

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1766 OF 2008**

The State of Maharashtra
(At the instance of the Special
Land Acquisition Officer No.2, Pune)

...Appellant
(Orig. Opponents)

Versus

Shri. Neguib Yahyabhiy Kachwalla
age 45 Yrs., Occu. Doctor,
R/o 101, Silver Beach,
PP. Jahambhekar Marg,
Dadar, West, Mumbai 400 028.

...Respondent
(Orig. Claimant)

Mr. A.R. Patil, AGP for Appellant- State.
Mr. Ruchir L. Tolat i/b. Adv. L.C. Tolat for Respondent – Claimant.

**CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.**

**RESERVED ON : 27 FEBRUARY, 2026
PRONOUNCED ON : 17 APRIL 2026**

JUDGMENT (Per Advait M. Sethna, J.):

Prologue:

1. An interesting issue arises for our determination in the peculiar factual complexion of the given case. It relates to the claim of the Appellant (Original Opponent) against enhancement of compensation in regard to the acquisition of the Respondent's subject land bearing Gat No. 307 admeasuring 8.22 Hectares = 82,200 sq.mt. (***“Subject/Acquired Land”*** for short) situated at Village Kusgaon, Maval Taluka, District Pune. The

Appellant in this First Appeal has assailed the Judgment and Order dated 2 June 2007 of the Reference Court i.e. Ad- hoc District Judge- 11, Pune. (“**Impugned Judgment**” for short). The Reference Court vide such Impugned Judgment ordered and directed the Appellant to pay compensation to the Respondent, at Rs. 500/- per sq.mt. for the subject/acquired land admeasuring 82,200 sq.mt. amounting to Rs.3,99,06,045/- in terms of Sections 23 and 24 of the Land Acquisition Act, 1894 (“**Land Acquisition Act**” for short).

2. At this juncture, we have noted the submission of Mr. Tolat, learned Counsel for the Respondent that he is ready and willing to accept the enhanced compensation of Rs. 3,99,06,045/- ordered and directed by the Reference Court in the Impugned Judgment, on the basis of the then prevailing market rate of Rs. 500 per sq.mt. in respect of the Subject /Acquired Land.

3. The relevant facts arising for adjudication of the First Appeal are as under:-

Factual Matrix:-

4. It was on 19 December 1996 that a notification was issued under Section 4 of the Land Acquisition Act by the Special Land Acquisition Officer (“**SLAO**” for short) for acquisition of the Respondent’s land, bearing Gat No.307, admeasuring 8 H 22 R (82,200 sq. meters) situated at village Kusgaon, Taluka Mawal, District Pune. Such acquisition by the Appellant –

State was for a public purpose viz. for soil, murum and stone quarries for construction of the Mumbai-Pune Express Highway.

5. An Award under Section 11 of the Land Acquisition Act was declared/published by the SLAO on 31 October 1997. By such Award, the compensation was granted to the Respondent at the rate of Rs.1,45,250/- per hectare i.e. (Rs.14.5/- per sq. mt. (approx.) aggregating to Rs.11,93,955/-). It was on 9 December 1997 that the possession of the subject acquired land was taken by the SLAO.

6. A Reference Application dated 17 February 1998 under Section 18 of the Land Acquisition Act was filed by the Respondent *inter alia*, seeking enhancement of compensation at Rs.940/- per sq. mt. The aforementioned Reference Application was rejected by the SLAO on the ground of being barred by limitation on 31 October 1998.

7. Against the aforesaid rejection by the SLAO, the Respondent preferred a Civil Revision Application No.230 of 2000 before this Court. By an order dated 16 August 2001 this Court held that the reference was filed within the limitation period and thereafter, reversed the rejection order of the SLAO dated 31 October 1998. The SLAO was further directed to forward the reference to the Reference Court. The reference was registered as L.R. 148/2002 before the District Court, Pune on 21 January 2002. According to the report of the Valuer AW-2, he determined the value of the subject land, for the purpose of compensation, at Rs.950/- per sq. mt. He

relied on 6 comparable sale instances to arrive at such valuation.

8. The Reference Court framed the following issues for consideration which read thus:-

“Issues	Findings
1) Is the reference barred by limitation?	IN THE NEGATIVE
2) Is it proved that the compensation offered by the Land Acquisition Officer is improper and inadequate as per prevailing market value on the relevant date?	PARTLY IN AFFIRMATIVE
3) Is claimant entitled to get enhanced compensation?	PARTLY IN AFFIRMATIVE
4) What order?	AS PER FINAL ORDER”

9. The Reference Court heard the parties and rendered its judgment in L.R. No.148 of 2002 on 2 June 2007. The Reference so made by the Respondent was partly allowed by enhancing the compensation to Rs.500/- per sq. mt. as against the compensation of Rs.14.5/- per sq. mt. awarded by the SLAO under the Award published on 31 October 1997. Accordingly, the said Reference Court ordered enhanced compensation of Rs.3,99,06,045/- payable by the Appellant to the Respondent along with 30% solatium and other terms as set out in the said Impugned Judgment.

10. The Appellant aggrieved by the Impugned Judgment of the Reference Court preferred present Appeal before this Court, *inter alia*, challenging the enhancement of compensation at Rs.500/- per sq. mt., awarded/ granted by the Reference Court.

11. The Co-ordinate Bench of this Court by an order dated 21 October 2021 passed in Civil Application No. 3448 of 2008 preferred by the Appellant herein stayed the Impugned Judgment of the Reference Court dated 2 June 2007, upon the Appellant depositing the decretal amount in Court. It is in such backdrop that this First Appeal is filed.

Submissions of the Appellant:

12. Mr. A.R. Patil, learned counsel for the Appellant- State has, at the outset, submitted that the Impugned Judgment of the Reference Court is both perverse and legally untenable, thus, warranting interference of this Court in Appeal.

13. Mr. Patil, by way of background, would state that subject land under Reference admeasuring about 82,200 sq. mt. is beyond the limits of Lonavala Municipal Council. The geographical location of village Kusgaon is an important factor. The topography of the acquired land indicates that Lonavala City is at a distance of 2 to 3 km from the subject land. Though the land is having non- agricultural potentiality, it is an agricultural land. Village Nangargaon is at a distance of 500 to 700 sq. meters from the subject land and village Bhangarwadi is situated at a distance of 5 km from the subject land. Both these villages, unlike the subject acquired land, are situated within the limits of Lonavala Municipal Council.

14. Mr. Patil would submit that the Respondent in his cross-examination before Reference Court admitted that the old Bombay – Pune Highway was

at a distance of 3 to 4 km away from village Kusgaon. There is no primary school, health centre, post office and/or veterinary facility in the said village at the relevant time. He, during the said cross-examination, also admitted that there was no electricity and water supply in the subject acquired land at the relevant time. People used to go to Lonavala for weekly market. Pertinently, Mr. Patil would contend that the Respondent (AW-1) failed to lead any evidence to bring on record any documentary proof to show that the subject acquired land was comparable with the lands situated in village Bhangarwadi, Nangargaon, Tungarli and Lonavala.

15. Mr. Patil relying on the evidence of AW-2 i.e. the Valuer Mr. Padmakar Panse would submit that the said witness in his affidavit of examination-in-chief deposed that the subject acquired land is at a distance of about 2.5 km away from the old Bombay-Pune National Highway. Further, the said AW-2 admitted in his cross-examination that he could not produce any document to prove/establish that since the year 1996, the industrial zones were developed in the village Kusgaon.

16. According to Mr. Patil, the said AW-2 failed to show whether any sale deed pertinent to village Kusgaon was available. In fact, the said AW-2 admitted that the acquired subject land is located on the hill and on the slope of the hill. AW-2 specifically admitted during his testimony that he visited the subject acquired land on 18 December 1998. This would indicate that he was not aware of the nature and extent of development, civic

amenities and other facilities in and around the acquired land. This would be as on the date of notification dated 19 December 1996, under Section 4 of the Land Acquisition Act.

17. Mr. Patil, would urge that the case of the Respondent (Original Claimant) placed reliance upon 6 sale instances as referred to by the Valuer (AW-2). In this regard, he would submit that none of the sale instances are comparable with the subject acquired land. All of them are therefore liable to be discarded. Accordingly, market value of Rs.950/- per sq. mt. arrived at by the AW-2 and deposed by him on the basis of such 6 sale instances is excessively high, unrealistic and exaggerated.

18. Mr. Patil would urge in the alternative and without prejudice to the above submission that if at all first sale instance dated 7 September 1995 is considered, such can only be accepted after substantial deductions. The market value of the said land under such instance is Rs.787/- per sq. mt. Such sale deed was executed 15 months before the date of the preliminary notification dated 19 December 1996, in the present proceedings.

19. Mr. Patil would refer to the decision of the Supreme Court in ***General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel & Anr.***¹. This is to submit that a 10% increase in the market rate of Rs.787/- per sq. mt. in the comparable first sale instance would come to Rs.866/- per sq. mt. in the given facts. Mr. Patil would urge that in

¹ (2008) 14 SCC 745

terms of the law laid down in ***Subh Ram and Ors. vs. State of Haryana & Anr.***², there should be at least 75% deduction in the market rate in the given case, on account of quality, location, size, civil amenities and development in and around the subject acquired land which, according to the Appellant would come to Rs.216.5/- per sq. mt.

20. Mr. Patil has relied on several decisions which he has tendered by way of compilation of judgments. Referring to the decision in ***Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr.***³ he has placed due reliance on the said judgment. He refers to paragraph 4 of the decision, which relates to the factors to be etched on the mental screen while determining compensation. Mr. Patil would accordingly submit that, in the present case, there is no material on the basis of which the Court has arrived at a conclusion to determine the market value of the said subject land at the rate of Rs. 500 per sq. mt. which is exaggerated and excessive.

21. He then placed reliance on the decision in ***Food Corporation of India vs. Makhan Singh & Anr.***⁴. Relying on paragraph 4 of the said decision, Mr. Patil submitted that the Act provides a mechanism to determine the market value of the land as on the date of the notification under Section 4. Under Section 15 of the Act, the Collector is mandated to be guided by the provisions contained in Sections 23 and 24 while determining the amount

2 (2010) 1 SCC 444

3 (1988) 3 SCC 751

4 (1992) 3 SCC 67

of compensation. It is the bounden duty of the Court, while ascertaining compensation, to ensure that it is just, not merely to the individual whose property is acquired, but also to the entity required to pay for it. Accordingly, Mr. Patil urged that the parameters prescribed under Section 15 read with Sections 23 and 24 have not been followed by the Reference Court. The amount of compensation ascertained is not just, as it considers only the interest of the individual whose property has been acquired.

22. Mr. Patil would then rely on the Judgment in the case of ***Manipur Tea Co. Pvt. Ltd. v. Collector of Hailakandi***⁵. Referring to paragraph 4 of the said decision, Mr. Patil would urge that the burden is on the claimant to prove, by adducing cogent, reliable, and acceptable evidence, the market value of the land under Section 23(1) of the Act. Such burden does not shift to the Government. Rather, it is the duty of the Court to assess the evidence adduced by the claimant and determine the compensation on the touchstone of what a prudent purchaser would pay in an open market. According to Mr. Patil, the Reference Court has overlooked this principle and failed to consider that the Respondent (claimant) has not discharged the burden cast upon him in law.

23. Mr. Patil has placed reliance on the decision in ***Kanwar Singh & Ors. v. Union of India***⁶. In this regard, Mr. Patil urges that, while considering comparable sale instances, the length and extent of the area acquired ought

5 (1997) 9 SCC 673

6 (1998) 8 SCC 136

to be taken into account to determine the proper amount of compensation. He further points to the findings of the High Court in the said case that the situation and potentiality of the land in adjoining plots, where higher compensation was awarded, were different. Mr. Patil contends that, even in the present case, the sale instances involve lands situated in different plots with distinct features and potentiality, and therefore cannot be compared. Accordingly, the Reference Court has fallen into error in doing so.

24. Mr. Patil would then place reliance on the decision in *Kasturi & Ors. vs. State of Haryana*⁷. In this case, the Supreme Court held that where there is a difference between a developed area and an area having potential value but not yet developed, a deduction of 20% towards development charges rather than the usual one-third (1/3) was justified on the facts. Mr. Patil would submit that the Reference Court, by neither deducting any development charges nor providing a basis for not doing so, has grossly erred in arriving at the amount of compensation.

25. Mr. Patil has placed reliance on the decision in *Kiran Tandon v. Allahabad Development Authority and Another*⁸, particularly paragraph 10 thereof. The Supreme Court held that the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant, who is in the position of a plaintiff. According to Mr. Patil, this burden has not been discharged at all by the present Respondent

7 (2003) 1 SCC 354

8 (2004) 10 SCC 745

(Claimant), and therefore, the Reference Court has erred in determining the amount of compensation in the given case.

26. Mr. Patil next referred to the decision in ***Mohammad Raofuddin vs. Land Acquisition Officer***⁹. He placed due reliance on paragraph 11 of the said decision. The Supreme Court held that, in the absence of a sale deed, the judgment and award passed in respect of acquired land in the same village and/or a neighboring village can be accepted as valid piece of evidence and can provide a sound basis for determining the market value of the land, after making suitable adjustments with regard to the positive and negative factors enumerated under Sections 23 and 24 of the Act. Undoubtedly, some amount of guesswork is involved in the entire exercise. Mr. Patil would urge that the principles laid down in the said decision by the Supreme Court have been completely ignored in the judgment passed by the Reference Court.

27. Mr. Patil places reliance on the decision in ***Lal Chand v. Union of India and Another***¹⁰. This is in support of the proposition that, while determining the amount of compensation, a percentage of deduction towards “development” must be applied to arrive at the market value of a large tract of undeveloped agricultural land, with reference to the sale price of small developed plots. Such deduction generally varies between 25% and 75% of the price of such developed plots, depending upon the nature of

9 (2009) 14 SCC 367

10 (2009) 15 SCC 769

development in which the exemplar plots are situated. Mr. Patil submits that the SLAO has correctly applied these principles of deduction, which the Reference Court has completely overlooked.

28. Mr. Patil has referred to the decision in ***Bhule Ram vs. Union of India and Anr.***¹¹, more particularly paragraphs 7 and 8 of the said decision. This is again to highlight that Section 23 mandates that the market value of the land is to be assessed at the time of issuance of the notification under Section 4 of the Act. The fair and reasonable compensation must be determined, which is just, taking into consideration the use to which the acquired land is put to and whether the same has unusual or unique features or potentiality. The Supreme Court, as Mr. Patil would point out from paragraph 9 of the said decision, relies on “guesstimate,” which cannot be treated as synonymous to conjecture. Mr. Patil would urge that the decision arrived at in the present case is neither fair nor just, and that the discretion exercised by the Reference Court in arriving at the compensation, by taking the market value of the land at Rs. 500/- per square meter, is exaggerated and excessive.

29. Mr. Patil has placed reliance on the decision of the Supreme Court in ***Union of India v. Dyagala Devamma and Others***¹². He has submitted that, in the said decision, the Reference Court was justified in making a deduction of 50% towards development charges from the market value. The High

¹¹ (2014) 11 SCC 307

¹² (2018) 8 SCC 485

Court had no basis to reduce this deduction to 25% in place of 50%. Similarly, in the present case, there is no clarity regarding the deduction towards development charges by the Reference Court in arriving at the compensation for the said land.

30. Mr. Patil, therefore, urges that, considering all of the above decisions, the Reference Court has failed to consider the parameters and principles laid down in the aforementioned decisions, and, therefore, the Impugned Judgment deserves to be set aside.

Submissions of the Respondent :-

31. Mr. Tolat, learned counsel appearing for the Respondent (Original Claimant), has supported the Impugned Judgment and advanced his submissions accordingly. He would primarily submit that the Respondent is ready and willing to accept the compensation as determined by the Reference Court to the extent of Rs. 500 per sq. mt.

32. The Respondent initially contended that the true and correct valuation of the subject acquired land was Rs. 950 per sq. mt, as determined by the valuer (AW-2), as against the claim of Rs. 940 per sq. mt made by the Respondent in the reference proceedings before the Reference Court. The Respondent sought compensation at the rate of Rs. 940 per sq. mt., amounting to Rs. 8,10,06,045/-.

33. Mr. Tolat, would submit that the Reference Court has rightly

considered various factors to arrive at the compensation payable, in the given facts and circumstances. For instance he would submit that the Reference Court has rightly considered the geographical location of village Kusgaon being situated on the outskirts of the Lonavala Municipal Council. This is hardly at a distance of 2 to 3 km from Lonavala city and therefore at a walkable distance. Admittedly Mr. Tolat, would submit that the said acquired subject land is having non-agricultural potentiality.

34. Mr. Tolat, would then contend that the Reference Court has rightly considered the evidence of the valuer Shri. Panse (AW- 2) and his valuation report. The said valuation determined the price of the acquired land of Rs.950 per sq. mt. on the basis of various factors. The Valuer AW-2 in his deposition which Mr. Tolat, would submit deposed that Kusgaon is adjacent to the Municipal limits of the Lonavala city. He further deposed that the old Mumbai Pune highway was situated at a distance of 3 to 4 km from village Kusgaon. These facts are also supported by the cross examination of the Respondent (Original Claimant).

35. Mr. Tolat, would then rely on the decision of this Court in ***State of Maharashtra and Anr Vs. Abdul Sattar and Ors***¹³ that while determining the compensation under Section 23 of the Land Acquisition Act comparable sale method is the proper method. Accordingly, price fetched by large area of land in certain circumstances can be considered. The proportion that more

13 AIR 1995 Bombay 85

area of land cannot fetch price at the same rate as fetched by the small land is not absolute.

36. Mr. Tolat, then submits that the Reference Court has rightly held that while pursuing the sale instances of land in the heart of Lonavala city cannot be held to be fully comparable with the subject acquired land. This is because the subject acquired land is, situated beyond the limits of Lonavala Municipal Council.

37. Mr. Tolat, would contend that upon hearing and considering the submissions of the parties the Reference Court refused to grant compensation at the rate of 940 per sq. mt., as initially claimed by the Respondent. Accordingly the same was reduced to Rs. 500 per sq. mt. as noted in the Impugned Judgment.

38. Mr. Tolat, would place reliance on the cross examination of OW-1 i.e. Shri. Kanhuraj Bagate i.e. the SLAO who admitted that he had not considered the fact of the acquired/subject land having non agricultural potentiality while determining the market value of the land. The said SLAO admitted that the rate of Rs.14.5 per sq. mt. fixed by him was on basis of the ready reckoner value.

39. Mr. Tolat on the observation of the Supreme Court in ***K.S. Shivadevamma and Ors vs. Assistant Commissioner and Land Acquisition Officer and Anr***¹⁴ wherein it held that for determining the market value of

14 (1996) 2 SCC 62

land for compensation under Section 23 of the Land Acquisition Act, a circular issued by the Government under Section 47-A of the Stamp Act for fixation of stamp duty and registration fee cannot form the basis for determining the market value, unless there is evidence of prevailing market value of lands in the locality/vicinity.

40. Mr. Tolat, would submit that the Reference Court has relied upon the decision of the Supreme Court in *State of Madras Vs. A.M. Nanjan and Anr*¹⁵, and that of this Court in *Gajanan Pandurang Kamat Vs. Special Land Acquisition Officer*¹⁶. This is in support of the preposition that comparable lands situated in the reasonable proximity are relevant to consider as held in the said decisions.

41. Mr. Tolat, would urge that Reference Court considering the aforesaid judgment of the Supreme Court and this Court respectively, accepted that since the sale instances in respect of the acquired/subject land was situated within the heart of Lonavala city and therefore they rightly fetch more value than Rs.900 per sq. mt. However, Reference Court duly took cognizance of the fact that acquired land of the Respondent was not within the Municipal Council of Lonavala city but was situated within the residential zone, which fact was borne out by the certificate issued by the concerned department certifying that the acquired land also had building potentiality. Therefore, the acquired land would not fetch Rs. 900 per sq.

15 (1976) 1 SCC 973

16 All India Land Acquisition and Compensation Cases 2001 (Supp) 282

mt.

42. Mr. Tolat would place reliance on ***Mohammad Yusuf & Ors. v. State of Haryana & Ors***¹⁷ wherein the Supreme Court has considered the principles embodied under Section 23 of the Land Acquisition Act. Further held that the amount of compensation has to be awarded considering factors like potential value, location of land, future prospects, development of the land in question, and the likely injury to be sustained by the parties whose land is acquired. He has further submitted that the Supreme Court has also considered in detail the intention behind enactment of the Land Acquisition Act.

43. Mr. Tolat would also place reliance on ***Besco Limited v. State of Haryana & Ors***¹⁸, wherein the Supreme Court has considered Sections 4(1) and 23 of the Land Acquisition Act and has laid down factors for determination of market value and compensation.

44. Mr. Tolat further submits that in ***Smt. Tribeni Devi & Ors v. The Collector, Ranchi***¹⁹, the Supreme Court has considered the principle for determination of compensation, such as opinion of experts. In the aforesaid matter the Respondent had led evidence of a valuer who is an expert in respect of Land Acquisition Act.

45. Mr. Tolat would place further reliance on ***Chimanlal Hargovinddas***

17 Civil Appeal Nos. 3807-3825 of 2018 dated 16 April 2018

18 Civil Appeal No. 5376 of 2023 dated 23 August 2023

19 1972 (1) SCC 480

(Supra), wherein, it is clearly mentioned/ held that the evaluation of the plus and minus factors depends on the facts of each case. There cannot be hard and fast or rigid rule. Common sense is the best and most reliable guide. Every case must be dealt 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.

46. Mr. Tolat, would contend that the Reference Court after hearing both sides at length, considering all relevant and material fact rightly reduced the amount of compensation of the Respondent from Rs. 940 per sq. mt. to Rs. 500 per sq. mt., which is acceptable to the Respondent (Original Claimant).

47. Mr. Tolat in view of the aforesaid submissions and the judgments relied upon, would submit that the First Appeal be dismissed and the Impugned Judgment dated 2 June 2007 be confirmed.

Analysis:

48. At the very outset we may note that the Respondent (Original Claimant) had filed an application under Section 18 for enhancement of compensation under the said provision, as awarded by the SLAO. The award of the SLAO is dated 31 October 1997, which is passed pursuant to the notification issued under Section 4 of the Land Acquisition Act by the SLAO on 19 December 1996. The subject/acquired land as noted earlier is situated at village Kusgaon, Taluka Maval, Dist. Pune bearing Gat No.307

admeasuring 08H. 22R which is equivalent to 82,200 sq. mt.

49. In the above context, we may first advert to the award of the SLAO dated 31 October 1997. By such award the SLAO had awarded compensation at the rate of Rs.14.5 per sq. mt., aggregating to Rs.11,93,955/-. The evidence of the SLAO is on record by way of his affidavit of examination-in-chief dated 16 March 2007 as recorded in Land Reference Case No.148/2002. A perusal of the evidence and the cross-examination of the SLAO reveals that there are absolutely no details to substantiate the valuation of the subject/acquired land. Neither have the sale deeds obtained in Form A from the Talathi have been considered nor the market value, being agricultural land. The entire basis in arriving at the valuation and compensation is the Ready Reckoner rate prevailing at the relevant time i.e. as on 19 December 1996, the date on which the Section 4 Notification was issued and accordingly the amount of compensation arrived at by him was adequate and proper. He accepts that the award in respect of the subject/acquired land was the first declared by him during the period 1995 to 1997.

50. It is trite law that compensation ought to be determined in accordance with the criteria laid down under Sections 23 and 24 of the Act under an application made under Section 18 thereof. At this juncture it would be apposite to reproduce Section 23 of the Land Acquisition Act which reads thus:-

“23. Matters to be considered in determining compensation-(1) *In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-*

- first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];*
- secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession thereof;*
- thirdly, the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land;*
- fourthly, the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*
- fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*
- sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collectors taking possession of the land.*

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of compulsory nature of the acquisition.”

51. Accordingly, upon taking the above factors into account, the compensation has to be determined on the basis of the market value as on the date of the issuance of Section 4 notification i.e. 19 December 1996 and

not on the basis of the Ready Reckoner rate. The Supreme Court on this issue in the case of ***K. S. Shivadevamma & Ors.*** (Supra) referred to by Mr. Tolat, has held that the circulars issued by the Government under Section 47-A of the Stamp Act for fixation of stamp duty and registration fee would not form the basis to determine the compensation. The SLAO in relying solely on the ready reckoner rate to determine compensation has failed to follow the said decision.

52. A similar view has been taken by the Supreme Court in ***Bharat Sanchar Nigam Ltd. Vs. M/s. Nemichand Damodardas & Anr.***²⁰. It is held that the rates mentioned in the Ready Reckoner are basically for the purpose of collection of stamp duty and cannot be the basis for determination of compensation for lands acquired under the Land Acquisition Act. In view thereof, the entire basis of arriving at the compensation by the SLAO in the given case, is legally flawed.

53. Moreover, the award of the SLAO does not even whisper about the valuation report of the registered valuer – AW2. The Supreme Court in ***U. P. Awas Evam Vikash Parishad Vs. Asha Ram (D) Thr. LRs & Ors.***²¹ has in paragraph 21 of the said judgment referred to a three Judge Bench decision of this Court in ***Smt. Tribeni Devi & Ors.*** (supra) indicated methods of valuation to be adopted to ascertain the market value of land on the date of notification under Section 4(1) as the opinion of experts; price paid within

20 (2022) LiveLaw (SC) 603

21 Civil Appeal No.337 of 2021 dated 23 March 2021

a reasonable time in bonafide transactions of purchase of lands acquired or the lands adjacent to the lands acquired possessing similar advantages and the number of years of purchase of actual or immediately prospective profits of the lands acquired. None of these criteria more particularly the opinion of expert reflected in the Valuation Report has been considered by the SLAO who has ascertained the compensation thereof solely on the basis of the Ready Reckoner rate as on 19 December 1996, which is legally impermissible.

54. On a perusal of the Impugned Judgment of the Reference Court, we find that the said Court has sufficiently considered the above aspects in recording its findings in paragraph 21 of the said Impugned Judgment. This embraces the cross-examination of the SLAO as noted above, his admissions in the deposition more particularly to the extent that the basis of arriving at the market value for ascertaining compensation is the Ready Reckoner rate. Thus, by relying on the decision of the Supreme Court ***A.S. Shivdevamma*** (supra) the Reference Court rightly concluded that the grant of compensation by the SLAO on the ready reckoner rate/ value was neither appropriate, nor proper, much less having any legal basis.

55. In the above context, it is necessary to advert to the decisions of the Supreme Court in ***Kiran Tandon*** and ***Manipur Tea Co. Pvt. Ltd.*** (supra) relied on by Mr. Patil. Here the Supreme Court has held that the burden of proving that the amount of compensation awarded by the Collector is

inadequate in that case, lies upon the Claimant being in the position of the plaintiff. The Court has to treat the reference as an original proceeding to determine the market value afresh on the basis of the material produced before it including that produced by the other side. We find that in the given case the Respondent (Claimant) has in clear terms proved that the compensation awarded by the SLAO is inappropriate, negligible much less legally untenable to say the least. On the parameters laid down in the said Supreme Court decision, we have examined the Impugned Judgment of the Reference Court in the paragraphs below.

56. We may now advert to the Valuer's Report which is a part of the records and proceedings before the Reference Court. The report is prepared by a registered Government Valuer. There are some relevant observations in the said report having a direct bearing on the issues involved in the given case, which are summarized below:

- a) The valuation is carried out as on 9/19 December 1996 i.e. the date of publication of the Notification under Section 4 of the Act.
- b) The subject land is continuously developing since 1990. Public and private transport and conveyance are available at a convenient distance from the nearby Aundholi road. The subject land is located at a distance of about 2 to 3 kms from Lonavala and the Nangargaon industrial area is located hardly at a

distance of 1 km. from the subject/acquired land.

- c) He being an expert in the field is well conversant with the surrounding properties. The subject/acquired land is very close to the proposed bypass highway, located at a distance of about 3 km from Lonavala railway station and bus stand and is situated on the fringe area of limits of the Lonavala Municipal Council.
- d) The subject/acquired land and surrounding areas have high industrial potential. There are relevant and fairly comparable evidences of lands with infrastructure like water supply, roads, electricity etc. and hence such arrangements can easily be made on the subject/acquired land.
- e) As a special feature, the subject/acquired land is located at higher elevation, almost at the top of the hill offering grand and scenic vistas of the surrounding expanses and Lonavala town. The subject/acquired land has very high potential as a site for prospective resort/farmhouse/rest house which will fetch a premium price.
- f) He has relied on the six sale instances which form Exh.13 before the Reference Court in arriving at the market value and the compensation at such value, for the subject/acquired land, as on 9 December 1996.

- g) Considering all the above and a deduction of 25% applied to the basic rate of Rs.1273.10 per sq. mt. he arrived at valuation for the purposes of compensation at Rs.950 per sq. mt.

57. On a perusal of the evidence on record including the examination-in-chief and cross-examination of the said Valuer we find that the Appellant in our view has not been able to controvert much less assail the Valuation Report. Being the report of an expert which is to be given due weightage considered as held by the Supreme Court in *U. P. Awas Evam Vikash Parishad* (supra) and *Smt. Tribeni Devi & Ors.* (supra) cannot be overlooked. It is thus evident that the subject/acquired land has high development/industrial potential, its location within the residential zone, indicated by the certificate issued by the concerned department, having high building potential, apart from having a strategic location, proximity to Lonavala and the old Bombay-Pune highway, approach road, readily available amenities, including high potential as a site for resort/farmhouse/rest house, which would fetch a premium price.

58. We have carefully considered the evidence of the Respondent-AW1 which would include his examination-in-chief and cross-examination. With a view to substantiate and prove his case he has deposed about the acquisition of the subject land and the purpose of the acquisition. According to him, he was aware about the developments in and around Lonavala, Tungarli, Nangargaon and Kusgaon. According to him the village Kusgaon is

adjoining to Nangargaon having all amenities like electricity, water, road which are available for the subject/acquired land. The other adjoining villages were merged with Lonavala Municipal Council which is also adjoining the subject/acquired land. He deposed regarding the N.A. potentiality of the subject/acquired land and the land situated at village Nangargaon being subject matter in L.R. No.354 of 1997 which is situated 1 km from the subject/acquired land. So also referring to the one of the exemplars in the sale instances, the land situated in village Bangarwadi is located hardly at a distance within 5 km of the subject/acquired lands. As such, the Respondent in his deposition has urged that the compensation be granted to him at the rate of Rs.940/- per sq. mt. in respect of the subject/acquired land. In cross-examination, he would state that Lonavala properties are situated at a distance of 1.5 km away from the subject/acquired land. He has deposed that old Bombay Pune-highway is situated at a distance of 3 to 4 kilometers from the village Kusgaon, towards the northern side. He would, in response to a suggestion deny that there is no bus stop and/or taxi stand at village Kusgaon and that the acquired subject land is not similar with the lands situated at Lonavala.

59. Having perused the evidence of the Respondent as noted above we are of the view that the Respondent has been able to demonstrate that the subject/acquired land has growth potential despite being agricultural land. It is not controverted that the old Bombay-Pune highway is situated at close

proximity to the said subject/acquired land. Also despite the same not being within the limits of Lonavala Municipal Council its close proximity to Lonavala is not controverted. He has also referred to the sale instances for the lands situated at Tungarli, Nangargaon which are in close vicinity to the subject/acquired land at Kusgaon.

60. We would now advert to the submissions on the sale instances which are a part of Exh.13 before the Reference Court. In this regard, Mr. Patil would strenuously urge that out of the six (6) sale instances only the first which deals with the land situated at village Bangarwadi being 444.7 sq. mt. dated 7 September 1995 would be the closest sale instance, inasmuch as the sale deed for the said land was executed about 13 months prior to the preliminary Notification dated 19 December 1996 issued under Section 4 of the Land Acquisition Act, in the given case. In the first sale instance the compensation was arrived at on the basis of market rate of Rs.787.7/- per sq. mt. which according to Mr. Patil is neither considered in the Valuation Report nor in the Impugned Judgment. The other sale instances relied on by the Respondent are of much prior periods than the Section 4 Notification in the given case and relate to much smaller plots of lands and are therefore cannot be considered and are thus not comparable.

61. In the above context, the decision of the Supreme Court in *Bhagwat Thula Vs. Special Tahsildar and Land Acquisition Officer*²² may be referred

²² (1991) 4 SCC 506

to. It held that large areas of land cannot possibly fetch a price at the same rate which the small plots are sold, is not an absolute proposition. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition situated in a remote locality. In view thereof, the said submission of Mr. Patil is not well founded and is not in sync with such decision of the Supreme Court. The same was followed by this Court in ***Abdul Sattar & Ors.*** (supra) on which Mr. Tolat justifiably relies on.

62. In the above context, we find that the Valuation Report of the registered valuer clearly takes in to consideration the first sale instance of the land having area of 444.7 sq. mt. situate at village Bhangarwadi, Nangargaon, where consideration of Rs 3,50,000/- was ascertained at the market rate of Rs. 787 per sq.mt. This forms a part of the evidence put forth by the Respondent which remains uncontroverted by the Appellant. Moreover, the SLAO in his evidence – cross examination has clearly deposed that the boundaries of the said villages of Dongargaon and Nangargaon forming a part of the said sale instances in and around which developments have taken place, are on one side of the village Kusgaon, where the subject/acquired land is located. There is a specific finding in the Valuation Report to the effect that since basic amenities such as power, well water and transport are available nearby, very little expenses have to be incurred to make them available on the subject/acquired land. All of this find due

consideration in the Impugned Judgment.

63. It is apposite to refer to relatively recent decision of the Supreme Court in *Madhukar S/o Govindrao Kamble & Ors v/s Vidarbha Irrigation Development Corporation & Ors.*²³. Here, the Supreme Court held that it is not the nature of the land alone which is determinative of the market value thereof, which is to be ascertained keeping in view various factors including proximity to developed area, road, residential or commercial or institutional area. The fact that the acquired land is unirrigated is not the reasonable yardstick to determine the market value of the land, factoring its closeness to the developed plots/areas. The Supreme Court in a recent decision in *Manohar & Ors. v/s State of Maharashtra & Ors.*²⁴ has similarly observed and held that the non-agricultural potential of the acquired land and being adjacent to the State highway are material factors to determine the compensation payable to the land owner including sale deeds of lands situate in vicinity of the acquired land. Juxtaposing the said decisions to the given factual matrix, we find no error or flaw in the finding of the Reference Court that the sale instances relied upon by the Appellant can be used to determine the market value of the subject/acquired land.

64. Mr. Patil has laboured that the Impugned Judgment where the Reference Court has arrived at the market rate of Rs.500/- sq. mt. and accordingly the compensation to the extent of Rs.3,99,06,045/- has

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absolutely no basis and is exaggerated/excessive. The Reference Court has also erred in failing to consider the requisite deductions towards development charges in arriving at the compensation payable to the Respondents, more particularly as the subject/acquired land are not developed and or situated within the area which is developed/having development potential. However, we upon perusal of the record, find that such submission of Mr. Patil is not borne out by the record. This is particularly so, since the Reference Court has duly relied on the valuation report of the registered valuer in arriving at the market rate of Rs. 500/- per sq. mt for the subject/acquired land and the resultant compensation payable.

65. We find that, at the same time, in doing so, the Reference Court has equally taken into consideration the fact that the Respondent was not in a position to place supporting evidence on record to demonstrate that the subject/acquired land is situated within the vicinity of the Sinhgad Institute, Pune. The Reference Court has further observed that the mere production of photographs, without corroborative material or evidence to show that the acquired land is adjacent to the Sinhgad Institute or at a reasonable distance from it, is not sufficient, much less adequate or proper.

66. The Reference Court has duly considered that the subject/acquired land situated in village Kusgaon is admittedly not within the local limits of Lonavala town, though it may be in its vicinity. The Court has further

observed that a previous decision in reference proceedings pertaining to the same village and the same award can be considered for determining market value in subsequent reference cases. However, such parameters are not applicable in the present case.

67. The Reference Court has also observed that the subject/acquired land, though not directly comparable with land in Tungarli village, is situated within a residential zone. This fact is corroborated by the certificate issued by the concerned department. Accordingly, the building potential of the subject/acquired land cannot be overlooked. Moreover, the subject/acquired land is located in proximity to the exemplar in the first sale instance and to the land situated in village Bhangarwadi, where substantial development has taken place. Also, considering the strategic location of the subject/acquired land, its proximity to the Bombay–Pune Highway approach road, and its strategic location in the hills, its high potential as a site for a resort or farmhouse, deserve due weightage.

68. Upon considering the instances in the previous reference cases, the Reference Court has noted that those relate to land situated in village Tungarli, where compensation was granted at the rate of Rs. 700 per sq. mt., relying upon sale instances from Lonavala city. These instances cannot be fully compared with the subject/acquired land situated in village Kusgaon, which does not fall within the municipal limits of Lonavala town.

The Reference Court has also observed that village Kusgaon, where the subject/acquired land is located, is not as developed as village Tungarli, where compensation was granted at the rate of Rs.700 per sq. mt. The Reference Court duly considered that the Respondent placed reliance on the proximity of the subject/acquired land at a distance of 1 km from the acquired land situated at village Nangargaon. However, the Court duly noted that there was no document or map produced by the Respondent in this regard, which also did not form a part of the valuation report. Therefore, the Respondent could not have taken advantage of the same.

69. From the above, it appears that the Reference Court has not mechanically accepted the market value of Rs. 950 per sq. mt. as stated in the valuation report. Rather, the Reference Court has holistically examined all relevant factors in accordance with the criteria prescribed under Sections 23 and 24 of the Land Acquisition Act while determining the market rate and the resultant compensation as of 19 December 1996, i.e., on the date of publication of the Section 4 notification in the present case.

70. In our view, the Reference Court, after considering all the material on record, including the comparable sale instance, has, after deducting development charges, arrived at the market rate of Rs. 500/- per sq. mt. for determining the compensation payable to the Respondent as on the date of publication of the Section 4 notification. In light of the negative factors as

postulated under Section 24 of the Land Acquisition Act, which have been duly considered by the Reference Court in the Impugned Judgment, it has arrived at a reasoned conclusion that this is a proper case for deducting development charges. This is because the subject/acquired land is not situated within a fully developed area, unlike the land referred to in the sale instances located in Lonavala, which were produced on record by the Respondent. We do not find any perversity, much less any irregularity and/or illegality, in these findings, which are duly supported by the material and evidence on record being correctly analyzed by the Reference Court in the Impugned Judgment.

71. There is substance in the submission of Mr. Tolat to the effect that when one compares the then prevailing market rate of Rs.500/- per sq. mt. on 19 December 1996 i.e. date of issuance of Section 4 Notification, to the market rate of Rs.950/- per sq. mt. arrived at by the registered Valuer, it clearly shows about 45% deduction. Similarly as against the market rate of Rs.787/- per sq. mt. in respect of the land situated at Bangarwadi forming a part of the closest first sale instance, there is a clear deduction of 35% (approx.). So also comparing the market rate of Rs.500/- to Rs.700/- per sq. mt. for the land situated at Tungarli village i.e. the past reference cases, there is again a deduction about 30% in this regard. The said facts are not controverted by the the Appellant which have been duly factored in by the Reference Court in arriving at the market rate of Rs.500/- per sq. mt. after

deducting the development charges in respect of the subject/acquired land, whilst arriving at the amount of compensation payable to the Respondent.

72. It is pertinent to note that the registered Valuer in his valuation report has duly deducted 25% to arrive at a fair market rate of Rs.950/- per sq. mt. from the market rate of Rs.1273.10 sq. mt., in respect of the subject/acquired land. There has been further deduction by the Reference Court towards development charges, in determining the market rate of Rs.500/- per sq. mt. to arrive at the compensation payable to the Respondent. It is settled law that deductions may be made for a variety of reasons which may differ in different cases. However, all deductions should not exceed the upper benchmark of 75%. The Supreme Court in ***Chimanlal Hargovindas*** (supra) has observed that there cannot be any hard and fast rule as to how much deduction should be made on account of the factor in relation to the potentiality/development of the land. This is essentially a question of fact which would depend on the factual matrix of every case. It does not involve drawing upon any principle of law. Therefore, in our view, the Reference Court has arrived at the market rate of Rs.500/- per sq. mt. in the given case keeping in mind such settled legal position, which does not appear to be exaggerated and/ or inflated. The Reference Court, thus, cannot be faulted on this score.

73. Mr. Tolat has correctly relied on the decision of the Supreme Court in

Mohammad Yusuf & Ors. (supra). The Supreme Court in the context of arriving at the calculation of compensation as on the date of Notification issued under Section 4 of the Land Acquisition Act, has clearly held that there cannot be a straight jacket formula in this regard. Each case has to be dealt in the light of its own facts and circumstances. Common sense is the most reliable guide. In the given case, the closest exemplar would admittedly be the first sale instance where the market rate for the land situated at village Bangarwadi was determined at Rs.787/- per sq. mt. The Reference Court has, in accordance with such settled legal principles and after considering the said sale instance has arrived at the market rate of Rs.500/- per sq. mt. for the subject/acquired land after deductions towards development charges, in determining the compensation payable.

74. We find substance in the reliance placed by Mr. Tolat on the decision of the Supreme Court in ***Nelson Fernandes & Ors. Vs. Special Land Acquisition Officer, South Goa & Ors.***²⁵ In this context, the Supreme Court held that the High Court in the said case erred in not assessing the injury that the appellant therein would likely to sustain due to loss of his future earnings from the said land. In the given case, soil, murum, stone quarrying formed a part of the subject/acquired land. A relevant factor to assess the damage already suffered due to diminution of profits of the land between time of publication of notice and taking possession by the SLAO also needs

²⁵ (2007) 9 SCC 447

to be factored in. We find that when the Registered Valuer has taken these aspects into consideration, there is no reason for the SLAO to have not factored in the report/findings of an approved Government Valuer, who is an expert in his field. Even then, as noted above, considering the development potential of the subject/acquired land and balancing it with the fact that it is not located within the local limits of Lonavala town, as the other lands in the sale instances produced by the Respondent, the Reference Court rightly arrived at the market rate of Rs.500/- per sq. mt. on an overall consideration of all such relevant and material factors.

75. At this juncture, we find it apposite to refer to a very recent decision of the Supreme Court in *New Okhla Industrial Development Authority Vs. Harnand Singh (Deceased) through LRs & Ors.*²⁶, where it was considering the issue of determination and enhancement of compensation under the aegis of the Land Acquisition Act. What the Supreme Court held in the said paragraphs, is extremely relevant to the given facts and therefore the same are reproduced below:-

“30. Consequently, given our analysis above, it is apparent that there exists no direct piece of evidence to determine fair and just compensation in the instant cases. We must, therefore, resort to the settled principle of guesstimation.

E.1.2. Applicability and use of the principle of guesstimation.

31. Guesstimation is a heuristic device that enables the court, in the absence of direct evidence and relevant sale exemplars, to make a reasonable and informed guess or estimation of the market value of the land under acquisition, and concomitantly the

²⁶ [2024] 7 S.C.R 443

compensation payable by the appropriate Government. In that sense, guesstimation hinges on the Court's ability to exercise informed judgement and expertise in assessing the market value of land, especially when the evidence does not tender a straightforward answer.

32. *This principle accentuates the fundamental understanding that determining compensation for land is not a matter of exact science but involves a significant element of estimation. Indeed, this holds true for valuation of land in general, which is affected by a multitude of factors such as its location, surrounding market conditions, feasible uses etc. Accordingly, while evidence and calculations can aid in estimating the land value, they ultimately serve as tools for approximation rather than precision. Instead, land valuation—and consequently the affixation of compensation—remains an exercise of informed estimation, requiring the integration of diverse data points and professional judgment concerning subjective, intangible and dynamic elements. Pursing a single precise valuation or compensation figure is bound to be unjust, representing a rigid approach and a procrustean endeavour at best.*
33. *Having said that, it is important to clarify that the process of determining compensation is not entirely subjective. While it may not be possible to arrive at a definitive figure, the exercise is still epistemologically objective in so far as it is grounded in evidence and the consideration of relevant factors. In case the compensation is fixed agnostically to the factors affecting the valuation of the land, the resultant figure might be arbitrary and may fail to adequately compensate the landowner for the expropriated land. Hence, while some subjectivity may exist in fixing the final figure based on these factors, the sliding scale of judicial discretion cannot be extended to mere speculation.*
34. *Accordingly, while the Court can use the principle of guesstimation in reasonably estimating the value of land in the absence of direct evidence, the exercise ought not to be purely hypothetical. Instead, the Court must embrace a holistic view and consider all relevant factors and existing evidence, even if not directly comparable, to arrive at a fair determination of compensation. Trishala Jain v. State of Uttaranchal [(2011) 8 SCR 520], summarizes these yardsticks as follows:*
 - “65. It will be appropriate for us to state certain principles controlling the application of “guesstimate”:*
 - (a) *Wherever the evidence produced by the parties is not sufficient to determine the compensation with*

exactitude, this principle can be resorted to.

- (b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.”*

35. Broadly, such relevant factors can be divided into three categories:

- i. Characteristics of the land: The valuation of land is undeniably influenced by its inherent characteristics. A parcel of land endowed with advantageous features that enhance its accessibility and usability tends to command higher market price and thus, a greater valuation in comparison to lands lacking such attributes. Key factors contributing to such features include connectivity via roads and other means of transportation, the size and shape of the land, availability of essential utilities such as electricity and water, the evenness or levelling of the land’s surface, width of frontage, and nature and status of the surrounding area etc.;*
 - ii. Future potentiality of the land: In addition to its characteristics, the valuation of land is also influenced by its potentiality. Lands with the potential to be used for commercial or residential purposes; that are located in or near a developed area; or which are proximate to tourist destinations, are perceived to hold greater value in the future. Consequently, landowners may anticipate higher future prices and accordingly demand higher sale prices compared to lands lacking these attributes. Accordingly, these features also lead to an increase in valuation; and*
 - iii. Factors denoting market sentiment: Market sentiments are powerful drivers of land valuation. Even if a particular piece of land possesses all desirable features, its valuation can still suffer if the market conditions at the time of publication of the notification under Section 4 of the 1894 Act were unfavourable. Factors such as economic recessions, political instability, speculative investments or real estate crisis can impact the perceived value of the land. Thus, these extraneous economic and political factors must also be considered when assessing land valuation.*
- 36. In the instant case, the evidence led by parties provides several relevant factors, as enumerated above. For instance, while the*

sale deed produced by the landowners cannot directly be relied upon for determining the price of the land, given its relative proximity, it nonetheless establishes its potentiality in the form of possible use towards residential purposes.”

The above are evidently applicable to the factual conspectus in the given case including the applicability and the usage of the principle of Guesstimation. We find that the observations (Supra) and the guidelines/yardstick laid down by the Supreme Court are duly factored in the Impugned Judgment of the Reference Court.

76. We would now advert to the decisions of Mr. Patil as relied on by him. To begin with we may note the decision of the Supreme Court relied on by him in **Bhuleram** (supra). In paragraph 8 of the said judgment it is held that market value of the land is to be assessed as per Section 23 of the Land Acquisition Act. Valuation of immovable property is not an exact science nor can it be determined like an algebraic problem, as it abounds in uncertainties and no straight jacket formula can be laid down for arriving at the exact market value of the land. Fair and reasonable compensation means the price of a willing buyer which is paid to the willing seller. Though the Land Acquisition Act does not provide for “just terms” or “just compensation”, the market value is to be assessed, considering the use to which the land is put to on acquisition and whether it has unique features or potentialities.

77. The Reference Court in the given case has duly considered and

applied the above while arriving at/assessing the market value as on 19 December 1996 i.e. the date of issuance of the Section 4 Notification. It has taken in to account the factors stipulated under Section 23 of the Act. Importantly, the Reference Court has given due weightage to the fact that the land has been acquired for soil, murum and stone quarries for construction of Mumbai-Pune Express Highway and its peculiar/unique development potential. This coupled with the fact of its location on the hills overlooking Lonavala town, which would fetch a premium price, as discussed (Supra) The purpose of acquisition clearly reflects an intrinsic importance/potential in the subject/acquired land. In view thereof, the decision in ***Bhuleram*** (Supra) supports the case of the Respondent and does not assist the Appellant.

78. The decision of the Supreme Court referred to by Mr. Patil in ***Mohammad Raofuddin*** (supra) is for the proposition that in the absence of sale deeds, the judgments and awards passed in respect of lands acquired in the same village/neighboring villages can be accepted as a valid piece of evidence. They provide a sound basis to determine the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Section 23 and 24 of the Land Acquisition Act. Undoubtedly, an element of some guesswork is involved in the entire exercise. Juxtaposing this to the given facts it is clearly applicable in the context of the Impugned Judgment in the determination of compensation by the

Reference Court, in terms of Section 23 and 24 of the Land Acquisition Act. For such reasons, even this decision does not take the Appellant's case any further.

79. The judgments cited by Mr. Patil in *Food Corporation of India* (supra) and *State of Punjab and Another vs. Hans Raj (Dead) by LRs Sohan Singh and Ors*²⁷ deal with the issue of the principles to be etched as stipulated under Sections 23 and 24 of the Land Acquisition Act to arrive at the market value of the land on the date of issuance of the Section 4 Notification. As discussed (supra) we are not persuaded to hold that the Impugned Judgment has faltered on the application of such well settled legal principles, to warrant any interference.

80. Mr. Patil has placed reliance on the decision in *Kanwar Singh & Ors.* (supra). This is to contend that when lands are situated in different villages there is no need to rely on those reference decisions, in such cases. However, it is clarified that potentiality of the land in terms of the development including its proximity to the subject acquired land is of vital importance in arriving at the market value for determining the compensation. The Reference Court has duly considered the said parameters, and therefore this decision, once again, does not come to the aid of the Appellant.

81. The decisions of the Supreme Court relied upon by Mr. Patil in

²⁷ (1994) 5 SCC 734

General Manager, Oil and Natural Gas Ltd.; Subh Ram and Ors. and **Kasturi and Ors.** (supra), are cases where certain deductions were made to arrive at the market value for determining the compensation, on account of quality, location, size and development in and around the subject land acquired. Mr. Patil through his written submission has applied the said decisions to submit that at least 75% deductions ought to be applied in the given facts to arrive at the market value which according to him comes to Rs.216.50 per sq. mt. However, deduction of 75% is the maximum permissible limit which for the reasons set out above cannot be applied in the given factual complexion. As held by the Supreme Court, such deductions vary in the given facts and circumstances, there being no straight jacket formula, in this regard. For similar reasons, the decision relied on by Mr. Patil in **Lal Chand** (supra) where the Supreme Court held that “deduction for development” factor is a variable percentage ranging from 20% to 75% depending upon the facts and circumstances. Hence, the above decisions do not assist the Appellant.

82. The compilation of judgments tendered by Mr. Patil also contains the judgment of the Supreme Court in **Dyagala Devamma and Ors.** (supra). The Supreme Court in the said decision has relied on its earlier decision in **Trishala Jain** which is gainfully referred to in the very recent decision in **New Okhala Industrial Development Authority** (supra). The sum and substance being that the determination of the market value of the land as to

what percentage should be adopted for deduction would depend on the facts of each case. The Supreme Court in that case did not find any fact/evidence to disturb the decision of the Reference Court which was upheld and that of the High Court was set aside. Therefore, clearly, the said decision in *Dyagala Devamma* also does not support the Appellant, in any manner, whatsoever.

83. Before parting, we may observe that in cases such as the present one needs to be guided by the factors embodied in Sections 23 and 24 of the Land Acquisition Act, while determining the compensation payable. Such exercise is fact specific and to an extent influenced by the principle of Guesstimation to be applied by the Reference Court in assessing the market value of the acquired land, particularly when the evidence does not have exactitude. As an Appeal Court, we have examined the Impugned Judgment of the Reference Court duly noting that there is an element of discretion to arrive at the market value of compensation as on the date of issuance of the Section 4 Notification. Such discretion, ought not to extend to mere speculation. We find that the Impugned Judgment passes the litmus test on all the above referred legal parameters and principles, in ascertaining the compensation which is both 'fair' and 'just'. We, therefore, find no reason and/or justification to interfere with the same. We conclude our judgment on this note.

84. For all of the above reasons, we pass the following order:-

ORDER

- (i) The First Appeal No.1766 of 2008 is Dismissed.
- (ii) The Respondent is permitted to withdraw the decretal amount of Rs.3,99,06,045/- (Rupees Three Crore Ninety Nine Lakh Six Thousand Forty Five only) towards compensation which is deposited by the Appellant with the Registry of this Reference Court pursuant to the Impugned Judgment and Order. The Registry of the said Court shall release the payment of such amount to the Respondent, subject to amounts withdrawn if any, within a period of four weeks from the date of uploading of this judgment along with the applicable accrued interest on such amount.
- (iii) No order as to costs.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]

After Pronouncement :

85. At this juncture, Mr. Patil, learned counsel for the Appellant would press for stay of this Judgment. Mr. Tolat, learned counsel for the Respondent objected to the request.

86. In the interest of justice, we deem it fit and appropriate to direct that this Judgment will not be acted upon for a period of four weeks from the date of uploading of the same.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]