Presented on : 08-07-1999
Registered on : 23-07-1999
Decided on : 15-07-2015
Duration : Y- 15 M- 11 D 22

IN THE COURT OF JT. CIVIL JUDGE (S.D),AT: LATUR

(Presided over by Govind G. Vayal)

1) LAR (G) No.48/99 (Hariram/State),
2) LAR No.194/99 (Shrirang/State) **Exh. No.**
3) LAR No.158/99 (Dhondiram/State)
4) LAR No.339/99 (Pandurang/State)
5) LAR No.586/99 (Namdeo/State)

1) L.A.R. NO. 48/99

Hariram Shivram Shelke,
Age.60 Yrs, Occup. Agril;
R/o.Harangul Bk., Tq.Latur. **..Claimant**

V E R S U S

1) State of Maharashtra,
Through, District Collector, Latur.

2) Maharashtra Industrial Development
Corporation Through it's Regional
Manager at Latur. **..Respondents**

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2) L.A.R. NO. 194/99

1) Shrirang Hariram Shelke,
Age.30 Yrs,
2) Tulshiram Hariram Shelke,
Age.22 Yrs,
3) Baliram Hariram Shelke,
Age.28 Yrs,
4) Mangesh Baliram Shelke,
Age.6 Yrs,
5) Ganesh Baliram Shelke,
Age.3 Yrs,
Claimants No. 4 & 5 are
minor U/G.Anusayabai Baliram
Shelke, Age.25, Occup.Agril;
All R/o. Harangul Bk.,Tq.Latur. **..Claimants**

V E R S U S

1) State of Maharashtra,
Through, District Collector, Latur.

2) Maharashtra Industrial Development
Corporation Through it's Regional
Manager at Latur. **..Respondents**

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3) <u>L.A.R. NO. 158/99</u>

Dhondiram Gyanba Ige,
Age.55 Yrs, Occup. Agril;
R/o.Harangul (Bk.), Tq.Latur. **..Claimant**

V E R S U S

1) State of Maharashtra,
Through, District Collector, Latur.

2) Maharashtra Industrial Development
Corporation Through it's Regional
Manager at Latur. **..Respondents**

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4) <u>L.A.R. NO. 339/99</u>

Pandurang Narayanrao Shelke,
Age.48 Yrs, Occup.Agril;&business **..Claimant**
R/o.Harangul (Bk.)Tq.Dist.Latur.

V E R S U S

1) State of Maharashtra,
Through, District Collector, Latur.

2) Maharashtra Industrial Development
Corporation Through it's Regional
Manager at Latur. **..Respondents**

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5) L.A.R. NO. 586/99

Namdeo Vithoba Chame,
Age.40 Yrs, Occup.Agril;
R/o.Khandapur Tq.Dist.Latur. **..Claimant**

V E R S U S

1) State of Maharashtra,
Through, District Collector, Latur.

2) Maharashtra Industrial Development
Corporation Through it's Regional
Manager at Latur. **..Respondents**

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Claim : References under Section-34 of the Maharashtra Industrial Development Act, 1961 for enhancement of compensation.

Shri.A.G. Patil, Advocate for Claimants.
Shri. T.S.Bhosale, AGP for Respondent No. 1.
Shri.V.B.Bedre & Shri.R.D.Kale,Advocate for respondent no.2.

JUDGMENT

(Delivered on 15th July, 2015)

These are references are filed under Section-34 of the Maharashtra Industrial Development Act, 1961 (for short “the said Act”) for enhancement of compensation. These references arise from same award. Hence, they are clubbed together by order at **Exh.10 in L.A.R. No.48/99.** Common evidence is recorded in the same file and therefore, are disposed of by this common judgment.

2. Summation of facts in these references is as under.

The claimants were owners and possessors of the following lands respectively.

L.A.R No.	Sy/Gat No.	Village	Acquired Area	Compensation withdrawn
48/99	180	Harangul (Bk.)	2 H. 34 R.	Rs.2,63,952/-
194/99	149	Harangul (Bk.)	8 H. 13 R.	Rs.6,02,032/-
158/99	288	Harangul (Bk.)	3 H. 69 R.	Rs.3,53,369/-
339/99	186	Harangul (Bk.)	4 H . 66 R.	Rs.4,73,083/-
586/99	272	Khandapur	3H. 87 R.	Rs.1,85,528/-

As aforesaid, the lands of claimants were acquired by the respondents for the formation of new M.I.D.C. area. The details of the acquisition proceeding are as under.

Purpose of acquisition	File No.	Date of notification u/sec.32(2) of M.I.D.C. Act	Date of Award	Land value claimed	Land Value awarded by LAO
Extension of M.I.D.C. area of Latur	1992/LNQ/KAVI/CR/0/6	07/05/92	03/01/98	Rs.100/- per sq.ft.	Rs.600/-, 400/- ,540/-, 255/-per 'R'

The said lands are hereinafter referred to as "***the acquired lands***" It is contended that notices under Section 9 of the Land Acquisition Act (for short "the L.A.Act") were not served upon the claimants. The respondents passed award on 03.01.1998. Notices of the said award were not issued to the claimants. The award was passed in absentia.

3. It is further contended that the acquired lands are situated on the Northern and Southern side of Latur-Barshi State highway road. The ring road passes from a short distance from the acquired lands. Municipal area of Latur

city is adjacent to the acquired lands. Manjara Sugar Factory is situated near the acquired lands. After formation of Latur district in 1982 rapid developments took place on the side of Barshi road. Old M.I.D.C. area is at the distance of 2 k.m. from Latur city. Government quarters, residential colonies, Girls Polytechnic College, Bidve Engineering College, Restaurants, shopping complexes, D.Ed. College, Ayurvedic College etc. are situated within the short vicinity of the acquired lands. Harangul railway station and staff quarters are located at a short distance from the acquired lands. On the tar road leading the village Harangul well constructed houses, veterinary dispensary, Zilla Parishad High School, Hotels, shops, petrol pumps etc. are existing since last 20 years. As such, there is tremendous development in the surroundings of the acquired lands. The Land Acquisition Officer (for short, "the LAO") did not take into consideration all these developments. He failed to consider the non agricultural potential of the acquired lands. He granted a very meagre compensation to the claimants. The claimants have withdrawn the compensation under protest. Aggrieved and dissatisfied by the determination of market price by the the L.A.O. these references are filed.

4. It is seen that L.A.R.No.48/99 proceeded without W.S. of respondents. The respondents have filed their written statement in other L.A.Rs.. Since all the matters are consolidated. The evidence of respondents is considered from their written statements filed on Exh.12 & 15 in L.A.R.No.194/99, Respondent no.1 resisted the reference contending that the L.A.O. has awarded reasonable and adequate compensation for the acquired lands after observing all the formalities contemplated in L.A.Act. The L.A.O. has published notification under Section 4 of the L.A. Act and had called objections from interested persons, but objections were not filed. The acquired lands were agricultural lands. The L.A.O. has treated the acquired lands as agricultural land. The L.A.O. had called relevant sale instances available in the vicinity and price index from the Sub-Registrar Office. He has considered the

location, quality, fertility and potentiality of the acquired lands. Considering all these aspects, the L.A.O. has granted compensation in accordance with the prevailing rates in the vicinity. The developments alleged by the claimant have been vehemently denied. It is contended that the claimant has claimed excessive enhancement without any justification or evidence. The references are baseless. Hence, it be dismissed. Respondent no.2 opposed the references on similar grounds.

5. My learned predecessor framed issues at Exh.18 in L.A.R.No.194/99. They are reproduced hereinafter together with my findings and reasons on them as follows:-

	Issues		**Findings**
1)	Do the claimants prove that compensation awarded by LAO is inadequate and insufficient ?		Yes.
2)	What was the market price of the acquired lands, when notification under Section 4 of the L.A.Act was published ?		@Rs.15 /- per $ft.^2$ in LAR No.48/99, 194/99,158/99, 339/99 and @ Rs.11/- per $ft.^2$ in LAR No.586/99.
3)	Are the claimants entitled to receive enhanced compensation, solatium, interest etc.? If yes, what amount?		Yes. As per the final order
5)	What order and decree ?		As per the final order

REASONS

6. In support of their claim, the claimants have examined Pandurang as PW-1 at Exh.15, Valuer Pravinkumar Shaha as PW-2 at Exh.30. They have also relied upon voluminous documents which shall be discussed in

appropriate stage. Ultimately they filed evidence closing pursis at Exh.36. The respondents did not lead any evidence but opted to file evidence closing pursis at Exh.11 and 12 respectively. Since issues no. 1 and 2 are interlinked with each other and evidence on them being interwoven, they are discussed together for brevity.

As to Issues No. 1 & 2:-

7. According to the claimants, they are the persons interested in the acquired lands. The 7/12 extract at Exh.19 to 22 fortify this contention of the claimants. Further it is also supported by the 'E' statement at Exh.25. Thus, it is abundantly clear that the claimants are the persons interested in the respective acquired lands mentioned in above table.

8. It is seen from the E-statement that total 1073.61 hectares land has been acquired from three adjacent villages namely Harangul, Khandapur and Chincholiraowadi for the formation of new MIDC under the same acquisition proceeding. Perusal of the award at Exh. 24 shows that the total acquired land is spread on northern and southern side of Latur- Barshi state highway. The acquired area begins at the distance of 7 km from Latur city and extends up to 12 km. Manjra co-operative sugar factory is situated adjacent to the acquired lands. The residential colony of labours of the said sugar factory is located adjacent to the state highway and within a very close proximity from the acquired lands. Bidwe Engineering college, Government girls college and hostel, Government quarters, Maharashtra steel industry are at the distance of about 3 km from the acquired lands. The location of acquired lands has been vividly described by the LAO on page 4 of the award at Exh. 24.

9. Thus, it is an admitted fact that a sugar factory is within the close proximity of the acquired lands. Residential, industrial, educational etc. entrepreneurs have developed in the close vicinity of the acquired lands. The

award also mentions that some of the land owners have converted their lands for non-agricultural use. It is also mentions that a Co-operative housing society has also purchased a piece of land which has also been acquired in this proceeding. Stone crushers, brick Kilns, hotels and hamlet of the people of Wadar community are also in the acquired lands. The award at Exh. 24 depicts the exact location as well as the surrounding developments in the vicinity of the acquired land.

10. Coming to the location of the acquired lands, it is seen from paragraph 3(c) of the award that Gut nos. 183, 184, 199, 201, 202, 210, 211, 214, 217, 218, 283, 284 and 288 of village Harangul are situated adjacent to the state highway. Behind these Gut numbers are situated Gut nos. 150,149, 151, 182, 185, 225, 232, 233, 234, 227, 228, 229, 230, 231, 277, 278, 279, 280, and other numbers of village Harangul as mentioned in the award. In the instant references, we are concerned with Gut no.149, 180, and 288 of village Harangul and Gut no. 186 of village Khandapur. The award clarifies that Gut no. 288 is situated adjacent to the high way. Whereas Gut nos. 180 and 149 are situated on the backside of these Gut numbers adjacent to the state highway. The map placed on record also fortifies this position. In short, it can be said that the acquired lands involved in the present references are either adjacent to the State high way or at a very short distance thereof.

11. The description of the location of the acquired lands (also the acquired lands) mentioned by the LAO award at Exh. 24 reveals that the acquired lands are situated at a very short distance from Latur city. The state highway bisects the acquired lands. A sugar factory is situated adjacent to the acquired lands. Commercial, industrial, residential and educational structures have been constructed at a very short distance from the acquired lands. Therefore, it can be said that the acquired lands are situated at such a place that by its location, the acquired lands had gained development prospectus. In this context, the learned counsel for the claimants has relied upon the

judgment of Hon'ble Supreme Court in case of ***<u>Valliyammal vs. Special Tahsildar (land acquisition)- 2011(5) All.M.R 933(SC)</u>*** wherein it is held,

> *"Though it may appear repetitive, we deem it necessary to mention that the acquired land is situated in the close vicinity of various residential colonies, educational institutions, hospitals etc. and is on the junction of two important roads. Therefore, it can safely be concluded that the land is semi-urban and has potential for being developed as housing sites."*

The location of the acquired lands is within a short distance from developed city and adjacent to a sugar factory with various developments in the surroundings. It crystallizes that the acquired lands definitely had a good development prospectus. As such the observations of the Hon'ble Apex Court squarely apply to the facts of the present case.

12. In case of ***<u>Executive Engineer(C), MSEB, Nagpur vs. Uttamrao Bapurao Raut- 2009 LAC 743(Bom)</u>***, the Hon'ble Bombay High Court in para-19 has observed,

> *"Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having you regard to its existing condition with all its existing advantage and its potential possibility when led in its most advantageous manner."*

The location, the developments in the vicinity and existence of a state highway enhance the potentiality of the acquired lands. The growth of Latur city in the direction of the acquired lands is an indicator of prospective development in the acquired lands in short future. Moreover, it is evident from the observations of the LAO on page 15 of the award plots were laid in Gut no.180. It also mentions that Gut no.186 and 188 are situated adjacent to Harangul Railway station. Some of the land owners having lands around the

Railway Station had constructed houses in their lands. Even some of the land owners had laid plots in their lands. Therefore, it can be concluded that the acquired lands had non-agricultural potential.

13. The learned counsel for the claimants argued that the acquired lands had non agricultural potentiality. Their location ipso-facto indicates that the acquired lands were on the verge of being converted into commercial utility. He also argued that the L.A.O. has made observations about the developments in the vicinity in the award, but has failed to consider the potentiality of the acquired lands in proper perspective. He extensively went though the award at Exh.24 and sternly assailed the conclusions of the L.A.O.. He further added that Latur city has rapidly developed in the direction of the acquired lands since it formation into a district. He also extensively argued on the existing developments in the vicinity of the acquired lands which include the Engineering College, Government girls college, Steel Industry, Old M.I.D.C., Government quarters etc.. He also argued that the acquired lands ought to have been valued on square feet basis. In the light of these developments in the vicinity. In support of his extensive submissions, he placed reliance on following case laws.

1) **AIR 2004 SC 3981-Union of India V/s. Balram & ano.**
2) **2007(6)All. MR 215-State of Mah. V/s.Bhimabai Bhika Gonda**
3) **AIR 2005 SC 1136 - Hans Raj Sharma (Dead) by L.Rs., V/s. Collector Land Acquisiton Doda.**
4) **2009 SAR(Civil) 465 - Mahesh Dattatray Thirthkar V/s. State of Mah.**
5) **AIR 1988 SC 1652 -Chimanlal Hargovinddas V/s. Spl. L.A.O. Poona & others**
6) **2002(4)SBR 273- The Spl. LAO, BTDA, Bagalkot V/s. Mohd. Hanif.**
7) **AIR 2012 SC 2721-Mehrawal Khewaji Trust -V/s- State of Punjab**
8) **2008 LAC 270 (Ori) -State of Orissa Thourgh, LAO, Cuttak V/s. Bhanurani Devi.**

9) 2008 LAC 274 (Guj)-Special LAO V/s. Ambalal Mithabhai Patel.

10) 2009(1) Bom.C.R.220 -Municipal Corp. of Greater Mumbai V/s. State of Mah.

11) 2009 SAR (Civil) 693 SC-Chandrashekhar and other -V/s- Additional Spl. LAO.

12) 2003(3) All M.R. 730-The Spl LAO, MHADA V/S. Zarine Ashrafali Jariabhai

13) (2008)2 SCC 568 -Atma Singh (Dead) through LRS. V/s. State of Haryana

14) 2006(6) Mh.L.J. 82 -State of Mah. V/s. Baliram Girdhar Patil

15) 2007(2) All MR 316- Bayaji Tatya Kalunge V/s. State of Mah.

On the other hand, the Ld.D.G.P. for respondent no.1 and the Ld. Counsel for respondent no.2 strongly supported the conclusions of the L.A.O.. They argued that the L.A.O. has taken into consideration all the facts existing in the vicinity of the acquired lands. The L.A.O. has adhered to the requisite parameters for determination of the market price. After observing all the formalities, he has determined the market value of the acquired lands in a just proper and reasonable manner. They also pointed out the observations in the award Exh.24 about the low quality and fertility of the acquired lands. According to them, the acquired lands did not have any development prospectus. In support of their submissions, they relied upon the following case laws.

1) **2005 (4) All M.R. 382 - Shrish Asaram Samdani V/s. State of Mah.**

2) **1996 LAC 35 (SC) -Smt.Indumati Chitley V/s. Government of India.**

3) **2001(3) Mh.L.J. 156-State of Mah. V/s. Arvind Ramrao Bhalerao.**

4) **2003 LAC 790 -State of Mah. V/s. Subhash S/o. Laxman Patwardhan.**

5) **2003(1) All M.R. 755 (S.C.) -Kasturi & Ors V/s. State of Haryana.**

6) **2005 (3) All.M.R. 815- Spl. LAO V/s. Purshottam Mulgaonkar.**

7) **2005(5) Bom.C.R. 331 (SC)-Viluben Jhalejar V/s. State of Guj.**

I have carefully studied all the cited case laws. The common principles of law emerging from these citations can be briefly cuiled out as follows.

1. Determination of market value of land on basis of comparable instance of sale of land acquired under different villages for same purpose is reasonable.
2. 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.
3. The Land Acquisition Officer has fixed the market value on acre basis, Court can determine the market value on square feet basis if adjacent land is developed or having potentiality of development.
4. Report of the engineer engaged by claimant, was based on his personal visit to the site, map was drawn after taking measurements and the valuation report was made after deducting the cost of depreciation can be relied upon.
5. Reference is not appeal. Material relied on by Acquisition Officer in his award cannot be relied upon unless same is produced and proved.
6. Highest comparable exemplar has to be accepted out of several exemplars for determination of market value of the acquired land.
7. Possession of the land had already been taken prior to the notification. Interest follows the award. Interest should be paid from the date of taking over the possession of the land. The claimant would be entitled to 12% additional award and interest from the date of taking over possession be awarded. Additional compensation can be granted only from the date of notification.
8. Ready Reckoner is for all purposes to generate revenue for Government at time of acceptation of stamp duty and registration

of documents. Necessary evidence about market value would be development, sale instances potentiality, loss suffered by claimants and benefits to acquiring body.

9. For a judgment relating to value of land to be admitted in evidence, must have been a previous judgment of that same court. Further requirement is that it must have been proved that due regard being given to all other attendant facts and circumstances.

10. Sale instance property situated only 360 meters away from suit property. It can be accepted as comparable sale instance.

11. The fact that the exemplars filed by the appellants were of the small pieces of land could not be a ground to discard them specially when exemplars of lrge pieces of land were not available.

12. For classification and fixing market value of the same for acquisition of agricultural lands factors like its nature, fertility, irrigation facilities etc. have to be considered. Assessment of the land cannot be made a basis for classification of the same.

13. Lands situated in same village, acquired for same purpose under same notification. Claimants are entitled to compensation at the same rate on ground of parity.

14. Sale instances in respect of properties situated in different areas Reference court holding that such sale instances are not any way helpful to determine the real market price of the property--View taken by reference Court was proper.

15. The Court should not place too much reliance on the oral evidence on behalf of the claimant about the income from the lands and the best evidence would be the evidence of rates of similar lands at about the time of the notification under section 4 of the Act. However, it is not possible to discard the entire testimony of the claimant and it is necessary to analyse the said evidence on record

from the view point of a prudent person.

16. Permission to use land as non agricultural cannot be sole basis to treat the entire land as non agricultural held that reference court committed an error in treating the entire land as commercial even though the land adjacent o high way may have a better value.

17. Reference court classifying the land into two categories when the total land was follow land i.e. without any agricultural use for more than five years. The findings of reference court set aside and award modified accordingly.

18. Land having commercial and residential potential but entirely undeveloped. One side abutted main road but remaining large area where planned development was required needing internal roads, drainage, sewer, water, electricity lines and other civic amenities. Cut of 20% on rate of compensation as against 1/3 normal deduction was proper taking into consideration potential for development

19. Application of principle of average price is wrong and illegal.

20. Misplaced or undue sympathy solely on claimant's right to compensation is bound to place heavy burden on exchequer to which everyone contributes by taxes either direct or indirect.

21. While fixing market value of acquired land comparable sale method of valuation is preferred as the most suitable method because it furnishes the evidence for determination of market value of acquired land if it has been sold in open market at the time of issue of notification under S.4 of the Act.

22. While determining the price the positive factors like smallness of size, proximity to road, frontage on road, nearness to developed area and negative factors like largeness of the area distance from road, narrow strip of land with small frontage etc. have to be considered. It is difficult to adopt a principle applicable to all situations.

Bearing in mind the legal principles enumerated in the cited authorities and in the light of the arguments advanced, the merits of the present references are dealt with.

14. Meticulous scrutiny of the award at Exh.24 shows that the L.A.O. proceeded on incorrect perceptions. Because on one hand he observed that there is tremendous development in the vicinity of the acquired lands. On the other hand he proceeded to determine the market value of the acquired lands on acreage basis. On one hand he mentioned that some of the land owners had converted their lands into non-agricultural use, but he did not take into account these developments. As stated above, a huge chunk extending to 1073.61 hectares was acquired. This land is spread over on both the sides of a State highway. A broad guage railway track also proceeds through this acquired area. The L.A.O. used belting system by keeping the State highway as the center point. But, as proceeding away from the State high way, he did not maintain uniformity. Because he did not maintain the equal distance on both the sides of State highway. This conclusion is drawn from the comparative scrutiny of the belts formed by the L.A.O. and the map placed on record. He vividly described the developed avenues in the vicinity of the acquired lands. But, did not take into account the future prospective of the acquired lands. It is also seen that he discarded the sale instances of higher value and determined the market price on the basis of the sale instances of comparatively low value. Therefore, I am constrained to conclude that the L.A.O. has failed to consider the location and potentiality of the acquired lands in proper perspective. This is the grievance raised by the claimants in the present references. Therefore, determination of market price of the acquired lands becomes imperative.

15. Having deeply cogitated upon the oral and documentary evidence on record, in my sincere view it is necessary to classify the acquired lands into broad divisions. Because the extent and spread over of the acquired lands is

considerably vast. Some of the acquired lands are situated adjacent to the State high way. Whereas some of the acquired lands are situated at a considerable interior from the State high way. If the parameters of a prudent man are applied, it can be said that a willing purchaser will not purchase the land adjacent to the State high way and the land situated at the last interior end at the same price. With this inculcation, the acquired lands are broadly classified as (1) The lands situated adjacent to the State high way (2) the lands situated behind these lands (3) the lands situated at village Khandapur.

16. In case of ***Chiman Lal vs. The Special Land Acquisition Officer, Poona reported in AIR 1988 SC 1652***, the Hon'ble Apex Court has issued following guidelines in para-4 of the judgment. The following factors must be itched on the mental screen:

1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the land acquisition officer in his award unless the same material is produced and proved before the court.

2) So also the award of the land acquisition officer is not to be treated as the judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the land acquisition officer and the material utilised by him for making his valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning or reverse the conclusions reached by the land acquisition officer, as if it were an appellate court.

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

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

5) The market value of the land under acquisition has to be determined as on the crucial date of publication of the notification under section 4 of the Land Acquisition Act. The dates of notifications under section 6 and 9 are irrelevant.

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

7) In doing so by the instances method, the court has to co-relate the market value reflected in most comparable instance which provides the index of market value.

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

9) even post notification instances can be taken into account(i) if they are very proximate (ii) genuine and(iii) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects

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

i) proximity from time angle.

ii) proximity from situation angle.

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

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

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

14) The exercise indicated in clauses 11 to 13 above has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors: –

	Plus factors.		**Minus factors**
1	Smallness of size.	1	Largeness of area.
2	Proximity to a road.	2	Situation in the interior at a distance from the road.
3	Frontage to the road.	3	Narrow strip of land with very small frontage compared to depth.
4	Nearness to develop area.	4	Lower level requiring the depressed portion to be filled up.
5	Regular shape.	5	Remoteness from developed locality.
6	Level vis-a-vis land under acquisition	6	Some special disadvantageous factors which would deter a purchaser.
7	Special value for an owner of an adjoining property to whom it may have some very special advantage.		

16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself. These are general guidelines to be applied with understanding formed with common sense.”

17. Bearing in mind the legal principles enunciated by the Hon'ble Supreme Court, the market value of the acquired lands has to be determined

on the basis of the evidence adduced by the claimants.

18. In order to establish the market price of the acquired lands the claimants have relied upon evidence of valuer, sale instances and previous judgments. To begin with, the claimants have examined Pravinkumar Shaha PW-2 as Valuer of the acquired lands. He testified that he had visited the acquired lands between 20.3.96 to 30.3.96. Having examined the factual position, sale instances from the vicinity and the location and potentiality of the acquired lands, he prepared valuation reports. He placed on record his valuation reports at Exh.31 to 35. In cross examination he deposed that the claimants were referred to him by the ld. Counsel for claimants. The Ld. Counsel also provided him the 7/12 extract of the acquired lands. This introduction of Pravinkumar PW-2 into the assessment of the market price of the acquired lands puts me on guard from relying his evidence. Because the claimants were not acquainted with him. It is not the case of the claimants that they came to know about him from some news paper or advertisement. It is not the case of the claimants the they independently approached him after getting knowledge of his professional skills. Therefore, there is a room to suspect that his introduction through the Ld. Counsel could be with an intention to procure the best possible valuation.

In cross examination Pravinkumar PW-2 deposed that he did not issue notices to respondents before visiting the acquired lands. He did not prepare panchnama of his visit to the acquired lands. He also did not take any rough notes at the time of his visit. He did not collect any information from the respondent no.2 about price fixed by him of the acquired lands. He did not peruse the town plan map. He did not verify sale instances from the Sub-Registrar office. He did not verify any lay out plan or N.A. orders. All these statements of Pravinkumar PW-2 made during his cross examination compel me to disbelieve his evidence. Because this witness was expected to act in an independent manner. He is not certain about the person/body in actual possession of the acquired lands at the time of his visit. If the contention of claimant is accepted for a moment, possession of acquired land was taken prior to his visit. Obviously, it was expected that this witness issues notices of his visit to the respondents. Therefore, the entire exercise carried out by this witness is one sided inclining in favour of the claimants. Moreover, he did not collect appropriate and requisite data as admitted by him in his cross examination. It can be said that this witness proceeded on the evidence produced by the claimants only.

Thirdly, in cross examination Pravinkumar adjured that he issued his valuation report on 19.1.2012 to the Ld.Counsel for claimants. He could not assign any reason as to why he did not hand over his report from 1996 to 2012 to the claimants. This witness claims to have visited to acquired lands in March 1996. But, he did not issue the reports till January 2012, nor could he assign any plausible reason for his delay. This unexplained delay raises two possibilities:- First that he prepared the report in 1996 and kept with him and second that he did not prepare the report till 2012. On any count this delay devastates the credibility of his evidence. It would be drastic to rely upon the reports at Exh.31 to 35 prepared by this witness.

Secondly the claimants have relied upon certain sale deeds and previous judgments. It is seen that these sale deeds and judgments are not exhibited. As per Sec. 51-A of the L.A.Act, the certified copies of sale deeds are admissible in evidence without formal proof. Similarly the previous judgments are public documents. Needless to say exhibition of documents is a ministerial act. It is completely distinct from the proof of document. By fiction of Section 51-A and the Evidence Act, the sale deeds and the previous judgments can be read in evidence. Therefore, there is no impediment as such in legally reading the sale deeds and judgments relied upon by the claimants. However, for the purposes of record and identification, these documents are exhibited at the time of judgment.

19. To begin with, the claimants have relied upon the five previous judgments. They are at Exh.74, 75, 80 to 82. The judgment at Exh. 74 is of land situated in Gut no. 184. In this case as many as 9 sale instances were placed before the court. The value in the sale instances ranged from Rs.16/- per square feet to Rs. 187/-per square feet. My learned predecessor had granted compensation at the rate of Rs. 38/- per square feet for the land situated in Gut no. 184. With due respect, I am unable to find the exact reasons as to why the determination was made at this rate. The judgment has discussed in detail the evidence and the contentions of the parties, but the method by which this value was deduced could not be found. Therefore, the judgment at Exh. 74 cannot be the comparable unit.

20. The judgment at Exh.75 has been delivered in L.A.R.No.58/99. It pertains to the land situated in Gat No.185 and 317 at village Harangul. My Ld. predecessor has determined the market value of these lands in the said judgment @ Rs.22.5/- per sq.ft.. The judgment at Exh.80 is of L.A.R. (G)No.122/99. It relates to the land situated in Gut no.151, 214, 217, 320, 323 and 333 of village Harangul. In this judgment, the market value was determined @ Rs.22.5/- per sq.ft.. The judgment at Exh.81 pertains to lands Gut no.200, 226, 280, 298, 316 and 373. Same is the rate awarded in this judgment. The judgment at Exh.82 is delivered in L.A.R.(G) No.862/99. In this judgment, the market value of lands situated in Gut numbers 200, 209, 217, 227, 229, 288, 298 and 324 was determined @ Rs.22.5/- per sq.ft..

21. When the location of the lands involved in the judgment at Exh.75 and 80 to 82 is examined in the map at Exh. 86 it is found that except Gut no.288, all the lands involved in these judgments are not adjacent or at a short distance from the acquired lands involved in the present matter. Here it is necessary to mention that even though a large area was acquired, but when the

determination is claimed on square feet basis and when the lands are situated in a developed surrounding, the vicinity would shrink. Therefore, it would be fallacious to blindly apply an uniform rate to all the lands in the entire acquired area.

Secondly it is seen that the sale deeds relied upon by the claimants in the present matter at Exh.83, 84 and 85 were also relied by the claimants in the judgments at Exh.75 and 80 to 82. It is seen that in the judgment at Exh.75 the sale deeds relied in instant matters were at Exh.34 and 35. In the judgment at Exh.80 these sale deeds are at Exh.88 to 90. In judgment at Exh.91 they are at exhibits 33 to 35. In the judgment at Exh.82 these sale deeds are at Exh.53, 55 and 57. My Ld. predecessor has discarded the sale deeds dated 18.8.95 and 17.7.95 (at Exhs. 83 and 85 in the present matter) on the ground that these sale deeds are executed after freezing point. My Ld. Predecessor proceeded to determine the market value of the lands in the judgment 75, 80 to 82 on the basis of the sale deed dated 3.6.93 which is at Exh.84 in the present matters. Even this sale deed is subsequent to the notification u/sec. 32(2) of the M.I.D.Act. But, it is very close to the date of notification in time proximity. Therefore, it appears that my Ld. Predecessor relied upon this sale deed.

22. Careful study of the judgments at Exh.75 and 80 to 82 makes me to defer and distinguish from the conclusions of my Ld. Predecessor regarding the market value of the acquired lands derived by him. Knowing well that this Court cannot sit in appeal over the judgments at Exh.75 and 80 to 82 as well as restricting to the limits, the reasons for deviation need to be discussed because it is well settled position that previous judgment is relevant as a guiding factor. My learned predecessor has proceeded on the basis of the sale deed at Exh.84 in the present matter. But, it is seen that my Ld. Predecessor did not apply the rigours of the plus and minus factors as explained by the Hon'ble Supreme Court in the case of ***Chiman Lal (cited supra)***. When the location of the lands involved in these judgments and the location of the lands

involved in the present matter is verified from the map at Exh.86, it is seen that they are not very close to each other. They are also not adjacent or very close to the land Gut no.314 involved in the sale deed at Exh.84. Therefore, while deducing market value of the acquired lands on the basis of the sale deed at Exh.84 minus factors ought to have been applied. Therefore, I am of the opinion that these judgments cannot be relied upon. As such, market value of the acquired lands has to be determined on the basis of the sale deeds at Exh.83 to 85.

Before adverting to the sale deeds relied upon by the claimants, it is necessary to discuss the sale deeds relied by respondent no.2 at Exh. 40 to 53. It is seen that these sale deeds range from 1989 to 1992. The common feature of the sale deeds of 1989-1990 is that the properties were sold on acreage basis. Some sale deeds pertain to the plots. It is seen that respondent no.2 has chosen the sale deeds having less value. It means that the respondent no.2 has adopted a specific mode of adducing evidence. This pick and choose policy cannot be relied upon. Because this way the prevalent market rates of the properties in the vicinity cannot be ascertained. Hence, the sale deeds relied upon by respondent no.2 are kept out consideration.

23. As stated above, the sale deeds at Exh.83 and 85 are executed about three years after the notification u/sec. 32(2) of the M.I.D.Act. The notification u/sec. 32(2) was published on 18.11.92 and these sale deeds were executed in the year 1995. Huge acquisition was made. The purpose of acquisition was formation of industrial area. Sudden escalation in prices of the properties in the vicinity was obvious. As per the recent verdict of the Hon'ble Supreme Court, determination of market value by reducing 10% value per year from the post notification sale deeds is not permissible. For these reasons, the sale deeds at Exh.83 and 85 are discarded.

24. Thus remains the sale deed at Exh.84 for determination of the market value of the acquired lands. Perusal of the sale deed at Exh.84, it is seen that plot no.14 admeasuring 60X25 feet =1500 sq.ft. was sold by Ujjawala Birle to Kanchan Mohite for the consideration of Rs.50,000/- . The four boundaries mentioned in the sale deeds are : towards east is the remaining portion of plot no.14, towards west is plot no.15, towards north is plot no.45 and towards south is situated the Latur-Barshi State high way. The location of land Gut No.314 when verified from the map at Exh.86 shows that the boundaries mentioned in sale deed Exh.84 are correct. The sale deed at Exh.84 pertains to a small plot out of Gut no.314. It needs no emphasis to mention that the plot in sale deed at Exh.84 is situated adjacent to the State high way. It is also situated adjacent to the acquired area when taken into totality. The intention of the respondents was widely published before this sale deed came to be executed. Obviously, the value of the land adjacent to the acquired area and the State high way must have gained steep increase. Bearing in mind this aspect, the market price of the acquired lands involved in the present matters needs to be determined.

25. Perusal of the sale deed at Exh.84 shows that 1500 sq.ft. area was sold for the consideration of Rs.50,000/-. On the date of execution of the sale deed, the value of the plot was 50,000÷1500=33.33. It means the plot Exh.84 was sold @ Rs.33.33/- per sq.ft..

26. In the present group four references i.e. L.A.R.No. 48/99, 194/99,158/99 and 339/99 relate to the lands situated at village Harangul. Whereas L.A.R.No.539/99 pertains to the land situated at village Khandapur. The land in Gut no.314 in sale deed Exh.84 is from village Harangul. It is adjacent to the State high way. Therefore, this important advantage is attached to the land in sale deed at Exh.84. This advantage is not attached to the acquired lands involved in the present matters. Therefore, this is one of the minus factors. Secondly the area of the property in sale deed at Exh.84 is 1500

sq.ft.. But, the area of the acquired lands in the present matters is comparatively large. It is common experience that many people come forward to purchase a small area of land. Vice versa people generally do not prefer purchase of lands having large area. Therefore, the size of the land is another minus factor. The acquired lands, although situated in a developed vicinity, but were not developed at the time of acquisition. It is settled position that deductions on the point of development are required to be applied. If, 30% deduction is applied on account of development charges and 12.5% each deduction is applied on account of above two minus factors, the total deductions come to 55%. The sale deed at Exh.84 was executed @ Rs.33.33/- per sq.ft.. If, deductions are applied as above to this value, the market price of the acquired lands can be deduced as follows: 33.33÷ 100 X 45= 14.99. As such, I am of the opinion that the market value of the acquired lands situated at village Harangul is @ Rs.14.99/- rounded off to Rs.15/- per sq.ft..

27. Here it is necessary to mention that village Khandapur is situated on the Southern side of Latur-Barshi State high way. It is also seen that village Khandapur is situated beyond the Shivar of village Harangul on Southern side. Needless to say village Khandapur is at a considerable distance from the State high way. This fact has also been observed by my Ld. Predecessor in the judgments at Exh.75 and 80 to 82. Therefore, the market value of the lands of village Harangul as determined above cannot be equally applied to the lands of village Khandapur. The distance of the land situated in Gat No.186 of village Khandapur from the State high way needs to be taken into account as one more additional minus factor. If, 12.5% deductions are further applied to the above deductions on account of this minus factor, I am of the opinion that the value of the land situated in Gut no.186 of village Khandapur involved in L.A.R.No.539/99 can be deduced. Applying this analogy, the value of the land of Gut no.186 of village Khandapur could be deduced as follows: 33.33÷ 100 X 32.5= 10.83. As such, I am of the opinion that the market value of the

acquired lands situated at village Khandapur is @ Rs.10.83/- rounded off to Rs.11/- per sq.ft..

28. To conclude, the market value of the acquired lands in L.A.R.No.48/99, 158/99, 194/99 and 339/99 was @ Rs.15/- per sq.ft. on the date of notification u/sec. 32(2) of M.I.D.Act and the value of the land in L.A.R.No.539/99 was @ Rs.11/- per sq.ft.. In other words the L.A.O. has not determined the market value of these lands in proper perspective. He has awarded inadequate compensation. Hence, I answer issues no.1 and 2 in affirmative.

<u>As to Issue No.3</u> :-

29. Before discussing the entitlement of the claimants, it is necessary to deal with the question of area of land acquired from Gut no.149 of village Harangul involved in L.A.R.No.194/99. The claimants in the said reference have contended that 8 Hectare 13 R land was acquired. But the 'E' statement at Exh.25 shows that 44 R land was already acquired by the State Government for the purpose of road. It means that 44 R land out of Gat No.149 had already vested in the State Government. Therefore, during the acquisition proceeding for new M.I.D.C. the claimants in L.A.R.No.194/1999 did not own and possess 8 Hectare 13 R land, instead they owned and possessed 7 Hectare 69 R land. Therefore, the claimants in L.A.R.No.194/99 are entitled to compensation only to the extent of 7 H. 69 R land.

30. The claimants have claimed solatium, interest and statutory benefits. Section 34(1) of the MID Act says that Part-III of the L.A. Act shall mutatis mutandis apply to the acquisition under the MID Act. In the light of Section 34(1), the claimants are entitled to the benefits under Section 23 & 28 of L.A.Act.

Section 23(1A) of the L.A. Act provides that in addition to the market value of the lands, the Court shall in every case award an amount calculated at the rate of Rs. 12 % per annum on such market value for the period commencing on and from the date of publication of the notification under section 4(1) to the date of the award of the collector or the date of taking possession of the lands whichever is earlier. In view of this provision, the claimants are entitled to an amount calculated at the rate of Rs. 12% per annum on the enhanced market value of his acquired lands for the period commencing from the date of publication of notification under section 32(2) till the date of the award. That is the period from 04.03.93 till 03.01.1998

31. Section 23(2) further provides that in addition to the market value of the lands, the Court shall in every case award a sum of 30% on such market value in consideration of compulsory nature of the acquisition. In view of this provision the claimants are further entitled to the sum of 30% on the aforesaid total market value. The claimant are entitled to interest from the date of notification i.e., from 04.03.93 at the rates specified in Section 28 of the said Act. The Hon'ble Apex Court in case of ***Sunder vs. Union of India- 2001(4) Mh.L.J 859*** has held that the interest is awardable to the claimants on the amount payable under section 28 of the Act and the Solatium. The Apex Court further held that the interest awardable under section 28 of the Act, therefore, would include within its ambit both the market value and the statutory solatium. The claimants would be entitled to interest on the aggregate amount including the Solatium. In view of this legal position, the claimants are entitled to interest on the aforesaid enhanced compensation at the rate of 9% per annum from the date of notification i.e 04.03.93 to 03.03.94 and at the rate of Rs.15% per annum for the period from 04.03.94 till payment. Hence I answer issue No. 3 accordingly in affirmative.

As a sequel, the upcoming order :-

ORDER

The reference petitions are partly allowed as under: –

1) The respondents do pay total enhanced additional value of the acquired lands at the rate of Rs.15/- per sq.feet (Rs.Fifteen per sq.ft. only) to the claimants in LAR No.48/99, LAR No.194/99,LAR No.158/99, LAR No.339/99 deducting the amount already paid.

2) The respondents do pay total enhanced additional value of the acquired land at the rate of Rs.11/- per sq.feet (Rs.Eleven per sq.ft. only) to the claimant LAR No.586/99 deducting the amount already paid.

2) The respondents further do pay an amount calculated at the rate of Rs. 12% per annum on the enhanced market value as above to the claimants for the period from the date of publication of Notification under section 32(2) till the date of the award i.e., the period from 04.03.93 till 03.01.98

3) The respondents further do pay solatium of 30% on the enhanced value as above to the claimants vide section 23(2) of the L.A. Act.

4) The respondents further do pay interest to the claimants on the aforesaid enhanced compensation at the rate of 9% per annum from the date of notification i.e 04.03.93 to 03.03.94 and at the rate of Rs. 15% per annum for the period from 04.03.94 till payment.

5) The respondents do pay proportionate cost of the reference petitions to the claimants under section 27(2) of the L.A. Act.

6) The claimants do pay deficit Court fees, if any, within one month of this order.

7) Award be drawn accordingly.

Date :15th July, 2015. (Govind G.Vayal)
Place :Latur. Jt.Civil Judge,S.D.,Latur.