



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

LAND ACQUISITION REFERENCE NO.18 OF 1988
WITH
LAND ACQUISITION REFERENCE NO.19 OF 1988

The Special Land Acquisition Officer (3)	.. Applicant
And	
A.H. Wadia Charity Trust & Others	.. Claimants
Versus	
Airport Authority of India	.. Acquiring Body

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- Mr. Shailesh S. Pathak a/w. Mr. Jay Vora, AGP for SLAO.
 - Mr. Chaitanya Chavan a/w. Mr. Neil Patel, Mr. Levi Rubens, Mr. Yohaam Rubens, Mr. Christine Rewrie, Mr. Tinaz Kapadia, and Ms. Unnati Bane i/b L. R. Associates, Advocates for Claimants.
 - Mr. Amrut Joshi a/w Mr. Yazad Udwadia, Ms. Radha Bhandari and Mr. Aavish Shetty i/b M.V. Kini & Co. for AAI (Acquiring Body).
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2024

JUDGMENT:

1. This is a group of two Land Acquisition References (for short “**LAR**”) seeking enhancement of market value of acquired lands under Section 18 of the Land Acquisition Act, 1894 (for short “**the said Act**”). The relevant date for computation of market value are different in both LARs.

2. In LAR No.18 of 1988, relevant date is 12.08.1982, total area involved is 44043.89 sq. m. comprising of 5 Survey Numbers. These lands are acquired for the public purpose, viz; Mumbai Airport /

Extension of Mumbai Airport. Notice under Section 9 of the said Act is issued on 05.06.1985. Award under Section 11 of the said Act is declared on 23.09.1986. Special Land Acquisition Officer (for short “SLAO”) awarded market value @ Rs.14.00 per sq. m. for the relevant date alongwith statutory benefits. Reference Application under Section 18 of the said Act was filed on 07.11.1986 within limitation period. Rate claimed by Claimants in the Reference Application is Rs.90.00 per sq. m. for the entire land. Rate determined by Claimants’ Valuer is Rs.113.00 per sq. m. in respect of four Survey Numbers and Rs.85.00 per sq. m. in respect of one Survey Number. Possession of acquired lands was already with the Acquiring Body since 09.03.1942 under the Defence of India Act, 1939. Hence symbolic possession of acquired lands under Section 17(4) of the said Act pursuant to Award is taken on 20.02.1986.

3. In LAR No.19 of 1988 relevant date is 20.08.1981, total area acquired is 5831.52 sq. m. comprising of five (5) Survey Numbers. Public purpose of the acquisition is requirement of the said lands for Mumbai Airport / Extension of Mumbai Airport. Notice under Section 9 of the said Act was issued on 05.09.1985. Award under Section 11 of the said Act is declared on 23.09.1986. SLAO awarded market value @ Rs.12.00 per sq. m. on the relevant date alongwith statutory benefits. Reference Application under Section 18 is filed on 07.11.1986 within limitation. Rate claimed by Claimants in the Reference Application is

Rs.90.00 per sq. m. for the entire land. Rate determined by Claimant's Valuer is Rs.98.00 per sq. m. in respect of three Survey Numbers and Rs.74.00 per sq. m. in respect of two Survey Numbers. Possession of acquired lands was already with the Acquiring Body since 09.03.1942 under the Defence of India Act, 1939. Hence symbolic possession of acquired lands under Section 17(4) of the said Act is taken on 20.02.1986.

4. Both LARs are heard together and common evidence is led by both parties in the LARs. Relevant dates in both LARs are one year apart.

5. Claimants led evidence of their Surveyor Mr. M.I. Khan (“CW-1”) in support of its case for describing the status of the acquired lands in both LARs in common. Claimants also led evidence of an Expert Valuer Mr. Ashok Vaidya (“CW-2”) in support of its case for valuation and proving the market value of the acquired lands in both LARs on their respective relevant dates. Acquiring Body i.e. Airports Authority of India led evidence in rebuttal of two of its officers who were witnesses of facts namely Mr. R.A. Hiremath (“AW-1”) and Mr. Madan Goswami (“AW-2”). Acquiring Body did not lead evidence of Valuer.

6. Considering the voluminous pleadings and record, for the sake of convenience, learned Advocates for Claimants and Acquiring

Body jointly prepared a compilation of all relevant documents running into 3 volumes. The relevant page numbers of the record and pleadings in the aforesaid 3 volumes shall be referred to according to their page numbers in the said volumes for convenience and reference in this judgment.

7. On 02.07.2004 and 08.02.2005, CW-1 filed Affidavit-in-lieu of examination-in-chief. His cross-examination was conducted and completed before the Court appointed Commissioner. These Affidavits are appended at page Nos.163 and 168 and his cross-examination is at page Nos.188 to 194 of Volume – I . On 21.10.2005, CW-2 filed Affidavit-in-lieu of examination-in-chief and his cross-examination was conducted and completed before the Court appointed Commissioner. This Affidavit is appended at page No.206 of Volume - II and his cross-examination is at page Nos.220 to 400. On 22.08.2006, AW-1 filed his Affidavit-in-lieu of examination-in-chief and his cross-examination was conducted and completed before the Court appointed Commissioner. This Affidavit is appended at page No.411 and his cross-examination is at page Nos.421 to 428 and 447 to 471 of Volume - II. On 16.07.2007, AW-2 filed his Affidavit-in-lieu of examination-in-chief and his cross-examination was conducted and completed before the Court appointed Commissioner. This Affidavit is appended at page No.429 and his cross-examination is at page Nos.434 to 443 of Volume - II.

8. The following common issue would arise for determination in both these References:-

“What was the fair market value of the acquired lands under acquisition on the two respective relevant dates i.e. on 12.08.1982 in LAR No.18 of 1988 and 20.08.1981 in LAR No.19 of 1988?”

9. Mr. Chavan, learned Advocate appearing on behalf of Claimants in LAR No.18 of 1988 would submit that a proposal for acquisition of the lands at Marol Village forming pockets within the boundary of International Airport was received from the Airport Officer (Commercial) – International Airport of the International Airports Authority of India under letter dated 10.01.1978. The Claimant viz. A.H.Wadia Trust is aggrieved by the Award dated 23.09.1986 declared by the SLAO in Land Acquisition Case being LAQ/332/B/1/1359. This Reference involves the following five (5) Survey Numbers alongwith their respective areas:-

Sr. No.	Survey Numbers along with Hissa Numbers	Area of the lands in square meters
1.	94/3 (Part)	5635.08
2.	94/7 (Part)	1772.36
3.	97/18 (Part)	17427.60
4.	107/1-A (Part)	18753.60
5.	106/2	455.25
	Total	44,043.89

9.1. Similarly, he would submit that the Claimant is also aggrieved by the Award dated 23.09.1986 passed by the Special Land Acquisition Officer (SLAO) in Land Acquisition Case being LAQ/332/A1. This Reference – LAR No.19 of 1988 involves the following five (5) Survey Numbers and their respective areas:-

Sr. No.	Survey Numbers along with Hissa Numbers	Area of the lands in square meters
1.	94/3 (Part)	900.00 + 142.00
2.	94/7 (Part)	150.00 + 101
3.	97/18 (Part)	1541.00.
4.	97/5	1517.52
5.	107/1-A (Part)	1340.00 + 140
	Total	5449.52 + 383 = 5831.52

9.2. In so far acquisition of lands in LAR No.19 of 1988 is concerned, it is seen that three small land parcels out of Survey No.94/3 (part) admeasuring 142 sq. m., Survey No.94/7 (part) admeasuring 101 sq. m. and Survey No.107/1-A (part) admeasuring 140 sq. m., totalling to 383 sq. m. in all have been acquired subsequently with the relevant date being 12.07.1984, as stated in the Award dated 23.09.1986 passed in LAQ/332-A. This issue needs to be clarified at the outset itself.

9.3. I have perused the Award in this LAR. It is stated in the Award that insofar as Survey Nos.94/3 (part) and 94/7 (part) is

concerned, the owner is the Claimant - Trust. However insofar as Survey No.107/1-A (part) is concerned, the owner is not stated but against this Survey Number, names of the protected tenants namely Shri Sorabji Jomaji and Shri Magon Nathuram Dave have been stated. Claimants in the present case have laid claim to the aforementioned three land parcels being the owner thereof. In their Reference Application dated 07.11.1986 appended at page No.153 of Volume - I, Claimants have laid a claim to total acquired area admeasuring 5831.52 sq. m. Insofar as Survey No.107/1-A (part) admeasuring 140 sq. m. is concerned, it is Claimant's case that compensation, if any, been awarded to the protected tenants be given to the Claimant - Trust as the Claimant - Trust is the owner of the said land. However, it is seen that in the Valuation Report at Exhibit "M-1" filed by the Claimants, Claimants' Valuer has considered and proved the market value for the entire land i.e. 5831.52 sq. m. which is the subject matter of LAR No.19 of 1988. In the Award of the SLAO, insofar as the above three Survey Numbers are concerned, the relevant Section 4 Notification date as depicted in the table of areas acquired and contents is shown as 12.07.1984 i.e. the date of publication in the Maharashtra Government Gazette. Insofar as Survey Nos. 94/3 (part), 94/7 (part), 97/5 (part), 97/18 (part) and 107/1-A (part) are concerned, Claimant - Trust is shown as the owner of the said lands. Save and except that, in Survey Nos. 94/3 (part), 97/5 (part) and

107/1-A (part), the names of holders of other rights namely lessee / tenants / protected tenants are shown in the said table. However, there is no such separate notification under Section 4 published for acquisition of this area.

9.4. Claimant - Trust has through its Valuer claimed enhancement entire compensation in respect of Survey Nos.94/3 (part), 94/7 (part) and 107/1-A (part). However, it is seen from the Award itself that the date 12.07.1984 is actually the date of publication under Section 6 of the said Act. If the Award is seen then it is gathered that Notification for acquisition of said lands under Section 128 of the Maharashtra Regional and Town Planning Act, 1966 readwith Sections 6 and 17 of the said Act was last published in the Maharashtra Government Gazette, Konkan Division Supplement on 12.07.1984. Once the aforesaid position is clear from the Award in LAQ/332-A in LAR No.19 of 1988, then the Claimant is entitled to enhancement of market value as on the date of Section 4 Notification for these lands i.e. 20.08.1981. Hence, the total area acquired under the second acquisition matter is 5831.52 sq. m. The Acquiring Body and SLAO have also not raised any dispute about the areas under the said acquisition.

9.5. The aforesaid position is crystal clear once the SLAO's Award is perused and it is therefore rightly dealt with by the Expert Valuer in

his Valuation Report. Hence, the ambiguity that the relevant date for the aforementioned 383 sq. m. is 12.07.1984 as stated in the Award is squarely answered and the relevant date for valuation of entire area of 5831.52 sq. m. in LAQ/332-A i.e. LAR No.19 of 1988 has to be taken as 20.08.1981.

9.6. Mr. Chavan would submit that lands belonging to Claimant are acquired for the designated public purpose in two tranches by issuing two separate Notifications under Section 4 of the said Act. He would submit that admittedly all acquired lands are requisitioned lands which were requisitioned in the year 1942 by the Government of India and were under the control of the Defence Department since then. Since these lands were required for extension of the Airport, the Acquiring Body pursued acquisition and accordingly the lands were acquired. He would submit that two separate Notifications under Section 4 of the said Act were issued, one year apart, in the present LARs. In LAR No.19 of 1988, Notification under Section 4 is issued on 20.08.1981 for acquiring area of 5448.52 sq. m. whereas in LAR No.18 of 1988, Notification under Section 4 is issued on 12.08.1982 for acquiring area of 44043.89 sq. m.. Four Survey Numbers are common to both notifications / acquisitions whereas one Survey Number is different. Lands are acquired out of Survey Nos.94/3(part), 94/7(part) and 97/18(part) and 107/1-A(part) in both cases. That apart, in LAR No.19 of 1988 land is acquired from Survey No.97/5 whereas in LAR

No.18 of 1988 land is acquired from Survey No.106/2 additionally. He would submit that two separate Awards both of even date i.e. 23.09.1986 are declared by the SLAO. In respect of lands covered under LAR No.19 of 1988, SLAO awarded market value @ Rs.12.00 per sq. m. and Rs.19.00 per sq. m. alongwith statutory benefits whereas in respect of lands covered under LAR No.18 of 1988, the SLAO awarded market value @ Rs.14.00 per sq. m. alongwith statutory benefits. He would submit that being aggrieved, Claimants filed Applications for enhancement of market value under Section 18 of the said Act on the ground of the market value being grossly inadequate. He would submit that Claimants accepted the Awards declared by SLAO under protest. He would submit that Claimants have led witness action and evidence of two witnesses on its behalf, the 2nd witness being an Expert Valuer to prove the correct and fair market value of the acquired lands on the respective relevant dates.

9.7. He would submit that in the present cases, both Awards are declared on 23.09.1986 whereas the provisions of amended Section 25 of the said Act came into effect on 24.09.1984. He would submit that possession of the acquired lands under the said Act is taken on 20.02.1986. He would submit that acquisition in the present cases having been effected after the provisions of amended Section 25 coming into effect, then the case of Claimants would be governed by the amended provisions of Section 25 and not by the unamended

provisions which existed on the date of issuance of the twin Notifications. He would submit that one of the deciding factors in the present cases would be the date of declaration of the Awards under Section 11 of the said Act. He would submit that if the date of Award was prior to 24.09.1984, only in those cases the unamended provisions of Section 25 of the said Act would apply.

9.8. In support of the above legal proposition while relying upon the following decisions of the Supreme Court, he would contend that since the Awards in the present cases are declared after coming into force of the amended Section 25 of the said Act, the bar under the unamended provisions of Section 25 which existed prior to the date of amendment cannot apply to Claimants' cases and accordingly the Reference Court shall have to award the just and fair market value irrespective of the claim made by the Claimant / owner either at the time of inquiry under Section 9 of the said Act or in the Reference Application:-

- (i) *LAO Vs. B.V. Reddy and Sons*¹;
- (ii) *State of Maharashtra Vs. Dhanaji Kamalu Joshi*²;
- (iii) *State of Maharashtra Vs. Govind Goma Govari*³;
- (iv) *State of Maharashtra Vs. Bhimabai Bhika Gondal*⁴;

1 (2002) 3 SCC 463
2 2005 SCC Online Bom 1050
3 2006 (2) MhLJ 55
4 2007 SCC Online Bom 858

- (v) *Krishi Utpadan Mandi Samiti Vs. Kanhaiya LaF*;
- (vi) *Ghaziabad Development Authority Vs. Anoop Singh*⁶;
- (vii) *Stanes Higher Secondary School Vs. Tahsildar*⁷;
- (viii) *Ashok Kumar Vs. State of Haryana*⁸; and
- (ix) *Sitaram Balu Bhopi Vs. State of Maharashtra*⁹.

9.9. He would submit that in the present case, Claimants' Valuer has relied upon and proven 5 sale instances in his evidence as comparable sale instances to the acquired lands in support of his Valuation Report. These sale instances have been marked in evidence as Exhibits L-1/C-11, L-2/C-12, L-3/C-13, L-4/C-14 and L-5/C-15 by the Court. According to Claimants, Exhibit "L-5/C-15" is the most comparable sale instance in terms of proximity of time i.e. nearer to the relevant date in both LARs. He would submit that this sale instance is dated 22.01.1980 which is clearly proximate in terms of time to the relevant date 20.08.1981 in LAR No.19 of 1988 and 12.08.1982 in LAR No.18 of 1988. He would submit that though the other 4 sale instances have also been proved by Claimants as comparable, the thrust of Claimants' case is based upon comparability of Exhibit "L-5/C-15" dated 22.01.1980 to the acquired lands for determination of the correct market value.

5 (2000) 7 SCC 756

6 (2003) 2 SCC 484

7 (2010) 4 SCC 565

8 (2016) 4 SCC 544

9 2008 (4) Mh.L.J. 9

9.10. He would submit that the SLAO while passing the Award considered comparable sale instances of plots of lands varying between 2500 sq. m. to 4500 sq. m. in size from a nearby developed industrial estate known as "Samhita Industrial Estate" located beyond the *nullah* passing through some of the acquired lands. He would submit that the said Samhita Industrial Estate has similar height restriction on construction due to its proximity to the Airport. He would submit that the plots located in Samhita Industrial Estate were well developed plots well before the relevant dates, located in Industrial Zone having proper access from Andheri – Kurla Road. He would submit that the market value stated and realized in respect of various sale instances considered by the SLAO from Samhita Industrial Estate varied from Rs.40.00 to Rs.60.00 per sq. m. between 1972 to 1980. He would submit that however the SLAO while passing the Award opined that the acquired lands are subjected to height restrictions prescribed by the Airport Authorities given their proximity to the Airport and without considering any further material awarded a rather estimated market value for the acquired lands to be Rs.14.00 per sq. m. as on the relevant dates. He would submit that Claimants have led evidence of two witnesses namely Mr. M.I. Khan, Surveyor working in Claimants' office since long for proving the status and description of the acquired lands as on the respective relevant dates and evidence of the Expert Valuer to ascertain and prove the correct market value of the acquired

lands after adopting the Comparable Sales Method and comparing the acquired lands with the most comparable sale instance namely Exhibit “L-5/C-15”. He would submit that land in Exhibit “L-5/C-15” admeasured 1776.77 sq. m. and consideration stated in the said document is Rs.1,06,250.00 and as such the market value ascertained and agreed upon between the parties in the said transaction in March 1975 comes to Rs.59.79 per sq. m. This sale instance is registered on 22.01.1980.

9.11. He would submit that from 1975 upto the relevant dates in both LARs, the rise factor has been applied by the Claimant’s Valuer to arrive at the market value on the respective relevant dates @ Rs.147.00 per sq. m. in LAR No.19 of 1988 and Rs.169.00 per sq. m. in LAR No.18 of 1988. He would submit that after application of the rise factor, the Expert Valuer has compared the acquired lands with the principal features of the sale instance land contained in Exhibit “L-5/C-15” on the basis of various parameters and factors. He would submit that the Expert Valuer after following the above exercise has opined positive allowances and negative deductions to the comparable factors of size, accessibility and development potential of the acquired lands to arrive at the true and correct market value of the acquired lands on their respective relevant dates. He would submit that the exercise undertaken by Claimant’s witnesses and more specifically their Expert Valuer is a proven exercise adopted by Expert Valuers by employing

the comparable sales method to arrive at the market value of the acquired land and the SLAO or the Acquiring Body has not led any evidence in rebuttal to prove to the contrary. He would submit that market value in SLAO's Award is a mere offer and there is no justification or reason given for awarding such a paltry amount of market value at the rate of Rs.14.00 per sq. m., which is grossly inadequate and hence the References.

9.12. He would submit that burden of proof for proving the correct and fair market value on the basis of cogent evidence on the respective relevant dates has been discharged by Claimant, however the Acquiring Body or the SLAO has not led any evidence in rebuttal to disprove or dislodge the case of Claimant or the market value proved by Claimants through its Valuer. He would submit that though the Acquiring Body has led evidence of two of its officers / employees, none of them is a Valuer or an Expert to opine on the market value or to arrive at the market value of the acquired lands on the relevant dates. He would lay thrust on the fact that no evidence has been led either by the Acquiring Body or the SLAO in rebuttal to prove the true and fair market value of the acquired lands or to even justify awarding of the market value in SLAO's Awards in the instant cases. He would submit that evidence led by the Acquiring Body is not independent evidence but has been led to merely oppose the evidence of Claimants.

9.13. In support of Claimant's case for valuation and principles determining compensation, following decisions of the Supreme Court and this Court are referred to and relied upon:-

- (a) (i) *Smt. Tribeni Devi & Ors. Vs. The Collector, Ranchi*¹⁰;
and (ii) *The SLAO (7) Vs. Majas Madhu CHS alongwith the SLAO (7) Vs. M/s. Tyabji Estates Pvt. Ltd.*¹¹. After reading these judgments, Mr. Chavan would contend that acquired lands have to be valued from what a seller might reasonably expect to obtain from a willing purchaser on the basis of principles for determining compensation. He would submit that the Authority must make an estimate judged by optimum standard and by taking its potential value into account and not only with reference to its condition on the relevant dates. He would submit that the present acquired lands being in the vicinity of a developed industrial estate ought to have been considered as having potential value of development into industrial plots and should have accordingly been valued, which exercise has infact been undertaken by Claimant's witnesses and no evidence whatsoever is led by the Acquiring Body and the SLAO in rebuttal on the aspect of valuation.

¹⁰ AIR 1972 SC 1417

¹¹ LAR No.4 of 1990 a/w. LAR No.5 of 1990 decided on 20.08.2020 (Bombay HC)

(b) ***Sri Raja Vyricherla Narayana Gajapatiraju Vs. Revenue***

Divisional Officer, Vizagapatnam¹² - Claimant has relied

on this decision to argue that market value of acquired lands has to be ascertained as the price that would be paid by a willing purchaser to a willing vendor and the possibility of fetching a higher value owing to any of its special condition cannot be disregarded. He would submit that in the present cases acquired lands are admittedly in close proximity of the Airport and therefore they commanded a special value from the Acquiring Body for expanding the Airport's operations and therefore the acquired lands were governed by a special value from the Acquiring Body apart from the normal market value that would be fetched in normal circumstances.

(c) ***Chimanlal Hargovindas Vs. SLAO, Poona & Anr.***¹³-

Claimant has relied on this decision of the Supreme Court to argue that Reference under Section 18 of the said Act is not an appeal against the SLAO's Award but an original proceeding and the Court must determine the market value of acquired lands on the relevant date afresh on the basis of material produced by the parties

¹² AIR 1939 PC 98

¹³ AIR 1988 SC 1652

before the Court. The said decision further holds that Court should consider principles of valuation and take into account positive and negative factors affecting market value of the acquired lands on the relevant date. He would submit that in the present cases, CW-2 Expert Valuer appointed by Claimant has undertaken the above exercise in its entirety and incidentally there is no evidence in rebuttal on such exercise or valuation either by the Acquiring Body or SLAO. Hence according to him, valuation ascertained and derived by CW-2 needs to be accepted as true and correct market value of the acquired lands on the relevant dates.

- (d) ***Smt. Kausalya Devi Bogra Vs. LAO, Aurangabad***¹⁴ - The decision in this case is relied upon by Claimants for considering the potential value of acquired lands based on the size of various parcels of acquired lands separately. He would submit that this decision holds that while comparing smaller plots with larger plots under acquisition, a deduction of 25% has to be given. While exploring this proposition, Claimant would argue that its Expert Valuer CW - 2 has given deduction of upto 33% since three parcels out of the acquired lands

¹⁴ AIR 1984 SC 892

namely Survey Nos. 94/3(part), 97/18(part) and 107/1(part) are much larger in area than the land parcel in sale instance exhibited below Exhibit "C-15". He would submit that negative deduction of 33% has been given by the Expert Valuer as his opinion as an Expert while comparing the size which deserved to be accepted as fair in the exercise of valuation.

- (e) ***Muddasani Venkata Narsaiah (D) Th. Lrs. Vs. Muddasani Sarojana***¹⁵ - The decision in this case is relied upon by Claimant in the context of witness action to contend that a party is required to lead positive evidence through its witnesses and the said witnesses are entitled for cross-examination. Claimant would contend that if no questions are put to the witness, then Court will have to presume and accept the witness account. In the present cases, it is contended that on the issues of requisition, apportionment and height restriction, the Acquiring Body and SLAO have not led any evidence in rebuttal nor have they put its case effectively during cross-examination to the Claimant's witnesses and therefore Claimant's evidence deserves to be accepted.

¹⁵ AIR 2016 SC 2250

- (f) *Land Acquisition Officer and Mandal Revenue Officer Vs. Narsaiah*¹⁶ - The decision in this case is relied upon by Claimant on the proposition of acceptance of certified copies of sale deeds without examination of the vendor or purchaser or any party connected therewith. Claimant would contend that it is settled position in law that certified copies of sale deeds / instances have to be accepted as comparable sales instances in evidence. Claimant would further contend that in the present cases while passing Award, SLAO has relied upon five (5) specific sale deeds / instances apart from many others. The 5 sale instances have been specifically proved by Claimant by placing on record certified copies thereof before the Reference Court. Claimant would submit that these 5 sale deeds / instances have been exhibited and marked in evidence as Exhibits “C-11” to “C-15” and Claimant’s Valuer i.e. Expert witness CW-2 has referred to them and compared the acquired lands with Exhibit “C-15” being the most comparable sale instance and as such the said comparable sale instances stand proved by Claimant.

¹⁶ AIR 2001 SC 1117

- (g) *Harish Loyalka Vs. Dilip Nevatia*¹⁷ - The decision in this case is relied upon by Claimant to prove the credibility of its witness namely Expert Valuer CW-2 to suggest that witness action of CW-2 has been appropriately recorded and it has not been shaken or for that matter challenged in cross-examination by the Acquiring Body and SLAO. Claimant would contend that mere denial to some questions by the witness cannot be construed against him and the entire evidence and witness action of the Expert Valuer should be read as a whole alongwith his Valuation Report and the comparable sales method adopted by him and rely upon the same.

9.14. In addition to the aforesaid citations, on the aspect of valuation of acquired lands, Claimant has referred to and relied upon the following decisions of the Supreme Court and various High Courts in support of its case:-

- (i) *Mahesh Dattatray Thirthkar Vs. State of Maharashtra*¹⁸;
- (ii) *General Manager, ONGC Vs. Rameshbhai Jivanbhai Patel*¹⁹;
- (iii) *Maharaja Jagadindranath Roy Vs. Secretary of State for India in Council*²⁰;

17 2015 (6) Bom. C.R. 361

18 (2009) 11 SCC 141

19 (2008) 14 SCC 745

20 (1902-03) 7 CWN 193

- (iv) *Chatusshakhiya Brahmavrinde Garayan Trust Vs. Union of India*²¹;
- (v) *Dewan Anand Kumar Vs. Union of India*²²; and
- (vi) *Dollar Company Madras Vs. Collector of Madras*²³.

9.15. On the aspect of applicability of the amended provisions of Section 25 of the said Act, Claimant has relied upon the following decisions:-

- (i) *Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal* (5th *supra*);
- (ii) *Land Acquisition Officer cum DSWO, A.P. Vs. B.V. Reddy and Sons* (1st *supra*);
- (iii) *Ghaziabad Development Authority Vs. Anoop Singh* (6th *supra*);
- (iv) *Union of India Vs. Pramod Gupta*²⁴;
- (v) *Stanes High Secondary School Vs. Tahsildar (L.A.)* (7th *supra*);
- (vi) *Ashok Kumar Vs. State of Haryana* (8th *supra*); and
- (vii) *Fomento Resorts and Hotels Vs. Gustavo Ranato Da Cruz Pinto*²⁵.

21 AIR 1970 Bom 18

22 AIR 1973 Del 102

23 (1972) 2 SCC 730

24 (2005) 12 SCC 1

25 (1985) 2 SCC 152

9.16. On the issue of claiming just and fair compensation, Claimants have referred to and relied upon the following decisions:-

- (i) *Shri Ambya Kalya Mhatre (D.) through LHs & Ors. Vs. State of Maharashtra*²⁶;
- (ii) *Vasant Vs. State of Maharashtra*²⁷;
- (iii) *Narendra Vs. State of U.P.*²⁸; and
- (iv) *VIDC, Nagpur Vs. Laxman Seetaram Neulkar*²⁹.

9.17. On the issue of law of precedents, Claimants have referred to and relied upon the following decisions:-

- (i) *Maru Ram Vs. Union of India*³⁰;
- (ii) *C.N. Rudramurthy Vs. K. Barkatulla Khan*³¹; and
- (iii) *Ashwani Kumar Singh Vs. U.P. Public Service*³².

9.18. Mr. Chavan, learned Advocate appearing for Claimants would submit that on the basis of the Valuation Report of CW-2, the market value proved by Claimant after undertaking the exercise under the Comparable Sales Method for the 5 different parcels of the acquired lands in the two LARs separately is determined as under and the same be awarded by the Reference Court while determining the present References for enhancement of market value:-

26 2011 (9) SCC 325
27 (2019) 6 Mh.L.J. 900
28 (2017) 9 SCC 426
29 (2021) 2 Mh.L.J. 198
30 (1981) 1 SCC 107
31 (1998) 8 SCC 275
32 (2003) 11 SCC 584

1) In LAR No.18 of 1988:

Sr. No.	S. No. & H. No.	Area in square meters	Rate in Rupees per square meter
1.	94/3 (part)	5635.08	113 [169 – 33% (being reduction on account of size of the land)]
2.	94/7 (part)	1772.66	113 [169 – 33% (being reduction on account of size of the land)]
3.	106/2 (part)	455.25	113 [169 – 33% (being reduction on account of size of the land)]
4.	107/1-A (part)	18,753.68	113 [169 – 33% (being reduction on account of size of the land)]
5.	97/18 (part)	17,427	113 [169 – 33% (being reduction on account of size of the land)]

Additional negative deduction for Survey No.97 Hissa No.18(part) on account of its location.

Sr. No.	S. No. & H. No.	Area in square meters	Rate in Rupees per square meter
1.	97/18(part)	17,427	85 [113 - 25% (being reduction on account of it being situated in the interior)]

2) In LAR No.19 of 1988:

Sr. No.	S. No. & H. No.	Area in square Meters	Rate in Rupees per square meter
1.	94/3 (part)	1042	98 [147 – 33% (being reduction on account of size of the land)]
2.	94/7 (part)	251	98 [147 – 33% (being reduction on account of size of the land)]
3.	107/1-A (part)	1480	98 [147 – 33% (being reduction on account of size of the land)]
4.	97/18 (part)	1541	98 [147 – 33% (being reduction on account of size of the land)]
5.	97/5 (part)	1517.52	98 [147 – 33% (being reduction on account of size of the land)]

Additional negative deduction for Survey No.97 Hissa No.5(part) and Hissa No.18(part) on account of its location.

Sr. No.	S. No. & H. No.	Area in square meters	Rate in Rupees per square meter
1.	97/5(part)	1517.52	74 [98 - 25% (being reduction on account of it being situated in the interior)]
2.	97/18 (part)	1541	74 [98 - 25% (being reduction on account of it being situated in the interior)]

9.19. On the basis of the above submissions, Claimant has urged that market value of the acquired lands arrived at by their Expert Valuer be accepted and accordingly the References be decided strictly in accordance with law by awarding the true and fair market value on the relevant dates alongwith all statutory benefits to the Claimant.

10. *PER CONTRA*, Mr. Joshi, learned Advocate appearing on behalf of the Acquiring Body has made the following submissions to oppose enhancement of market value and to support the SLAO's twin Awards, both dated 23.09.1986:-

10.1. Principal submission of the Acquiring Body is that provisions of unamended Section 25 of the said Act would apply to Claimant's case and hence Claimant would be precluded from claiming market value higher than that claimed in reply to the Section 9 Notification under the said Act. He would submit that the relevant date that is the date of Section 4 Notification under the said Act in respect of the present LARs is 20.08.1981 and 12.08.1982 and thus proceedings for land acquisition are deemed to have begun from this date onwards. Hence, he would submit that these dates are to be considered for determination of market value under Section 23 of the said Act and therefore provisions of Section 25 which was in force on these relevant dates are applicable. He would submit that Section 25 was amended in 1984.

10.2. Unamended Section 25 is reproduced below for reference:-

“Section 25: Rules as to amount of compensation:

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11. (emphasis supplied)

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, may exceed, the amount awarded by the Collector.”

10.3. Amended Section 25 is reproduced below for reference:-

“Section 25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.

The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.”

10.4. According to Mr. Joshi, under unamended Section 25 the Reference Court did not have power to grant compensation higher than what was claimed by Claimant before the Collector in reply to statutory notice regarding valuation under Section 9 of the said Act. He would submit that this Court being the Reference Court will have to therefore apply the unamended provisions of Section 25 as it prevailed on the date of publication of the Section 4 Notification under the said Act and the amended Section 25 provisions cannot be retrospectively applied to the present cases. He would submit that provision under

Section 25 is a substantive provision and not merely procedural in nature. He would submit that amended Section 25 nowhere indicates that it can have retrospective application to all acquisitions made prior to 24.09.1984 i.e. the date on which amended Section 25 came into effect.

10.5. He would submit that in the present case, the Reference Court is therefore bound by the unamended provisions of Section 25 and cannot award any amount in excess of the market value claimed by Claimants during inquiry held under Section 9 of the said Act and the market value claimed by Claimants at that stage before the SLAO.

10.6. He would submit that Claimants have restricted its claim in the twin Reference Applications, both dated 07.11.1986 filed before SLAO to Rs.16 Lakhs and Rs.2 Lakhs respectively being the market value claimed by Claimants. He would submit that once Claimants have restricted their claim in the Reference Applications to Rs.16 Lakhs and Rs.2 Lakhs respectively, it is now not open to the Reference Court to award any higher compensation to Claimants than what is claimed in their Reference Application nor it is available to Claimants to seek any higher market value than what was claimed by them in their Reference Applications since Claimants are bound by their own pleadings. He would submit that Reference Application under Section 18 of the said Act is an original proceeding before the Reference Court

and Claimants are in the position of the Plaintiff in such proceedings. He would refer to and rely upon the decision in the case of *Union of India Vs. Pramod Gupta (Dead) By Lrs & Ors.* (24th supra) and *Sitaram Balu Bhopi Vs. State of Maharashtra* (9th supra) to contend that Claimants cannot make a claim for market value beyond what is pleaded in the Reference Application under the said Act. However he would fairly concede to the decision of the Full Bench of this Court in the case of *State of Maharashtra Vs. Sitaram Narayan Patil*³³ which has held that a Claimants can very well amend their Claim Petition so as to enhance the compensation claim in the Application for Reference but would argue that in the present case there is no such amendment sought for by Claimants before this Court. Hence, he would contend that provisions of unamended Section 25 of the said Act as it prevailed prior to the coming into force and enactment of the Amendment Act of 1984 would apply to the facts of the present case.

10.7. He would next argue that even otherwise Claimants have restricted their claim for market value to Rs.16 Lakhs and Rs.2 Lakhs respectively in their Reference Applications and therefore they cannot get anything higher than these claims from the Reference Court as market value.

10.8. He has relied upon the evidence of AW-1 Mr. R.K. Hiremath, who was working with the Acquiring Body since 1982 and at the time

³³ 2010 (2) Mh.L.J. 387

of his deposition he was the Senior Assistant Surveyor, Land Department, Airports Authority of India and therefore had knowledge about the status and description of the acquired lands in both References on their respective relevant dates. He would draw my attention to the examination-in-chief of AW-1 in which he has stated that Claimants had made revision in its claim initially before the SLAO on two occasions and subsequently before the Reference Court and such upward revision is not permissible.

10.9. In support of SLAO's Award, he would vehemently submit that the SLAO has considered the fact that the acquired lands were falling within the boundary of the Airport and hence were not accessible as they were land locked. He would submit that the acquired lands were affected by height restriction for construction of buildings thereon since they were in close proximity to the International Airport at Sahar.

10.10. While referring to Exhibit "C-4", he would submit that the acquired lands did not have direct access from Andheri Railway Station and that there was only an existing proposal of a DP road which was not constructed on the relevant dates. He would submit that if closely seen, access to the acquired lands was only by way of a pedestrian approach and not through any vehicular road on the relevant dates. He would submit that Mithi river traversed right across some of the

acquired lands and therefore the approach and access to some of the Survey Numbers lying beyond Mithi river was not available. That apart, he would submit that there was an existing nullah which also sub-divided the acquired lands into two parts thus rendering the further lands being cut-off from any kind of access, both pedestrian and vehicular.

10.11. He would submit that Claimant's claim that acquired lands had potential for industrial development is incorrect considering that the entire acquired land was landlocked and therefore could not be developed. He would submit that merely comparing the acquired lands with a comparable sale instance of a building having industrial activity within its vicinity cannot be considered as comparable exercise in valuation for determining higher potential for industrial development of the acquired lands on the relevant dates. He would submit that there were large number of slums in and around the acquired lands, resultantly declining and reducing the market value of the acquired lands on the relevant dates. He would submit that Claimant's Valuer did not consider factors like height restriction and lack of access while determining market value of acquired lands on the relevant dates. He would submit that AW-1 Mr. Hiremath had thorough knowledge about the acquired lands considering his association with the Acquiring Body since 1982 and was fully aware about their status and description and his deposition ought to be accepted.

10.12. He would next submit that deposition of AW-2 – Mr. Madan Goswami who worked with the Acquiring Body since 1976 also needs to be accepted as he was having first hand knowledge about the status of the acquired lands which he has deposed in his evidence and there is nothing brought out in his cross-examination to dislodge his credibility as a witness of fact.

10.13. Mr. Joshi has commented on the evidence and witness action of Claimants and would draw my attention to the deposition of CW-1 Mr. M.I. Khan to contend that some of the factual evidence given by him is not credible enough for consideration. He would submit that CW-1 has stated that he visited the subject lands atleast twice a year, but in the same affidavit, he has stated that the acquired lands were in possession of the Defence Authorities since 1942 under the Defence of India Act, 1939 and possession of acquired lands was taken from Claimants on 09.03.1942. On this ground, he would submit that evidence of CW-1 is not credible.

10.14. Next, he would argue on the credibility of the Plan relied upon by CW-1 and exhibited by the Reference Court as Exhibit “C-4” showing location of acquired lands. He would submit that in cross-examination, CW-1 - Mr. Khan has stated that he has relied upon the official village Plans of Village Sahar, Marol and Mohili Villages and after placing their tracings, he has prepared Exhibit “C-4”. He would

submit that he has admitted that the Village Plans used by him for preparation of Exhibit "C-4" are of the year 1916 for Village Marol and Village Sahar which are irrelevant in so far as the relevant dates are concerned. That apart, in cross-examination he has admitted that he has not compared any other record to ascertain the genuineness of the Village maps which he used for preparation of Exhibit "C-4". He would therefore submit that accuracy of Exhibit "C-4" is doubtful as under Section 83 of the Indian Evidence Act, 1872, the witness is duty bound to prove accuracy of the Plan prepared by him. He would submit that as per Exhibit "C-4" itself only three Survey Numbers namely Lands marked as A, B and C are admitted to have access but the remaining two Survey Numbers in both LARs do not have direct access. His deposition that the remaining two Survey Numbers can get access from the three Survey Numbers having access as they all are contiguous cannot be accepted. He would submit that Exhibit "C-4" does not show existence of any available DP Road or any road having access to the acquired lands or even some of the acquired lands. He would question the witness deposing about availability of Govan road passing through Village Sahar upto the acquired lands shown by dotted lines on Exhibit "C-4" and would submit that there is no corroborative evidence placed on record to support existence of the said Govan road. He would submit that CW-1's evidence is therefore unclear on access to all acquired lands as also with respect to existence of tenants on the

acquired lands.

10.15. Next with reference to Tikka Sheet No.55 prepared in 1965, which was superseded by Tikka Sheet No.62 showing the existence of the nullah cutting across and through the acquired lands, he would submit that both Tikka Sheet Nos. 55 and 62 show existence of nullah which is admitted by CW-1 in his cross-examination and thus this negative deduction is not considered and factored by Claimants' Valuer while drawing comparison with the acquired lands in his Valuation Report.

10.16. He would submit that Affidavit of CW-2 - Valuer of Claimant does not record his experience as Valuer. He would submit that the Valuer has not stated in his Report the dates of his visit to the acquired lands though he has stated that he has inspected the acquired lands for the purpose of determining their market value on the respective relevant dates. He would submit that in his cross-examination, the Valuer has answered that he visited the acquired lands on a number of occasions but has refrained from giving the dates of his visit.

10.17. Next, he would submit that since the Valuer has stated that his evidence is based on the evidence given by CW-1 Mr. Khan on behalf of Claimants, it should be discarded. He has drawn my attention to the Valuation Report dated 20.10.2005 prepared by CW-2 and marked as Exhibits "M" and "M-1" in evidence. He would draw my

attention to various distances referred to in the Valuation Report and the Valuer's answer that the distances are based on assumptions and not exact travel time. He would submit that such evidence is not specific and hence should be discarded as assumptions are impermissible and actual travel time ought to have been stated. He would submit that if the Valuer has indeed visited the acquired lands as asserted by him, in that case he ought to have given the actual distance. He would submit that all five parcels of acquired lands are not contiguous to each other and therefore the distance required to traverse and reach upto them would be different and it cannot be the same as stated by the Claimant's Valuer.

10.18. Next, he would submit that Claimants' Valuer in his cross-examination has agreed that the proposed road in the development plan shown as access was not in existence on the relevant dates. He would draw my attention to paragraph No.3(s) at page 223 of Volume - I to contend that CW-1 has in his evidence deposed that in the year 1982 there was no access by tar road to three Survey Numbers namely Survey Nos.94/7, 97/18 and 106/2 and access was provided to Survey Number 94/3 by a 20 feet wide road. He would submit that this part of the Valuer's evidence is based entirely upon the evidence of CW-1 Mr. M.I. Khan and it is therefore hearsay evidence and deserves to be discarded.

10.19. Next, he would submit that though the Valuer has clarified that two Survey Numbers namely 107/1-A and 94/3 have access by regular tar roads, in cross-examination he has clarified that the said tar road was a proposed road shown in the development plan and was not in existence on the relevant dates. He would submit that the Valuer has admitted the fact that in 1984 there was no access road / tar road upto Survey Numbers 94/7, 97/18 and 106/2 and access was available only upto Survey Numbers 94/3 by the 20 feet wide road. He would submit that evidence given by CW-2 - Valuer is merely based on the evidence of CW-1 and therefore it be considered as hearsay and it is highly doubtful. He would submit that Valuer's evidence carries very little weight in such a case and has to be discarded. In support of this proposition he would refer to and rely upon the following decisions:-

- (i) *State of Maharashtra Vs. Ismail Abdul Gafur Patel*³⁴;
- (ii) *Thakkarsibhai Devjibhai & Ors. Vs. Executive Engineer, Gujarat & Anr.*³⁵ and
- (iii) *Special Land Acquisition Officer (7), Bombay Vs. Vishanji Virji Mepani & Anr.*³⁶.

10.20. He would submit that there are several other infirmities in the Valuation Report prepared by Claimants' Valuer - CW-2. He would submit that the factor of industrial development potential considered

³⁴ (2006) 2 Mh.L.J. 323

³⁵ AIR 2001 SC 2424

³⁶ 1996 (2) Mh.L.J. 535

by him due to proximity to a well developed industrial area is a bald and cursory statement not substantiated by any evidence. He would submit that acquired lands were requisitioned in 1942 and were with the Defence Authorities since then and therefore industrial development potential cannot be attributable to such lands. He has next attempted to argue on the registered sale instances referred to and relied upon by the Valuer in support of his Valuation Report below Exhibits "C-11" to "C-15" and would contend that all 5 sale instances pertain to vacant agricultural lands from Village Mohili and therefore cannot be compared with the acquired lands on the ground that the acquired lands have industrial development potential. He would submit that while considering the aforesaid 5 comparable sale instances, CW-2 Claimants' Valuer has not factored the negative deductions for conversion of such vacant agricultural lands to industrial potential in his Valuation Report.

10.21. He would submit that the Valuer has also not considered appropriate development charges and costs that would have to be incurred if the acquired lands are required to be developed and in that regard relied upon the following decisions:-

- (i) *Lal Chand Vs. Union of India*³⁷;
- (ii) *Subh Ram & Ors. Vs. State of Haryana & Anr.*³⁸;

³⁷ (2009) 15 SCC 769

³⁸ (2010) 1 SCC 444

- (iii) *Basavva Vs. SLAO*³⁹;
- (iv) *Hasanali Khanbhai and Sons & Ors. Vs. State of Gujarat*⁴⁰;
- (v) *K.S. Shivademma Vs. Commr. and SLAO*⁴¹ and
- (vi) *Trishala Jain & Anr. Vs. State of Uttaranchal & Anr.*⁴².

10.22. He would next submit that the restriction on height of the buildings to be built on the acquired lands has to be considered as a negative factor and duly accounted for which has been ignored by the Valuer especially when it is an admitted position that the acquired lands were affected with the above restriction.

10.23. With respect to the rise considered by CW-2 Valuer, Mr. Joshi has vehemently attacked the sale instances referred to and relied upon by the Valuer which refer to the increasing trend in the rise of market value from 1972 to 1975 at the rate of 19% per annum. He would submit that to apply such a high rate of rise in land prices upto the relevant date which is 7 years beyond the sale instance date should not be considered as a correct yardstick and it cannot be assumed that there was a continuous rise in land prices for the period between 1975 to 1982. The reasons advanced by Mr. Joshi to reject the rise factor adopted by CW-2 is that the sale instances taken into consideration

39 (1996) 9 SCC 640

40 (1995) 5 SCC 422

41 (1996) 2 SCC 62

42 (2011) 6 SCC 47

are not proximate enough in time to the relevant date and hence consideration of such sale instances defies the ratio and ruling laid down by the Supreme Court in the following decisions:-

- (i) *Shaji Kuriakose & Anr. Vs. Indian Oil Corporation & Ors.*⁴³;
- (ii) *Viluben Jhalejar Contractor Vs. State of Gujarat*⁴⁴;
- (iii) *Chimanlal Hargovindas Vs. SLAO, Poona* (13th supra);
- iv) *Karnataka Urban Water Supply and Drainage Board & Ors. Vs K.S. Gangadharappa & Anr.*⁴⁵; and
- (v) *SLAO Vs. T. Adinarayan Shetty*⁴⁶.

10.24. On the basis of the above decisions, he would contend that the Valuer has mechanically applied the price rise upto the relevant date of the acquired lands and there is no evidence deduced on that behalf by Claimants. He would submit that the Reference Court should not adopt a mechanical and mathematical approach for applying the price rise of 15% per annum for the 7 year period between 1975 to 1982 as escalation of market price of land every year has to be based upon empirical data and evidence during those years and Claimants have failed to produce the same.

10.25. Next, he would comment on Exhibit “C-15” i.e. the sale instance referred to and relied upon by the Valuer for arriving at the

43 (2001) 7 SCC 650

44 (2005) 4 SCC 789

45 (2009) 11 SCC 164

46 AIR 1959 SC 429

market value of the acquired lands. He would submit that on reading the sale instance there is an ambiguity as to on which date the earnest amount was exchanged between the parties and that the said sale instance is interpolated at various places with additions and therefore should not be considered.

10.26. He would draw my attention to the fact that the Valuer has disregarded the presence of the Mithi river and the nullah in his Valuation Report as irrelevant but according to the Acquiring Body, presence of the above water bodies near and through the acquired lands is a negative factor disrupting access to some of the acquired lands and therefore deserve to be considered as a negative factor while valuing the acquired lands. He would submit that failure to do so is a serious lacunae on the part of the Valuer which cannot be ignored. He would submit that there is no justification or rationale given by CW-2 Valuer for deducting 25% from the market value in respect of land bearing Survey No.97/18 when there is no independent application of mind by the Valuer and he has merely based it conceptually on the writings of an eminent author on Valuation namely J.A. Parks in his book on Valuation of Lands.

10.27. He would draw my attention to the provisions of Sections 101, 102, 103 and 106 of the Indian Evidence Act, 1872 and would contend that it is well settled principle of law that the person who

asserts a particular fact is required to affirmatively establish the said fact. Hence he would submit that such is the ratio in the following decisions of the Supreme Court:-

- (i) *Gian Chand Bros & Ors. Vs Rattan Lal*⁴⁷;
- (ii) *Narayan Govind Gavate Vs. State of Maharashtra*⁴⁸ and
- (iii) *Anil Rishi Vs. Gurbaksh Singh*⁴⁹.

10.28. He would submit that in the instant case, the Claimants have failed to discharge their burden and therefore are not entitled to any increase in the land value or market value for the acquired lands.

10.29. Finally, Mr. Joshi would argue that Claimants have to prove its case by leading cogent evidence on his own accord and not by taking advantage of alleged weaknesses in the case of the Acquiring Body. He would submit that pointing out alleged shortcomings in the evidence of the Acquiring body cannot derive any advantage to Claimants and in this regard has referred to and relied upon a catena of judgments. The latest judgments on the above proposition referred to and relied upon by him are *Khushilal Patel Vs. Dhan Singh Patel*⁵⁰ and *Baluchamy Vs. G. Subbiah Thevar*⁵¹.

10.30. On the basis of the aforesaid submissions, he would urge the Court to dismiss the Reference Applications and uphold the twin SLAO

47 (2013) 2 SCC 606

48 (1977) 1 SCC 133

49 (2006) 5 SCC 558

50 2016 SCC Online MP 3683

51 2016 SCC Online Mad 17376

Awards dated 23.09.1986 passed in both LARs as being appropriate.

11. Mr. Pathak, learned AGP has adopted the submissions and contentions put forth by Mr. Joshi in support of SLAO's Awards dated 23.1.1986 in both LARs.

12. I have perused the pleadings with the able assistance of Mr. Chavan, learned Advocate appearing on behalf of Claimants, Mr. Joshi, learned Advocate appearing on behalf of Acquiring Body i.e. Airports Authority of India and Mr. Pathak, learned AGP appearing on behalf of the SLAO who is the Applicant before me. That apart, I have also considered the relevant documents referred to and relied upon by the parties including the evidence and witness action of the four witnesses. Submissions made by learned Advocates have received due consideration of the Court.

13. In the present case the main thrust of the submissions made on behalf of the Acquiring Body is on the issue of applicability of the amended provisions of Section 25 of the said Act. This issue is therefore dealt with at the outset. It is submitted by the Acquiring Body that since present acquisition proceedings have commenced in the year 1981 / 1982 with the issuance of Notifications under Section 4 of the said Act prior to coming into effect of the provisions of amended Section 25, claim of the Claimants will have to be determined on the basis of unamended Section 25 only. In effect,

what is contended by the Acquiring Body is that the Reference Court cannot grant compensation higher than what is claimed by Claimants before Collector in the inquiry under Section 9 of the said Act. Rather, the Acquiring Body has pitched its case to the extent that this Court being the Reference Court would not have jurisdiction to grant compensation higher than what is claimed by Claimants in the inquiry under Section 9 and this Court should apply the unamended Section 25 of the said Act to the Claimants' case for determination of market value. Acquiring Body has further argued that the amended provisions of Section 25 cannot be retrospectively applied to the present case as the said provisions are substantive provisions and not procedural in nature. This is the thrust of the Acquiring Body's arguments in the first instance.

14. Admittedly in the present LARs, the date on which Award is declared by SLAO is 23.09.1986 in both cases. Thus, though acquisition has commenced in both cases in the year 1982 by virtue of Notifications issued under Section 4, the statutory Award under Section 11 is declared on 23.09.1986. It is seen that possession under Section 16 of the said Act is taken by the SLAO on 20.02.1986. In the present case acquired lands were in fact in possession of the Defence Department since the year 1942 due to requisition. On acquisition of the acquired lands under the said Act, requisition automatically came to an end. It is an admitted position that statutory Award declared in

the present Land Acquisition cases is after coming into effect of the amended provisions of Section 25 on 24.09.1984. It is pertinent to note the date of Notices under Section 9 issued in the present case. It is seen that the SLAO issued a general Notice under Section 9(1) & (2) and Section 10 of the said Act to Claimant on 05.06.1985 pursuant to which Claimant appeared before the SLAO on 24.09.1985. Claimant filed statement of claim before SLAO pursuant to inquiry under Section 9 on 18.04.1986 and statutory Award under Section 11 was declared on 23.09.1986.

15. From the above, it is clearly seen and it is an admitted position that inquiry under Section 9 as also declaration of statutory Award in the present cases is after the date of enactment of the amended provisions of Section 25 of the said Act.

16. In the above backdrop, let us analyze the submissions advanced by the Acquiring Body in so far as applicability of the unamended provisions of Section 25 of the said Act is concerned. According to Acquiring Body, thrust is laid on certain decisions of the Supreme Court and this Court, which are referred to and alluded to herein above in the submissions advanced by Mr. Joshi. On perusal of those decisions and citations, it is clearly seen that in all those decisions, the date of declaration of statutory Award by the Competent Authority / SLAO was prior to the date of enactment and coming into

effect of the amended provisions of Section 25 and therefore Courts in those decisions have held that while determining enhanced compensation, Reference Court will have to apply the law as it stood on the date of publication of Notification under Section 4 i.e. prior to amendment of Section 25 in the year 1984. In such cases, Courts held that the amended provisions of Section 25 cannot be applied retrospectively. The point of distinction in so far as the present two LARs are concerned is that in the instant cases inquiry under Section 9 as also the statutory Award declared under Section 11 is after coming into effect of the amended provisions of Section 25 of the said Act. In that regard, decisions of the Supreme Court and this Court which are relied upon by the Acquiring Body are therefore clearly distinguishable and cannot apply to the present cases. It is the case of Acquiring Body that provisions of unamended Section 25 apply to the present cases. The unamended provisions of Section 25 of the said Act states that amount awarded to Claimants by Court cannot exceed the amount claimed pursuant to any Notice issued under Section 9 of the said Act. The Acquiring Body has referred to and relied upon the decision in the case of ***B.V. Reddy & Sons*** (1st *supra*) which holds that Section 25 of the said Act being a substantive provision will apply prospectively to all subsequent acquisitions. That apart, the Acquiring Body has also referred to and relied upon the decisions of this Court in the case of ***Dhanaji Kamalu Joshi*** (2nd *supra*), ***Govind Goma Govari*** (3rd *supra*) and

Bhimabai Bhika Gondal (4th *supra*) to contend that unamended Section 25 would apply to Reference cases in which Notification under Section 4 of the said Act has been published prior to the amendment to Section 25 coming into force on 24.09.1984. I am not sure whether merely this proposition can be applied to the present case. Whether this submission and proposition of the Acquiring Body can even be considered to be an absolute proposition so as to apply to cases in which Award is declared after 25.09.1984 is therefore required to be decided.

17. The Supreme Court in the case of ***Krishi Utpadan Mandi Samiti*** (5th *supra*) has held that since Notification under Section 4 and the Award as well as proceedings pursuant to the Reference Application were passed much prior to coming into force of the amendment to Section 25, the unamended Section 25 of the said Act would apply and in that regard has held that Section 25 of the said Act as amended was substantive in nature and therefore prospective in application. Following the decision in the case of ***Krishi Utpadan Mandi Samiti*** (5th *supra*), the Supreme Court in the case of ***B. V. Reddy and Sons*** (1st *supra*) also held that the provisions of Section 25 of the said Act can never be held to be procedural and it is substantive in nature. The Supreme Court declared that the enunciation of the law made in the case of ***Krishi Utpadan Mandi Samiti*** (5th *supra*) in paragraph No.17 of the judgment relying upon the case of ***Union of***

*India Vs. Raghubir Singh*⁵² is not correct and to that extent, the aforesaid case must be held to not having been correctly decided. It held that it related only to the applicability of Section 30(2) of the said Act and therefore held that the rest of the decision in the case of *Krishi Utpadan Mandi Samiti* (5th *supra*) is still good law.

18. In the the case of *B. V. Reddy and Sons* (1st *supra*), the Award was passed prior to 24.09.1984. In fact in that case, the question answered by the Supreme Court was whether amended Section 25 would apply to a case where the Award had been made much prior to the coming into effect of the Amendment in question. As it was held earlier that provisions of Section 25 are substantive and nowhere does it indicate that it is retrospective, therefore, the Supreme Court held it to be prospective and applicable to all acquisitions made subsequent to 24.09.1984.

19. In the case of *Ghaziabad Development Authority* (6th *supra*), it was noted that unlike the case of *Krishi Utpadan Mandi Samiti* (5th *supra*) since the Award and the judgment of the Reference Court were passed prior to the effective date of amendment of Section 25, the unamended Section 25 of the said Act would apply. In the case of *Stanes Higher Secondary School* (7th *supra*), the Supreme Court applied the principles laid down in the case of *Krishi Utpadan Mandi Samiti* (5th *supra*) and *B. V. Reddy and Sons* (1st *supra*) and held that

52 AIR 1989 SC 1933

since both the Notification and Award were issued prior to 24.09.1984, parties were governed by the unamended provision of Section 25.

20. However, finally in the case of *Ashok Kumar* (8th *supra*), facts of which are identical to the present cases, Notification under Section 4 of the said Act was issued prior to 24.09.1984 and Award was passed after the said amendment, the Supreme Court held that the restriction under Section 25 is no longer applicable in the light of the amendment and that the Court can award just and fair compensation taking into consideration the true market value and other relevant facts irrespective of the claim made by the owner under Section 9 or in the Reference Application. Therefore, as the Award in the present two LARs has been passed on 23.09.1986, the provisions of amended Section 25 of the said Act would apply prospectively to the present cases.

21. In the present cases, it is further seen that there is a categorical statement made in the Reference Applications that Claimants i.e. the Trust is the only person interested in the acquired lands and any claim of tenants or third parties therefore stands rejected in view of no evidence whatsoever being led by the Acquiring Body or the State to contradict the claim of Claimants to the acquired lands in entirety. Claimants have led the evidence of two witnesses in support of its case for enhancement. Mr. M.I. Khan is CW-1 i.e.

Claimant's witness No.1. His credentials and qualifications are stated in his deposition. He is a Surveyor working with Claimant since long. He prepared a plan which is exhibited as Exhibit "C-4" in evidence by using villages maps of three villages namely Village – Sahar, Village – Marol and Village – Mohili and identified the location and status of the acquired lands with reference to three portions; Portion A, Portion B and Portion C on the said plan alongwith showing access to the acquired lands. He has deposed from is personal knowledge that portion A consisting of Survey Nos.94/3, 106/2 and 107/1-A had access from the nearby Andheri-Kurla Road and as such there was clear access available to these lands. He has next deposed that the above three Survey Numbers were also accessible from the proposed D. P. Road as also the 20 feet road which was clearly visible in Tikka Sheet No.55 which has also been exhibited and marked as Exhibit "F" in the present cases. With respect to portion B on Exhibit "C-4" pertaining to Survey No.94/7, he has deposed that the said portion B had clear access from Survey No.94 belonging to Claimant. Finally, in respect of portion C pertaining to Survey No.97/18, he has deposed that the said land parcel derived access from the "Govan Road" as depicted on Exhibit "C-4" and this fact could be corroborated with the village map of Sahar Village which showed existence of the Govan Road in dotted line. He has therefore deposed that all acquired lands derived clear access from the North and West sides despite the Mithi

river flowing on its eastern side. In his cross-examination, Mr. Khan has correctly asserted the existence of the Govan Road and the facts that the acquired lands had access from the northern and western side through the Govan Road. The testimony of this witness with respect to description and status of the acquired lands on the relevant dates has not been shaken or broken down in cross-examination. He has deposed as a witness of fact drawing from his wealth of experience and personal knowledge having worked with the Claimants in their Estate Department and it is therefore safely assumed and derived that he had adequate knowledge about the status and description of the acquired lands on the relevant dates. Though it may be and is infact argued that the acquired lands were with the Defence Department under requisition, however it is significant to note that admittedly besides the 5-6 parcels of the acquired lands, the Claimant – Trust was owner of several other land parcels in its vicinity and thus CW-1 who was working as Surveyor with Claimants had personal knowledge of the status and description of the acquired lands as deposed by him which deserves to be accepted.

22. Drawing upon the evidence of CW-1, Claimants have next led the evidence of CW-2 an Expert Valuer - Mr. Ashok Vaidya, Architect and Valuer. Alongwith the Affidavit-in-lieu of examination-in-chief of CW-2, Mr. Vaidya has prepared a Valuation Report dated 20.10.2005 which are marked as Exhibits “M” and “M-1” in evidence

and appended at page Nos.206 to 212 and 213 to 219 of Volume-II of the compilation of documents. To complete the record, CW-2 has filed a common Affidavit-in-lieu of examination-in-chief dated 21.11.2005 alongwith his Reports dated 21.11.2005 in both LARs.

23. The crucial document is the Valuation Report (Exhibits “M” and “M-1”). He has deposed that the Andheri-Kurla Road is at a short distance towards the east of the acquired lands. He has deposed that Survey No.94/7 abuts the proposed D. P. Road which passes through Survey Nos.94/3 Part and 107/1A Part as per sanctioned Development Plan. He has deposed that acquired lands were accessible by the 20 feet road as shown in the City Survey Plan. He has deposed that Survey No.94/7 abuts the D. P. Road whereas Survey Nos.94/3, 107/1A have the proposed D. P. Road touching them. He has deposed that in so far Survey No.97/18 (part) is concerned, it will have access through the adjacent land belonging to a third party which has a clear access from the Govan Road and the proposed D. P. Road. In that view of the matter, he has opined that assuming that Survey No.97/18 (part) has no direct access and access is available from the Govan Road through another land, in that case a negative deduction of 25% in the market value has to be applied for this particular Survey Number. Therefore according to him the market value of Survey No.97/18 (part) after applying the above deduction is arrived at Rs.85.00 per sq. m. as on the relevant date as compared to the remaining four (4) parcels of

lands having direct access. This deduction of 25% of market value for not having direct access *prima facie* appears to be fair and deserves acceptance.

24. Similarly in respect of Survey No.97/5 in LAR No.19 of 1988, CW-2 - Expert Valuer has opined that since access to this land parcel is to be derived from adjacent lands, it would attract a negative deduction of 25% thereby arriving at the market value of Rs.74.00 per sq. m.. In his cross-examination, CW-2 - Expert Valuer has clarified and answered that Survey No.107/1-A (part) and Survey No.94/3 (part) have access road through a tar road. He has clarified that Survey No.107/1A and Survey No.106/2 are contiguous in nature. He has clarified that in the year 1982 access was upto Survey No.94/3 by the 20 feet wide road and not upto Survey Nos.94/7, 97/18 and 106/2. He has clarified that the D. P. Road provided access to the acquired lands and the Andheri-Kurla Road was at a distance of 800 meters from there and that Survey No.97/18 had access from the Govan Road and the D. P. Road was constructed upto Survey Nos.94/7 (part) and 107/1A (part).

25. As against the deposition of Claimants' witnesses, it is equally important to consider the deposition of the witnesses of the Acquiring Body. Both witnesses of Acquiring Body are witnesses of fact.

26. In so far as evidence led by the Acquiring Body is concerned, it is seen that they have led evidence of two witnesses of fact only. In rebuttal the Acquiring Body nor the SLAO have led any evidence on the issue of valuation and determination of market value of the acquired lands on their respective relevant dates. Mr. Joshi has vehemently argued and attempted to lay criticism on the valuation exercise undertaken by CW-2 i.e. the Expert Valuer in Exhibit "M". In so far as evidence on behalf of Acquiring Body is concerned, its first witness Mr. AW-1 Hiremath has deposed that the approach road is at the distance of 6 kms. on the eastern side of Andheri Railway Station and the access to the acquired lands is therefore convoluted. He has however in paragraph No. 2 of his Affidavit-in-lieu of examination-in-chief stated that there is a 20 feet wide approach road providing access to the acquired lands available for pedestrians and he has also admitted that the proposed DP road to be constructed would provide access to Survey No. 94/3 (part), 94/7 and 107/1A (part). In his cross examination, it is seen that his answers are merely based on SLAO's observations on situation and description of the acquired lands made in the respective Awards dated 29.09.1986. He has no personal knowledge or from the records. In so far as the issue of access is concerned in answer to Q. Nos. 40 to 50 of his cross-examination, he has categorically admitted that the acquired lands can be accessed from the road appearing and shown in the map as also from the road

shown. He has deposed that the road appearing in Tikka Sheet No. 55 provided access to Survey No.94/3 which existed on the relevant date of acquisition as well. These specific admissions are contained in the answers given in reply to Q. Nos. 147 and 151 in his cross-examination. In reply to Q. No. 55, AW-1 has further clarified that the operation area of the Defence Department was operational and such area included roads for moving around the operation area which in effect would mean that save and except the area under requisition no other portion or part of Survey No. 94 was acquired by the Acquiring Body. The said witness has also identified the road connecting Survey No. 94/3 and Survey No. 107/1A to Andheri-Kurla Road in his answer given in reply to Q. No. 32. He has also categorically affirmed that the roads connecting the Airport Building to Andheri-Kurla Road were in existence on the relevant date of acquisition.

27. In so far as the Acquiring Body's 2nd witness of fact is concerned, AW-2 Mr. Madan Goswami in his deposition has simply stated that the acquired lands are landlock. However in cross-examination the said witness AW-2 has admitted the fact that the proposed DP Road passed through Survey Nos. 94/3 and 107/1A and the position shown on Annexure 2 existed on the date of acquisition. In reply to Q. No. 47 he has admitted that access to Survey No. 107 was available. On a conjoint reading of the answers given by the witnesses of the Acquiring Body, it is seen that testimony of AW-2 is

not of much significance. Deposition of AW-1 however is such that the said witness candidly admits availability of access roads to the acquired lands and therefore the theory propounded and argued by the learned Advocate for the Acquiring Body that the acquired lands were landlocked cannot be accepted and stands rejected. Equally while ascertaining the market value of the acquired lands one has to also bear in mind the fact that the said lands will have to be valued independently as if the said lands are required to be sold in the open market.

28. Juxtaposing the above with the evidence of CW-1, it is observed that he has worked in the Estate Department of the Claimants since 1982. On the date of his deposition, he was working as a Surveyor of lands belonging to Claimant. Claimant – Trust admittedly is a land owner and owner of several land parcels in the vicinity of the acquired lands. Thus the scope and extent of his duty would involve ascertainment of status of Claimant's lands. The testimony of CW-1 therefore assumes significance. One thing from his evidence is clearly derivated and that is that lands bearing Survey No. 94/3, 107/1A, 94/7 and 106/2 had clear access through the roads connecting to them whereas Survey No. 97/18 had access from the Govan Road. Another fact which is admitted by both sides is that the acquired lands were connected to Andheri-Kurla Road also. Further the acquired lands namely Survey Nos. 94/3, 94/7, 107/1A and 106/2 also derived access

from the 20 feet wide road and the DP roads connected to them.

29. In the above backdrop of evidence regarding status and description of the acquired lands, let us now analyze both the Valuation Reports of the Expert Valuer to see whether the exercise of valuation undertaken by him is reasonable enough for consideration to arrive at a fair market value of the acquired lands on the relevant dates or whether it requires any interference. The Valuation Reports are exhibited in evidence as Exhibit “M” and “M-1” and are annexed to the affidavit- in-lieu of examination-in-chief of CW-2. The method of valuation undertaken by the Valuer to arrive at the market value of the acquired lands on their respective relevant dates is the “Comparable Sales Method”. In this valuation exercise, comparable sale instances of similarly placed lands in the vicinity and surrounding of the acquired lands which are in close proximity of time and distance are compared with the acquired lands to arrive at the market value of the acquired lands on the relevant date. In the present case it is seen that CW-2 the Expert Valuer has relied upon five registered sale instances which were marked as Exhibits L-1 to L-5 and correspondingly exhibited and marked in evidence as Exhibits C-21 to C-25 by the Reference Court. Certified copies of the aforementioned five sale instances have been marked as Exhibits in evidence. The most important feature is that these very 5 sale instances are also considered by the SLAO while passing his twin Awards dated 23.09.1986 in both the cases. On

perusal of the Valuation Reports Exhibits “M” and “M-1” it is seen that the Expert Valuer has deposed that Andheri - Kurla Road is on the north side and Andheri-Kurla Road is at a short distance on the eastern side of the acquired lands. He has deposed that the lands are accessible by the 20 feet road shown in the City Survey Plan and that all acquired lands have access through the DP Road, save and except Survey No. 97/18 (part) which could have access only through to the adjacent land. In respect of this Survey No.97/18(part), he has given a negative deduction of 25% on this count for the particular land parcel. Analysis of the 5 sales instances which are registered sale deeds of which certified copies are taken on record and marked as Exhibits as considered by the Expert Valuer are as under:-

	Exhibit No.	Date	Sale Instance details / facts
1	L-1/ C-11	29.12.72	This registered sale deed is in respect of agricultural plot of land from Samhita Industrial Enterprises. Size of the plot is 1124.59 sq. m. Sale price is @ Rs. 35/- per square yard equivalent to Rs. 41.86 per sq. m.
2	L-2/ C-12	29.12.72	This registered sale deed is in respect of agricultural plot of land from Samhita Industrial Estate. Size of the plot is 301 sq. m. Price of land is Rs. 35 per square yard equivalent to Rs. 41.86 per sq. m.
3	L-3/ C-13	29.12.72	This registered sale deed is in respect of agricultural plot of land from the vicinity of acquired land. Size of the plot is 979.94 sq. m. Price of land is Rs. 35 per square yard

			equivalent to Rs. 41.86 per sq. m.
4	L-4/ C-14	29.12.72	This registered sale deed is in respect of agricultural plot of land from Samhita Industrial Estate. Size of the plot is 665.66 sq. m. Price of land is Rs. 35 per square yard equivalent to Rs. 41.86 per sq. m.
5	L-5/ C-15	22.01.80	This registered sale deed is in respect of agricultural plot of land from Samhita Industrial Estate. Size of the plot is 1776.77 sq. m. Price of land is Rs. 50 per square yard i.e. Rs. 59.79 per sq. m. as per the agreement between parties dated 27.03.1975.

30. From the above and the Valuation Report, it is seen that for the purpose of employing the Comparable Sale Method for arriving at market value of the acquired lands CW-2 - Expert Valuer has considered Exhibit No. L-5/C-15 which is dated 22.01.1980 as the most comparable sale instance for comparison with the acquired lands, though other instances are also comparable. The reason is obvious. Firstly, the date of sale instance Exhibit "C-15" is 22.01.1980 is the closest in terms of proximity of time to the two relevant dates in the present LAR cases namely 20.08.1981 (in LAR No.19 of 1988) and 12.08.1982 (LAR No.18 of 1988). Secondly, sale instance Exhibit "C-15" is in respect of an agricultural plot of land in the nearby vicinity known as Samhita Industrial Estate which is in close proximity (in terms of distance) to the acquired lands. This Samhita Industrial Estate was a fully developed industrial estate as on the aforementioned two

relevant dates. This position is undisputed because, the Award itself considers these very sale instances while referring to the sale instances from Samhita Industrial Estate. The certified copy of Exhibit "C-15" is produced on record and exhibited in evidence. Under Section 51A of the said Act, certified copy of a document registered under the Registration Act, 1908 can be accepted as evidence of the transaction recorded in such document. Hence Exhibit "C-15" is accepted in evidence. On perusal of the same, it is seen that size of the plot in the sale instance is 1776.77 sq. m. and this size is therefore compared by the Expert Valuer with the ten parcels of land comprised in the present twin Reference cases. When the area of the ten land parcels are seen, it is seen that the smallest plot admeasures 251 sq. m. whereas the largest plot admeasures 18753.68 sq. m. It is seen that the transaction below Exhibit "C-15" pertains to a land parcel admeasuring 1776.77 sq. m. in respect of which sale consideration of Rs. 1,06,250/- was paid. Perusal of Exhibit "C-15" does not show any encumbrance or applicability of any special condition which would render the said transaction / document as not a marketable sale transaction. The market value / rate of land on the date of the sale transaction dated 22.01.1980 in Exhibit "C-15" if calculated would come to Rs. 59.79 per sq. m. which is rounded off by the Expert Valuer to Rs. 60/- per sq. m. Equally Exhibit "C-11" to "C-14" are also certified copies of registered sale deeds which are produced on record and exhibited in evidence.

The Expert Valuer has thereafter applied the rise factor to this market rate of the land from the date of the said sale transaction i.e. 22.01.1980 upto the two relevant dates i.e. upto 20.08.1981 (in LAR No.19 of 1988) and 12.08.1982 (in LAR No.18 of 1988). The Expert Valuer has considered the rise in the value of land prices at a conservative estimate of 15% per annum in that regard and there is no reason in accepting this rise factor as it is based on the evidence placed on record. For arriving at the rise factor, CW-2 – the Expert Valuer has considered sale instance Nos.1 and 2 namely Exhibits “C-11” and “C-12” and sale instances Nos.3, 4 and 5 namely Exhibits “C-13”, “C-14” and “C-15” in the present cases. Paragraph No.8.05 of the Valuation Reports in both References pertain to the rise factor and the same are reproduced verbatim herein below:-

LAR No.18 of 1988:

“8.05. Instances Nos.1 & 2 reflect a rate of Rs.41/86 per sq. mt. in December 1972 whereas Instances Nos.3 to 5 reflect a rate of Rs.59/80 per sq. mt. up to March 1975, thus indicating a rise of 19% per annum on the basis of simple interest i.e. about 17% per annum rise at a compound rate. Considering a conservative average compounded rise of 15% per annum, the rate of the land under valuation as on 12/08/1982 i.e. after a period of 7.42 years will be Rs.169/- per sq. mt. (Rs.59.80 x 2.826).”

LAR NO.19 of 1988:

“8.05. Instances Nos.1 & 2 reflect a rate of Rs.41/86 per sq. mt. in December 1972 whereas Instances Nos.3 to 5 reflect a rate of Rs.59/80 per sq. mt. up to March 1975, thus indicating a rise of 19% per annum on the basis of simple interest i.e. about 17% per annum rise at a compound rate. Considering a conservative average compounded rise of 15% per annum, the

rate of the land under valuation as on 20/08/1981 i.e. after a period of 6.42 years will be Rs.146/92 per sq. mt. (Rs. 59.80 x 2.457) or say Rs.147/- per sq. mt.”

31. From the above, it is seen that to arrive at the yearly rise while juxtaposing sale instance Nos.1 and 2 on the one hand and sale instance Nos.3, 4 and 5 on the other hand between the two market rates, a rise of 19% per annum on the basis of simple interest and 17% per annum on compounded basis is clearly reflected. Thus from 1972 to 1975, if both market rates in the aforesaid set of transactions are compared, then it shows the above rise in market value. The Expert Valuer has considered this rise factor which is on the basis of empirical data namely proved sale instances which are exhibited in evidence by the Court. These very sale instances are also relied upon by the SLAO in his twin Awards. Most importantly these sale instances are from the nearby developed ‘Samhita Industrial Estate’. Hence the exercise for determining the yearly rise in market value adopted by and opined by the Expert Valuer at the conservative rate of 15% per annum upto the twin relevant dates in the present References being passed on empirical data of proved sale instances needs to be accepted by the Court. Further, there is no evidence in rebuttal led by the Acquiring Body or SLAO on this issue of rise factor. Hence the exercise for determination of yearly rise @ 15% per annum from the date of the most comparable sale instance i.e. Exhibit “C-15” is accepted by the

Court as cogent and reasonable.

32. After application of the rise factor, the Expert Valuer has opined that the market value of the acquired lands in LAR No.19 of 1988 would be Rs. 147/- per sq. m. as on the relevant date and the market value of the acquired lands in LAR 18 of 1988 would be Rs. 169/- per sq. m. as on its relevant date. Thereafter the Expert Valuer has compared the sale instance land with the acquired lands on the basis of positive and negative factors viz; with respect to factors and features relating to size, accessibility and development potentiality. He has given positive allowances and negative deductions on the basis of comparison of the aforementioned three predominant factors in his analysis in his Valuation Report. On the issue of size factor, he has applied a 33% deduction to all 5 acquired land parcels whose area is much larger than the area of the sale instance land below Exhibit "C-15". I have discussed this issue in much greater detail herein below *qua* each acquired land parcel according to its size so that the comparable sales method is applied correctly on the basis of the evidence on record.

33. Next in respect of availability of access to the acquired lands, in so far as Survey No. 97/18 (part) and Survey No. 97/5 (part) are concerned, he has given a negative deduction of 25% to these two land parcels considering their location and these lands lacking direct access

to a road. In so far as LAR No.18 of 1988 is concerned, after applying the same 25% deduction to Survey No. 97/18 (part), he has arrived at a market value of Rs. 85/- per sq. m. Despite the fact that the Govan road abuts this particular Survey number, one of the reason for singling out this particular Survey number is the fact that three Survey Nos. i.e. 94/3 (part), 106/2 (part) and 107/1-A (part) are contiguous lands and therefore in those Survey Numbers' access can be given / taken from the neighbouring land parcels belonging to the Claimant itself. After applying the deduction of 25% towards lack of access, he has arrived at the market value of Rs. 74/- per sq. m. in respect of Survey Nos. 97/5 (part) and 97/18 (part). It is seen that the exercise which has been undertaken by the Expert Valuer i.e. CW-2 is an exercise contemplated by Comparable Sales Method. As a first step, he has considered registered sale instances of comparable lands which are in close proximity of time and distance to the acquired lands and the relevant dates for determination of market value. On both these counts Exhibit "C-15" passes the test of proximity in terms of time and distance. The second step which the Expert Valuer has undertaken in his exercise to determine the market value is to apply the rise factor to bring the market value of the sale instance land upto the relevant date. Application of such rise factor can be positive or it could even be negative. In the present case considering the ascending rise of market value of lands on the basis of the proved sale instances itself viz;

Exhibits “C-11” to “C-15” which are exhibited in evidence, the Expert Valuer has applied a conservative increase of 15% per annum and after applying the same he has arrived at the market value of the sale instance land as on the relevant dates. The third step undertaken by the CW-2 – Expert Valuer thereafter is compare the main features of the sale instance land with the acquired lands and give positive allowances or negative deductions. Predominantly he has compared two main distinguishing features affecting the acquired lands in question with the sale instance land. Firstly, he has compared the lands on the basis of their size and secondly, he has compared them on the basis of availability of access. In so far as features / factors which affect the sale instance land and the acquired lands are common, in his Valuation Report he has referred to them but declined to give any positive allowances or negative deductions since some of the said factors affect both the lands equally. Some of these factors which are discussed by him are regarding height restrictions and access to some of the acquired lands in detail. This opinion is not disturbed in his cross-examination. It is facts based.

34. From the perusal of record and cross-examination of CW-2 – Expert Valuer, it is seen that the sale instances considered by him are the same sale instances relied upon by the SLAO in the Award. In the Award, SLAO has not undertaken any exercise of comparing the lands in the said sale instances with the acquired lands. The market value

declared in both the Awards is on the basis of the opinion of the SLAO. Whereas in the Reference proceedings, CW-2 has undertaken an elaborate exercise of comparing the most comparable sale instance out of the 5 sale instances under the Comparable Sales Method. The Valuation Reports Exhibits “M” and “M-1” and cross-examination of CW-2 have not been shaken or discredited in any respect by the SLAO or the Acquiring Body. Infact there is no evidence led by them in rebuttal for challenging the valuation of CW-2. The sale instances relied upon by CW-2 are from Samhita Industrial Estate which was a fully developed industrial estate in close proximity to all acquired lands. The SLAO has also acknowledged this fact. Hence, taking into account the height restriction, accessibility to the acquired lands and the comparable sales method employed by CW-2 alongwith assigning the rise factor, in the absence of any cogent evidence in rebuttal, I have no hesitation in accepting the valuation exercise undertaken by CW-2 in arriving at the market value of the acquired lands on both the respective relevant dates, save and except in negating the negative deduction in respect of 2 parcels and 1 parcel of land in the twin LARs which is elaborately discussed herein below. The evidence of the two witness AW-1 and AW-2 on behalf of the Acquiring Body do not come to the aid and assistance of the Acquiring Body’s case in point. On the issue of access, material and cogent evidence is produced on record by CW-1 and the same has not been shaken nor dislodged. Availability of

access to all land parcels except 2 and 1 land parcel out of the 5 parcels of acquired lands in both the References has been proved in evidence. Appropriate negative deduction of 25% is given by the valuer for land parcels without access. Accordingly the size factor has been considered and appropriate deduction @ 33% is applied to the acquired lands. Height restrictions would apply to both, the acquired lands and the sale instance land, and hence no allowance or deduction, whether positive or negative is given. Hence, in regard to height restriction there cannot be any deduction in the market value. There is no dispute about apportionment to any tenant as this is a Section 18 enhancement Reference and despite arguing this issue, the Acquiring Body / SLAO has not led any evidence on this ground to prove its allegation. It is also argued by the Acquiring Body that presence of the “nullah” be considered to decrease the market value. In this regard, evidence led by Claimant shows that the said existing “nullah” touched Survey No.94(7) only. Further, the nullah was made by the Defence Authorities after the lands were originally requisitioned. This explanation has not been denied or controverted by the Acquiring Body. Hence, mere existence of the “nullah” cannot be a sole determinant factor to reduce or affect the market value of any of the acquired land parcels. Exhibit "C-15" is held to be the most comparable sale instance and determinant for arriving at the market value of the acquired lands and the same is upheld as having been proved in

evidence as it is in close proximity of time and distance to the twin relevant dates and the acquired lands in both LARs.

35. Insofar as the 5 land parcels in LAR No.19 of 1988 are concerned, it is seen that CW-2 - Expert Valuer of Claimant has given a negative deduction of 33% to the acquired land parcels on account of its larger size. At first blush, the exercise undertaken by the Expert Valuer may seem appropriate because there is hardly any variation in size of the 5 land parcels if compared with the area of sale instance land in Exhibit "C-15". The size of the sale instance land in Exhibit "C-15" is 1776.77 sq. m. However, the Expert Valuer of Claimant has correctly given deduction of 33% on account of size to the acquired lands because these 5 land parcels are not independent land parcels but are contiguous and form a part of substantially large land parcels. If the exercise undertaken by Claimant's Valuer in his Valuation Report is seen, it is understood that in LAR No.19 of 1988, he has given deduction on account of size to the land parcels with Survey No.94 Hissa No.7 (part) in both the LARs. The area of Survey No.94 Hissa No.7(part) in totality however is 1772.66 sq. m. which is almost equivalent to the size of land in the comparable sale instance Exhibit "C-15". However, if the areas of other land parcels are seen namely Survey Nos.94 Hissa No.3 (part), 107 Hissa No.1-A (part) and 97 Hissa No.18 (part), their respective areas are 5635.08 sq. m., 18753.68 sq. m. and 17427 sq. m. which are acquired in LAR No.18 of 1988. The

land parcels of LAR No.19 of 1988 are out of the same Survey Numbers as of LAR No.18 of 1988 except one of them which are acquired 1 year before for the same public purpose. Therefore the exercise of giving negative deduction on account of the size factor in LAR No.19 of 1988 to the extent of 33% for 4 out of the 5 land parcels is completely justified even if the actual area acquired is more or less equal to the area of land in the comparable sale instance Exhibit "C-15".

36. Though in the Valuation Report at Exhibit "M" concerning LAR No.18 of 1988, CW-2 – Expert Valuer has proceeded on the premise that 33% deduction is required to be given for all 5 acquired land parcels but such application of negative deduction will not be correct in the case of 2 land parcels namely Survey No.94 Hissa No.7 (part) admeasuring 1772.66 sq. m., Survey No.106 Hissa No.2 (part) admeasuring 455.25 sq. m. and Survey No.94 Hissa No.7(part) in LAR No.19 of 1988 admeasuring 251 sq. m.. Admittedly, one of these land parcels i.e. Survey No.94 Hissa No.7(part) is equal in area whereas the other land parcel Survey No.106 Hissa No.2(part) is much less in area than the area of sale instance land in Exhibit "C-15". This is the fallacy in the Valuer's Report at Exhibits "M" and "M-1" which is observed by the Court and needs to be corrected and valued on the basis of the admitted areas of the acquired land parcels. However, it has been argued by Claimant by bringing it to the notice of the Court that 33%

deduction will have to be therefore made in respect of acquired lands that are much larger in area as compared to sale instance land below Exhibit "C-15". This submission of Claimant deserves to be accepted, otherwise the negative deduction exercise in respect of acquired land parcels which are of the same size or smaller in area than the sale instance land will not be a correct measure of valuation. To that extent the Valuer's Reports Exhibits "M" and "M-1" are not correct though it may result in the Claimant receiving lesser market value. Duty of the Reference Court is to award the correct market value on the basis of available evidence before the Court. In that view of the matter, though the Expert Valuer has given deduction of 33% in land value to all 5 land parcels in LAR No.18 of 1988 and adopted the same exercise for LAR No.19 of 1988 in his twin Valuation Reports at Exhibits "M" and "M-1", I am not in agreement with the said exercise to the aforesaid extent as it will be contrary to the principles of valuation while comparing a large plot of land with a small plot of land. Hence I am inclined to award no negative deduction on account of size for Survey Nos.94/7 (part), 106/2 (part) and 94/7 (part) in the twin LARs. The Claimant will therefore be entitled to market value as determined in this judgment without any deduction on account of size for the aforesaid 3 land parcels in view of my above finding. Hence the Claimant will be entitled to the following market value:-

A. LAR NO.18 OF 1988:

Sr. No.	S. NO. H.NO.	Area in sq.m.	Rate in Rupees per square meter
1	94 H 3(pt.)	5635.08	113 [169 – 33% (being reduction on account of large size of the acquired land)]
2	94 H 7(pt.)	1772.66	169 (without any deduction on account of size)
3	106 H 2(pt.)	455.25	169 (without any deduction on account of size)
4	107 H 1-A (pt.)	18753.68	113 [169-33% (being reduction on account of large size of the acquired land)]
5	97 H 18 (pt.)	17427	85 [169-33% (being reduction on account of large size of the acquired land) = 113 and 113 - 25% (being reduction on account of it being situated in the interior)]

B. LAR NO. 19 OF 1988:

Sr. No.	S. NO. H.NO.	Area in sq.m.	Rate in Rupees per square meter
1	94 H 3(pt.)	1042	98 [147 – 33% (being reduction on account of large size of the acquired land)]
2	94 H 7(pt.)	251	147 (without any deduction on account of size)
3	107 H 1-A (pt.)	1480	98 [147-33% (being reduction on account of size of the acquired land)]
4	97 H 18 (pt.)	1541	74 [147-33% (being reduction on account of large size of the acquired land) = 98 and 98 - 25% (being reduction on account of it being situated in the interior)]
5	97 H 5(pt)	1517.52	74 [147 (being reduction on account of large size of the acquired land) = 98 and 98 - 25% (being reduction on account of it being situated in the interior)]

37. In view of my above observations and findings, both References deserve to be allowed. Accordingly, both the References are allowed by awarding the following market value as on the respective relevant dates in the twin LARs:-

(i) **(1) In LAR No.18 of 1988:**

Market value of acquired lands as on 12.08.1982:

Sr. No.	S. No. & H. No.	Area in square meters	Rate in Rupees per square meter (Market Value)
1.	94/3 (part)	5635.08	113.00
2.	94/7 (part)	1772.66	169.00
3.	106/2 (part)	455.25	169.00
4.	107/1-A (part)	18,753.68	113.00
5.	97/18 (part)	17,427	85.00

(2) **In LAR No.19 of 1988:**

Market value of acquired lands as on 20.08.1981:

Sr. No.	S. No. & H. No.	Area in square Meters	Rate in Rupees per square meter (Market Value)
1.	94/3 (part)	1042	98.00
2.	94/7 (part)	251	147.00
3.	107/1-A (part)	1480	98.00
4.	97/18 (part)	1541	74.00
5.	97/5 (part)	1517.52	74.00

- (ii) Claimant in both LARs is entitled to the benefit of Section 23(1-A) under the said Act @ 12% per annum on the enhanced market value from the date of Notification to the date of possession in both LARs;
- (iii) Claimant in both LARs is entitled to 30% solatium on the enhanced market value under Section 23(2) of the said Act;
- (iv) Claimant in both LARs is entitled to statutory interest under Sections 28 and 34 of the said Act as applicable on the enhanced market value until payment;
- (v) Payment already made to Claimant by SLAO under the twin Awards in the two LARs shall be adjusted from the market value awarded by this Court in these Reference Awards in both LARs;
- (vi) SLAO shall compute the balance amount and pay it to the Claimant as directed in the judgment;
- (vii) Claimant is directed to file calculation and computation of the aforesaid market value and statutory benefits payable with the SLAO and Acquiring Body within two weeks from the date of this Reference Award;

(viii) The SLAO and Acquiring Body shall after making due adjustment of the amounts already paid to Claimant under the twin Awards dated 23.09.1986 in both cases, pay the balance amount to the Claimant in both LARs within a period of four weeks from the date of submission of calculation for the market value payable alongwith all statutory benefits as directed herein above in accordance with the provisions of the said Act.

38. With the above directions, LAR No.18 of 1988 and LAR No.19 of 1988 are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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