (emphasis supplied) Reference can also be made to the case in Jas Rath v. Union of India, 2006(VII) A.D.Delhi 284, in this regard. 22. Where the Court has to make an award, the Court has to examine the case to achieve ends of judicious fairness, and reliance upon certain guess work was equally settled principles of law. The law that deduction from the sale consideration/allotment price/premium/letter of allotment even in leasehold properties has to be made for developed areas. From the consideration deduction can vary keeping in view the facts and circumstances of the case right from 20% to even 70%. Firstly, it would be on account of comparative value of the developed area and undeveloped area. For development of that area deduction of rate for roads and other utility services have to be cumulatively applied before the Court can determine the market value of the acquired land. Further reference can be made to the decisions in Union of India v. Dr. Balbir Singh, 1999(3) PLR 613, Smt. Bindu Garg v. State of Haryana, 1999(2) PIL 794, Dhanpal Rai v. Grampanchayat Village Lakhno Tehsil Anandpur Saheb District Rupnagar and Ors. 2000(1) PLR 830, and Risal Singh and Ors. v. Union of India and Anr. 2006(VII) AD Delhi 665. In the case of Dhanpal Rai (supra), the Court held as under: The only evidence which can help the Court in computing fair market value of the land in question would be Exhibit P.38 and Exhibit P. 39. The details of Exhibit P. 38 and Exhibit P. 39 which were sold in the year 1982-1986, which shows the increase in the value of the land, certainly also indicates an apparent fact that the land sold is quite small. The property of each claimant which has been acquired vide notification in question is also small pieces of land, though totalling an area of 4653 square yards, was acquired for the construction of two lane bridge. Average of P. 38 and P. 39 comes to Rs. 3500 per square yard. Keeping in view the fact that the lands in small portions were acquired for a much beneficial public purpose, namely construction of over bridge crossing and the fact that the sale instances were again between the same parties, would normally indicate a higher value of the land than the market value. Furthermore, the land sold under these Exhibits is of very small pieces nearly 10 square yards or so. For the variety of reasons stated by the Hon''ble Supreme Court in the case of K.S. Shivadevamma and Ors. v. Assistant Commissioner and Land Acquisition Officer and Anr. 1996(2) SC 62 , it is necessary for the Court to apply the some reasonable element of deduction. The above grounds in addition to the fact that the area for the acquired purposes is to be developed by heavy costs to be incurred by the State and the fact that the development itself would be ultimately beneficial to the public at large, detailed reasons have been given by this Court in RFA No. 4294 of 1990 title State of Haryana v. Meena Dua, (2000-I) 124 PLR 9, decided on 27-5-1999 for the necessity to apply the principle of deduction to such case. The consistent view taken by the Hon''ble Apex Court in its various judgments which have been relied upon in those cases is that deduction in such cases is an essential feature for determination of the amount payable to the claimants. Therefore, I am of the considered view that the present case is a fit case where deduction of at least 53% should be applied. Such extent of deduction was applied by the Hon''ble Supreme Court in the case of K.S. Shivadevamma (supra). I fail to understand as to why the learned District Judge had not applied the principle of deduction to the facts of the present case. Computing on the aforesaid basis the compensation payable to the claimants would be at the rate of Rs. 1045 per square yard (Rs. 5500 × 53 = 1855) 3500-1855 = Rs. 1645.00). Consequently the claimants would be entitled to compensation of Rs. 1065 per square yard with all statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act." (j) Revenue Divisional Officer-cum-Land Acquisition Officer v. Shaik Azam Saheeb and Ors. 2009 5 Mh.L.J. 160. The Apex Court has explained the mode and manner in which the determination of the value is to be carried out of acquired land. Paragraph 16 to 20 of the said judgment read thus: "16. The lands are situated in two different villages. The plan showing the location of the land vis-a-vis the National Highway No. 18 had not been placed before us. From the award of the learned Reference Judge, it appears that the lands situated in Pasupula village are better placed than the lands situated in B. Thandrapadu village. Such a distinction had also been kept in mind not only by the Land Acquisition Collector but also by the Reference Court. 17. We agree with the judgment of this Court in civil Appeal No. 5206-5228 of 1997 (A.P. Industrial Infrastructure Corporation Limited v. G. Mohan Reddy and Ors.) that the market value of the land would also depend upon the situation thereof. 18. Applying the said formula, if we rely on Exhibit B3, the market value of the land in question would come to about Rs. 1,25,000/per acre. It is, however, not possible to agree with the submissions of Mrs. Amareswari that we should determine the market value only on that basis upon addition of 10 per cent enhancement of the market value each year. It must be bear in mind that the lands in question were agricultural lands whereas the lands which were the subject matter of the said deed of sale was a homestead land, thus, some amount, therefore, will have to deducted towards the development cost. 19. Indisputably while comparing the market value of developed lands with that of undeveloped lands, the court has to make suitable deductions towards the cost of development. We, however, may notice that this Court, at different times, has spoken in different voices. In P.S. Krishna and Co. Pvt. Ltd. v. The Land Acquisition Officer. (Deputy Collector) Hyderabad, (1991) 2 SCALE 1186, this Court refused to interfere with the judgment of the High Court which had given a deduction of 20% towards development charges. Recently, a Division Bench of this Court in Mummidi Apparao v. Nagarjuna Fertilizers and Chemicals Ltd. 2008(16) SCALE 226 did not interfere with the decision of the High Court which had given a direction for deduction of 50% as development charges. However, we are not oblivious of the fact that this Court had observed in Viluben Jhalejar Contractor (D) v. State of Gujarat, (2005) 4 SCC 789 : 28. In Hasanali Khanbhai & Sons v. State of Gujarat (1995) 5 SCC 422 and Land Acquisition Officer v. Nookala Rajamallu (2003) 12 SCC 334 it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. 29. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. (See Kasturi v. State of Haryana (2003) 1 SCC 354, Tejumal Bhojwani v. State of UP. (2003) 10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer & Mandal R. Officer (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority and Anr. (2004) 10 SCC 745. 20. In the facts and circumstances of the present case, one-third deduction, in our opinion, should be made towards development costs for the lands situated both in Pasupala village as also B. Thandrapadu village. Keeping in view the fact that the lands are abutting National Highway and near the district town, where a large number of educational institutions have come up, 10 per cent escalation per year has to be added. Thus, Rs. 1,41,666.66 per acre may be fixed for the lands in Pasupala village. The lands in another village B. Thandrapadu Village being situated away from the NH 18, another 10 per cent from the amount fixed for the lands in Pasupala village must be deducted. Thus, Rs. 1,27,499.99 per acre may be fixed for the lands in B. Thandrapadu village. We have adopted the same method which had been adopted by the Reference Judge inasmuch as the Reference Judge had fixed market value for the lands situated in Pasupala village at Rs. 1,00,000/per acre and Rs. 90, 000/per acre in respect of B. Thandrapadu village." (k) An unreported judgment of this court in the matter of the Special Land Acquisition Officer (2) v. M/s. Tayabji Estate Pvt. Ltd. dated 23.02.2017 Original Side Land Acquisition Reference No.1/2000 in LAQ/SR/533. How to determine the market value of the acquired land. 27. The learned counsel for the claimant submits that even in the present proceedings though the State as well as the acquiring body failed to file their written statement, the State examined Mr. Sanjay Ragunath Kurvey, Dy. Director of Town Planning, Greater Mumbai to show the market value of the acquired land on the date of issuing Notification under section 4 of the said Act. The State witness Mr. Sanjay R. Kurvey placed on record the valuation report of the acquired land. In the said valuation report, the State witness has specifically stated that though he tried to collect the sale instances of open lands from village Vikroli, no comparable sales of open lands were available. Hence, sales of flats and built up properties in the vicinity of the land under acquisition and from adjoining village Hariyali were collected for determining the market value of the acquired land. 28. The learned counsel for the claimant submits that the Government Valuer has considered three agreements for sale dated 07.04.1995, 23.05.1996 and 23.05.1996 in his valuation report. All those sale instances were in respect of the built up structures only. The State Valuer opined that the valuation of the acquired land should be calculated @ Rs.3,200/per sq.mtr. He submits that at the time of calculating the market rate of the acquired land, the Valuer Dy. Director of Town Planning, Greater Mumbai failed to consider the advantages available to the acquired land i.e. near to the Railway Station, Express Highway situated in the developed area etc. Hence, the report prepared by the Government Valuer cannot be relied upon for fixing the market rate of the acquired land. 29. On the basis of these submissions and the authorities, the learned counsel for the claimant submits that the Land Acquisition Officer ought to have decided the market value of the acquired land @ Rs.6300/per sq. mtr. Hence, this Hon''ble Court be pleased to allow Reference directly Special Land Acquisition Officer to pay compensation of acquired land @ Rs.6,300/per sq.mtr. with all benefits as per amended provisions of the said Act. 30. On the other hand the learned AGP for the SLAO vehemently opposed the Reference on several grounds. It is the contention of the learned AGP that the Government valuer Mr. Sanjay R. Kurvey, Dy. Director, Town Planning, Greater Mumbai, after considering the documents available on record categorically held that the market value of the acquired land cannot be more than Rs.3220/per sq. mtr. She submits that at the time of determining the market value of the acquired land on the basis of sale instance of flat, he has taken into consideration the construction cost per sq. mtr, security deposits, development charges, architect fees, RCC consulting, legal charges, advertisement charges and other expenses. Considering all these expenses, the valuer and the SLAO right held that the claimant is entitled to compensation not more than Rs.3220/per sq. mtr. She submits that the Government Valuer has flatly stated in his deposition that as per the D.C. Rules 1991, for an independent development of the acquired land, an independent access is necessary. The acquired land is not directly approachable from the existing road. Therefore, right of way was required to be obtained from the internal road of Godrej Staff quarters for independent development and for this purpose some expenses were required to be incurred. Land is adjacent to the existing railway track. Therefore, as per D.C. Rules, 1991, if the site is situated within the distance of 30 meters from railway track, a NOC from the concerned railway authorities is required. 31. The learned AGP for the Government submits that the evidence of both the witnesses of claimant admitted that no sale instance of any vacant land was available for fixing the market value of the acquired land. She submits that bare reading of the valuation report dated 28.11.2007 submitted by the claimants witness show that for determining the market value of the acquired land, he has to take into account several factors like size, shape, access, frontage, civil amenities, potential user, distance from railway station, distance from highway etc. She submits that as per the report of the Claimant''s Valuer the value of the acquired land comes to Rs.3700/- but he added 70% on these factors. She submits that for all those amenities, neither the claimant nor their witness i.e. Valuer brought on record any cogent evidence. 32. The learned AGP for the State further submits that the market value arrived by SLAO is according to law, market value as on the date of issuing notification under section 4 of the said Act and same does not require any interference. 33. The learned AGP submits that their valuer Mr. Sanjay Raghunath Kurvey, Deputy Director of Town Planning, Greater Mumbai considered in all three sale instances of built up area i.e. flats at the time of fixing the marketvalue of acquired land. She submits that the agreement of sale dated 7.4.1995 registered on 14.11.1995 in respect of the flat having built up area 26.98 sq.mt. from CTS No.356(P) sold by Shri Navinchandra Jagjvandas Panchal to Prasad Prabhakar Mehrunkar for Rs. 2,00,000/- . The second sale instance was dated 23.5.1996 registered on 8.7.1998 in respect of 50.18 land with structure from Survey No.50-A, 50-B, CTS No.79 sold by Olive D''silva to Sumati B. Nayak for Rs. 18,000/- and agreement dated 23.5.1996 registered on 8.7.1998 of 657.17 sq.mtrs land from Survey No.50-A, 50-B, CTS No.79 sold by Olive D''silva to Sumati B. Naik for Rs. 18,000/- . She submits that their valuer has not considered the sale instances at Serial No.2 and 3 being of low rate land value. 34. The learned A.G.P. submits that on the basis of first sale instances dated 7.4.1995, the valuer considered the construction cost, 2% scrutiny fees on construction cost, subdivision charges, development charges, architect fees on construction cost, RCC consultant charges, legal charges, advertisement charges, misc.expenses and development profit at the time of fixing the market value of acquired land on the date of acquisition. She submits that considering all these facts, the government valuer valued the acquired land at the rate of Rs.1691 per sq.mtrs. on the date of agreement of sale i.e. 7.4.1995. For two years, he has given 20% increase in land rate from 1995 to

1997. Hence, he has valued the market rate of acquired land @ Rs.2030 per sq.mtr. But later on, he stated in his valuation report that the said sale was of built up property and situated at village Vikhroli (East), Kannamvar Nagar. That site was far away from Vikhroli Railway Station and therefore, the same was also not considerable and discarded by valuer. 35. The learned A.G.P. submits that the government valuer after considering the valuation report submitted by claimants valuer held that the claimants valuer had not properly given deduction on several factors at the time of deciding the marketvalue of acquired land. She submits that on the basis of the sale instances relied by the claimant''s valuer dated 2.6.1998, the market value of acquired land comes to Rs.3220 per sq.mtr. Only. She submits that the claimant''s valuer failed to take into consideration the deduction on the grounds of scrutiny fees, subdivision fees, architect fees, RCC consultant, legal charges, advertisement, misc.expenses at the time of fixing the marketvalue of acquired land on the basis of sale instance dated 7.10.1995. She relies on detailed analysis made by government valuer in respect of fixing of marketvalue on the basis of sale deed dated 7.10.1995 which is as under:

Claimant Valuation This Office valuation Remarks

A) Gross rate of flat per sq.mts. of B.U.A.- Rs. 11015/- A) Gross of flat per sq.mtr of built up area 9214/m2 It appear that following deduction has not been considered by the claimant valuer

881250/- = 95.64

I) Construction cost, Material + Labour per sq.mtr of B.U.A. Rs. 6000/- B) 1) Construction cost per sq.mtr 6000/ m2 a) Scrutiny fee, Development charges, sub division charges are to be paid to municipal Corporation and R.C.C. Consultant charges, Architect fee, legal charges.

ii)Misc. Expenses per sq.mtr. Of B.U.A. Rs.200/- 2) Scurtiny fee 13/ m2

iii)Builder profit at 15% on I + II Rs.930/- 3) Subdivision charges 02/ m2

4) Development charges 63/ m2

5)Architect fee at rate of 5% of Construction cost 300/ m2 The area mentioned in document is 80 sq.mts. Which is carpet as 95.637 m2. The claimant valuer consider carpet area.

B)Total of I + II + III = Rs. 7130/- 6)R.C.C. Consultant cost 300/ m2

C)Cost value of land component per sq.mtr of B.U.A. - (A-B) = Rs. 3885/- say Rs. 3885/- 7) Legal charges, Advertising Misc. Expenses at the rate of 5% of construction cost 300/ m2

8) Development profit 15% of dale value 1382/ m2

Total 1 to 8 8360/ m2

Value of land Component (A-B) 854/ m2

36. The learned AGP for the State further submits that even the claimant''s valuer admitted in his deposition that no sale instances of open plot of land were available. Therefore, at the time of fixing market-value of acquired land on the basis of built up area, one as to consider the factors as stated by Government valuer. As those factors were not considered by the claimant''s valuer, his valuation report is not relevant for fixing the market-value of acquired land. Hence, the reference made by the claimant is required to be dismissed with costs, holding that SLO awarded market value of acquired land prevailing on the date of issuing notification under section 4 of the said Act. 37. The learned counsel for the acquiring body submits that the Special Land Acquisition Officer considered all relevant factors at the time of fixing market-value of acquired land. The learned counsel for the acquiring body across the bar made a statement that he is adopting the submissions made by the learned AGP for the State. He submits that there is no substance in the present reference and same is required to be dismissed with costs. 38. On the basis of pleading, documents, submissions made by both the counsel, the issue involved in the present Land Acquisition Reference is as under: "Whether the claimant proved that they are entitled to compensation in respect of acquired land @ Rs.6,300/per sq.metre" .. Partly allowed with cost. Claimants are entitled @ Rs.5,000/per sq.mtr. 39. It is to be noted that in the present proceeding neither the Special Land Acquisition Officer nor the acquired body filed their written statement. Apart from that, no one entered into the witness box on behalf of acquiring body to justify their case. 40. For determination of the marketvalue of the acquired land, the Apex Court in the matter of Viluben Jhalejar Contractor (Dead) By Lrs. v. State of Gujarat (Supra) held that, 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 of the land under acquisition. 41. Admittedly in the present acquisition proceeding the claimant''s valuer as well as State of Maharashtra''s valuer specifically admitted in their deposition as well as in their valuation report that the land is situated in fully developed area. Hence, not a single sale instance of vacant land was available for determining the market-value of acquired land. Hence, both the valuers of claimants as well as government relied on built up area i.e. flat. 42. There is no dispute between the parties that the land is situated in a fully developed area. Even the Special Land Acquisition Officer in its award specifically stated that the land is situated in residential zone. Same is at a distance of 800 to 900 meters i.e. walkable distance of 5 to 10 minutes from Vikhroli Station of Central Railway, Mumbai. The eastern express highway is about 1/2 to 3/4 km. away from the land under acquisition. The land under acquisition is surrounded by Godrej Company Limited. Land used by staff quarters and manufacturing

purpose. The land under acquisition have access from the internal layout road of staff quarters. This itself shows that the acquired land had all benefits of developed area. Even the claimant had constructed compound wall for the acquired land. As the land is situated in developed area, both the valuers i.e. Government as well as Claimant''s relied on sale instances of built up area i.e. flats. Both the valuer relied on same sale instances dated 7.10.1995 and Deed of Confirmation dated 20.5.1998 of flat admeasuring 80 sq.mtr. on the 11th floor of the building Presidential Tower - B on land bearing Survey No.160 CTS No.167, 167/1 to 167/22 from village Ghatkopar, sold by M/s. Ashford Investment and Trading Company Private Limited to Mr. Pachyabhai Premji Patel and Ors. for consideration of Rs. 8,81,250/- . The claimant''s valuer stated that the gross rate of flat per sq.mtr. comes to Rs.11,015/per sq.mtr. Out of that he deducted sum of Rs.6,000/- towards construction cost, material plus labour, misc. expenses Rs.200, builder''s profit @ 15% Rs. 930/- . In this way, market value of land per sq.mtr Rs.3,900/- . He also deducted 5% as year gap to arrive value as on 18.10.1997. In this way, the claimant''s valuer held that marketvalue comes to Rs.3,700/per sq.mtr. as on 18.10.1997. Thereafter, the claimant''s valuer considered the advantages of acquired land i.e. shape, locality, having facility of school, hospital, bank, petrol pump, distance between the railway station and highway. On the basis of these factors, the claimant''s valuer added 70% of Rs.3,700/- and held that the market value of acquired land on the date of section 4 notification of the said Act should be Rs.6,300/- . 43. If we compare the valuation report submitted by claimant''s valuer and Government valuer only the difference is about deductions. The government valuer given additional deductions towards 2% scrutiny fees, construction cost, subdivision charges, architect fees, RCC consultant charges, legal charges, advertisement charges and misc. expenses. This shows that both the valuers arrived at the market value of land near about the same except deduction for some expense. Indirectly expenses shown by Government valuer were considered by claimant''s valuer in his report. Considering these facts, court have to do some guess work at the time of fixing market value. 70% increase given by claimant''s valuer is little bit on higher side. Instead of 70% it should be 30% only. If we consider 30% increase then valuation comes to Rs. 4,810/- . Considering these facts that the land is situated in developed area next to railway station, I am of the opinion that the claimant is entitled compensation in respect of acquired land @ Rs.5,000/per sq.mtr. 44. Apart from this issue, nothing is raised either by AGP and or by advocate for the acquiring body. Hence, reference is partly allowed as under: a) Claimants are entitled compensation in respect of acquired land @ Rs.5,000/per sq.mtr. b) Claimants are also entitled additional benefits as per amended provisions of Land Acquisition Act, 1894 i.e. 30% solatium, 15% component, interest etc. c) At the time of calculating the amount due and payable to the claimants, amount already paid be adjusted. d) Reference is partly allowed accordingly, with cost.