
(2008) 09 BOM CK 0029

In the Bombay High Court

Case No : First Appeal No. 1469 of 2007 in L.A.R. No. 723 of 1991, First Appeal No's. 412 to 421 of 2007, Cross Objection (Stamp) No's. 16303, 16306 and 16307 OF 2006 and Cross First Appeal (Stamp) No's. 13587 to 13591 of 2000, First Appeal (Stamp) No. 7522 of 2

The State of Maharashtra

APPELLANT

Vs

Sahadu Aba Shete and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 33, Order 6 Rule 17

Land Acquisition Act, 1894 — Section 10, 11, 12(2), 18, 18(2)

Citation : (2008) 09 BOM CK 0029

Hon'ble Judges : Swatanter Kumar, C.J.;A.P. Deshpande, J

Bench : Division Bench

Advocate : A.R. Patil, Assistant Government Pleader and P.M. Joshi, for the Appellant; A.R. Patil, Assistant Government Pleader, Anil Ahuja, J.H. Ahuja, Asha Rakh, Anand Prabhu/Chaware and Smita Anand, for the Respondent

Judgement

Swatanter Kumar, C.J.—On 25th August 1988, the Special Land Acquisition Officer (SLAO), Irrigation II, Nashik issued on behalf of the State of Maharashtra Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) for acquisition of the lands for a public purpose namely, construction of Tisgaon Dam. Corrigendum to this Notification was issued on 24th July 1989. These Notifications were published in the Government Gazette on 25th August 1988 and 26th October 1989, whereupon it was also so published in the local newspapers on 20th August 1988, 23rd August 1988 and even notified at the village chawadi on 17th April 1989. In furtherance to these Notifications, the SLAO issued a declaration u/s 6 of the Act on 23rd March 1990 where after he proceeded in accordance with law and after hearing the Claimants, made an Award u/s 11 of the Act on 16th February 1991 determining compensation payable to the Claimants at the following rates:

2. Dissatisfied with the extent of compensation, the Claimants without prejudice to their rights and contentions made applications u/s 18 of the Act claiming compensation at the rate of Rs. 1,00,000/-per hectare for jirayat land (cultivable land) and Rs.5,000/-per hectare for pot kharaba land (waste land). The Claimants produced documentary and oral evidence and, amongst others, proved on record certain sale-deeds and judgments of the Court being Exhibits 15, 23, 34 and 36. The State government examined only one witness DW1, whose statement was recorded as Exhibit 49, who was not aware of the contents of the sale deed dated 6th April 1988 and thus could not prove in accordance with law Exhibit 50, sale deed relating to the Village Khedgaon where it was stated that the jirayat land measuring 1 hectare 99 Ares was sold for a sum of Rs. 40,000/-. The learned Reference Court relied upon Exhibit 34 sale deed dated 24th March 1986 vide which 27Ares bagayat land was sold for Rs. 41,000/-in village Khedgaon giving a rate of Rs. 1,51,851/per hectare.

3. While referring to other evidence on record, the learned Reference Court enhanced the compensation payable to the Claimants for acquisition of their land as follows : Rs. 1,47,000/-p.h. for Jirayat Land (Group II) Rs. 73,500/-p.h. for Pot Kharab land.

4. The State of Maharashtra took exception to the enhancement of compensation by the Reference Court and thus filed the present Appeal i.e. First Appeal No. 1469 of 2007 challenging the correctness of the judgment of the Reference court on different grounds. The Respondent-Claimants have not preferred any Appeal or Cross-Objection against the judgment of the Reference Court.

5. We may usefully refer to the reasonings and findings recorded by the learned Reference Court while enhancing the compensation payable to the Claimants. The same reads as under:

14. The last witness examined on behalf of the claimants to prove sale instance Ex. 34 is P.W. 2 Somnath Punjaji Thube. According to him on 24-31980 he had sold G. No. 242 from village Khedgaon to Savitribai Bhaskarrao Davange for Rs. 41,000/-. The area sold was 27ARE. It was bagayat land and it was irrigated on the well water. According to him, land was sold as per the then market rates prevailing. There was also electric motor of 3 H.P. Installed on the said well. He had 1/10th share in the well and electric motor. He had purchased said electric motor for Rs. 2,500/-to Rs. 3,000/-. According to him, he was required to spend round about Rs. 2,000/-for getting electric connection. Earnest money of Rs. 24,000/were received at the time of agreement of sale and the remaining amount of Rs. 17,000/-, was paid at the time of sale-deed. According to him, he had signed the said sale-deed to Ex. 34. He states that the distance between the acquired land in the present reference and the land sold by him is only 300 to 400 metres. Quality and fertility of the acquired land and that of the land sold by him is the same. So, he has certainly proved the contents of the said sale-deed Ex. 34. It is pertaining to the bagayat land from the same village. When the sale instances of Jirayat land like present acquired land are not produced on record,

then for comparison and proving the then market rate of the Jirayat land from the same village. One can certainly keep reliance on the sale instance of the bagayat land. It is not in dispute that the land under sale instances is bagayat land and therefore, it is superior in quality to the Jirayat land like the land under present reference. Under these circumstances, when the land in question is bagayat land and in absence of proof of extant of superiority of the land to Jirayat land, then in that case as it has been held by the Supreme Court in the case of Kantaben Manibhai Amin and Another Vs. Special Land Acquisition Officer, Baroda, that the value per acre should be determined after taking into consideration contemporaneous documents of sale of Jirayat land and it has awarded 25 per cent excess compensation over and above market value of Jirayat land. So, on the basis of proved sale instance Ex. 34 in the present references dated 24.3.1986 the claimants have proved that the land G No. 242 admeasuring 0.27 ARE was sold for Rs.41,000/- from village Khedgaon. So, the basis of it per hectare rate on the date of alleged sale dated 24.3.1986 comes to Rs. 1,51,000/-. But the gap between said sale instance dated 24.3.1986 and the present notification u/s 4 in this reference dated 26.10.1989 is of 43 months. So, if 10% rise is given per annum, then for this 43 months, the rise which is required to be given will come to 35%. So, if so the proved rate of Rs. 1,51,000/- P.H. On the basis of sale instance dated 24.3.1986 vide Ex. 34 ;if rise is given of 35%, then rate of bagayat land will come to Rs. 2,03,000/-P.H. If 25% deduction is given for the Jirayat land being present land as Jirayat land on the basis of decision by the Apex Court in the case supra Kantaben Manibhai Amin v. The Special Land Acquisition Officer, Baroda, then Jirayat rate for group No. III will come to Rs. 1,52,000/-P.H. If deduction of Rs.5,000/- is given as per the gap of Rs.5,000/- kept in two different groups by the S.L.A.O., then rate for Jirayat Group No. II will come to Rs. 1,47,000/-. This according to me will be just and proper compensation rate of be awarded to the claimants in the present reference which will meet the ends of justice. Consequently, the claimants are entitled to get aforesaid market rate as worked out by me.

6. The challenge to the correctness of the above findings on behalf of the State is primarily on the ground that even if Exhibit 34 was to be relied upon, still the Court should have made appropriate deductions on account of smallness of the land subject matter of Exhibit 34, and the fact that the land sold vide Exhibit 34 was a bagayat land and the compensation payable for jirayat land should have been reduced by atleast 50% and, lastly, that the Claimants had not produced any evidence on record to show that there was increasing trend in the sale consideration of the land during the period 1986 to 1989 which is the relevant period. The Claimants having failed to discharge their obligation, the increase granted by the Reference Court u/s 10 is without any basis.

7. Before we proceed to discuss merit or otherwise of the contentions raised in First Appeal No. 1469 of 2007, it is necessary for us to deal with the facts of bunch of another first appeals which have been listed for hearing together with this appeal. First Appeal No. 366 of 2000 and group of connected matters:

8. The learned Reference Court, vide its Judgment dated 29th April, 1999 decided 48 references, out of which 4 references were barred by time. The learned Reference Court dismissed all those 48 references with costs. Out of 48 references, 44 references were dismissed on merits as, according to the Reference Court, there was no substance in the claim of the claimants. However, the remaining 4 references were dismissed, as reference petitions u/s 18 of the said Act in those references were filed by the claimants beyond time. Out of the said 48 claimants, whose cases were dismissed by the learned Reference Court vide its judgment dated 29th April, 1999, 41 claimants have filed the above first appeals before this Court. It may also be noticed that out of 4 land acquisition references which were dismissed by the learned Reference Court, as being barred by time, three claimants have filed appeals before this Court being First Appeal Nos.891 of 1999, 893 of 1999 and 1382 of 2005.

9. When these appeals were pending in this Court, during the pendency of these appeals, some of the claimants/appellants expired resulting in filing of Civil Application Nos.4272, 4273, 4274 and 4275 of 2008 in First Appeal Nos.368 of 2000, 372 of 2000, 375 of 2000 and 376 of 2000 for bringing legal representatives on record.

10. Vide orders dated 6th June, 2001, 10th April, 2007 and 13th August 2007 some of the appeals were dismissed for non compliance of objections and in some of the appeals conditional order was passed which was not complied with and resultantly the Civil Application No. 3818 of 2008 in First Appeal No. 903 of 1999, Civil Application No. 3820 of 2008 in First Appeal No. 981 of 1999, Civil Application No. 3800 of 2008 in First Appeal No. 891 of 1999, Civil Application No. 3819 of 2008 in First Appeal No. 977 of 1999 and Civil Application No. 4885 of 2007 in First appeal No. 979 of 1999 have been filed for recalling and/or setting aside the order passed by the Registrar (J) and for hearing the appeals on merits.

11. Still further three Civil Application Nos.3729 of 2008 in First Appeal No. 367 of 2000, 3985 of 2008 in First Appeal No. 903 of 1999 and 3984 of 2008 in First Appeal No. 891 of 1999 were filed for taking additional evidence on record.

12. Some of the Claimants have, in their respective Appeals, filed Civil Application Nos.7503 to 7505, 7507 to 7511, 7513, 7514, 7517 and 7520 of 1999 with a prayer that the costs imposed and ordered to be recovered under the Judgment of the Reference Court be not enforced against them.

13. The claimants have challenged the legality and correctness of the judgment under appeal on the ground that they had led sufficient material and admissible evidence, oral as well as documentary, on record which have been incorrectly ignored by the Reference Court resulting in serious prejudice to the claimants. Exhibits 52, 53 and 83 are the statements of expert valuer, Horticulturist and seller of the lands from village Khedgaon who had sold 30 acres land to one Ramesh Damu Dhokale on 1st June, 1989 for a sum of Rs.50,000/-, giving a rate

of Rs. 1,66,666/-per hectare, The said land was bagayat land irrigated on canal distributory. He proved the Sale Deed Exhibit 84. The claimants have also tendered and placed on record Exhibit-17/62C sale instance from the same village is 63 acres of land sold on 17th May 1989 for a sum of Rs. 75,000/-, giving a price of nearly Rs. 1,19,048/-per hectare. In addition to this evidence, the claimants also proved on record the 7/12 extract of the acquired land as Exhibits 18 to 50. The State relied upon the oral evidence of D.W.1 Exhibit-97 from the State's Horticulture Department, the Award Exhibit 14, notices sent to the claimants u/s 12(2) of the Act and the Map Exhibit-148 in relation to the acquired land. It may be useful to notice here that Section 4 Notification giving rise to these appeals was issued on 29th August, 1989 while declaration u/s 6 of the said Act was made on 21st June, 1990 and the Collector had made his Award in terms of Section 11 of the said Act on 9th April, 1992. In other words, the Notification in First Appeal No. 1469 of 2007 and all other proceedings are prior to the relevant dates in this group of appeals.

14. The learned Reference Court rejected the Exhibit-84 on the ground that the sale instance was from another village and relying upon the oral statement of D.W. 1 which came to the conclusion that the Award Exhibit-14 was depicting the correct market value of the land in question and as such no enhancement was required to be given to the claimants.

15. As far as First Appeal Nos.891 of 1999, 893 of 1999 and 1382 of 2005 are concerned, by the impugned judgment, the references of these claimants were held to be barred by time and as such were dismissed by the Court. Even before us, the learned Counsel appearing for the claimants is unable to demonstrate that the reference applications filed before the Collector u/s 18 of the Act were not brought by time and as such they could not be entertained by the Court for the purposes of granting any relief to the claimants.

16. The learned Reference Court has specifically referred to the notices issued u/s 12(2) of the Act and their service upon the Claimants. In the applications moved u/s 18 of the Act by the Claimants, there was delay of 18 to 57 days. The discussion of the Reference Court on this issue is based upon statutory provisions and the Court has also relied upon various judgments of this Court as well as of the Supreme Court. Thus, this aspect of the judgment does not call for any interference.

17. It is settled proposition of law that neither the Collector nor the Court has jurisdiction to extend or condone the period of limitation provided u/s 18(2) of the Act. Reference can be made to a judgment in the case of State of Maharashtra v. Ashok Laxman Wani decided on 31st July, 2008 in First Appeal No. 1119 of 1997 as under:

9. ...This is a reference by the Collector to the Court of competent jurisdiction and proceedings of reference are expected to be carried out in accordance with law. Proviso to Section 18(2) spells out a limitation within which the application

contemplated u/s 18 of the Act is to be filed. The period of limitation depending on the facts of a given case would be six weeks to six months. Six months being the outer case limit, in either of the events, where the Applicant was present before the Collector at the time when the Award was made or where he was served with a notice under Sub-section (2) of Section 12 of the Act. This specific period of limitation is mandatory and is not flexible either in its term or by any enunciated principles of necessary implication. In fact, this legal issue is no more res integra and stands finally settled by the judgment of the Supreme Court in the case of Mahadeo B. Patil v. State of Maharashtra 2006 Mh. L. J. SC 206, where referring to Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and State of Punjab and Another Vs. Satinder Bir Singh, , the Court held as under:

14. We are here not concerned with the correctness of the decision, but the fact remains that having considered the claim of the appellant for compensation, the Special Land Acquisition Officer rejected the claim. This does amount to the making of an award, commonly described as nil award. If the appellant was aggrieved by such an award, it was open to him to seek reference u/s 18 of the Act which the appellant actually did. We, therefore, cannot hold that no award as envisaged by Section 11 of the Act was declared on 29/8/1994, since the claim of the appellant was considered and was totally rejected. There was, therefore, no question of giving any calculation of the manner in which the compensation was computed. Since, the application u/s 18 was not filed within six weeks of the receipt of notice u/s 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference u/s 18 of the Act has no power of condonation of delay in making an application under the aforesaid section.

10. Even a Division Bench of this Court while following the above principles, held in the case of The State of Maharashtra v. Sadashiv Ganpat Avhad and Ors. First Appeal No. 251 of 1996, decided on 31st January 2008, as under:

18. We are unable to find any merit in the contention raised on behalf of the claimants. It is neither disputed before us nor was disputed before any other for a that in the applications filed by the claimants u/s 18 of the Acquisition Act they had categorically and specifically admitted that they had received the notices u/s 12(2) of the Acquisition Act on 31.3.1986. The applications u/s 18 of the Acquisition Act are dated 5th June, 1986. No purpose would be served by remanding the matter to the Reference court inasmuch as the claimants cannot be permitted to go back from their admission of receipt of a statutory notice. Furthermore, it is not for any other purpose that the dates were mentioned in the application. The applicants were fully aware that they are filing applications u/s 18 of the Acquisition Act and had already received the notices u/s 12(2) of the Acquisition Act. These applications are signed by the applicants and that fact is also not in dispute. That being so, it is not necessary for us to set aside the

judgments of the Reference Court and remand the matters to that Court. It is settled principle of law which in fact was not even disputed before us that the Collector and for that matter any other Court has no power to condone the delay in filing an application u/s 18 of the Acquisition Act. That being the settled position of law, again it will be futile for the Courts to accept the contentions raised on behalf of the claimants for remanding the matter to the Court of the learned Joint District Judge.

19. In the light of the enunciated principles and the documents available on record before us, it is not required of this Court to remand the matter to the learned Joint District Judge. The reference applications have thus been erroneously decided by the learned Joint District Judge, in fact, under a mistaken impression of fact and law both. All the above appeals of the State thus necessarily should be allowed and we hereby allow the same, set aside the judgment of the reference Court in favour of the appellants in the above noticed appeals, while leaving the parties to bear their own costs.

11. From the above analysis of the above settled principles of law, it is clear that the limitation prescribed u/s 18 of the Act is inflexible, uncondonable and is capable of rigid interpretation. Its effect on the merits of the case, we shall proceed to discuss shortly.

18. In view of the settled position of law, we are unable to find any infirmity of law or otherwise in the approach of the learned Reference Court to that extent. Thus, these three appeals i.e. First Appeal Nos.891 of 1999, 893 of 2005 and 1382 of 2005 are dismissed without any order as to costs.

19. As already noticed, in the judgment under Appeal, the learned Reference Court has observed that Claimants have not been able to establish by a cogent evidence their claim for enhancement. Two reasons have been given by the learned Reference Court. One that there is no proper evidence or sale instances placed on record by the Claimants in relation to the village from where the land has been acquired. Secondly, the lands from other villages could not be relied upon. We are unable to contribute with this view taken by the Reference Court. May be the Claimants have not been able to bring on record much documentary or oral evidence but they have produced on record evidence which could in law be sufficient to consider the claim of the Claimants for enhancement. Exhibit 84 a sale instance from village Khedgaon was not considered by the Reference Court on the ground that it is an instance of another village, while there is not much discussion on relevancy of Exhibit 17/62C, the sale instance from the same village, certified copy of the sale deed was produced on record by the Claimants. As far as rejection of Exhibit 84 is concerned, this is again not in conformity with the settled principles. The learned Reference Court noticed the evidence and contention of the Claimants as under:

The claimants have kept reliance on the evidence of P.W. 3 Walu Patil at Exh. 83 to prove the sale instance Exh. 84 for proving the then market rate prevailing in

the nearby villages. On perusal of his evidence, we can find that he had sold No. 452, admeasuring 30 Are to Ramesh Dhokale on 1.6.1989 for Rs.50,000/-prior to notification u.s. 4 in the present reference dt. 29.8.1989. It was a Bagait irrigated land on canal distributory. According to him, the distance between the acquired land and the land sold by him is about 1 K.M. However, according to him, the quality and fertility of the land sold by him and the acquired lands of the claimants is the same. Lastly, he has deposed that he has sold his land as per the then market rate prevailing in his village Khedgaon. It is no doubt that the village map produced at Exh. 148 certainly goes to show that village Khedgaon is situated adjacent to village Tisgaon from where the lands of claimants were acquired for the purpose of Tisgaon project. According to the claimants, this sale- instance Exh. 84 is most comparable on the point of time and situation angle and, therefore, on the basis therefore they should be awarded compensation. The claimants, Advocate by keeping reliance on the decision of Bombay High Court in the case of Osman Khan and another Vs. State of Maharashtra, , submitted that the price paid in sale or purchase of the land in neighbour hood possessed of similar potentiality and fertility within reasonable time would furnish best evidence. Certainly, this legal proposition laid down by the Bombay High Court can be accepted if no sale instance from village Tisgaon are available for fixing the market value of the acquired lands on the basis of comparative sale instance. It is at this juncture worthy to be noted here that the Apex Court in the case of The State of Madras Vs. A.M. Nanjan and Another, held that the awards given by the Collector are atleast relevant, material and may be in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. So, if we keep reliance on the particular decision of the Apex Court, we can find that it was claimant's duty to prove by leading cogent and acceptable evidence that there were no sale instances available at the time of acquisition in the village of the claimants i.e. Tisgaon. If really the sale instances from village Tisgaon are available of the required lands or part thereof the adjacent lands, then there is no necessity of keeping reliance on the sale instances from adjacent village. It is further to be noted here that if the award by the collector in respect of the same land covered under notification u.s. 4(i) then it cannot be ignored by the Court while determining compensation payable for other acquired lands covered by the state notification.

20. There is definite evidence on record in the form of Exhibit 148 which shows that the village Khedgaon is situated adjacent to village Tisgaon and this fact was also recorded by the Court in its judgment as afore referred.

21. Not only that in the case of Osman Khan and another Vs. State of Maharashtra, , a Bench of this Court has taken a view that the lands of the neighbourhood villages which have similar potential and fertility, etc. can form part of basis for determining the compensation payable to those Claimants. In

fact, in a very recent judgment of this Court, after noticing the judgments of the Supreme Court, the Court held that adjacent villages land can be a material and relevant piece of evidence. The Court in the case of State of Maharashtra v. Smt Bhimabai Bhika Gondal 2008 (1) BCR 219 : 2007 (109) BLR 2199 held as under:

8. The main argument raised before us on behalf of the State was that the sale instances of village Vetale were not comparable instances and same compensation could not be awarded to the claimants. This argument, on the face of it, is of no help to the State. It is a settled proposition of law that the sale instances of the adjacent villages can be taken into consideration while determining the compensation payable to the claimants for acquisition of their lands and particularly when none of the parties had led evidence in regard to sale instances relating to the same village from where the lands were acquired. In this regard, reference can be made to a judgment of the Division Bench of this Court in the case of The State of Maharashtra and Ors. v. Yashwant Kahnur Shirsath and Ors. First Appeal No. 896 of 2005 decided on 19th July, 2007. The relevant observations are as under:

7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquired land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. The exclusion of these exhibits from the zone of consideration for determination of the controversy thus cannot be said to be incorrect in law. The land in Exhibit-30 relates to village Mukane, while Exhibits-14 and 15 relate to the other two villages viz. Modade and Rayambe. These villages are located around the acquired land but have a better potential as they are closer to industrial area and the Highway. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for determining the market value of the land and even the awards relating to those adjoining villages would also be a relevant consideration. Reference in this regard can be made to the case of Sham Krishan Chandiwalla and Another Vs. Union of India, and judgment of the Supreme Court in the case of Harcharan Vs. State of Haryana, , where the Court stated that subject to the test of comparison of land area wise, topography wise and use wise, awards and transactions in relation to the adjacent areas are the best evidence with regard to valuation of price of land. Still, in the case of Gokal Vs. State of Haryana, , the Court was concerned with awarding of compensation to the land similarly situated but vide different notifications issued by the Government u/s 4 of the Act. Trend in increase of the land prices in those areas was also taken to be a relevant consideration.

9. In addition to the above settled principle of law, we may further notice another aspect of this case and that is, the SLAO had himself taken large number of sale instances into consideration of village Vetale. In fact, the compensation was

determined by him with reference to the sale of the land in village Vetale. This fact would stare the State in face and they cannot be permitted even to raise this contention. Once the comparability, nature of the land, its potential and utility are similar, in that event, the mere fact that the sale instances relied upon by the Court relate to an adjacent village would hardly be of any consequence. The reasoning given by the Reference Court in LAR No. 89/90 is correct and does not call for any interference by this Court in First Appeal. The oral and documentary evidence clearly demonstrates that the sale instances taken into consideration by the trial Court fell within the ambit of admissible and relevant evidence.

22. Furthermore, the learned Reference Court while placing undue emphasis on the term Exhibit 14 declined to enhance the compensation, though Exhibit 17/62C has not been discussed in the impugned judgment. There is no reason also stated as to why Exhibit 17/62C was not a relevant piece of evidence. As already noticed, Exhibit 17/62C is the sale instance wherein the land admeasuring 63 Ares was sold for a sum of Rs. 75,000/- in village Tisgaon on 17th May 1989 i.e. prior to issuance of Notification u/s 4 of the Act. On the basis of this evidence, the sale price of the land per hectare would come to Rs. 1,19,048/-. Thus, in our view, Exhibit 84 as well as Exhibit 17/62 were relevant and material piece of evidence which, keeping in view the statements of PW1 and PW3, could be considered for determining fair market value of the land in question.

F.A. No. 412/2006 ALONG WITH CONNECTED APPEALS:

23. In this bunch of First Appeals, the Notification u/s 4 of the Act was issued on 25th August 1988 for acquisition of land for Tisgaon Dam in relation to village Khedgaon, Taluka Dindori, District Nashik. The declaration u/s 6 was issued on 23rd March 1990 while Award u/s 11 of the Act was published on 16th February 1991. Thus, all these dates, in these Appeals, are identical to the relevant dates as set out in First Appeal No. 1469 of 2007. The Collector had made one and the same Award in all these cases and, therefore, had awarded the same compensation to the Claimants. However, dissatisfied from the compensation awarded to them under the Award, they preferred References u/s 18 of the Act which were disposed of by the Reference Court vide its Judgment and Award dated 31st December 1999 and awarded different compensation depending upon the nature of the land being jirayat, bagayat and pot kharab. Different References made to the Reference Court were disposed of by different judgments dated 31st December 1999 and 30th October 2000. While enhancing the compensation as under:

24. In these judgments, the Reference Court had primarily relied upon Exhibit 36 and Exhibit 41 respectively which is the copy of the judgment of the Reference Court made in LAR No. 723 of 1991 dated 14th July 1999, out of which First Appeal No. 1469 of 2007 has arisen.

25. The Claimants in Reference No. 107/1993, had not produced any other

evidence except statement Exhibit 40 of the Claimants, certified copy of the said judgment dated 14th July 1999 Exhibit 41 and a sale deed Exhibit 44. The Court had relied upon Exhibit 36 of LAR No. 723 of 1991 as well as Exhibit 34 which was relied upon and proved where on 24th March 1986 27Ares of land in village Khedgaon was sold for a sum of Rs. 41,000/-(bagayat land) giving a rate of of Rs. 1,51,851/-per hectare, while the Notification u/s 4 was issued on 25th August 1988 and the Court, therefore, arrived at a figure of Rs. 2,03,000/-per hectare for bagaiyt land and after making 25% reduction for jirayat land awarded the compensation by giving due increase to the Claimants.

26. As is evident from the above narrated facts, two sale deeds, Exhibit 34 and Exhibit 36 and the judgment of the Court in LAR No. 723 of 1991 show a common trend on the basis of which the compensation has been awarded/enhanced by the Reference Court. Of course, the judgment was not available to the Reference Court which dealt with the group of land references from which First Appeal No. 366 of 2000 has arisen, but it had ignored the other sale instances proved on record.

27. It would be necessary for the Court to deal with the applications filed by the claimants for leading additional evidence. Three civil applications have been filed for permission to lead evidence under the provisions of Order XLI Rule 27 of the Code of Civil Procedure. The main application is Civil Application No. 3729 of 2008 filed in the First Appeal No. 367 of 2000. Vide this application, the applicants wish to produce on record the Sale Deed dated 17th May, 1989 and to prove the said document relating to the sale of land in the village Tisgaon. The applicants further wish to produce on record the judgments of the learned Reference Court dated 14th July, 1999, 31st December, 1999 and 30th October, 2000, which are the subject matter of other three First Appeals which we are disposing of by this common judgment. The claimants further wish to place on record the Map showing the Revenue estate of village Tisgaon from where the land has been acquired and that of surrounding villages. This application for leading additional evidence has been seriously opposed on behalf of the State and it is contended that the Sale Deed was available to the applicants for being produced during the period when the evidence was being led before the Reference Court and so they could have produced the same even before passing of the judgment. It is further contended that the said application is an abuse of process of law and the applicants have failed to exercise due diligence and as such the applications should be dismissed.

28. The learned Counsel for the State, while relying upon the judgment of the Supreme Court in the case of *The State of Gujarat and Another Vs. Mahendrakumar Parshottambhai Desai (Dead)* by L.Rs., , argued that additional evidence in such circumstances cannot be led and in any case the provisions of Order XLI Rule 27 of the CPC can be invoked only if the Court requires such document for pronouncing the judgment and the applicants cannot be permitted to fill up the lacunae. He also relied upon the judgment of the Supreme Court in

the case of Smt. Pramod Kumari Bhatia Vs. Om Prakash Bhatia and Others, .

29. On the other hand, the learned Counsel appearing for the Claimants relied upon the recent judgment of a Division Bench of this Court in the case of State of Maharashtra v. Ashok Laxman Wani delivered on 31st July 2008 First Appeal No. 1119 of 1997 where the Court held that:

44. For the reasons afore-recorded, we are of the view that the provisions of Order 6 Rule 17 read with Order 41 Rule 33 of the CPC cannot be resorted to amend the application filed by the claimants u/s 18 of the Land Acquisition Act in so far as it relates to enhancement of the amount of compensation claimed. However, the provisions of amendment under the Code can be invoked in amending the memorandum of appeal or a petition before the reference court in so far as it relates to other matters pertaining to pleading and/or evidence, e.g. location, potential of the acquired land, sale instances which would benefit the applicants to justify the amount claimed u/s 18 and which could not be brought before the Court by them despite due diligence. In other words, amendment of memorandum of appeal should be understood in distinction to amendment of an application filed before the Collector u/s 18 of the Act.

30. There is no hard and fast rule or strait jacket formula, which could be universally applied to all cases. It essentially should have referred to the facts and circumstances of a given case. In the present case, the claimants could not have produced the documents sought to be produced by way of evidential value, except the Sale Deed.

31. As far as the Sale Deed is concerned, the same is dated 17th May, 1989 vide which land admeasuring 63 Ares was sold in village Tisgaon for a consideration of Rs. 75,000/-giving the rate of Rs. 1,19,048/-per hectare. This sale instance, firstly, is just prior to the notification u/s 4 of the Act and relates to the same village from where the lands have been acquired. Certified copy of the said Sale Deed was produced in the Court and was tendered in evidence as Exhibit -17/62C. However, it appears from the judgment of the Reference Court in LAR No. 194 of 1992 that the same was not read in evidence. We are unable to see the reason why the learned Reference Court has not admitted and/or read the same in evidence while passing the judgment. It is a settled principles of law, and in any case the provisions of Section 51A of the Land Acquisition Act, that the certified copy of a sale deed can be tendered in evidence. Exhibit-17/62C was tendered by the claimants. Thus, the said sale deed which has already been tendered as Exhibit 17/62C, in our view, should have been read in evidence and thus, there is no reason why the said sale deed should not be permitted to be taken on record as an additional evidence in the present case particularly when this Court has to discuss the merits and effect of the same in First Appeal No. 366 of 2000. As far as the three judgments referred to above which are sought to be produced in the present appeals in relation to the same acquisitions are concerned, it is obvious from the record that the applicants could not have produced the said judgments of the Reference Court in LAR No. 194 of 1992

giving rise to the First Appeal No. 367 of 2000 inasmuch as the said judgments were pronounced subsequent to the judgment in that case. The judgment in LAR No. 194 of 1992 was pronounced on 29th April, 1999 while all the three judgments referred above were pronounced on 14th July, 1999, 31st December, 1999 and 30th October, 2000. Thus, the applicants despite exercise of due diligence could not have produced these documents. Thus, as far as other documents are concerned, the Map has already been produced on record in the connected appeals. Thus, no prejudice would be caused to any party as the map in question is a copy of the Map Exhibit-148 in LAR No. 194 of 1992. For these reasons, we partially allow the applications filed for additional evidence and permit the Sale Deed dated 17th May, 1989 as well as the judgments of the Reference Court dated 14th July, 1999, 31st December, 1999 and 30th October, 2000 and the Map Exhibit-148 to be read in evidence as they are already exhibited in the connected appeals and/or the same are a part of judicial record by way of impugned judgment in the connected appeals. However, as far as placing on record the Circular dated 18th December, 1975 and other documents in the connected applications by the applicants are concerned, we find no justification to allow the said applications, and to that extent the same are dismissed.

32. All the applications for setting aside the conditional order as well as bringing on record the legal representatives of the deceased were not opposed and as such they all are allowed and the legal representatives of the deceased Appellants/Respondents, as the case may be, are permitted to be brought on record. Amendment note to be taken on judicial file. There has been negligence on the part of the claimants as well as State in complying with certain directions issued by the Registrar and have not removed the objections which resulted in passing conditional order. Therefore, we recall all the conditional orders dated 6th June 2001, 10th April, 2007 and 13th August, 2007 and set aside those orders and permit the appeals to be heard on merits. All these applications are allowed and the same are accordingly disposed of. As we are pronouncing the main judgment, the Civil Application No. 4375 of 2008 has been rendered infructuous and is accordingly disposed of. The application has no merit and is based on no averments which could be taken cognizance by the Court and as such the same is also dismissed.

33. Having dealt with all the applications, we would take the arguments raised on behalf of the parties in First Appeal No. 1469 of 2007. We are taking up this First Appeal for discussion primarily for the reason that the judgment of the Reference Court dated 14th July, 1999 has been followed in other two references which, in turn, has given rise to the two other sets of appeals, which we shall also dispose of together. However, the First Appeal No. 366 of 2000 will have to be separately discussed, as the judgment of this Court in the above appeals may have been the basis for a decision of 40 appeals connected with the First Appeal No. 366 of 2000.

34. First and foremost, we will examine the challenge to the judgment of the Reference Court dated 14th July 1999 in LAR No. 723 of 1991 which has been even followed in subsequent cases. The State, as already noticed, has filed the Appeal and questioned the correctness of this judgment primarily on the ground that the judgment of the Reference Court is not based upon proper appreciation of evidence and suffers from errors as well as the view taken is not in conformity with the settled principles of law. It is further their contention that even if Exhibit 34 could be relied upon, still the Court ought to have made further deductions on the sale consideration stated in this sale deed as it was a very small piece of land of 27 Ares of bagayat land which had been sold for a sum of Rs. 41,000/-. The State further contended that sale instance was of bagayat land and there should have been a reduction in determining the market value of jirayat land and applying the principle of deduction appropriately, at least 1/3rd cut should have been allowed in the value. Thus, the compensation awarded to the Claimants is excessive and not in consonance with law.

35. We may also notice here that from the record of the Reference Court it does not appear that the State even raised plea of reducing amount of compensation payable to the claimants on account of small sale instance of small pieces of land. Once this issue was not raised before the Reference Court and the compensation was determined without any protest, then it would hard be permissible to the State to raise claim before this Court for the first time. A reference in this regard can be made to the judgment of this Court in the case of The State of Maharashtra Vs. Valu Yesu Suryavanshi (Nhavi) and Others, .

36. On the other hand, according to the Claimants, Exhibit 34 indicates a value as on 24th March 1986 much prior to the issuance of the Notification u/s 4, the Court besides giving limited increase, should have further added to the value of the land inasmuch as there was increasing trend reflected in the sale consideration. It is their contention that no deduction on account of small plot is called for as all the owners are owners of small pieces of land and the acquisition of land from different owners would not justify deduction. Furthermore, the land was being taken up for no development activity, but primarily was for the Tisgaon Dam project and the entire land would submerge under the water. Therefore, according to the Claimants, the compensation awarded by the Court is just and fair and pray that the Appeals preferred by the State be dismissed by this Court.

37. The learned Reference Court has determined the market value payable to the Claimants. While determining the compensation, the Claimants have been awarded increase keeping in view the increasing trend of the price, it will be appropriate to refer to the reasoning given by the Reference Court while enhancing the compensation:

14. The last witness examined on behalf of the claimants to prove sale instance Ex. 34 is P.W. 2 Somnath Punjaji Thube. According to him on 24.3.1980 he had sold G. No. 2342 from village Khedgaon to Savitribai Bhaskarrao Davange for Rs.

41,000/-. The area sold was 27 ARE. It was bagayat land and it was irrigated on the well water. According to him, land was sold as per the then market rates prevailing. There was also electric motor of 3 H.P. Installed on the said well. He had 1/10th share in the well and electric motor. He had purchased said electric motor for Rs. 2,500/-to Rs. 3,000/-. According to him, he was required to spend round about Rs. 2,000/-for getting electric connection. Earnest money of Rs. 24,000/-were received at the time of agreement of sale and the remaining amount of Rs. 17,000/-was paid at the time of sale-deed to Ex. 34. He states that the distance between the acquired land in the present reference and the land sold by him is only 300 to 400 metres. Quality and fertility of the acquired land and that of the land sold by him is the same. So, he has certainly proved the contents of the said sale-deed Ex. 34. It is pertaining to the bagayat land from the same village. When the sale instances of Jirayat land like present acquired land are not produced on record, then for comparison and proving the then market rate of the Jirayat land, from the same village. One can certainly keep reliance on the sale instance of the bagyat land. It is not in dispute that the land under sale instances is bagayat land and therefore, it is superior in quality to the Jirayat land like the land under present reference. Under these circumstances, when the land in question is bagayat land and in absence of proof of extent of superiority of the land to Jirayat land, then in that case as it has been held by the Supreme Court in the case of Kantaben Manibhai Amin and Another Vs. Special Land Acquisition Officer, Baroda, that the value per acre should be determined after taking into consideration contemporaneous documents of sale of Jirayat land and it has awarded 25 per cent excess compensation over and above market value of Jirayat land. So, on the basis of proved sale instance Ex. 34 in the present references dated 24.3.1986, the claimants have proved that the land G. No. 242 admeasuring 0.27 ARE was sold for Rs. 41,000/-from village Khedgaon. So, the basis of it per hectare rate on the date of alleged sale dated 24.3.1986 comes to Rs. 1,51,000/-. But the gap between said sale instance dated 24.3.1986 and the present notification u/s 4 in this reference dated 26.10.1989 is of 43 months. So, if 10% rise is given per annum, then for this 43 months, the rise which is required to be given will come to 35%. So, if so the proved rate of Rs. 1,51,000/-P.H. on the basis of sale instance dated 24.3.1986 vide Ex. 34 if rise is given of 35%, then rate of bagayat land will come to Rs. 2,03,000/-P.H. If 25% deduction is given for the Jirayat land being present land as Jirayat land on the basis of decision by the Apex Court in the case supra Kantaben Manibhai Amin v. The Special Land Acquisition Officer, Baroda, then Jirayat rate for group No. III will come to Rs. 1,52,000/-P.H. If deduction of Rs.5,000/-is given as per the gap of Rs.5,000/-kept in two different groups No. II will come to Rs. 1,41,000/-. This according to me will be just and proper compensation rate to be awarded to the claimants in the present reference which will meet the ends of justice. Consequently the claimants are entitled to get aforesaid market rate as worked out by me.

38. The State itself has relied upon the judgment of the Supreme Court in Kanta

K.Manibhai reported in AIR 1990 SC 103 where the compensation was determined by the Supreme Court while taking into consideration the contemporary documents of sale of Jirayat land and awarded 25% excess compensation over market value of Jirayat land where the land in question was bagayat land. In other words, deduction on increase by 25% would be a reasonable basis for determining the fair market value of Jirayat land as compared to Bagayat land.

39. Exhibit 36 is the other sale deed wherein land admeasuring 30 Ares of bagayat land was sold for a sum of 1st Rs.50,000/-as on June 1989. This sale instance has been rejected by the Reference Court on the ground that the contents of the sale deed have not been proved by the witness PW3. We do not see any reason to interfere with the findings recorded by the learned Reference Court and in any case it is of not much consequence in the facts of the present case as the Claimants themselves primarily relied upon Exhibit 34. The possession of the land was taken on 22nd September 1986. The sole sale deed produced by the State, Exhibit 50, firstly was not proved in accordance with law and, secondly, the rate of sale consideration shown is even less than the value awarded by the Collector for bagayat land and, therefore, both Exhibit 36 and Exhibit 50 cannot be appropriately read in evidence and form the basis for determining the fair market value of the land.

40. The Supreme Court in the case of The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc., , held that the award in relation to acquisition of land from the same village as an evidentiary value and the Court determining the compensation payable for other acquired land covered by the said notification can take such award into consideration.

41. Reliance on Exhibit 34 by the learned Reference Court does not suffer from any infirmity inasmuch as the land subject matter of the sale deed is from the revenue estate of the same village i.e. Khedgaon for which Notification u/s 4 was issued on 25th August 1988 and lastly published on 26th October 1989. Thus, the relevant date for determining the compensation and for all intended purpose would be 26th October 1989. It has been noticed in the judgment and is evident from the evidence on record that the land, subject matter of Exhibit 34, is just 300 to 400 mtrs. from the acquired land and quality and fertility of the acquired land is similar to that land. The Reference Court, as is evident from the above discussion, granted increase for the intervening period and after determining the rate of bagayat land at Rs. 2,03,000/-per hectare, reduced it for jirayat land by 25%. Certain amount of guess work has to be essentially applied while determining the market value of the acquired land. To determine the same with complete rigidity may result in doing some injustice to the Claimants who are simple agriculturists owners of small holdings. It is the obligation of the Court under the Scheme of the Land Acquisition Act and more particularly Section 23 to determine the fair market value of the land in question. This market value has to be determined on just and fair basis and essentially should reflect the correct

market value of the land on the date of the Notification i.e. in the present case 26th October 1989. These are the cases of compulsory acquisition and certain leverage has to be provided to the Reference Court while it determines the compensation payable to the Claimants for determining the compensation. Reference in this regard can also be made to the cases in Chinubhai Kalidas Patel, through his legal representatives Smt. Sulochana Chinubhai Patel and Sou. Linaben Bharatbhai Patel Vs. The State of Maharashtra, ; The State of Maharashtra Vs. Sat Dev Prakash, and State of Maharashtra Vs. Trimbak Joma Thakur deceased through his legal representatives Dasharath Trimbak Thakur and Others, .

42. The Reference Court has also relied upon the judgment of the Supreme Court and which in fact is even further supported by different judgments of this Court that it is not necessary for the Court to always make a deduction for smallness of the plots. Admittedly, the land Exhibit 34, a land admeasuring 30 Ares, was only sold but the various Claimants whose lands have been acquired in this Appeal and/or the connected Appeals are owners of small holdings and thus they cannot be denied fair market value of the land only on the ground that there is huge acquisition. Larger acquisition by the State per se is no ground for reducing the compensation payable to the Claimants particularly when the lands are being acquired for a purpose for Tisgaon Dam project where the lands were ultimately to submerge. Such acquisition can in stricto sensu be not placed with parity with the acquisition of lands for development and progressive purpose.

43. It is an accepted principal of law that the principle of deduction necessarily need not be complied with in all cases uniformly. It will have to depend upon the facts and circumstances of a given case where the claimants/owners are holders of small holdings and the land is being acquired for a uniform purposes which would not result in enhancing potential of the land, like in the present case, that all the lands are submerged, it would not be necessary to reduce compensation payable to the claimants on that account. Furthermore, the State itself had not brought on record the proof or any evidence, which would be admissible in evidence and would be a comparable instance. The rate of compensation mentioned in the Sale Deed produced by the State was even below the rate awarded by the Collector. In this regard, it will be useful to refer to a decision of the Division Bench of this Court in the case of The State of Maharashtra Vs. Valu Yesu Suryavanshi (Nhavi) and Others, , where after following the judgment of the Supreme Court, it has held as under:

6. The learned Reference Court did not treat Exhibit-23 as a sale instance relating to a small piece of land. In fact, as it appears from the record, State had never objected or raised this issue before the Reference Court, it would hardly be permissible for the State to raise this point for the first time in appeal before this Court. Furthermore, 32 acres is very close to an acre as 40 acres make an acre. Thus, it cannot be treated such a small piece of land that it would justify application of principle of deduction on the basis of smallness of land subject

matter of sale.

There are claimants who own small pieces of land while others may be owners of larger chunk of land. There cannot be any straightjacket formula to determine compensation payable to the claimants. Sale instance of nearly an acre of land cannot fairly be termed as a small piece of land. The matters must be examined and evidence must be understood by the Court in its correct perspective and while keeping the ground realities in acquisition matters in mind.

44. The compensation awarded to the Claimants can also be viewed from another angle. Exhibit 15 is a judgment delivered by the Reference Court in LAR No. 224 of 1989 decided on 5th July 1996. In this case, the Notification u/s 4 of the Act was issued on 4th November 1981 for acquisition of land from the revenue estate of the same village i.e. Khedgaon. Award u/s 11 was made on 19th January 1986 and the Reference Court had enhanced the compensation awarded by the Collector from Rs. 16,500/-per hectare to Rs. 40,000/-per hectare for jirayat land and Rs. 60,000/-per hectare for bagayat land. There is definite evidence on record to show that there was increasing trend in the sale price of the land in question. Witness No. 1 (Exhibit 52) in LAR No. 194 of 1992 (FA No. 366 of 2000 bunch of the connected Appeals) had clearly stated that from time to time there is a rise in the price of agricultural land in the village. Even the Award of the Collector and various sale instances proved in the present case as well as in the connected cases clearly show the increasing trend in the sale price of the land. The lands in this very village had earlier been acquired even in the year 1981. From 1981 to 1988-89, when the Notification u/s 4 of the present case was issued, there has been increase in the sale consideration of the agricultural land. The increase granted by the trial Court even could be more than what has been awarded. The Reference Court has granted increase at the rate of 10% per annum which would be bare minimum in such cases. F. A. No. 412 of 2006 and Cross Objections and Cross Appeals:

45. Having determined the rate of compensation payable to the claimants for bagayat land, the Reference Court proceeded to reduce the compensation by 25% in the case of Jirayat land and awarded only Rs.5,000/-per hectare for potkharaba land. This approach of the Reference Court can hardly be faulted with. For this Court to interfere, the onus is upon the State to show that the findings are either perverse or are based upon no evidence. The argument is that from the bagayat land at least 50% should have been reduced in the case of Jirayat land. This again is a finding, which will have to be recorded on the basis of the evidence led by the parties. The State did not bring any evidence on record to show that the location, fertility and potential of both the lands were at such a variance that it would call for reducing the compensation by 50%. In our view, the State has utterly failed to produce any evidence on record and the only evidence Sale Deed-Exhibit-50 has not even been proved, which in any way is inconsequential for all intended purposes. Thus, we find no reason to interfere with the findings of the Reference Court and accept the appeals filed by the

State. This judgment which has been followed by the Reference Court in its judgment dated 31st December, 1999 in L.A.R. No. 723 of 1991 was tendered in evidence as Exhibit 36 in L.A.R. No. 710 of 1991 from which First Appeal Nos.412 of 2006 to 421 of 2006 have arisen. The said judgment was also followed by the Reference Court in its judgment dated 30th October, 2000 in L.A.R. No. 107 of 1993 and was tendered in evidence as Exhibit -41 and has made the same as the basis for awarding compensation by the Reference Court wherefrom First Appeal Stamp No. 7522 of 2001 has arisen. The relevant paragraph reads as under:

14. So, by keeping reliance of the decision of the Apex Court and Bombay High Court *supra*, I kept reliance on the previous Judgment of this Court in LR No. 723/1991(Exh.41) to fix the market value of the acquired land in the present reference. In the said previous judgment in LR No. 723/91, this Court has awarded enhanced compensation at the rate of Rs. 1,47,000/-p.h. for Jirait-II. Taking into consideration the gap of Rs.5,000/-kept in two groups, the rate of Jirait-III land i. e. the present acquired land will come to RS.1,52,000/-ph (i. e. Rs. 1,47,000/-plus Rs.5,000/-) and I award the same to the present claimants in this reference being just and proper compensation.

46. The judgment dated 14th July, 1999 in L.A.R. No. 723 of 1991 was tendered as the Exhibit-41. From these two judgments of the Reference Court, the State of Maharashtra felt aggrieved and has filed this First Appeal from those two judgments. In First Appeal Nos.412 of 2006 to 415 of 2006 and First Appeal Nos.418 of 2006 to 421 of 2006, the claimants have filed cross objections and the cross appeals. However, limiting their claim that the Reference Court should have awarded interest on excess land value i.e. on the benefits accruing in favour of the claimants for payment of statutory benefits in accordance with Section 28 and 23(2) of the Land Acquisition Act.

47. Five Cross First Appeals, which have been filed by the claimants in addition to these, also raise claim for enhancement on account of valuation of trees, etc. Thus, we will deal with all these Appeals, Cross Objections and the Cross First Appeals together.

48. The Claimants produced and proved on record Exhibit-36 copy of the Judgment and award in L A. R. No. 723 OF 1991. In L.A.R. No. 107 of 1991, the Sale Deed dated 17th May, 1989 for sale of 63 Ares of land in village Tisgaon for a sum of Rs. 75,000/-giving approximately a rate of Rs. 1,19,048/-per hectare and was proved at Exhibit-44. As already noticed, Exhibit 41 was the certified copy of the copy of the judgment dated 14th July, 1999. The learned Reference Court while considering the evidence produced on record and by following the earlier Order dated 14th July 1999 Exhibit 36 the Court held as under:

13. So, certainly previous judgment Ex.36 in LRNo. 723/1991 is most comparable document to fix the market value of the acquired lands. In this previous judgment Ex.36, this Court has awarded the enhanced compensation at the rate of Rs. 1,47,000/-per hectare for Jirayat group No. 2 and Rs. 1,52,000/-

per hectare for Jirayat group No. 3 by keeping difference of Rs.5,000/-in each group. On the basis of this difference of Rs.5,000/-, the rate of Jirayat group No. 1 will come to Rs. 1,42,000/per hectare. The rate of Jirayat group No. 4 will come to Rs. 1,57,000/-per hectare. On the basis thereof the market rate on the date of the relevant notification u/s 4 of the L. A. Act in this reference also for acquisition of bagayat land will come to Rs. 2,13,000/-per hectare for Bagayat group No. 1, Rs.2,18,000/-per hectare for Bagayat group No. II, Rs. 2,23,000/-per hectare for Bagayat group No. III and Rs. 2,28,000/-per hectare for Bagayat group No. IV respectively. So, on the basis of this previous judgment, the claimants in all these references are entitled to get the aforesaid compensation as stated above as per rate mentioned above in respect of the acquisition of Jirayat or Bagayat lands respectively and this being just and proper compensation to be awarded to the claimants in this group of references, I award the same to them for the acquisition of the lands.

14. ...the claimants are entitled to get 50% of the market value given to Jirayat land for the Pot Kharba land i. e. Rs. 71,000/-per hectare for Jirayat group No. I, Rs. 73,500/-per hectare for Jirayat group No. II, Rs. 76,000/-per hectare for Jirayat group No. III and Rs. 78,500/-per hectare for Jirayat group No. IV.

49. As evident from the reliefs granted in these two appeals as well as in Exhibit 36 (L.A.R. No. 710 of 1991), the land was not only divided into three classes i.e. Bagayat, Jirayat and Potkharaba, but under the head of Jirayat also grouping was done into four groups depending upon location, potential and fertility of the land. This grouping was done by the Collector in his award and has been accepted by the Reference Court. In fact, none of the parties objected to the same and there is no objection raised by any of the parties in the grounds of appeal before us. In fact, during the long argument, no such point was raised for determination. Since we have already held that the judgment of the Reference Court dated 14th July, 1999 in L.A.R. No. 710 of 1991 does not suffer from any error of law or appreciation of evidence, the awards based upon those judgments obviously have to be upheld.

50. As far as the Cross Objections and the Cross Appeals of the Claimants are concerned, their claim for interest has to be accepted by this Court. A constitutional bench of the Supreme Court in the case of *Sunder v. Union of India* reported in (2001)4 MhLJ 859 in no uncertain terms held that interest was awardable to the claimants on the amount payable u/s 28 of the Act and solatium. The Court held that interest awardable u/s 28 of the Act therefore, would include within its ambit of both, the market value and the statutory solatium. The claimants would be entitled to interest on the aggregate amount including solatium. The learned Counsel appearing for the State could hardly raise any counter plea. Thus, this claim of the claimants is allowed to that extent. As far as the claim of the claimants for higher enhancement of trees value is concerned, this claim cannot be accepted. Now it is a settled principle of law that the trees are integral part and the claimants cannot claim separate value for

trees. In any case, there is no evidence on record except bald statement of the claimants that they are entitled to claim higher value of trees. The Supreme Court in the case of State of Haryana Vs. Gurcharan Singh and another etc., enunciated the principle that the claimants cannot raise a statutory claim for trees as it is a part of consolidated compensation value arrived at by the Court concerned. Resultantly, we find no merit in this claim of the claimants and the same is hereby rejected.

51. For these reasons, the State Appeals are dismissed and the Cross Objections/ Cross Appeals are partially accepted.

52. The other set of First Appeals which remains to be considered by the Court are the one which are arising from the judgment of the Reference Court dated 29th April 1999. As already noticed, the Reference Court answered 48 References by this common judgment and dismissed 44 while declining to enhance any compensation, while the remaining 4 were dismissed as Reference application u/s 18 of the Land Acquisition Act was found to be barred by time. In this case, the Claimants had produced and proved Exhibit 84 sale instance, from village Khedgaon where the land was sold at the rate of Rs. 1,66,666/-per hectare. Exhibit 17/62C was the sale instance where the land from the village Tisgaon was sold at the rate of Rs. 1,19,048/-on 17th May 1989. The Court after considering the evidence, oral and documentary, held that the Claimants had failed to establish their claim for enhancement and resultantly dismissed the claim Reference Petition. Aggrieved from the findings, the present 41 Appeals have been filed.

53. We have already discussed in some detail the lacuna or infirmities on facts and law that have appeared in the judgment under Appeal in paragraph 19 of this judgment. Another important aspect of the case is that Exhibit 84 was rejected by the Reference Court primarily on the ground that it was a sale instance of a different village and thus could not be taken into consideration. We have already referred to the law that the lands of the adjacent villages which have similar potential, fertility and location can be taken into consideration by the Court while determining the fair market value of the land in terms of Section 23 of the Act. The Court below had specifically noticed that the boundaries of the village Tisgaon and Khedgaon are adjoining and there was definite evidence on record led by the Claimants to show that the fertility, location, etc., were similar. Furthermore, Exhibit 148, the map clearly shows that Tisgaon and Khedgaon are located next to each other. In fact, the road leading from Pimplegaon touches both these villages and the acquired land is quite close to the land of village Tisgaon. In other Appeals, the land has been acquired from Khedgaon for the same purpose i.e. Tisgaon Dam project for which the lands from village Tisgaon have been acquired. The proximity, nature of the land and location thus is even evidenced by the fact that the lands were acquired by a common Notification for one and the same purpose. In these circumstances, the rejection of Exhibit 84 by the learned Reference Court which otherwise is admissible and relevant sale

instance is not justified. We have already discussed that even Exhibit 17/62C could not be ignored by the learned Reference Court. This was a certified copy of the sale deed duly tendered on record. However, it appears that the same was not proved (however in LAR No. 107/93 this very sale deed is Exhibit 44). May be that Exhibit 17/62C could not form the basis of awarding compensation to the Claimants as it was not proved by any witness. Be that as it may, Exhibit 84 would be a relevant document as the sale instance is prior to the issuance of the Notification u/s 4 of the Act which was issued on 29th August 1989 and reflects market value of land located in village Khedgaon adjacent to village Tisgaon. In other words, this was not a case where there was no evidence on record to consider the claim of the Claimants for enhancement of compensation. Exhibits 18 to 50 were 7/12 extracts of the acquired land and evidence of the Claimant Exhibit 52 and Exhibit 83 as well as expert evidence of Dr.Nigam, Expert Horticulturist Exhibit 53 was on record. Cumulative effect of this oral evidence and the documentary evidence, in our opinion, was sufficient to consider all the applications of the Claimants whose lands have been compulsorily acquired. The increasing trend of the sale price of the land has been noticed in the evidence including the statement of witness No. 1 Exhibit 52. The SLAO in his Award returned the findings that the land in these villages was similar with a common boundary. Upon a physical inspection, he noticed as under:

All lands are inspected on 16.2.90, 17.2.90 and subsequently on 2.6.90 and 4.6.90 after the claims received, in pursuance of all land owners and their respective Advocate. All lands are situated on the Bank of Parashari River. The acquisition starts from village Gaothan and it goes to the southern side upto 1 to 2 Km. Distance upto the last boundary of nearest adjacent village Khedgaon. All lands are required for submergency area of Dam. There are Iind class Bandharas begin from village Gaothan from North side to southern side and both are in existence. The agriculturist are taking benefits of natural water of Parashari and Gavili River on availability of water by rotation system. Therefore the water assessment is already fixed for each land and it is mentioned permanently as water rate in the village for No. VII/XII.

54. The sale instances referred in the Award of the SLAO were never proved by the State before the Reference Court and in any case the value reflected in those sale instances is even below the compensation determined by the SLAO himself. The villages Khedgaon and Tisgaon are part and parcel of the same project and the entire revenue estate is located within 1 km. In these circumstances, we are unable to contribute to the view taken by the learned Reference Court that there was no evidence on record produced or led by the Claimants which could justify any enhancement. Further, in our view, we should apply the same standard which have been applied in the case of the above First Appeals relating to the lands situated in village Khedgaon. In other words, the Claimants would be entitled to the same compensation as has been awarded by the Reference Court in other Appeals.

55. While we accept 38 Appeals filed by the Claimants, but are unable to disturb the view taken by the Reference Court in 3 connected Appeals where the claims were rejected on the ground that applications u/s 18 of the Act were barred by time. Those Appeals, therefore, are dismissed.

56. As the judgment under Appeal is being set aside by us, it will not be appropriate not to grant prayer of the Applicants. In fact, the judgment of the Reference Court has been set aside in its entirety and the Claimants have been awarded compensation. Thus, costs cannot be imposed against Claimants. In fact, Civil Application Nos.7503 to 7505, 7507 to 7511, 7513, 7514, 7517 and 7520 of 1999 would not survive as the judgment itself has been set aside and substituted by our above judgment. The same are accordingly disposed of.

57. In view of our above detailed discussion, thus we order as under:

(a) 38 Appeals being First Appeal Nos.366 of 2000 to 384 of 2000; 824 to 832, 834, 903, 977 to 979 and 981 of 1999; 301 & 302 of 2001 and 1381 & 1383 of 2005 are hereby partially allowed and the Claimants would be entitled to get compensation at the following rates:

(b) First Appeal Nos.412 to 421 of 2006, relating to village Khedgaon filed by the State are dismissed without any order as to costs. However, Cross-Objection (Stamp) Nos.16303, 16306, 16307 of 2006 and Cross- First Appeal (Stamp) Nos.13587 to 13591 of 2000 are allowed limited to the extent that they shall be entitled to receive interest on the market value of the lands and on the solatium and other statutory benefits as well.

(c) First Appeal No. 1469 of 2007 filed by the State is dismissed. No order as to costs.

(d) First Appeal No. 7522 of 2001 against the order dated 30th October 2000 preferred by the State is also dismissed with no order as to costs.

(e) Civil Application Nos.3729 of 2008, 3984 of 2008 and 3985 of 2008 for additional evidence have been allowed to a limited extent.

(f) Civil Application Nos.4272 to 4275 of 2008 for bringing the legal representatives on record are allowed. The legal representatives of the respective Appellant/Respondent, as stated, are permitted to be taken on record.

(g) Civil Application No. 3800 of 2008, 3818 of 2008, 3819 of 2008, 3820 of 2008, 4213 to 4217 of 2008 and 4315 of 2008 for setting aside the conditional orders are also allowed.

(h) Civil Application Nos.7503 to 7505, 7507 to 7511, 7513, 7514, 7517 and 7520 of 1999 do not survive as the judgment itself has been set aside and substituted by our above judgment.

(i) In Civil Application No. 4885 of 2007, the time for payment to make up deficiency in payment of Court Fees is extended by two weeks from the date of

pronouncement of this Judgment. In the event of default, the Appeal would stand dismissed and the Respondent would be entitled to any benefit.

58. All the First Appeals/Cross Objections/Civil Applications are accordingly disposed of. No order as to costs.