
(2007) 07 BOM CK 0103

In the Bombay High Court

Case No : First Appeal No's. 1036 and 1246 of 2006

The State of Maharashtra and The Executive Engineer (Civil) APPELLANT
Maharashtra State Electricity Transmission Company Limited,
E.H.V. Civil Construction Divn.

Vs

Rajendra Gaikwad
 Rajendra Gaikwad Vs The State of RESPONDENT
Maharashtra and The Executive Engineer (Civil) Maharashtra
State Electricity Transmission Company Limited, E.H.V. Civil
Construction Divn.

Date of Decision : 20-07-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 17, 18, 23

Citation : (2007) 07 BOM CK 0103

Hon'ble Judges : N.V. Dabholkar, J;M.G. Gaikwad, J

Bench : Division Bench

Advocate : A.S. Bajaj, in First Appeal No. 1036 of 2006, Ganesh Patil and R. K. Singnapurkar, in First Appeal No. 1246 of 2006, for the Appellant; Ganesh Patil and R.K. Singnapurkar, in First Appeal No. 1036 of 2006, K.B.Chaudhary, Addl.G.P. for Respondent No. 1 and A. S. Bajaj, in First Appeal No. 1246 of 2006, for the Respondent

Judgement

M.G. Gaikwad, J.—These two appeals challenge the judgment and award dated 6.7.2006 in Land Acquisition Reference No. 62 of 2005, whereby the learned Reference Court (Ist Adhoc Additional District Judge), Beed, partly allowed the reference of the claimant. (For the sake of convenience, the parties are referred to as "the claimant" and "the acquiring body").

2. The claimant is owner of part of the land survey No. 149 of village Bobade Taraf, Beed, admeasuring 3 Hectare, 5 R. This land, along with other lands, was proposed to be acquired for the purpose of erection of 220 KV Sub Station at Beed. Notification u/s 4 of the Land Acquisition Act, 1894 (Henceforth, "the L.A.Act"), came to be published in the Government Gazette dated 2.12.1999, and in the village on 21.11.2000. Declaration u/s 6 of the L.A. Act was made on

11.10.2001. After calling objections from interested persons, the Special Land Acquisition Officer ("SLAO" for short) passed award on 12.9.2003. Under this award, market price payable for the claimant's land was determined by SLAO at the rate of Rs.107 per square mtr. However, while declaring the award, the Collector reduced the same to Rs.75/= per square meter. The possession of the land was taken by private negotiations on 28.10.1997. After this award, the claimant accepted the amount under protest and submitted a reference u/s 18 of the L.A.Act, which was referred to competent Civil Court.

3. The claimant, by reference u/s 18 of the L.A. Act, claimed compensation at the rate of Rs.375/= per square meter. According to the claimant, though the land was agricultural land at the time of acquisition, it had N.A. potentiality, as the same is abutting the municipal limits of township Beed, the same is surrounded by residential localities, other development activities had already taken place, and there are housing societies as well as government offices and educational institutions in the nearby area. According to the claimant, the market price determined by the SLAO is inadequate and the SLAO did not consider N.A. potentiality, as well as sale instances relied upon by the claimant.

4. Before the Reference Court, the claimant examined himself and also produced, certified copies of five sale deeds, as comparable instances (annexure "A" to this judgment). On behalf of the acquiring body, no oral evidence was laid. However, it had produced certified copies of 20 sale deeds (Annexure B to the judgment). According to acquiring body, market price determined by the SLAO, is adequate.

5. The Reference court did not accept the sale transactions relied upon by the claimant (Exh.25 to 29) by observing that the market price shown in those sale deeds is much higher than the price claimed by the claimant. Sale instances pointed out by acquiring body at Exhibits 33 to 38 were not considered, solely on the ground that those transactions are in relation to agricultural lands. Sale deeds (Exh.28/29) produced by the claimant, are discarded also on the ground that those are transactions, after issuance of notification u/s 4 of the L.A.Act. Learned Reference court also observed that the SLAO considered the sale transactions and determined the market price at Rs.107 per square meter, however, the Collector reduced the same to Rs.75/= per square meter, without recording any reasons. Reference has also been made to compensation awarded in another land acquisition reference, at Rs.107 per sq.mtr. On that basis, market price of Rs.75/= per square meter, as declared under the award, is held inadequate. However, without recording any reasons, the Reference Court concluded that the market rate of the land under acquisition would be Rs.150/= per square meter, and compensation is enhanced at the rate of Rs.150/-per Sq.Mt. On the basis of difference in rates, of Rs.75/= per square meter, total enhanced compensation of the claimant's land is calculated to Rs.22,87,500/=. By grant of statutory benefits of 30% solatium and 12% component, enhanced compensation of Rs.40,09,988/= came to be awarded, with interest at 9 per cent per annum for a period of one year from 2.12.1999 and at the rate of 15 per

cent per annum from 2.12.2000 onwards till actual payment of additional compensation amount.

Feeling aggrieved by this award of the reference court, the claimant, as well as acquiring body have approached this Court by two appeals.

6. On behalf of the claimant, learned Counsel Shri Ganesh Patil submitted that the reference court did not give due consideration to the evidence on record which established that the acquired land is located in a developed area and had N.A. potentiality. There was no evidence from Respondent, to show that the acquired land was inferior in quality and potentiality than the lands under sale instances relied upon. According to the learned Counsel Shri Patil, sale transactions, on which the claimant had placed reliance, are genuine sale transactions and those related to the lands in the nearby area of the acquired land. Though the said sale deeds are in respect of the transactions of small plots, those can be used as comparable sale instances, as the land under acquisition is located in a developed area. No deduction towards development was essential. Therefore, according to learned Counsel the reference court ought to have granted compensation to the claimant at the rate of Rs.375/= per square meter as claimed since the said claim is also much less than the market price of the lands under sale instances placed on record.

7. Learned Counsel also made a grievance that under the award, benefit of interest u/s 34 is not given by the SLAO, nor remedied by the reference court and, therefore, this Court should grant the said benefit to the claimant. Shri Patil fairly admitted the claimant has received rental compensation for the period from 28.10.1997 till the date of publication of notification u/s 4 of the L.A. act, i.e. 21.11.2000. He, therefore, urged for interest under Sections 34 and 28 of the L.A. Act, from 21.11.2000 onwards.

8. On behalf of the acquiring body, learned Counsel Shri Bajaj submitted that the land under acquisition is agricultural land, the sale instances relied upon by the acquiring body before the reference court reveal market price of the land much below the market price fixed by the SLAO. Those transactions are proximate in time to the date of publication of notification u/s 4 of the L.A. Act, lands are within a short distance of the land under acquisition. So, according to learned Counsel Shri Bajaj, those sale instances were comparable sale instances on the basis of which the market price is much lower than what is determined by the SLAO and the reference court was not at all justified in enhancing the same.

9. He has further submitted that under the provisions of the L.A. Act, acquiring body is not liable to pay interest u/s 34 as the possession of the land was taken by private negotiations, prior to initiation of acquisition proceedings. On the point of deductions on account of development, he has submitted that the land under acquisition was agricultural land and the same is far away from the town, and not abutting the roads. Therefore, for development deductions ought to have been made which was not done either by the SLAO, or by reference court.

According to Mr. Bajaj, grant of compensation on the basis of square foot or square meter, by itself was not justified, as the land is a bulk agricultural land beyond municipal limits.

10. A copy of award passed by SLAO is produced before reference court at Exh.58. On perusal of the same, we noticed that the SLAO at internal page 7 of the award, recorded that this land is within the limits of municipal council, Beed. The land under acquisition is surrounded by residential localities. To the western side of the acquired land, there is Beed-Majalgaon road and towards south, there is Beed-Parali State Highway. Beed-Nalawandi road is also adjacent to the land under acquisition. SLAO has also noted geographical condition of the land in para (6) of the award and it is found to be at a distance of 1 kilometer from Taluka and District Head quarters. There are all other amenities like bus station, schools, cooperative housing societies. The SLAO considered the geographical condition and other amenities in the area and determined and offered the market price of the land acquired, on the basis of square meter and not by treating the land to be agricultural land. It was an offer made by the SLAO himself of the compensation on square meter basis thereby recognizing the land as having N.A. potentiality. Hence contention raised by acquiring body that compensation ought not to have been determined on the basis of square meter, cannot be entertained.

11. On behalf of acquiring body, Advocate Shri Bajaj placed reliance on the decisions of the Apex Court in the case of Smt. Indumati Chitale Vs. Government of India and another, , and State of Maharashtra and Others Vs. Digamber Bhimashankar Tandale and Others, in support of his contention that compensation on Sq.Mt./Sq.Ft. cannot be granted for agricultural land.

In the case of Indumati, the land acquired was admeasuring about 17.57 acres. The said land was within the limits of Nagpur Municipal Corporation. The land owner's request for grant of N.A. permission was rejected. Because of these facts, it has been held that the lands continued to be agricultural lands without being developed for building purposes. As the N.A. permission was found to have been rejected, it was observed that no one would prefer to purchase this agricultural land on square foot basis. This being the factual position, the Apex Court held that the land owner would be entitled to compensation determined on per acre basis and grant of compensation on square foot basis was per-se illegal.

In the case of Digamber (supra), the land under acquisition was admeasuring 12.50 acres and it was an agricultural land. The lands were found converted for N.A. purposes. However, from the evidence on record, it was found that as on the date of notification, there was no development in that area, the developments were at a distance of 3 to 4 kilometers from the said land. On some portions of it, some illegal constructions were found existing. In view of these facts, it has been held that as on the date of notification, there was no potential value of the land, though it was converted to N.A. purposes on account these facts, the determination of compensation on the basis of potential value is held illegal.

The ratio in both the cited cases therefore is not applicable to the case before us. The SLAO in our case, in his award itself admitted the N.A. potentiality of the land. As observed by him in the award, the land under acquisition is surrounded by housing societies and other developments, as well.

DATE : 24/07/2007 -----

12. As discussed hereinabove, we find that at the time of acquisition the acquired land was having N.A. potentiality. The SLAO as well as reference Court accepted this position and the market rate of the land came to be determined on square meter basis. Both the claimants as well as acquiring body challenged the award of the reference Court by preferring appeals. The reference Court determined the market price/rate on the basis of sale instances. According to claimant, the Reference Court did not consider the evidence on record i.e. the sale instances which were brought on record. So, the award of the reference Court is not justified. On the other hand, acquiring body also challenged the enhancement granted by reference Court and according to them, the sale instances brought on record by them were showing the market rate much below than the compensation granted by the SLAO. In view of these rival contentions, the main point for our consideration is "as to whether the rate determined by the reference Court is just and proper." In view of Section 23 of the Act, the market value of the land at the date of publication of notification u/s 4 of the Act needs to be determined. The market rates can be determined by three recognised methods:

1] The comparable sale instances.

2] The annual yield basis

3] Valuation by experts.

It is well settled that method of determination of market rate on the basis of sale instances of comparable lands is the proper method. The reference Court also adopted that method for determination of market rate. However, grievance from both the sides is that the evidence about sale instances has not been considered properly. One of the contention raised on behalf of the claimant is that the reference Court without considering the sale instances and without recording any reasons discarded that evidence observing that the prices shown are exorbitant. As stated above on behalf of acquiring body also contention is raised that sale instances brought on record are not considered. In view of these rival contentions the evidence adduced before the reference Court oral as well as documentary requires consideration.

13. The claimants produced on record certified copies of sale deeds at Exhs.25 to 29. Out of 5 sale instances, sale transaction under Exhs.27 to 29 are of the lands located in Beed Taraf Bobde area and other two are from different locality known as Taraf Pingale. On behalf of the acquiring body as many as twenty certified copies of the sale deeds were produced on record. Out of the said twenty sale

transactions the transactions under Exhs.33 to 38 are for the year 1999 and remaining sale instances are for the year 2000 and 2001. The market rates as well as the sale instances within proximate time of the date of notification u/s 4 of the Act are relevant. The sale instances for the years 2000 and 2001 need no consideration when the sale instances for the year 1999 which are within proximate time of date of notification u/s 4 are available on record. So far as the sale instances brought on record by claimants, the reference Court in paragraph 10 of the judgment observed that sale transactions under Sale deeds at Exhs.25 to 27 are prior to the date of notification u/s 4(1) of the Act. The sale deeds at Exhs.28 and 29 are observed to be the sale instances after the date of notification u/s 4 of the Act. The date of notification u/s 4 in the present case is 2/12/1999 and sale deeds at Exhs.28 and 29 are dated 10/2/2000 and 30/12/2000. Sale deed at Exh.25 is dated 15/10/1998 and transactions under Exhs.26 and 27 are dated 19/5/99 and 30/9/99. So these sale transactions are prior to the notification u/s 4 and also within the proximate time. In respect of sale transactions of which the acquiring body placed reliance, it has been rightly observed that the transactions under sale deeds Exhs.33 to 38 are the transactions in the proximate time of date of notification and relevant. It is for us to examine those sale transactions to ascertain as to whether those can be said to be comparable sale instances for the purpose of determination of market rate.

14. On perusal of sale deed Exh.25 we noticed that the property under this sale deed bearing survey No. 173 is located in Pingale Taraf area. It is a sale transaction of a house property. So this sale transaction which is a transaction of plot alongwith a house structure cannot be said to be a comparable sale instance of the land acquired. of Survey No. 174 located in Pingale Taraf area. The land acquired is from Bobde Taraf. It is for the claimant to bring on record the location as well as the other amenities available to show that same can be accepted to be a comparable sale instance. The claimant has admitted that each zone consists of a land more than 100 Acres. In relation to sale instances, the claimant has stated that he has produced copies of sale deeds and those plots were from Beed Taraf Bobde. However, in relation to sale deed of a land from Taraf Pingale, he has not deposed anything. In absence of evidence from the claimant, it cannot be concluded that the lands situated at Taraf Pingale area are of similar advantages and the sale deeds cannot be accepted to be the comparable sale instances. He made a general statement that there are roads and other facilities. However, he could not give any details about the location of Pingale Taraf area except a statement in cross examination that Taraf Pingale area of Beed is in between Nagar road and Solapur road. Survey Nos.173 and 174 as is evident from Exhs. 25 and 26 are the sale deeds from Pingale Taraf area of Beed. Survey No. 173 as admitted by claimant himself is situated near Asha Theatre. Survey No. 174 which is a sale transaction under Exh.26 as admitted by claimant himself is situated to the backside of Navgaon locality. So considering these admissions of the claimant, it cannot be said that the lands under sale deeds Exhs.25 and 26 are similar with the land under acquisition.

The third sale deed on which reliance has been placed by the claimant is a sale deed of land survey No. 195 from area of Taraf Bobade, the same locality where the land acquired is situated. In relation to this land survey No. 195 also claimant did not give any other details except his statement that land survey No. 195 is 1 Km. away from the land under acquisition. There is no evidence from the claimant's side to show similarity of land survey No. 195 with the acquired land. Only fact established is that land survey No. 195 is from Bobade Taraf area, but at a distance of 1 K.M. So this sale deed Exh.27 cannot be said to be a comparable sale instance. As stated above other 2 sale deeds are post-notification sale deeds, though they are from Taraf Bobade area. No doubt it is not an absolute rule that the sale transactions of the lands situated at long distance cannot be treated to be comparable sale instances. Even post-notification transaction also can be taken into consideration with some allowances of deductions because of time factor. However, it must be shown that the said lands are the comparable lands and are having same advantage and other amenities. However, no such evidence is laid before the reference Court though sale deeds are produced on record by claimant. The documents by themselves do not assist the claimant to prove the market rate of the lands at the time of date of notification u/s 4 of the Act, in absence of evidence of similarity in quality and similar amenities.

15. Though acquiring body produced on record 20 certified copies of sale instances only the sale transactions under Exhs.33 to 38 are within the proximate time of date of notification. No evidence is laid on behalf of the acquiring body also to show that these sale transactions are also of comparable lands.

Sale deed at Exh.33 is of a land survey No. 151-A from Bobade Taraf area. 20 Ares portion of the land is alienated for a consideration of Rs.45,000/-. This sale is admittedly a sale of agricultural land. However, no evidence was adduced to show that this land is having some advantage like the land under acquisition. Sale deed at Exh.34 is a transaction of sale of agricultural land Survey No. 101 to the extent of 7 Acre 9 Gunthas out of total area of 25 acres and 29 gunthas. 7 Acre 9 Gunthas land is found to have been alienated for a consideration of Rs.3 lakhs. At the trial before reference Court certified copy of map of Bobade Taraf area is produced at Exh.30. Land survey No. 101 is found located at a long distance from the land under acquisition. It is abutting to village boundary of Chincholi Mali. This land not being adjacent land and there being no other evidence from the acquiring body on the point of similarity of the land this sale transaction of land survey No. 101 also cannot be used as a comparable sale instance for the purpose of determination of market rate. Sale transaction under Exh.35 is a sale instance of land survey No. 151-A admeasuring 20 Are. This is also a sale instance of agricultural land. In the map this survey No. 151-A is shown adjacent to village Gairan and the land acquired is shown after one other agricultural land. However, about similarity and other amenities also no evidence is laid on behalf of the acquiring body. Apart from this fact, this transaction is a

transaction of agricultural land.

Under sale deed Exh.36, Two Acres 36 Gunthas portion out of 9 Acres 26 Gunthas of survey No. 96 has been sold for a consideration of Rs.1,20,000/-. This land survey No. 96 is far away from land under acquisition. It is near the village boundary of village Pimpra. There is no evidence to show that it is having same advantage and the similarity with the land under acquisition. The transaction under Exh.37 is a sale transaction of 2 Acre portion out of survey No. 127 which has been sold for a consideration of Rs.1,50,000/-. This is also a sale instance of agricultural land, far away from the land acquired. About the quality and similarity in relation to this land also no evidence was laid. The last sale transaction relied upon by the acquiring body is of Survey No. 78. Agricultural land admeasuring 2 Acres 80 Ares out of survey No. 78 was sold for a consideration of Rs.94,000/-. This land survey No. 74 is far away from the land under acquisition practically at the boundary of village Hirwadi. As regards the quality of the land or other amenities or the developments in that area no evidence has been brought on record. So this sale transaction of agricultural land far away from land acquired is not relevant to determine market rate of land acquired.

16. The sale transaction under sale deeds Exh.33 to 38 relied upon by acquiring body are the transactions of agricultural land. As discussed to above, the lands are far away from the acquired land. About similarity and existence of N.A. potentiality no evidence was laid. The market rate of the land shown under those transaction is much below the market rate determined by the SLAO. In view of the provisions of Section 25 of the Act the Reference Court cannot award compensation less than what was awarded u/s 11. Under the award SLAO determined market rate at Rs.107/- per Sq.Mt. and by Collector at the rate of Rs.75/- per Sq.Mt. In view of the provisions of Section 25 of the Act, the acquiring body at the most could have placed limited reliance to the extent that the market rate should not be enhanced beyond what is awarded under the award.

17. The claimants approached this Court challenging the award of the reference Court on the ground that sale instances produced on record have not been considered. However, said sale instances are of lands situated at a long distance and there is no evidence to show similarity with acquired land. Admittedly those are not the transactions of part of land under acquisition nor of adjacent lands. Those are not the sale transactions of the lands of similar quality or with similar advantage and N.A. potentiality also. It is well settled that the burden is always on the claimants to prove the inadequacy of the compensation granted by the SLAO. In the present case, the claimants could not bring on record the material to prove that the compensation granted by SLAO is grossly inadequate.

18. The next point for consideration is as to whether there was any other evidence before reference Court to enhance market rate from Rs.75/- to Rs.150/ per Sq.Mt., when sale instances were not of comparable lands. The reference

Court while determining the market rate of the lands at the rate of Rs.150/-per Sq.Mt. did not record any reasons, besides the observations made as under:

Already SLAO has come to the conclusion that the market value of acquired land on the date of notification u/s 4(1) of the Act was Rs.107/- per Sq.Mt. However, he awarded compensation at the rate of Rs.75/- per Sq.Mt. as the Collector has awarded compensation at Rs.75/-per Sq.Mt. Looking to the aforesaid circumstances, in my opinion Rs.150/-per Sq.Mt. towards compensation will be proper.

The reference Court in absence of any other evidence has accepted Rs.107/- per Sq.Mt. the rate granted by SLAO as base for determination of market rate. However, he increased the same to Rs.150/-per Sq.Mt. without recording any reasons at all. So this finding enhancing market rate from Rs.75/- per Sq.Mt. to Rs.150/- per Sq.Mt. by reference Court is found to be a finding without any reasons and the supporting evidence for the same. So, that finding is not at all sustainable.

19. On perusal of the judgment and award of the reference Court, we noticed that though the land under acquisition was an agricultural land, the reference Court granted compensation for acquired land admeasuring 3 Hectares 5 Ares area equivalent to 30,500/- Sq.Mt. at the rate of Rs.150/- per Sq.Mt. without any deduction towards development charges. Learned advocate Shri Patil for claimant submitted that when the land is in the developed area, there is no necessity to make any deduction out of the total area towards development charges. In support of this contention, he has placed reliance on the decision of Division Bench of this Court in the case of Osman Khan Abdul Majid Khan and Anr. v. State of Maharashtra reported in 1994 M.L.J. 1103. wherein it has been held that there was an evidence in that case to show that area adjoining the acquired land was the area already developed and where houses were constructed and land had potential of being used as a building site and because of these facts, principle of deduction of expenses required for development of large track was not applicable in the circumstances. The Division Bench observed thus:

The proposition that the large area of the land cannot possibly fetch a price at the same rate at which small plots are sold, in our considered opinion, does not apply in given circumstances of the case. The sale instances certainly constitute a relevant piece of evidence for determining the value of the acquired land.

In that case also it has been held that large area of the land cannot possibly fetch a price at the same rate at which similar plots are sold is not absolute proposition but in given circumstances it would be permissible to take into account the price fetched by the small plots of the land. On the facts of the said case, the sale instances of small plots are held relevant and principle of deduction is held not applicable because of reason that neighbouring area was already developed one and houses have been constructed and land has potential value of being used as building sites and land is also found converted into city

survey numbers. Such is not a case before us. The land under acquisition was an agricultural land, no evidence is there to show that adjoining lands were already developed and development activities such as providing amenities like roads, drainage, electricity in that area were found provided at the time of acquisition.

Reliance has also been placed on the decision of Apex Court in the case of Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, wherein the Apex Court observed that sale value of even a small developed plot of land can form basis for determining value of a large track of acquired land if it is also fully developed with all facilities requiring little or no further development and in such cases principle of one third deduction cannot be resorted to when the acquired land is situated in an already developed area. It has been observed that if larger track of land because of advantageous position is capable of being used for the purpose for which the similar plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for the purpose of comparison is not warranted. If larger track of land is having advantageous position of being used like a smaller plot then in such cases the principle of deduction will not be attracted. This ratio is not any way applicable to the facts before us. Admittedly at the time of acquisition the land was not having other civic amenities like road etc.

In support of contention that deduction is not necessary and purpose of acquisition is relevant, reliance has been placed on the decision of Apex Court in the case of Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, . The acquisition in the case before Their Lordships of Apex Court was acquisition for the purpose of construction of new broad gauge line for Konkan railways. It has been held that as per Section 24 the SLAO shall also exclude any increase in the value of the land likely to accrue from use to which it will be put once acquired. The market value of the land means the price of the land which a willing seller is reasonably expected to fetch in the open market from a willing purchaser. In paragraph 29 of the judgment it has been observed that purpose for which the land is acquired must also be taken into consideration in fixing the market value. However, it has not been held that in every case deduction is not permissible. In the very case the acquisition was for laying railway line. Though it is observed that question of development thereof would not arise, finally deduction at the rate of 20% was accepted for determining the market rate of the land acquired. In this case, no absolute rule is laid down that deduction is always impermissible.

20. On behalf of the acquiring body, advocate Shri A.S.Bajaj contended that deduction towards development charges is a normal rule. In support of this contention, he has placed reliance on the decisions reported in the case of (1) Smt. Basavva and others Vs. Special Land Acquisition Officer and others, ; (2) K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, ; and (3) Land Acquisition Officer, Kammarapally Village

(A.P.) v. Nookala Rajamallu and Ors. reported in AIR 2003 SCW 6674. In the case of Basavva and Ors., deduction between 33% to 53% from market value for development charges was held to be valid. In Bassava's case High Court gave additional deduction of 13% that is total deduction of 65% and the said deduction adopted by High Court is accepted observing that it cannot be said to be illegal. In the case of K.S.Shivadevamma and Ors., the deduction of 53% under the building rules and further deduction towards development charges ordered by High Court held not illegal. In the case of Land Acquisition Officer Kammarapally v. Nookala Rajamallu and Ors., deduction of 53% towards development charges is held legal. In all these cases it has been observed that as a normal rule, deduction towards development charges is to the extent of 33.3%. However, considering the development rules, in those cases further deduction is also held legal. So the ratio from these cases make it clear that in cases of acquisition of large track of lands when market rate is to be determined on the basis of sale instances of small plots, deduction is always permissible as some portion of the land while preparing layouts, needs to be reserved for internal roads, open spaces and thus not available for sale on Square meter basis.

21. In the case before us, the evidence laid before the Reference Court oral as well as documentary including the sale instance was found not sufficient to determine the market price at the time of acquisition of the land. The SLAO accepting the potentiality of the land had granted compensation on square meter basis however, without there being any deduction towards development charges. He has determined the market rate at Rs.107/- per Sq.Mt., considering the location of the land. It appears that he has collected some information of sale instances and on that basis as well as market rate determined in another land acquisition proceeding SLAO determined the market rate. Learned Advocate Shri A.S.Bajaj submitted that the material collected by the S.L.A.O. cannot be considered by reference Court unless that was brought on record before the Reference Court. This contention raised by Shri Bajaj needs to be considered at this stage.

DATE : 26/07/2007 ----- The award is a public document. Same is produced before reference Court while challenging the market rate as unreasonable or inadequate. No doubt, the reference Court needs to record finding on the issue of market rate on the basis of material available before it. For the purpose of ascertaining the reasonableness of the market rate whether it is reasonable and adequate, the award needs to be placed before the Court. The mandate u/s 25 imposes restriction not to grant compensation less than awarded by SLAO. In view of provisions u/s 25 the market rate determined is binding on the acquiring body as well as on the reference Court though reference Court may enhance the same on the basis of material placed before him by the claimant but cannot reduce it. In view of these facts, contention raised on behalf of acquiring body that the material referred in the award cannot be considered is devoid of any merit. We are referring the award for limited purpose. While passing the award, SLAO on the basis of material before him determined the market rate of

Rs.107/- per Sq.Mt. However, making a reference of one letter from Collector that rate came to be reduced to Rs.75/-. No material is placed before us on what count Collector directed the reduction. Whether the market rate initially determined by SLAO is reasonable or whether Rs.75/- per Sq.Mt. as finally determined on direction of Collector is the reasonable rate has to be seen. on behalf of acquiring body, Advocate Shri Bajaj submitted that Collector may have reduced it on account of deduction for development charges. In support, neither the letter nor any other material is placed before us. As already discussed to above, the principle of deduction towards development charges is applicable in the present case as the land acquired is a large tract agricultural land. As per normal rule, the deduction is 33.3% towards development charges. By applying the deduction of 25 to 30% of the initial market rate of Rs.107/- per Sq.Mt. the rate comes to Rs.75/-per Sq.Mt. with some fraction. We are not inclined to consider that fraction because in the matter of determination of market rate always some guess-work is required. So in view of these facts, the market rate finally determined at the rate of Rs.75/- per Sq.Mt. can be said to be a just and reasonable market rate. In view of these facts, the market rate determined and compensation granted by SLAO is found just and reasonable and no material was placed before the reference Court for further enhancement, hence the finding of inadequacy and enhancement of market rate by the reference Court is not at all sustainable.

22. The last submission advanced on behalf of the claimant is that the SLAO did not grant interest u/s 34 of the L.A.Act. The reference Court also has not granted the interest u/s 34 of the Act. According to Mr.Patil as the claimant is dispossessed long back before initiation of the land acquisition proceedings, the Collector ought to have granted interest u/s 34 of the Act. In support of this submission he has placed reliance on the decision of Apex Court in the case of Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, wherein the Apex Court held that interest u/s 28 as well as 34 can be claimed at any stage of the proceeding. In case it was not awarded by lower Court then the higher Courts in any proceeding under the Act may grant it. On behalf of the acquiring body, Adv. Shri Bajaj by placing reliance on the decision of R.L. Jain (D) by Lrs. Vs. DDA and Others, submitted that the provisions of Section 34 are not attracted to the cases where the possession of the land has been taken before publication of notification u/s 4 of the L.A.Act. In the case of R.L.Jain the Apex Court considered the decision in the case of Vijay Cotton and Oil Mills and in paragraph No. 14 of the judgment, held that decision in the case of Vijay Cotton and Oil Mills is not an authority for the proposition that where possession is taken before issuance of notification u/s 4(1) interest on compensation amount could be awarded in accordance with Section 34 of the Act with effect from the date of taking possession. So the said decision relied upon by Shri Patil claiming interest u/s 34 from the date of possession is not helpful to the claimants in view of the observations made by Apex Court in R.L.Jain's case.

23. The Apex Court in the case of R.L.Jain considered the scope of Section 34

which refers to payment of interest and as to whether said provisions are applicable to a case where possession has been taken over prior to issuance of notification u/s 4(1) of the Act. After examining the scheme of the Act, under various Sections, it has been held that the term "taking possession" means taking of possession in accordance with Section 16 or 17 of the L.A.Act which stage would reach after publication of notification u/s 4. The circumstances of taking possession prior to notification u/s 4 initiation of acquisition proceeding is considered by the Apex Court in paragraph No. 18 of the judgment. At this stage, it will be proper to refer to those observations, as it is.

In a case where land owner is dispossessed, prior to the issuance of preliminary notification u/s 4(1) of the Act, the Government merely takes possession of the land but the title thereof continuous to rest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore, only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property where possession is taken prior to the issuance of preliminary notification in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation payable to the land owner for acquisition of the property. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

From the above observation, it is clear that when the possession has been taken before initiation of land acquisition proceedings, title of the property remains with the land owner and Government retains such a possession for which the Government is liable to pay rental compensation, rent or damages and if such payment is delayed the land owner may also claim interest on it. It is not disputed that in the present case, the land owner received rental compensation for the period from the date of possession till 21/11/2000. The date of possession contemplated u/s 34 as observed by the Apex Court is the possession under the Act. The Collector has authority to take possession of the land u/s 16 after he makes an award u/s 11 of the L.A.Act. Another provision in the Act is taking of possession u/s 17 in the case of emergency. In the present case, the award came to be passed on 29/7/2003. u/s 16 of the Act, the Collector was competent to take possession after this award. So upto the date of award i.e. 29/7/2003, the claimant can claim rent and damages on account of Government retaining possession. For that purpose, claimant may take appropriate proceedings.

24. The award came to be passed on 29/7/2003. According to Shri Patil, the Collector ought to have granted interest u/s 34 for the earlier period i.e. from the date of taking possession. In view of the ratio laid down in R.L.Jain's case, the claimant is not entitled to interest u/s 34 of the Act upto the date of award. In the present case though possession of the land has been taken prior to the notification u/s (4), the claimant is not entitled to interest u/s 34 till the

possession is taken under the provisions of the Act. Till the date of award title of the land remains with the claimant. However on the date of award the claimant ceased it and title vested in the Government as the possession has been already taken by the Government. Hence from the date of award till the actual payment is made the claimant is entitled to the interest u/s 34 of the Act and consequently interest u/s 28 in case there is an enhancement by the reference Court. The reference Court enhanced the compensation but that award for enhancement is not found justified and by this judgment, we set aside that part of the award of reference Court. Hence in the present case, question of granting interest u/s 28 in favour of the claimant does not arise. However, from the date of award i.e. from 29/7/2003, till the date of actual payment, the claimant is entitled to interest u/s 34 of the Act. To that extent relief needs to be granted in favour of the claimant by partly allowing claimant's appeal. As stated above, the award passed by the reference Court is not sustainable, hence the appeal preferred by acquiring body needs to be allowed and hence we set aside the award passed by reference Court.

25. In the result, First Appeal No. 1036/2006 is allowed. The award dated 6/7/2006 passed by reference Court in L.A.R.No.62/05 is quashed and set aside and we confirm the award dated 29/7/2003 passed by the Collector.

26. We partly allow First Appeal No. 1246/2006 preferred by claimant, by confirming award passed by SLAO. We direct that the respondent-State shall pay interest u/s 34 of the Act to the claimant from the date of award i.e. from 29/7/2003 till the date of actual payment as per award of the SLAO. 26. The amount deposited by appellant acquiring body in First Appeal No. 1036/2006 is to be refunded to the acquiring body after deducting the amount of interest u/s 34 as ordered in favour of the claimant.