IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO. 5 OF 2003

JYOTI PRAKASH PAWAR
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The Special Land Acquisition Officer (3)
Mumbai and M.S.D., 1st Floor, D.D. Bldg.,
Old Custom House, Fort, Mumbai – 400 023.

V/s.

1. Rahul Arun Merchant,
Karta and Manager of Chaturbhuj Vallabhdas
(HUF), Residing at : 2092, B Wing, 9th Floor,
Clover Regency, Ramji Ashar Lane,
Ghatkopar (East), Mumbai – 400 007.

2. Paresh Nanbhai Trivedi

3. Mukundraj C. Doshi

4. Smt. Prameelaben R. Varia

5. Bharatbhai P. Gada

6. Jayesh N. Trivedi

7(a) Lata Pravinkumar Bagadiya
Age - 55 years, Occupation – Housewife
Residing at 404, 4th Floor, Kantinagar,
J.B. Nagar,, Andheri (East),
Mumbai – 400 069

7(b) Mahendra Kantilal Sanghavi
Age – 53 years, Occupation – Business
Residing at Block No.6,
Satrarbhuj Vallabhdas Tejpal Wadi,
Ramji Assar Lane, M.S. Road,
Ghatkopar East, Mumbai – 400 077.

7(c) Mrs. Rekha Nitinkumar Shah,
Age – 50 years, Occupation – Housewife,
Residing at M/F-2, Sarvoday Nagar,
Military Compound, Dutta Mandir Road,

Malad (East), Mumbai – 400 097

7(d) Jitendra Kantilal Sanghavi,
Aged about 48 years, Occupation – Service,
Residing at Block No.6,
Chaturbhuj Vallabhadas Tejpalwadi,
Ramji Asar Lane, M.G. Road,
Mumbai – 400 077

7(e) Mrs. Mamta Prashantkumar Kothari,
Aged about 43 years, Occupation – Housewife,
Residing at B-103, Vasant Arddhana,
1st floor, Mahavir Nagar, Dahanukar Wadi,
Kandivali (West) - Mumbai

8. Sunil Pratap Anjaria

9. Sudarshan Anandji Rasputra

10. Smt. Anusayaben C. Doshi

11. Smt. Meeaxi Vyas
Vallabhdas Ramji Asar Lane,
Tejpalwadi, Ghatkopar (East),
Mumbai – 400 077

12. Janardhan Vatare

13. Gangaram Gharve,
Vallabhdas Ramji Asar Lane,
Tejpalwadi, Ghatkopar (East),
Mumbai – 400 077

14. MMRDA,
New Administrative Building, E-Block,
BKC, Bandra (East), Mumbai 400 051 … Claimants

And

1. The Deputy Chief Officer (C)

Metropolitan Transport Project (Railway)
Basement of PF No.4, Vashi Station Bldg.,
Navi Mumbai – 400 703 … Acquiring Body

WITH
LAND ACQUISITION REFERENCE NO. 9 OF 2005

The Special Land Acquisition Officer (3)
Mumbai and M.S.D., 1st Floor, D.D. Bldg.,
Old Custom House, Fort, Mumbai – 400 023.

V/s.

1. Rahul Arun Merchant,
Karta and Manager of Chaturbhuj Vallabhdas
(HUF), Residing at : 2092, B Wing, 9th Floor,
Clover Regency, Ramji Ashar Lane,
Ghatkopar (East), Mumbai – 400 007. … Claimant

And

1. The Deputy Chief Officer (C)
Metropolitan Transport Project (Railway)
Basement of PF No.4, Vashi Station Bldg.,
Navi Mumbai – 400 703 … Acquiring Body

Mr. Atul Damle, Senior Advocate a/w. Mr. Jayesh Ashar a/w. Mr. Dhaval Patil a/w. Mr. Akshay Gupte i/b. M/s. K. Ashar & Co. for Claimant no.1.
Mr. Vijay M. Vaghela for Claimant nos. 4 to 10 in LAR/5/2003.
Ms. Asha M. Bhambwani for Claimant no.14 – MMRDA.
Mr. Prashant Kambale, AGP for State of Maharashtra – SLAO.
Mr. Suresh Kumar for Acquiring Body.

CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 17th MARCH 2026
PRONOUNCED ON : 17th JUNE 2026

JUDGMENT :

1. The present proceedings arise out of the acquisition of property under the Land Acquisition Act, 1894 ***("said Act"),*** for the public purpose of construction of the 5th and 6th railway lines between Kurla and Thane. Two References have arisen out of the same acquisition proceedings – Land Acquisition Reference No. 9 of 2005 dated 9th February 2001, came to be made by the Special Land Acquisition Officer pursuant to an application preferred by Claimant no.1 ***("owner")***, seeking enhancement of compensation under Section 18 of the said Act whereas, Land Acquisition Reference No. 5 of 2003 dated 14th August 2003, pertains to the dispute regarding apportionment of compensation under Section 30 of the said Act between the owner and Claimant nos. 2 to 13 ***("tenants")***, who were in occupation of the structure/s standing upon the acquired property.

BRIEF FACTS

2. Before adverting to the merits of the present References, a brief recital of facts, insofar as they are relevant for adjudication of the present proceedings, is set out hereinbelow:

a) The present References pertain to land bearing CTS No. 4129 (Pt.) admeasuring 798.20 square meters, CTS No. 4088 (Pt.) admeasuring 40.90 square meters, CTS No. 4090 (Pt.) admeasuring 52.90 square meters, CTS No. 4091 (Pt.) admeasuring 9.30 square meters and CTS No. 4097 (Pt.) admeasuring 5.00 square meters, totally admeasuring 906.30 square meters, along with building known as *"Vallabh Chawl"* admeasuring 204.40 square meters being a ground plus one upper storey structure standing thereon. The land is situated at Village Kirol, Ramji Ashar Lane, Ghatkopar (East), Mumbai Suburban District ***("acquired property")***.

b) The acquired property came to be acquired for a public purpose, of construction of the 5th and 6th railway lines between Kurla and Thane, as part of the Central Railway's expansion project.

c) Notification No. LAQ/Desk-1/B-1/CR-884/97 under Section 4 of the said Act came to be published in the Maharashtra Government Gazette on 22nd January 1998. The relevant date for determination of the market value of the acquired property, being the last date of publication of the said Notification, is 12th March 1998.

d) The declaration under Section 6 of the said Act bearing Notification No. LAQ/Desk-1/B-1/CR-905/98 issued by the Commissioner, Konkan Division, came to be published in the Maharashtra Government Gazette dated 25th June 1998 at pages 623 and 624.

e) Notice under Sections 9(3) and 9(4) of the said Act was issued to the Claimants on 11th August 1998.

f) Pursuant thereto, the owner, through its Advocates, addressed a reply dated 18th September 1998 bearing Reference No. V110c/1024/98 to the SLAO in response to the aforesaid notices and submitted its claim for compensation in respect of the acquired property.

g) By an Award under Section 11 of the said Act bearing Award No. LAQ/382/4/Kirol dated 22nd December 2000, the Special Land Acquisition Officer (3) ***("SLAO")*** awarded compensation in the sum of Rs. 78,69,442/- in respect of the acquired property. The market value of the acquired property, as determined under the Award, was assessed at Rs. 3,750/- per square meter.

h) Notice under Section 12(2) of the said Act was issued to the Claimants on 22nd December 2000, and the possession of the acquired property was handed over to the SLAO on 4th September 2005.

i) Being dissatisfied with the quantum of compensation awarded, the owner sought the present Reference, namely LAR No. 9 of 2005 under Section 18 of the said Act for enhancement of compensation of the acquired property, on the basis of market value, which was claimed at Rs. 19,368/- per square meter.

j) The acquired property comprised structures, including a chawl known as *"Vallabh Chawl"* occupied by 10 tenants and 2 tenants who occupied structure/s on CTS Nos. 4191, 4197, 4091 and 4097.

k) During the course of acquisition and rehabilitation proceedings undertaken in relation to the Thane-Kurla Railway Project ***("MUTP")***, the Mumbai Metropolitan Region Development Authority ***("MMRDA")*** undertook rehabilitation of the occupants affected by the acquisition proceedings. In that regard, undertakings dated 28th June 2005 came to be executed by the tenants.

l) The record indicates that permanent alternate accommodation came to be provided by MMRDA to all 12 tenants, and in lieu thereof, possession of the premises occupied by them was handed over to MMRDA on 4th September 2005.

m) The Award did not determine apportionment of compensation between the owner and tenants, resulting in rival claims regarding entitlement and distribution of compensation made by the tenants to the SLAO.

n) Accordingly, apart from enhancement in compensation, the present proceedings also involve adjudication of the dispute pertaining to apportionment of compensation between the owner and the tenants.

o) Since rival claims arose in respect of entitlement to the compensation awarded for the acquired property between the owner and the tenants, the said dispute came to be referred by the SLAO to this Court under Section 30 of the said Act and was accordingly registered as LAR No. 5 of 2003 dated 14th August 2003.

A. LAR No. 9 OF 2025- ENHANCEMENT OF COMPENSATION

A1. SUBMISSIONS OF THE OWNER ON ENHANCEMENT OF COMPENSATION IN LAR NO. 9 OF 2005

3. At the outset, Mr. Atul Damle, learned senior advocate appearing on behalf of the owner, vehemently submits that the compensation awarded by the SLAO is *ex facie* inadequate and wholly disproportionate to the fair market value of the acquired property as on the relevant date of acquisition. Mr. Damle submits that although the owner had specifically claimed compensation at the rate of Rs. 19,368/- per square meter, the SLAO, without adopting a fair, reasonable or legally sustainable methodology, assessed the market value at only Rs. 3,750/- per square meter and consequently, awarded total compensation of Rs. 78,69,442/-. He points out that the acquired property is situated in a prime and commercially developed locality at Ghatkopar (East), in close proximity to Ghatkopar Railway Station, M.G. Road and other commercial establishments, thereby possessing substantial commercial potential and high marketability, which were not considered by the SLAO in arriving at the said computation.

4. According to Mr. Damle, the compensation determined under the Award neither reflects the true market value of the acquired property nor constitutes just and fair compensation within the meaning of the said Act, and therefore

he submits that his client is legitimately entitled to substantial enhancement in compensation. He therefore submits that the owner has claimed enhanced compensation of Rs. 2,80,62,258.53. He states that the methodology used by the SLAO was flawed and had serious infirmities and procedural irregularities to which he demanded being changed.

5. Mr. Damle, thereafter, invites my attention to the sale instances relied upon by the SLAO whilst determining the market value of the acquired property and invites the attention of this Court to the four sale instances that were identified / relied upon for the purposes of valuation. For convenience, they are briefly described hereunder:

i) Instance No. 1 - The valuation was in respect of land with a building on plot No. A, S.No.173 (pt), 175(pt) CTS No. 3337, 3344 etc. of the village Ghatkopar admeasuring 837.75 square meters approximately converged consideration of Rs. 55,00,000/- as on 15th May 1995. It shows a rate of Rs. 6565/- per square meters.

ii) Instance No. 2 - It pertains to a built up property standing on the land bearing CTS No. 4160 to 4191 admeasuring 2046.00 square meters for a total consideration of Rs. 1,25,00,000/- as on 29th July 1994.

The sale indicates a rate of Rs. 6109/- per square meters.

iii) Instance No. 3 - The conveyance is in respect of built up property bearing CTS No. 850 to 859 and S. No. 135/5 is admeasuring 1540.5 square meters for a total consideration of Rs. 57,00,000/- on 2nd April 1994. The sale indicates a rate of Rs. 3700/- per square meter.

iv) Instance No. 4 - It refers to an agreement for sale of flat situated on land bearing CTS No. 5461, 5462 etc. S. No. 255/8 plot No. 1 of village Ghatkopar Kirol for total carpet area of 67.1 square feet for total consideration of Rs. 9,50,000/- as on 13th June 1994. Which indicates a rate of Rs. 15,230/- per square meters the flat is situated in the building known as Sterling Apartment, Harbhanji lane near M.G. Road Ghatkopar (E.)

6. Mr. Damle further submits that although the SLAO initially relied upon sale instance nos. 2 and 4 for determining the market value of the acquired property, the SLAO subsequently observed that sale instance no. 2 was not comparable and consequently proceeded to place reliance only upon sale instance no. 4. Mr. Damle, however, vehemently contends that all the

aforesaid four sale instances pertain to transactions of the year 1994, which are nearly four years prior to the issuance of notification under Section 4 of the said Act, and therefore the same could not have been treated as safe or reliable indicators for determination of the prevailing market value of the acquired property as on the relevant date of acquisition.

7. Mr. Damle further submits that the acquired property is situated in a commercially developed locality near Ghatkopar Railway Station, M.G. Road and Rajawadi Hospital and possesses substantial commercial potential. He submits that the SLAO failed to properly consider the valuation of adjacent and surrounding properties whilst determining compensation and consequently arrived at an erroneous valuation wholly disproportionate to the prevailing market value of lands in the vicinity.

8. Mr. Damle points out that the owner owned land admeasuring 8841.80 square meters out of which, the acquired land admeasured 906.30 square meters. He points out that that in respect of the remaining portion, namely, 7935.50 square meters, the owner had executed a Development Agreement dated 12th December 2003 with M/s. Avanti Enterprises for total consideration of Rs. 12,71,00,000/- plus three constructed flats admeasuring 1270 square feet along with stilt parking. Similarly, basis the valuation of

Rs. 36,500/- per square meter as per the Stamp Duty Ready Reckoner, he submits that each of the three flats admeasuring 117.98 square meters is required to be valued at Rs. 43,06,270/-, thereby aggregating Rs. 1,29,18,810/-. Relying on such valuations, Mr. Damle submits that the total consideration receivable by the owner under the Development Agreement is Rs. 14,00,18,810/- which works out to a rate of Rs. 17,644.61 per square meter.

9. He assails the evidence of Mr. Sanjay Kurvey, Deputy Director, Town Planning, relied upon by the Acquiring Body, and submits that during cross-examination, the said witness admitted that he had neither personally measured the acquired property nor maintained contemporaneous site inspection notes and that, the valuation report was substantially prepared on the basis of documents supplied by the SLAO. He therefore submits that the valuation report lacks proper foundation and cannot be accepted as a reliable basis for determination of market value.

10. Mr. Damle further submits that while determining the market value of the acquired property, due consideration is required to be given to the location, commercial potential and future utility of the land. In support of the said submission, he has placed reliance upon the judgment of this ***Court in***

Special Land Acquisition Officer v. Wallace Flour Mills Co. Ltd.[1], to submit that while determining market value, due regard must be had to the potentiality, location and future utility of the acquired property.

11. Mr. Damle further relies upon the decision of this Court in ***Special Land Acquisition Officer (Highways) v. Pratap Singh Shoorji Vallabhdas[2]*** and the decision of the Supreme Court in ***Viluben Jhalejar Contractor v. State of Gujarat[3]*** to submit that while determining the market value of acquired land, this Court is required to consider genuine and comparable sale instances having proximity, both from the point of view of time and situation and that such valuation cannot be determined merely by adopting arbitrary averages or mathematical calculations. Mr. Damle submits that the sale instances relied upon by the SLAO pertain to the year 1994, nearly four years prior to the issuance of Notification under Section 4 of the said Act, and therefore cannot be treated as safe and reliable indicators of the prevailing market value of the acquired property.

12. Thereafter, reliance is placed upon the decisions of the Supreme Court in ***Atma Singh v. State of Haryana[4]*** and ***Gajanan v. State of Maharashtra[5]***,

1 (2003) SCC OnLine Bom 1183
2 (2005) SCC OnLine Bom 559
3 (2005) 4 SCC 789
4 (2008) 2 SCC 568
5 (2011) 12 SCC 286

wherein it is reiterated that the true test for determining market value is the price which a willing purchaser would offer to a willing seller having regard to the existing advantages, location and future potentiality of the land. Mr. Damle submits that the acquired property, situated in a commercially developed locality of Ghatkopar (East), possessed substantial commercial utility and future developmental prospects, which have been completely overlooked by the SLAO while passing the Award.

13. Mr. Damle further relies upon the judgments of the Supreme Court in **Administrator General of W.B. v. Collector**[6] and **State of U.P. v. Jitendra Kumar**[7] to contend that even subsequent transactions can be taken into consideration for determining market value, if such transactions reflect a stable market trend and are otherwise comparable in nature. On the strength of the said principles, Mr. Damle submits that the Development Agreement dated 12th December 2003 executed by the owner with M/s. Avanti Enterprises in respect of the adjoining land admeasuring 7935.50 square meters is a relevant and material and ought to be considered as a comparable sale instance for determining the fair market value of the acquired property.

14. Relying on ***Jitendra Kumar*** (supra), Mr. Damle submits that a sale instance

6 (1988) 2 SCC 150
7 (1982) 2 SCC 382

subsequent to the notification under Section 4 of the Land Acquisition Act can also be taken into consideration in determining market value, particularly in the absence of any material indicating fluctuation in market rates during the intervening period. He submits that the Apex Court, in the aforesaid case, upheld reliance on a sale deed executed three years after issuance of the notification under Section 4 on the ground that no evidence had been produced to show any fluctuation in market value during the said period. He therefore submits that subsequent sale instances cannot be simplicitor discarded on the ground that they are post-notification transactions, especially where they otherwise constitute reliable and comparable evidence of the market value of the acquired land.

15. Mr. Damle further submits that the Supreme Court in ***Manohar v. State of Maharashtra***[8], after relying upon the judgments in ***State of Punjab v. Hans Raj***[9], ***Anjani Molu Dessai v. State of Goa***[10], ***M. Vijayalakshmamma Rao Bahadur v. Collector***[11], ***Mohammad Yusuf v. State of Haryana***[12], and ***Mehrawal Khewaji Trust (Registered), Faridkot v. State of Punjab***[13], has reiterated the settled position of law that where several comparable sale

8 2025 SCC OnLine SC 1519
9 (1994) 5 SCC 734
10 (2010) 13 SCC 710
11 (1969) 1 Mad LJ 45 (SC)
12 (2018) 16 SCC 105
13 (2012) 5 SCC 432

exemplars are available in respect of similar lands, the highest bona fide exemplar ought to be considered for determination of market value. Mr. Damle submits that the Supreme Court has observed that where land is compulsorily acquired, the owner is entitled to receive the highest value reflected from a bona fide transaction in respect of similar land in the locality between a willing purchaser and a willing seller around the time of acquisition. He further submits that in ***M. Vijayalakshmamma Rao Bahadur*** (supra), the Supreme Court had observed that when land is compulsorily taken away from a person, such person is entitled to claim the highest value which similar land in the locality is shown to have fetched in a *bona fide* transaction entered into between a willing purchaser and a willing seller at or about the time of acquisition.

16. In support, Mr. Damle submits that his client had led the evidence of two witnesses to prove the market value of the acquired property by examining Mr. Vijay Singh Chaturbhuj, the owner and also an expert witness, Mr. A.V. Thakker who is an Architect, Surveyor and a Registered valuer.

17. He has then painstakingly taken me through the evidence of the said Mr. Vijaysingh Chaturbhuj (CW-1) from which, he asserts that the following position has been established:

i) The predecessors-in-title of the Claimant, namely Valabhdas Tejpal and Tulsidas Tejpal, were lawfully seized and possessed of the larger property situated at Village Kirol, Taluka Salsette, comprising Survey No. 75, Hissa No. 1, together with structures standing thereon.

ii) By an Indenture of Lease dated 9th August 1893, the predecessors-in-title acquired leasehold rights in the said entire property for a period of ninety-nine years with a right of renewal.

iii) Thereafter, by a Release Deed dated 9th January 1913, Tulsidas Tejpal released and relinquished all his right, title and interest in the said Entire Property in favour of Valabhdas Tejpal.

iv) Subsequently, by a Deed of Gift dated 5th September 1935, Valabhdas Tejpal conveyed and assured the said Entire Property in favour of Chaturbhuj Vallabhdas.

v) The said Entire Property was not under cultivation prior to 14th August 1951 and was being used for non-agricultural purposes, including construction of buildings thereon.

vi) Upon coming into force of the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951, the rights of the lessors stood vested in the Government, however, the occupation and possession of

Chaturbhuj Vallabhdas over the said Entire Property continued uninterrupted.

vii) Pursuant to a notice dated 5th August 1953 issued under Section 37(2) of the Bombay Land Revenue Code, Chaturbhuj Vallabhdas was called upon to establish his rights over the said property before the Enquiry Officer.

viii) Upon consideration of the documents and evidence produced, the Enquiry Officer, by order dated 21st September 1953, accepted the claim of Chaturbhuj Vallabhdas in respect of Survey No. 75/1 situated at Village Kirol.

ix) Thereafter, the Government issued forty-seven sanads in favour of Chaturbhuj Vallabhdas in respect of the various parcels of land forming part of the said Entire Property, thereby granting occupancy rights in his favour.

x) Under an Under-Lease dated 11th July 1899, perpetual rights of occupation had been granted in respect of lands bearing CTS Nos. 4085 to 4129 of Village Kirol, which parcels formed part of the larger property subsequently acquired.

xi) The said Chaturbhuj Vallabhdas was thereafter treated as the absolute

owner and occupier of the said Entire Property, including the lands bearing CTS Nos. 4085 to 4129 of Village Kirol.

xii) By a Declaration dated 14th October 1968, Chaturbhuj Vallabhdas declared and impressed the said Entire Property with the character of Joint Hindu Family property belonging to himself, his wife and sons.

xiii) Thereafter, under an Indenture of Partition and Release dated 7th November 1969, certain members of the family released their undivided share in the said HUF property, while the remaining members continued to hold the property.

xiv) Under a Will dated 24th October 1989 executed by Smt. Jambabai Chaturbhuj Merchant, her interest in the HUF property was bequeathed in favour of the surviving male members of the family.

xv) The acquired land admeasuring 906.30 square meters forms part of the aforesaid larger property and includes CTS Nos. 4129 (pt.), 4088 (pt.), 4090 (pt.), 4091 (pt.) and 4097 (pt.) situated at Village Kirol, Ghatkopar.

xvi) The evidence further reveals that the tenants were occupants of certain structures standing upon a small portion of the acquired land and had vacated their respective premises prior to completion of

acquisition proceedings and prior to taking possession under Section 16 of the Land Acquisition Act, 1894.

xvii) The said tenants had surrendered their tenancy rights and possession upon receipt of surrender compensation and, therefore, ceased to have any subsisting right, title or interest in the acquired land.

xviii) The structures occupied by the tenants were situated only upon CTS Nos. 4088 (pt.) and 4090 (pt.), aggregating approximately 50 square meters, whereas CTS No. 4129 (pt.) admeasuring approximately 797.54 square meters constituted nearly 88% of the acquired land and remained substantially vacant.

xix) The compensation awarded by the SLAO was principally towards the market value of the land and depreciated value of the structures falling within the acquisition line and, therefore, the compensation in respect of the land should exclusively be payable to the owner.

xx) The owner alone possesses lawful ownership and entitlement in respect of the acquired land and the compensation awarded in respect thereof, whereas the tenants possess no legal right, title or interest in the said compensation.

18. Mr. Damle has further taken me through the evidence of the expert witness,

Mr. A.V. Thakker (CW-2), who is stated to be an approved valuer. He submits that the expert witness, while preparing the valuation report, computed the market value of the acquired property by separately assessing the valuation of the land as well as the structures standing thereon and thereafter, aggregated the same along with statutory benefits payable under the said Act, in the manner set out hereinbelow:

i) The expert valuer initially computed the market value of the acquired land admeasuring 906.30 square meters by adopting the rate of Rs. 19,368/- per square meter and thereafter, assessed the compensation payable in respect of the structures standing upon the acquired property separately.

ii) The valuer assessed compensation in respect of structure no.1 at Rs. 7,04,051.71/-; structure no.2 at Rs. 2,37,668/-; structure no.3 at Rs. 2,69,960.60/-; and structure no.4 at Rs. 2,90,000/-.

iii) The valuer further assessed compensation towards the retaining wall at Rs. 9,80,000/-; compensation towards existing trees at Rs. 1,00,000/-; and compensation towards repeated auxiliary expenses at Rs. 50,000/-.

iv) Upon determining the valuation of the land and structures in the aforesaid manner, the valuer thereafter added statutory benefits payable under the Land Acquisition Act, 1894, including solatium at the rate of 30% and additional component at the rate of 12%.

v) Upon such computation, the expert valuer ultimately assessed the total compensation payable in respect of the acquired property at Rs. 2,80,62,258.53.

19. Mr. Damle therefore submits that the evidence led by the expert valuer clearly demonstrates that the compensation awarded by the SLAO is grossly inadequate and does not reflect the true market value of the acquired property.

20. In contrast thereto, Mr. Damle submits that the Respondents have examined only one witness, namely, Mr. Sanjay Raghunath Kurvey, Deputy Director of Town Planning, Greater Mumbai, who has relied upon the valuation report prepared in respect of the acquired property. He contends that the evidence of the said witness, as well as the valuation report relied upon by him cannot be accepted as possessing any evidentiary value whatsoever.

21. Mr. Damle submits that the cross-examination of Mr. Sanjay Raghunath

Kurvey clearly demonstrates that the valuation undertaken by the Acquiring Body was not based upon any independent or scientific assessment. Mr. Damle submits that the witness admitted that except for perusing the Award and papers forming part of the acquisition proceedings, no independent documents were considered by him while preparing the valuation report. He further admitted that the affidavit filed by him was substantially based upon his memory and not upon independently verified contemporaneous records.

22. Mr. Damle further submits that the witness admitted that he had neither personally measured the acquired land nor was he in a position to state whether the measurements undertaken by the SLAO were correct. He further submits that the witness admitted that the locality and situation of the acquired land materially affect valuation and that the locality itself could result in variation in valuation to the extent of approximately 20%.

23. Mr. Damle further submits that the cross-examination clearly establishes that the witness had not undertaken any complete or independent inspection while preparing the valuation report. He submits that the witness admitted that he had not relied upon photographs pertaining to inspection of the acquired property. Mr. Damle further submits that the valuation of land and structures had been undertaken independently without properly considering

the actual condition and potentiality of the property.

24. Mr. Damle further submits that the sale instances relied upon by the SLAO were themselves unreliable and incapable of constituting proper comparable instances. He submits that the witness admitted that sale instances 2 and 4 relied upon by the SLAO pertained to the year 1994, whereas the acquisition in the present case is of the year 1998. According to Mr. Damle, reliance upon remote and incomparable sale instances vitiates the valuation exercise undertaken by the Respondents.

25. Mr. Damle further submits that the witness admitted that the calculations and percentages reflected in the valuation report were not based upon any objective or scientific methodology. He submits that the witness admitted that the calculations were based solely upon data supplied by the SLAO and that no independent justification was provided for denying compensation assessed by the Claimant's valuer in respect of structures, retaining wall, compound wall and trees. He submits that the witness further admitted that the percentages adopted in the annexures to the valuation report were based merely upon assumptions, presumptions, personal experience and general valuation practice and that no justification whatsoever was provided for adopting the said percentages.

26. Mr. Damle, therefore, submits that the admissions elicited during the cross-examination of Mr. Kurvey clearly establish that the valuation report relied upon by the Respondents lacks independent verification, scientific methodology and cogent reasoning and consequently cannot be safely relied upon for determining fair market compensation under the provisions of the said Act.

27. It is necessary to point out that no submissions were advanced on behalf of the tenants on the issue of enhancement of compensation in LAR No. 9 of 2005, and the submissions advanced on their behalf were only confined to the issue of apportionment of compensation in LAR No. 5 of 2003.

A2. SUBMISSIONS OF THE ACQUIRING BODY

28. In response, Mr. Suresh Kumar, learned counsel appearing on behalf of the Acquiring Body, submits that the land under acquisition is in the nature of a narrow and elongated strip having a width of approximately 9 to 11 meters. He submits that the acquired property is situated in a substantially interior location away from the main road and has access only through a narrow by-lane having a width of approximately 15 feet. According to Mr. Suresh Kumar, the acquired land does not have frontage on any major or minor

road.

29. He further submits that the rates of developed plots reflected in the Stamp Duty Ready Reckoner pertain to plots which are free from encumbrances, possess proper road access and are equipped with requisite infrastructural facilities. According to him, the land under acquisition does not satisfy any of the aforesaid criteria. He submits that the acquired land is encumbered by tenants, who are themselves claiming a share in the compensation awarded in respect of the acquisition.

30. He further invites the attention of this Court to the restrictions on construction applicable to the acquired land. He submits that under Development Control Regulation No. 29(8)(ii), new construction or reconstruction of an existing building is not permissible within a distance equivalent to half the height of the building from the railway track boundary and, in any event, within 30 meters from such boundary. He further submits that any construction within 30 meters from the railway boundary can be undertaken only in accordance with the terms and conditions stipulated by the Railway Authorities. He submits that in the present case, no permission from the Railway Authorities permitting construction has been placed on record and therefore, the development potential of the acquired land stands

substantially restricted.

31. While opposing the sale instances relied upon by the owner, Mr. Suresh Kumar submits that the sale instances referred to by the Claimant's valuer are not comparable with the acquired land. According to him, the land under acquisition is encumbered with tenants and is not free from encumbrances. He submits that the acquired land does not abut any proper road and has access only through a narrow by-lane. He further submits that the land is situated along the railway tracks and is subject to statutory restrictions, whereas the land covered under the sale instances relied upon by the owner are not subject to similar restrictions. Mr. Suresh Kumar reiterates that the acquired land is a narrow strip of land and, owing to the restrictions imposed under the Development Control Regulations, cannot be developed at the will of the owner or developer. According to him, the acquired land does not possess commercial potential, whereas the sale instances relied upon by the owner pertain to lands having commercial potential. Lastly, he submits that the acquired land is situated at an inferior and interior location as compared to the land covered under the sale instances relied upon by the owner.

32. Mr. Suresh Kumar submits that the SLAO has correctly assessed the market value of the acquired land after taking into consideration all relevant factors,

including the location of the land, restrictions on development and the fact that the land is encumbered by tenants.

33. Mr. Suresh Kumar concludes his submissions on the issue of enhancement by contending that the sale instances relied upon by the owner do not pertain to lands of the similar nature, character or subject to similar restrictions as the land acquired for the railway project. He submits that Mr. Sanjay Raghunath Kurvey, Deputy Director of Town Planning has observed in his affidavit that, considering the fact that the acquired land is a narrow strip situated very near the railway track, located at an inferior position and heavily encumbered, the SLAO had rightly applied a deduction of 70% on the Ready Reckoner rate and accordingly computed the market value at Rs. 3,750/- per square meter, which according to him is fair, reasonable and beneficial to the Claimants.

34. Mr. Suresh Kumar has placed reliance upon the decision of this Court in *The Special Land Acquisition Officer (3) v. Godrej & Boyce Manufacturing Co. Ltd. & Anr.*[14], wherein the principles governing determination of market value of acquired land are enunciated. Mr. Suresh Kumar submits that in the said case, the acquired land was situated in a fully developed area

14 2018 (1) ALL MR 266

and, accordingly, the valuers on both sides relied upon sale instances pertaining to built-up properties, namely flats. He submits that both valuers had considered the same sale instances and, after making necessary deductions from the gross rate of the flats, arrived at a substantially similar market value of the land, namely approximately Rs. 3,700/- per square meter, save and except certain deductions considered by the Government valuer.

35. Mr. Suresh Kumar further submits that in the said matter, while considering the advantages attached to the acquired land, such as its shape, locality, availability of schools and hospitals and proximity to the railway station and highway, the valuer of the Claimants had added 70% towards such advantages. However, the High Court held that the addition ought to have been restricted to 30% and accordingly determined the market value at Rs. 5,000/- per square meter. Mr. Suresh Kumar relied upon the aforesaid judgment to contend that even where the acquired land is situated in a good and developed locality, valuation is required to be assessed on realistic parameters after making appropriate deductions and adjustments.

B. LAR NO. 5 OF 2003- APPORTIONMENT OF - COMPENSATION

B1. SUBMISSIONS OF THE OWNER

36. Mr. Damle submits that Claimant No.1 is admittedly the sole and absolute owner of the larger property admeasuring 8841.80 square meters bearing CTS Nos. 4085 to 4129 situated at Village Kirol. He points out that from the said larger property, the acquired land admeasuring 906.30 square meters forms the subject matter of the present acquisition proceedings, whereas the remaining area admeasuring 7935.50 square meters continued to remain with the owner. He adds that the tenants had never pleaded or asserted any ownership or title in respect of the acquired land and were merely statutory tenants in the structures standing thereon without any independent right, title or interest in the acquired land.

37. Mr. Damle submits that the Award passed by the SLAO gave rise to the present Land Acquisition Reference for determination of apportionment of compensation between the owner and the tenants. He submits that in view of permanent alternate accommodation having been provided to the tenants by MMRDA, their right to claim any share in the compensation stands extinguished.

38. He points out that there were 10 tenants occupying the structure known as *"Vallabh Chawl"* and 2 tenants occupying structure/s on CTS Nos. 4191, 4197, 4091 and 4097 that was on the acquired land, who had themselves sought alternate accommodation. He accordingly asserts that since MMRDA had provided permanent alternate accommodation to the said tenants, free of cost, which accommodation was accepted by them, they were not entitled to receive any compensation from the awarded amount.

39. In support, he relies on the affidavit filed by Mr. Sonawane on behalf of MMRDA and also relies on the evidence of Mr. Mahendra Kantilal Sanghvi, who had deposed on behalf of the tenants. From this evidence, he submits that possession of the tenanted premises was handed over by the tenants to MMRDA on 4th September 2005 after the latter agreed to provide ownership accommodation of equivalent area to them. He is at pains to urge that no written consent of the landlord / owner had been obtained before this was done. He adds that no proceedings were also initiated by them against the landlord / owner claiming any amount for vacating the tenanted premises.

40. Mr. Damle further submits that Mr. Sanghvi had admitted that he was deposing on behalf of all the tenants. Though the witness alleged that there was an understanding between the tenants and MMRDA whereby

compensation would be collected and thereafter handed over to MMRDA, he admitted that the Minutes dated 15th July 2003 did not specifically record any such stipulation. The witness also admitted that, except for Exhibit "C2-2", there existed no written agreement with MMRDA regarding the collection of compensation and handing over the same to MMRDA.

41. Mr. Damle submits that the tenants, having accepted permanent alternate accommodation free of charge from MMRDA ceased to retain any subsisting tenancy right and consequently were not entitled to claim any share in the compensation in the present Reference. According to him, once the tenants elected to accept permanent alternate accommodation, their tenancy rights as well as their right to claim apportionment stood extinguished. He contends that the tenants could not simultaneously avail permanent alternate accommodation and also seek compensation for the tenanted premises.

42. Mr. Damle further submits that there was no documentary material whatsoever establishing that the tenants were required to recover compensation on behalf of MMRDA except for bare oral assertions. According to him, the alleged right of MMRDA to recover compensation or

seek apportionment was not reflected in any binding document and was beyond the scope of the present Reference proceedings.

43. Mr. Damle also opposes the contention raised on behalf of the tenants that subsequent developments could not be considered while deciding the Reference and that the rights of parties stood frozen as on the date of filing of the Reference. According to him, the said proposition was legally untenable. He submits that every adjudicating authority is required to consider subsequent developments and events while determining the rights and reliefs of parties.

44. In support of the aforesaid proposition, reliance is placed upon the judgment of the Supreme Court in ***Sheshambal vs. Chelur Corporation, Chelur Building*** [15], wherein it was held that Courts are empowered to take cognizance of subsequent events and developments for effectively moulding reliefs and doing substantial justice between parties. Mr. Damle therefore submits that the subsequent acceptance of permanent alternate accommodation by the tenants constituted a relevant circumstance which was required to be considered while adjudicating the issue of apportionment.

15 (2010) 3 SCC 470

45. Mr. Damle further submits that the tenants had no right, title or interest in the acquired land and were merely tenants in the structures situated thereon. Having no proprietary rights over the acquired land, they could not have lawfully transferred any such right to MMRDA. In this regard, Mr. Damle relies upon the principle of *nemo dat quod non habet*, meaning thereby that no person can transfer a better title than he himself possesses. He submits that in the absence of prior consent of the owner, who is the true and lawful owner of the acquired land, neither tenants nor MMRDA are entitled to claim any share in the compensation awarded by the Special Land Acquisition Officer for the acquired land. According to him, the entire compensation in respect of the acquired land is liable to be awarded exclusively to the owner, being the sole owner thereof.

46. Mr. Damle further submits that the present Land Acquisition Reference had been filed only for deciding apportionment between the owner and the tenants. According to him, MMRDA was merely a third party to the present proceedings and had no independent right to intervene or claim compensation in the apportionment Reference. He contends that any undertaking allegedly given by the tenants to MMRDA was wholly irrelevant for determining the rights of parties in the present proceedings and

that the scope of the present Reference was required to remain strictly confined to adjudication of rights inter se between owner and the tenants.

47. Mr. Damle further places reliance upon the judgment of this Court in ***Dattaram Deu Desai and Ors. v. Nirakar Devasthan of Palolem, Goa, and Ors***.[16] wherein it was held that a person who was not a party to the proceedings before the Land Acquisition Officer cannot subsequently be impleaded as a party in a Reference under Section 30 of the Land Acquisition Act, even if such person claims to have acquired or possessed some right in the acquired land which formed the subject matter of the acquisition proceedings. Mr. Damle submits that this Court, while applying the aforesaid principle, rejected the applications seeking intervention in the Reference proceedings.

48. Mr. Damle further submits that the undertakings executed by the tenants in favour of MMRDA, whereby the tenants purportedly agreed to transfer or assign their share in compensation, were executed without the consent of the owner and are contrary to the applicable provisions of the rent act. According to him, the said alleged assignment / transfer is therefore invalid in law.

16 (1999) SCC OnLine Bom 498

49. Mr. Damle submits that upon voluntarily vacating the tenanted premises and accepting alternate accommodation from MMRDA, the tenants rendered their tenancy rights infructuous and their interest in the acquired premises ceased to exist. According to him, once the tenants vacated the premises, no transferable tenancy interest survived, which could thereafter be assigned to MMRDA.

50. Mr. Damle further submits that statutory tenancy rights are non-transferable in nature. In support of the said contention, reliance is placed upon the judgment of the Division Bench of this Court in ***Tatoba Krishna Hargude v. Dikkayya Mattaya Pujarji***[17], wherein it was held that a statutory tenant merely possesses a right to remain in possession and does not hold any transferable or heritable estate or interest in the premises occupied by him.

51. Mr. Damle further relies upon the judgment of the Hon'ble Supreme Court in ***Anand Nivas Private Limited v. Anandji Kalyanji's Pedhi***[18]**,** wherein it was held that a statutory tenant has no estate or interest capable of transfer in law and merely possesses a personal right of occupation. He submits that once the statutory tenant parts with possession or vacates the premises, any derivative right claimed through such tenant automatically comes to an end.

17 (1979) SCC OnLine Bom 159
18 (1963) SCC OnLine SC 62

52. Mr. Damle further relies upon the judgment of this Court in ***SLAO (3), Mumbai and Gangabai w/o Devsi Khona & Ors. vs. Deputy Chief Engineer (C) Metropolitan Transport Project (Railway)***[19] wherein while deciding a similar issue of apportionment between landlord and tenants occupying premises situated upon acquired land, it was held that since the tenants had already been provided alternate accommodation by MMRDA, they could not thereafter claim any percentage in the compensation amount in the acquisition proceedings.

53. Mr. Damle submits that tenants were merely statutory tenants occupying tenanted premises situated in structures standing upon the acquired land and were not tenants of the acquired land itself. According to him, the tenancy rights of the said Claimants were confined only to the tenanted premises occupied by them and did not extend to the vacant land forming part of the acquisition.

54. Mr. Damle further submits that the total built-up area occupied by the tenants measured approximately 108.7 square meters, constituting only about 12% of the total acquired land, whereas the remaining 797.54 square meters, constituting approximately 88% of the acquired land, was vacant

19 Judgment dated 5th December 2025 passed in LAR No. 3 of 2003

land exclusively owned by the owner. He therefore submits that the tenants cannot claim any compensation in respect of the vacant portion of the acquired land.

55. Mr. Damle submits that, having voluntarily surrendered their tenancy rights and accepted alternate accommodation, the tenants lost all rights and interests in the tenanted premises and consequently no tenancy right survived capable of being transferred or assigned to MMRDA. According to him, no tenancy rights or interests can be transferred merely by way of undertakings executed without consent of the owner.

B2. SUBMISSIONS OF CLAIMANT NOS. 4, 5, 7 & 10

56. Mr. Vijay Vaghela, learned Counsel appearing on behalf of Claimant Nos. 4, 5, 7 and 10, submit that it is an undisputed fact that the present proceedings arise out of a Reference under Section 30 of the Land Acquisition Act pertaining to apportionment of compensation in respect of the land acquired for laying of the 5th and 6th railway lines between Kurla and Thane for Central Railway. He submits that the SLAO by Award dated 22nd December 2000, awarded total compensation of Rs. 78,69,442/- in respect of the acquired land for all the Claimants.

57. He further submits that for the purposes of determining the issue of apportionment of compensation, this Court ought to take into consideration only the date of the Reference and the date of publication of the acquisition notifications and ought not to consider any subsequent events whatsoever. He states that it is the case of the owner that possession of the land along with the structures was handed over on 4th September 2005. However, according to Mr. Vaghela, there is no dispute that tenants and other Claimants were permanent tenants protected under the provisions of the Bombay Rents Act, 1947 / Maharashtra Rent Control Act, 1999 and that without an eviction decree passed by the competent Court, namely the Court of Small Causes at Mumbai, possession could not have been lawfully taken from any of the tenants.

58. He further submits that, through the evidence led by the owner, an attempt was made to contend that the tenants had vacated portions of the structures prior to taking possession under the Land Acquisition Act. According to him, it is the case of the owner that even if possession was handed over by the tenants to the acquiring body and not to the landlords, the same amounted to surrender of tenancy and consequently, all rights of the tenants stood extinguished. He submits that the owner further contended that since the tenants were rehabilitated elsewhere by MMRDA from its own funds,

the tenants were not entitled to any apportionment except the owner. It was also contended by the owner that the SLAO had not awarded compensation to the tenant, and therefore the tenant had no legal right in the compensation awarded. Mr. Vaghela submits that even during cross-examination, suggestions were put regarding an alleged understanding between the tenant and MMRDA for handing over compensation amounts received under the Award to MMRDA.

59. Mr. Vaghela submits that the tenants have established through oral and documentary evidence that they were permanent tenants having statutory protection under law. According to him, the owner could not lawfully recover possession without obtaining an order from the Court of Small Causes upon establishing grounds under the applicable Rent Act.

60. Mr. Vaghela further submits that the tenants are entitled to apportionment of compensation since it is an admitted position that the entire property was occupied by statutory tenants and the property was subject to legal encumbrances created by such tenancies. According to him, the tenants are therefore entitled to a substantial share in the compensation awarded in respect of the acquired property. He submits that although the landlord continues to remain the owner of the structure, the tenants, having statutory

protection under law, are fully entitled to maximum compensation since they are the ones who enjoyed the property.

61. Mr. Vaghela submits that the contents of the Award and the submissions pertaining to the tenants are duly supported by judgments of the Hon'ble Supreme Court of India. He therefore submits that 75% of the compensation awarded ought to be awarded to the tenants. According to him, subsequent rehabilitation or accommodation provided to the tenants by MMRDA after passing the Award is wholly irrelevant for deciding the present Reference. He further submits that from the date of publication of the acquisition notification, the relationship of the owner and tenants ceased to subsist and therefore 75% of the Award amount ought to be granted to the tenants.

62. Further, Mr. Vaghela places reliance upon the judgment of the Mysore High Court in ***Ramacharya Narayana Charya Burli and Anr. v. State***[20], wherein the principles governing apportionment of compensation between landlord and tenant were considered while determining the ratio of entitlement between them.

63. Mr. Vaghela further relies upon the judgment of the Aurangabad Bench of this Court in ***Vishnu Namdeo Kumar and Ors. v. State of Maharashtra and***

20 AIR 1965 Mysore 1

Ors.[21], rendered in the context of Section 16 of the Land Acquisition Act, 1894 and the Government Resolution dated 10th October 1973. He submits that the Court therein held that once acquisition proceedings are completed in all respects, the land vests in the State Government free from all encumbrances and upon payment of compensation for compulsory acquisition, the expropriated owner ceases to have any right, title or interest in the acquired land. It was further held that the expropriated owner cannot insist upon utilisation of the acquired land for a particular purpose or seek restoration thereof and that if the land remains unused, the same is liable to be disposed of through public auction and not restored to the expropriated owner.

64. Mr. Vaghela further relies upon the judgment of the Supreme Court in ***Special Land Acquisition Officer, City Improvement Trust Board, Mysore v. Govindan***[22]**.** He submits that the Supreme Court, while interpreting Section 23 of the Mysore Act, observed that once a resolution is passed by the Board declaring that an improvement scheme under Section 14 is necessary, the authorised officer and his servants are empowered to undertake acts in respect of the land in the same manner as an officer authorised under Section 4(2) of the said Act.

21 2003 (2) Bom CR 200
22 (1976) 4 SCC 697

65. Mr. Vaghela further relies upon the judgment of the Supreme Court in ***Mangat Ram and Ors. v. State of Haryana and Ors***[23]**.,** wherein it was held that in matters of apportionment of compensation, tenants are entitled to three-fourths of the compensation and the landlord is entitled to the remaining one-fourth thereof. He submits that the additional amount and enhanced compensation are also liable to be apportioned in the same ratio.

66. Mr. Vaghela further relies upon the judgment of the Supreme Court in ***Union of India v. Ajit Singh***[24]**,** wherein apportionment of compensation was affected in the ratio of 60% and 40%. He submits that in the said matter the property was held under a government lease for a period of 99 years containing a covenant permitting resumption of possession for public purpose. However, since the lessee had already enjoyed 18 years of the lease period, the Supreme Court apportioned the compensation accordingly.

B3. SUBMISSIONS OF MMRDA

67. Ms. Asha M. Bhambwani, learned counsel appearing on behalf of the MMRDA submits that MMRDA is an authority established under the Government of Maharashtra for the purpose of facilitating infrastructure in

23 (1996) 8 SCC 664
24 (1997) 6 SCC 50

Mumbai. She submits that the acquired property was acquired for the project of laying down the 5th and 6th railway lines in Kurla - Thane for Central Railway.

68. She submits that in order to facilitate speedy recovery of possession, MMRDA conducted negotiations and meetings with the tenants and offered alternative accommodation to each tenant of an area approximately equivalent to their legally occupied area (with variation up to 10%) subject to a minimum of 225 square feet. These facts are admitted by the tenants in their Affidavit.

69. Ms. Bhambwani submits that MMRDA is duly authorised to rehabilitate the affected occupants and had accordingly, rehabilitated the tenants on the express understanding that they would not claim compensation in their own right and that MMRDA would be entitled to their share in the apportionment of compensation. According to her, the tenants had agreed and undertaken that the apportionment amount payable to them would be paid over to MMRDA. She submits that true and correct copies of such undertakings executed by the respective tenants are already on record. She therefore contends that the tenants' right to receive apportionment stands assigned in favour of MMRDA. Consequently, MMRDA has stepped into the shoes of

the tenants insofar as claims for compensation arising out of the acquisition are concerned.

70. She further submits that the Award clearly records that the SLAO had valued the acquired property on the basis of the land-plus-building method by separately bifurcating the land value and the building value.

71. Referring to the evidence on record, she submits that the owners' witness, Mr. Arun Chaturbhuj, in his cross-examination admitted that none of the tenants had been accommodated by the owner. Ms. Bhambwani further submits that in his cross-examination dated 5th February 2008, Mr. Arun Chaturbhuj admitted that except CTS No. 4129, which pertained to vacant land, the remaining CTS properties comprised areas covered by structures. He further admitted that possession of the said structures had been taken by the SLAO and that none of the tenants had surrendered tenancy rights in respect of the acquired structures to the landlord.

72. Ms. Bhambwani further submits that in his cross-examination Mr. Arun Chaturbhuj admitted that at the time of issuance of the acquisition notification there were twelve tenants occupying the premises standing on the acquired land. He further admitted that the said tenants had been

occupying the premises for several years prior to issuance of the notification under Section 4(1) of the Land Acquisition Act. The tenants' witness, Mr. Mahendra K. Sanghavi, in his cross-examination admitted that MMRDA had provided the tenants with free-of-cost alternative accommodation in lieu of the premises which were in their possession.

73. She submits that the tenants were in occupation of their respective premises and also possessed leasehold interest in the acquired property. According to her, a lessee's interest as well as the structures standing upon the acquired land constitute an "interest in land", since the structures are permanently affixed to the land. She submits that under the provisions of the Transfer of Property Act as well as the Land Acquisition Act, the expression "land" includes structures affixed thereto. It was therefore contended that the protected tenants, having enjoyment of the common facilities attached to the plot, are entitled to proportionate compensation in respect of both the land and the structures standing thereon.

74. Ms. Bhambwani further submits that the structures occupied by the tenants covered almost the entire acquired land and had substantially altered the character of the land from vacant land into occupied and tenanted land. According to her, even in cases involving redevelopment of property by a

landlord, the tenants are legally protected and entitled either to compensation or rehabilitation and the same principle would squarely apply in the present case.

75. She further submits that in the present case the tenants were rehabilitated entirely at the cost of MMRDA. According to her, the funds of MMRDA are public funds belonging to the State Government and MMRDA had provided alternative land and constructed new premises solely for rehabilitation of the tenants, thereby incurring substantial expenditure from public funds. She submits that the statement showing the total cost of rehabilitation has been produced at Exhibit "B" to the affidavit in lieu of examination-in-chief filed on behalf of MMRDA.

76. Ms. Bhambwani further submits that in cases of compulsory acquisition there exists a statutory requirement that compensation must correspond to the market value of the acquired land. According to her, the cost of acquisition is borne from State funds and if the rehabilitation expenditure already incurred by MMRDA is not reimbursed, the total cost of acquisition would exceed the market value of the acquired land, which would be contrary to and violative of the provisions of the Land Acquisition Act.

77. She submits that the entitlement of the owner to apportionment of compensation is required to be adjudicated in light of the aforesaid facts and circumstances. According to her, the compensation payable to the owner ought to be restricted only to such portion as represents the landlord's residual interest after excluding the share attributable to the tenants' interest.

78. Ms. Bhambwani further submits that the portion of compensation attributable to the tenants' interest in the acquired land and structures ought to be paid to MMRDA, being the assignee of such interest and having validly stepped into the rights of the tenants in respect thereof.

79. Ms. Bhambwani further relies upon the judgment of the Allahabad High Court in ***Jal Sansthan, Agra v. Krishna Kumari and Ors.***[25] in support of her submission that the right to receive compensation consequent upon acquisition of land constitutes a valuable and enforceable proprietary right flowing from the interest held in the acquired property. She submits that although acquisition results in vesting the land in the State free from encumbrances, the right to receive compensation in lieu thereof survives and remains capable of being enforced by the person entitled thereto.

25 (2016) SCC OnLine All 2944

80. Ms. Bhambwani submits that in the present case the tenants possessed legally protected tenancy and leasehold interests in the acquired property and were therefore entitled to compensation in respect of such interest. According to her, once the tenants assigned and undertook to hand over their apportioned share of compensation to MMRDA, the said right stood validly transferred in favour of MMRDA. She therefore submits that MMRDA has lawfully stepped into the shoes of the tenants and is consequently entitled to participate in the present Reference proceedings and claims the apportioned compensation attributable to the tenants' interest in the acquired land and structures.

B4. SUBMISSIONS OF THE ACQUIRING BODY

81. Mr. Suresh Kumar placed reliance upon the judgment of the Supreme Court of India in ***Mangat Ram and Ors. v. State of Haryana and Ors.***[26], wherein it has been held that where the acquired land is occupied by tenants, they are entitled to three-fourths of the compensation, and the landlord is entitled to only one-fourth thereof.

82. He submits that, in the present case, the tenants have already been provided rehabilitation by the Government and the Railway Authorities have also

26 (1996) 8 SCC 664

deposited the amount of compensation as determined by the Special Land Acquisition Officer. He submits that, in the event this Court is inclined to enhance the compensation, the three-fourths share of the enhanced compensation, which would otherwise be payable to the tenants, shall be liable to be refunded to the Government and only one-fourth thereof shall be payable to the owner.

C. ANALYSIS, REASONS AND FINDINGS IN LAR NO. 9 OF 2005

83. LAR No. 9 of 2005, in so far as it relates to enhancement of compensation, arises from the objection taken by the owner to the market value determined by the SLAO under the Award dated 22nd December 2000. Under the said Award, the SLAO determined the market value of the acquired land at Rs. 3,750/- per square meter. The owner seeks enhancement of this compensation on the ground that the valuation adopted by the SLAO does not reflect the true and fair market value of the acquired land as on the relevant date of acquisition.

84. Since the objection is to the amount of compensation, it is necessary to first advert to Section 18 of the said Act, which reads thus:

> *"18. Reference to Court.*
>
> *(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*
>
> *(2) The application shall state the grounds on which objection to the award is taken:*
>
> *Provided that every such application shall be made,*
>
> *(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*
>
> *(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."*

85. A plain reading of the aforesaid section would reveal that the Reference Court is required to determine the objection raised by the person interested in the Award, whether such objection relates to measurement, amount of compensation, persons entitled to compensation or apportionment. In the present case, the objection is to the amount of compensation. The jurisdiction of this Court is therefore confined to examining whether the compensation awarded by the SLAO represents the true and fair market value of the acquired land.

86. The Award of the SLAO is not a binding adjudication upon this Court. It is

in the nature of an offer made on behalf of the State. However, the burden remains on the owner seeking enhancement to establish by cogent evidence that the market value awarded by the SLAO is inadequate. It is in this backdrop that the evidence on record, the valuation material, the cross-examination of witnesses and the judgments relied upon by the parties are required to be considered.

87. Having thus noticed the scope of a Reference under Section 18 of the said Act, the next question is the manner in which market value is required to be determined by the Reference Court. Since the objection in this Reference is to the amount of compensation, the Court must assess whether the rate fixed by the SLAO reflects the price which the acquired land would have reasonably fetched in the open market on the relevant date. The broad principles governing such determination are also now well settled.

88. In ***Viluben Jhalejar Contractor*** (supra), the Supreme Court has held that the market value must be determined on the basis of what a willing purchaser would pay to a willing seller, having regard to the existing advantages, situation, location, potentiality and comparable sale instances having proximity in point of time and situation. The Court is also required to consider both positive and negative factors affecting valuation.

89. In ***Wallace Flour Mills*** (supra), it is held by this Court that while determining market value, the Court is not required to confine itself merely to the existing use of the land, but is also required to consider the potentiality of the land, surrounding development, accessibility, situation and commercial utility. The said principle is relevant in the present case because the acquired land is situated at Ghatkopar (East), in proximity to Ghatkopar Railway Station, M.G. Road and Rajawadi Hospital.

90. In ***Pratapsingh Shoorji Vallabhdas*** (supra), it is held by this Court that market value cannot be determined by mechanically averaging unrelated sale instances. The Court must identify a genuine and comparable sale instance having proximity from the point of view of time, situation, nature and potentiality. The said principle is material in the present case because the sale instances relied upon by the SLAO were of the year 1994, whereas the acquisition in the present case is of the year 1998. The said Award does not contain any satisfactory analysis showing that the said sale instances were comparable to the acquired land in terms of location, potentiality, nature, access and restrictions.

91. In ***Manohar*** (supra), and in the numerous judgments referred to therein, the Apex Court has held that where several bona fide comparable sale

exemplars are available, the highest reliable exemplar may be adopted. The said principle assists the owner only to the extent that a genuine and higher comparable transaction may be considered. However, the said principle does not dispense with the requirement of the owner in proving that the exemplar relied upon is comparable in terms of time, situation, nature, access, restrictions and potentiality.

92. In ***Godrej & Boyce Manufacturing*** (supra), relied upon by the Acquiring Body, it is held by this Court that even where the acquired land is situated in a developed locality, valuation must be assessed on realistic parameters and appropriate deductions must be made having regard to the nature, situation, restrictions and development potential of the land. The said judgment is relevant in the present case because the acquired land is not an open, freehold and fully developable plot. The land is a narrow and elongated strip, has access through Ramji Ashar Lane, is situated near the railway boundary, is affected by restrictions requiring Railway NOC, and was also encumbered by tenants. Therefore, even if the owner is entitled to enhancement, the rate claimed by the owner cannot be accepted mechanically.

93. In ***Atma Singh*** (supra) and ***Gajanan*** (supra) it is reiterated that the true test

for determining market value is the price which a willing purchaser would offer to a willing seller having regard to the existing advantages, location and future potentiality of the land.

94. Thus, the legal positions laid down by the afore-mentioned judgments are required to be applied to the evidence on record in the present Reference and this Court is independently required to determine the fair market value of the acquired land. However, in order to arrive at this figure, it would be appropriate to consider and analyze the valuations relied upon by the competing parties.

95. First off, let us consider the valuation computed by the SLAO. The Award records that, for the purpose of estimating the market value of the acquired land, as on the relevant date, the SLAO attempted to collect sale instances of open land from Village Kirol and Ghatkopar. However, since no comparable sale instance of open land was available, the SLAO proceeded to consider sale instances of built-up properties / flats in the vicinity of the acquired land. The Award refers to four sale instances. Instance No. 1 reflected a rate of Rs. 6,565/- per square meter, Instance No. 2 reflected a rate of Rs. 6,109/- per square meter, Instance No. 3 reflected a rate of Rs. 3,700/- per square meter, and Instance No. 4 reflected a rate of Rs. 15,230/- per square meter.

96. However, for reasons set out in the Award, he disregarded sale instance nos. 1 and 3 as not being comparable to the land under acquisition. The SLAO is stated to have then considered the nature of the acquired land, its situation, the fact that it was a strip of land required for railway line, its proximity to the railway boundary, the existence of structures and occupants thereon, and the limitations attached to its development and use and applied positive and negative factors to the flat/land covered under sale instance no. 2 (dated 29th July 1994) and sale instance no. 4 (dated 13th June 1994) and thereafter, computed the valuation of the land rate at Rs. 3,750/- per square meter and 3,430/- per square meter respectively, as on the date of valuation. However, he then held that since the acquired land was to the west of the pipe line and had no direct access from M.G.Road, as against the sale instance nos. 2 and 4, which were to the east of the pipe line, he applied a 20% deduction to the higher of the said two rates and computed the valuation at Rs. 3,000/- per square meter.

97. He then considered the valuations contained in the Stamp Duty Ready Reckoner for developed land under one F.S.I and applied a 70% deduction to the said rate which resulted in the rate of Rs. 3,770/- per square meter. Considering that the rates estimated by him on the basis of the sale instances and on the basis of the Stamp Duty Ready Reckoner were similar, the SLAO

adopted the rate of Rs. 3,750/- per square meter as the market value of the acquired land and passed the Award on basis thereof.

98. The two sale instances considered by the SLAO were themselves old transactions dated June and July 1994, whereas the relevant date for valuation in the present case is 12th March 1998. Further, although the negative factors attached to the acquired land could justify deduction, the Award does not satisfactorily explain the extent of deduction applied or the manner in which the final figure of Rs. 3,750/- per square meter was arrived at. Therefore, while the SLAO was justified in considering deductions on account of the peculiar nature and situation of the acquired land, the final rate of Rs. 3,750/- per square meter appears to be on the lower side and does not adequately reflect the locational advantages of the acquired land at Ghatkopar (East). The SLAO also computed the depreciated construction cost for the structures occupied by the tenants on the acquired land at Rs. 5,500/- per square meter.

99. During the course of this Reference, the expert valuer of the SLAO filed his valuation report dated 16th October 2008. However, in this report, the expert valuer has merely set out the manner in which the SLAO has computed and arrived at the rates of the acquired land and the structures standing thereon,

in the Award and the manner in which the valuer of the owner has computed the same rates. No independent exercise of valuation was undertaken by him. Instead, the report merely notes the following six differences between the sale instance quoted by the valuer of the owner and the computation done by the SLAO in the Award, namely: **(i)** Land under valuation is encumbered with tenants and not free; **(ii)** Land under valuation does not front on proper road it has access through a by lane; **(iii)** Land under valuation is along railway track. Hence, D.C. Regulation no. 29(8)(ii) would be attracted. Moreover, development of lands within 30 meters from the railway boundary could be done only as per the terms and conditions of the Railway authorities; **(iv)** Land under valuation does not have commercial potential; **(v)** Land under valuation is situated at the interior side; and **(vi)** Land under valuation is an elongated strip having width of 9 to 11 meters; and concludes that as a result thereof, the 70% deduction to the stamp duty ready reckoner rate and the finalized rate of Rs. 3,750/- per square meter computed by the SLAO was correct.

100. Keeping this in mind, the cross-examination of the expert valuer of the SLAO - Mr. Sanjay Raghunath Kurvey is material for testing the said valuation and for appreciating both, the positive and negative factors attached to the acquired land. The relevant portions of the cross-examination

of Mr. Kurvey read thus:

"Q.5 In paragraph 2 of the said Affidavit, you have stated that you have been appointed as "Expert valuer", when was such appointment was made and by whom?

Ans. I was appointed as expert valuer in the present case by the Director of Town Planning, Maharashtra State, Pune vide his letter dated 3rd October 2007 (Shown paragraph 3 of the Affidavit of Evidence of the witness)

Q.6 In the first line thereof, you have stated that - "I have gone through the relevant paper of the land under Acquisition". Could you tell us what relevant papers did you go through?

Ans. I have seen the complete Award, papers and proceedings in the present L.A.R. including the evidence of the parties

Q.7 When in paragraph 3 of your Affidavit of Evidence, you say - "after collecting the required information", would this require information be the same as you have answered in your previous question?

Ans. Yes.

Q.8 Therefore, would it be correct to say that except perusing the Award and papers in the present L.A.R. as stated by you, you have not examined any other documents?

Ans. No, It is clearly mentioned in Award that there were no sale transactions of open lands. I deputed my staff for collection of sales data, some other documents in respect of sale transactions However, I could not get the additional sales data apart from the data mentioned in the Award - visited the locations under sale instances considered by the SLAO and analyze as per my experience in the field of valuation and came to conclusion that the SLAO has awarded proper market value

Q.9 How many times before the valuation report, did you visit the acquired site?

Ans. Before submission of valuation report, I visited the site two to three times."

...
...

"Q.26 Whatever evidence about your site inspection you are giving today or during your evidence in this L.A.R. is given on the basis of your memory or your written notes made at that time?

Ans. On memory.

Q.27 Therefore, do I take it that there were no notes available made by you at that time during the site visits?

Ans. Noting is not necessary and therefore they are not there.

Q.28 *You have referred to the details of the land on page 1 of your Report along with the area, would it be correct to say that this description of the property and the area is given by you from the Award itself and not from any other place?*

Ans. *Yes*

Q.29 *Therefore, would it be correct to say that you have not personally measured the actual area?*

Ans. *It is correct. (Witness volunteers) It is the duty of the SLAO.*

Q.30 *Therefore, would it be correct to say that since you have not actually measured the site, you would not be able to say personally whether the SLAO has measured the site correctly or not?*

Ans. *Yes, it is correct."*

...

...

"Q.32 *Is it correct that notice was sent only for C.T.S, No,4088 pt and 4090 pt. and not for 4089 pt.?*

Ans. *Since SLAO records are not available with me now, I will have A. to check the same and let you know at the next date"*

...

...

"Q.55 *This it correct that from the land in question, one can reach Ghatkopar Rly. Station by walking in 3 minutes?*

Ans. *Yes.*

Q.56 *Is it correct that the land in question is very close to Rajawadi Hospital which is one of the main hospitals in Ghatkopar?*

Ans. *Yes.*

Q.57 *Is it correct that the land in question is 30 meters away from M.G. Road?*

Ans. *Yes.*

Q.58 *Is it correct that the land in question is approachable from Ramji Asher Lane of M.G. Road?*

Ans. *Yes.*

Q.59 *(Shown answer to question No.32) Have you checked up*

Ans. *Yes. I did.*

Q.60 *Therefore is it correct that notice was sent only for CTS No.4088 (part) and 4090 (part) and not for 4089 (part)?*

Ans. *This is correct"*

...

...

"Q.62 *Would it be correct to say that the total area of 3 structures aggregating to 62.72 square meters would be required to be*

demolished for construction of retaining wall and demolition value thereof is payable to the Claimants?

Ans. *Yes. (Witness Volunteers), I state that this fact is already mentioned in the Award as Railways has agreed to construct the retaining wall.*

Q.63 *Were instances referred to in the Award by the SLAO personally visited by you?*

Ans. *Yes.*

Q.64 *Have you made any noting in respect of your said inspections?*

Ans. *I have got photographs of the present status of the said instances.*

Q.65 *Is it correct that you have not relied upon or produced these photographs ither in your Affidavit in evidence or in these proceedings?*

Ans. *I did not as I did not feel it necessary."*

...

...

"Q.68 *Are you aware that in a tenanted property income capitalization technique is adopted?*

Ans. *Yes.*

Q.69 *Are you aware that in determining compensation payable in respect of land with building compensation cannot be determined by assessing only the value of the land and the land and building constitute one unit and entire unit must be determined with all advantages and potentialities?*

Ans. *Yes.*

Q.70 *Would it be correct to say that your report is not based on the above proposition?*

Ans. *Yes. I state that the SLAO-3 has valued the property and the buildings as per the procedure laid down by Revenue & Forest Department in which valuation of the land is to be made by SLAO and the valuation of the buildings is to be made and approved by the PWD and that such valuation done by PWD Department is incorporated in the Award without any variation.*

Q.71 *Therefore would it be correct to say that you have not independently given the valuation of the land and the building??*

Ans. *Yes."*

...

...

"Q.73 *Can you tell us that procedure?*

Ans. *While preparing the Ready Recknor the data is collected of said instances of the area of which the price is to be fixed.*

Q.74 *Can you tell us how many years sale instances are taken into account for preparation of such data?*

Ans. *Year to year. Since the Ready Reckoner is prepared every year on the basis of sale deeds registered.*

Q.75 *Is it correct that the sale instances accepted by SLAO namely instance No.2 and 4 are for the year 1994 while the acquisition in the present case is of 1998?*

Ans. *Yes.*

Q.76 *Is it correct that development within 30 meters from the Railway boundary can be done but only on the terms stipulated by the Railways?*

Ans. *Yes. (Witness Volunteers) One has to take NOC from the Railways."*

...
...

"Q.78 *Would you consider the locality in which the property is situated as a good and proper locality?*

Ans. *Yes. It is a good and proper locality. However, the land under present Reference is having access through a narrow lane known as Ramji Ashar Lane.*

Q.79 *Would that make any difference in valuation and if so to what extent?*

Ans. *Yes. About 20%.*

Q.80 *Can you justify 20% or is it on assumptions and presumptions?*

Ans. *I cannot justify, It is on assumptions."*

...
...

"Q.83 *But you have not taken into account while doing your valuation report?*

Ans. *About cost of construction my report says that SLAO has also awarded depreciated cost for structures occupied by tenants at Rs.5500/- per square meters to which I have agreed.*

Q.84 *Would it be correct to say that your agreement which you have referred to above is not on your actual calculations but only from the data available from the Award?*

Ans. *Yes. (Witness Volunteers) The valuation of the structures is done by Government Department (PWD)."*

...
...

"Q.93 *Would it be correct to say that after referring to the Claimants' valuers denying the compensation fixed by the Claimants valuer Report in your Report you have not given any specific reason for approving or for structure No.2, 3, 4*

retaining wall, compound wall and compensation for existing trees?

Ans. *I did not feel it necessary to give valuation of the above items*

Q.94 *Is it correct that the percentage put by you in the annexure to your Report in respect of different items mentioned therein is only on assumptions and presumptions?*

Ans. *Yes. I have given it on the basis of my experience and general practice of valuation.*

Q.95 *Is it correct that your Report does not give any justification for coming to a particular percentage for the items mentioned in your statement annexed to the Report?*

Ans. *It is correct."*

101. In the present case, the admissions of Mr. Kurvey show that the acquired land was situated in a good locality, within walking distance from Ghatkopar Railway Station, close to Rajawadi Hospital and about 30 meters from M.G. Road. Despite this, his valuation report does not appear to have adequately reflected the locational advantages and potentiality of the acquired land.

102. Moreover, sale instance nos. 2 and 4 accepted by the SLAO were of the year 1994, whereas the acquisition in the present case is admittedly of the year 1998. Further, though the witness claimed to have inspected the sale instances, the photographs or supporting material were not produced in evidence. The comparability of the sale instances relied upon by the SLAO has therefore not been satisfactorily established.

103. Also, it is relevant that Mr. Kurvey has admitted in cross-examination that

the description and area of the property in his report were taken from the Award, that he had not personally measured the acquired land, that he had not independently valued the land and building as one unit, and that the percentages mentioned in the annexure to his report were based on assumptions and presumptions. In view of these admissions, it is difficult for this Court to accept the valuation of Rs. 3,750/- per square meter computed by him as a reliable determination of the market value of the acquired land.

104. Accordingly, this Court concludes that the market value determined by the SLAO at Rs. 3,750/- per square meter is not just, fair or reasonable and the owner is entitled to enhancement thereof. However, the enhanced rate must be determined keeping in mind suitable deductions for the negative factors affecting the acquired land, namely, restricted access, railway-related development restrictions, narrow shape of the acquired strip and tenant encumbrances.

105. On the other hand, the owner - Chaturbhuj Vallabhdas (HUF) has led the evidence of one of its coparceners, Mr. Vijaysingh Chaturbhuj (CW-1). He has deposed in detail as to how the acquired land came to be owned by the Chaturbhuj Vallabhdas (HUF) and produced various title documents in support thereof. He has also deposed to the acquisition proceedings. He has

also deposed that the tenants are not entitled to any part of the awarded compensation. He has deposed to a Development Agreement dated 12th December 2003 that was entered into between the owner and M/s. Avanti Enterprises for the adjoining property which formed part of the larger property of the owner, of which, 906.30 square meters of land together with structures thereon were acquired by the SLAO. He relied on the valuation recorded in the said Development Agreement, as being the basis/yardstick for determining the market value of the acquired land.

106. Next, let us consider the valuation of the acquired land as computed by the owner. The valuation report prepared by the Owner's expert valuer, Mr. Anil Thacker of M/s. Archsurveyors (CW-2) proceeds on the footing that the acquired land admeasures 906.30 square meters and forms part of the larger property situated at Village Kirol, Ramji Ashar Lane, Ghatkopar (East). The valuer has taken into consideration that the acquired land is situated in a developed locality, within close proximity to Ghatkopar Railway Station, M.G. Road and Rajawadi Hospital, and that civic amenities and commercial facilities are available in the vicinity. The valuer has also noticed that the land falls in a residential zone with permissible 1 FSI. At the same time, the report records certain disadvantages attached to the acquired land, namely that the land is in the form of an elongated strip having a width of

approximately 9 to 11 meters, that it has no frontage on any major or minor road, and that access is available through a narrow lane of about 15 feet. After considering these features, the valuer adopted the rate of approximately Rs. 1,800/- per square foot (which equals Rs. 19,368/- per square meter) and, on that basis, assessed the land component of compensation at Rs. 1,75,40,368.56/-. It is however necessary to highlight that no details and/or particulars are furnished and set out in the said report to corroborate and support such computation.

107. CW-2 thereafter separately assessed compensation in respect of the structures and other items standing upon or connected with the acquired land. The report assesses compensation for Structure No. 1 at Rs. 7,04,051.71, Structure No. 2 at Rs. 2,37,668/-, Structure No. 3 at Rs. 2,69,960.60, Structure No. 4 at Rs. 2,90,000/-, retaining wall and compound wall at Rs. 9,80,000/-, existing trees at Rs. 1,00,000/- and repeated acquisition/auxiliary expenses at Rs. 50,000/-. Upon adding the aforesaid heads, the valuer arrived at a subtotal of Rs. 2,01,72,048.87. CW-2 thereafter added solatium at 30% amounting to Rs. 60,51,614.66 and additional component at 12% amounting to Rs. 18,38,595/- and accordingly assessed the total compensation payable at Rs. 2,80,62,258.53.

108. However, while the valuation report is relevant for showing the basis of the Owner's claim and the locational advantages of the acquired land, the rate adopted by CW-2 cannot be accepted mechanically. This is moreso since the valuation report does not explain the basis on which CW-2 has arrived at the rate of Rs. 1,800/- per square foot (which equals Rs. 19,368/- per square meter) as the market value of the acquired land. However, during his cross-examination, CW-2 appears to have filled in this lacuna by relying on the Development Agreement dated 12th December 2003. The valuation report is therefore required to be considered along with the evidence of CW-2. The relevant portion of the cross-examination is reproduced hereunder:

> *"Q.11. You have given valuation of Rs. 1,800/- per sq.ft. for the acquired land. What is the basis for it?*
> *Ans. The location of the land being in fully developed locality with all civic amenities and very close to the Ghatkopar Railway Station, located at less than three minutes walking distance and 30 mtrs. away from M.G. Road, where shopping and other commercial facilities are available. I as valuer of the property has assessed the land value at the rate of Rs. 1,800/- per sq.ft. on the aforesaid reasons.*
>
> *Q.12. Your valuation of Rs. 1,800/- per sq.ft. is equivalent to Rs. 19,000/- per sq.mtrs.?*
> *Ans. Correct*
>
> *Q.13. Do you agree that each locality has a separate valuation?*
> *Ans. Yes.*
>
> *Q.14. Would you agree that the land in question which is located in Ghatkopar can be valued at such a high rate?*
> *Ans. Yes. I fully agree with my valuation."*
>
> *...*
> *...*
> *"Q.17. What would be the property market value of the bare land in Ghatkopar in March, 1998 being the year of notification?*

Ans. *Rs. 1,800/- per sq.ft.*

Q.18. *What have you to say on the award of SLAO and were particularly on the sale instances 2 & 4 taken into consideration by the SLAO and giving the valuation of the land under acquisition?*

Ans. *The said instances are not comparable as they are very far away from the site and hence, cannot be considered.*

Q.19. *As an expert valuer, you are aware of the accepted principles of valuation and have you follow the same?*

Ans. *Yes. The basis of the valuation following the market value of flats based on which the land value is ascertained.*

Q.20. *Why have you not cited any sale instance of sale of flat in the vicinity?*

Ans. *The method followed by me is to ascertain the market value of flat in the vicinity to compute the land value. Since, no relevant sale instances of flat were available.*

Q.21. *Since you had no relevant sale instances of flats in the vicinity available, why did you not site instances of market value of flats in the vicinity from which you have derived the value of acquired land?*

Ans. *The method followed by me is to ascertain the market value of land based on prices of flats in that locality. Since no relevant instances were available on that particular date, we have based on our judgment computed the market value of the land. The market value is what a willing buyer wants to buy and a willing seller willing to sell at that price, for which a valuer has to use his own judgment based on the market rate prevalent in that particular locality and compute/assess the value of land. This is the method followed by me in valuing the property.*

Q.22. *You have ascertained the market value of the land from your judgment as to what a willing buyer to pay to a willing seller who would sell his land at that price. What was the data collected by you?*

Ans. *For the same land, the data collected was the offers received by various parties for sale of this particular land which has ultimately been recorded in a registered Agreement, wherein consideration has been paid by a willing purchaser to the land owner for the same piece of land which is not being acquired.*

Q.23. *Can you produce the documents?*

Ans. *It is a part of the Affidavit filed by the Claimants at Sr. No. 19 Exhibit-O at page 132.*

Q.24. *Would you please specify the area of the land and the consideration which is being paid and the date of the said Agreement?*

Ans. *Referring to the Sale Deed, the land area clear of the acquired land is 7935.50 square metres for a total consideration of Rs. 12,71,00,000/- and three constructed flats of 1,270 square feet to be given to the owner free of costs in the new building proposed to be constructed by the purchaser.*

Q.25. *Would you give per square foot rate/per square metre rate of the Sale Deed of 2003?*

Ans. *The total consideration received in the year (the rato) works out much more than the rate at which the land is assessed on the relevant date of 1998, whereby as per an expert valuation judgment on the value of land has been proved correct by actual transaction in the subsequent year fetching much more value than the assessed value of 1998."*

...
...

"Q.27. *What according to you would be the difference in price in Ghatkopar area between 1998 and 2003?*

Ans. *The difference in value of the property between 1997 and 2003 were virtually stagnant.*

Q.28. *The land has been acquired in 1998 and do you think the valuation of your balance land sold in 2003 is comparable to the land acquired in 1998?*

Per Commissioner:

The parties have agreed that the word "balance land" means the remaining land which is not being acquired.

Ans. *Yes.*

Q.29. *Is this the only instance of 2000 on which you have relied and which you consider to be the relevant instance?*

Ans. *Yes.*

Q.30. *How is the valuation done of a tenanted property?*

Ans. *The property which is tenanted is valued at the value of balance potential in the property based at the market rate prevalent and the capitalized value of the rent which the owner derives from the tenant summing upto the value of the property.*

Q.31. *I refer you to answer to question No. 22 wherein you have relied upon a Registered Agreement of 12.12.2003. You have referred to the said Registered Agreement as a Sale Deed to*

answer to question No. 24 posed to you. Is it a Sale Deed?

Ans. *Yes.*

Q.32. *You have referred to page 132, Exhibit "O" which is an exhibit to the affidavit of Claimant No. 1 dated 01.03.2007. I refer you to page No. 164 of the said affidavit wherein it has been stated in said Agreement in Clause 17 under caption "Miscellaneous" and it states as under:*
"It is hereby expressly agreed and declared that :-
(a) by this Agreement, the Owner is not transferring the ownership of the said Property to the Developer;"
What you have to state about it?

Ans. *It is a Sale Deed because the entire consideration has been paid to the land owner coupled with Power of Attorney in favour of the Purchaser discharging all the rights of the land owner to the Purchaser.*

Q.33. *But the Agreement is styled as a Development Agreement wherein the Party of the First Part (Claimant No. 1) is the owner and the Party of the Second Part is a Developer with a mere licence to the Developer to enter upon the land to execute the Agreement. What do you say about that?*

Ans. *Any Development Agreement where the consideration has been paid with the Power of Attorney is a deemed Conveyance and the purpose of referring to is to ascertain the market value for the purpose of valuation.*

Q.34. *I put it to you that the Development Agreement cannot be cited as comparable to an instance of sale?*

Ans. *I disagree the same.*

Q.35. *Can a post dated agreement after a gap of five years be cited for a valuation of acquiring land which has taken place five years before?*

Ans. *Yes."*

...
...

"Q.39. *The acquired land is 906.30 square metres while the balance land shown under the Development Agreement is 7935.50 square metres. Still you maintain that they are comparable?*

Ans. *Yes, they are comparable."*

...
...

"Q.41. *I put it to you that the Development Agreement is for the development of the balance land with permissible FSI and TDR available to the Developer whereas the acquired land has an FSI of 1. Is it fair valuation of the acquiring land?*

Ans. *Yes, it is fair valuation of the acquiring land as the TDR has*

to be purchased by the Developer from the open market and has to use in the land and it is not available with the land."

...
...

"Q.92. My question is that, are you aware of any regulation that no construction can be done near the Railway boundary?
Ans. I am aware.

Q.93. Whether any regulation restricts the development near the Railway boundary?
Ans. D.C. Regulations permit the construction by leaving mandatory distances from the Railway boundary.

Q.94. What is the distance provided under the Regulations?
Ans. The distance to be provided is half the height of the proposed building from the Railway boundary.

Q.95. When you had prepared the plan, what was the height of the building proposed?
Ans. The height of the building proposed was 23 mtrs and accordingly the distances have been kept.

Q.96. Would it be correct to say that the distance which was required to be kept according to your previous answer would be 11.5 mtrs from the Railway boundary?
Ans. Yes.

Q.96. What is the distance of the acquired land from the Railway boundary?
Ans. It is abutting the Railway boundary.

Q.97. What is the width of the acquired land?
Ans. The approximate width of the acquired property is around 9.7 mtrs.

Q.98. I put it to you that since the width as per your answer is 9.7 mtrs and you have stated that mandatory requirement is 11.5 mtrs. The property could not have been developed. How could you develop this property?
Ans. It is possible to develop the property as the FSI is allotted by leaving the mandatory distance. The potentiality of the land is not lost on account of mandatory distance.

Q.99. Which Regulation provides for availability of the FSI to be given for the land near the Railway boundary?
Ans. D.C. Regulation provides for FSI of the land near Railway

boundary i.e. Regulation No. 32.

Q.100. In which year, the plans passed by BMC for development of the acquiring property?

Ans. The plans for the acquired property have been approved by the BMC in the year 1994-95."

...

...

"Q.108. Are you aware that before developing the property near the Railway tracks, permission is required to be taken from the Railways?

Ans. Yes.

Q.109. What type of permission, according to you, is required from the Railways?

Ans. N.O.C. from the Railways for height of proposed building, the requirement of land, if any, required by the Railways for operation and clearance from the Signaling Dept. of the Railways for the development related to the land in the vicinity of the Railways.

Q.110. Are you aware that the Developer is required to give an Undertaking to the Railways to demolish the building at their own cost, if it is within 30 mtrs from the Railway boundary?

Ans. The Undertaking for the said development is to be given only after N.O.C. from the Railway Authorities for the proposed building and not for the buildings which are already existing.

Q.111. Whether, according to you, N.O.C. and Undertaking will be required for developing the plot in question?

Ans. Both i.e. N.O.C. and Undertaking, are not required.

Q.112. Why, according to you, the N.O.C. and Undertaking are not required for developing the plot in question?

Ans. As more than the mandatory distance, half the height has been provided for. Therefore, the said N.O.C. is not required.

Q.113. If there is any amendment in the D.C. Regulation with regard to the restrictions on construction, will it be applicable?

Ans. It would not be applicable as the Commencement Certificate for the said development has also been issued on 13th May, 1996

Q.114. Are you aware that the minimum distance the land to be kept vacant near the Railway track is 30 mtrs?

Ans. There is no such regulation provides keeping 30 mtrs. from

the Railway boundaries. It is only governed by the half the height of the proposed building.

Q.115. I put it to you that the regulation no. 29(8)(ii) provides that 30 mtrs distance from the Railway boundary has to be kept vacant.

Ans. No such provision is there in D.C. Regulation governing the development of lands in Mumbai."

...

...

"Q.127. I put it to you that for the purpose of valuation, you were supposed to take instances available as of 1998."

Ans. Since no comparable sale instance as of 1989 were available, the instance of 2003 pertaining to the same land was relied upon while preparing the report."

109. However, even if the above evidence is accepted and the Development Agreement is considered as a comparable sale instance, the resultant rate that is derived from it, does not corroborate the rate of Rs. 1,800/- per square foot (which equals Rs. 19,368/- per square meter) that is set out by CW-2 in his valuation report but instead, it bears out a rate of Rs. 17,644.61 per square meter. This rate is arrived at in the following manner, namely, by adding the amount of Rs. 12,71,00,000/- that is payable to the owner to the aggregate value of the 3 flats that are required to be provided to the owner, free of cost and then dividing the resultant amount with the remaining area of the larger property which is subject matter of the Development Agreement. In order to arrive at the aggregate value of the 3 flats, the Stamp Duty Ready Reckoner rate in 2004 of Rs. 36,500/- per square meter has

been considered, basis which, the aggregate value of the 3 flats (having aggregate area of 117.98 square meters or 1270 square feet) works out to Rs. 1,29,18,810/- (36500 x 117.98). Thus, the total valuation under the Development Agreement would work out to Rs. 14,00,18,810/- (12,71,00,000 + 1,29,18,810) from which, the rate of Rs. 17,644.61 per square meter (140018810 ÷ 7935.50) is derived.

110. In ***Jitendra Kumar*** (supra), it is held by the Apex Court that a post-notification transaction is not *per-sé* inadmissible and may be considered as a surrounding circumstance, provided it is otherwise relevant and there is no evidence of abnormal market fluctuation. The said judgment is relevant for considering the Development Agreement dated 12th December 2003 relied upon by the owner. However, since the said Development Agreement is subsequent to the Section 4 Notification, it cannot be adopted mechanically and can only be considered with caution, subject to appropriate deductions.

111. Similarly, ***Administrator General of W.B.*** (supra), it is reiterated that even subsequent transactions can be taken into consideration for determining market value, if such transactions reflect a stable market trend and are otherwise comparable in nature.

112. The decision of the Supreme Court in ***Viluben Jhalejar Contractor*** (supra) assumes relevance for the present purpose. In the said decision, the Supreme Court has observed that:

> *"19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered."*

113. The aforesaid principle is apposite to the facts of the present case. The Development Agreement dated 12th December 2003, though not a sale deed in the strict sense, is nevertheless a commercial transaction relating to the remaining portion of the same larger property of which the acquired land formed a part. It therefore constitutes relevant "other evidence" for the limited purpose of indicating the market trend, development potential and commercial value of the larger holding situated in the same locality. However, the said Development Agreement cannot be mechanically adopted as a direct comparable sale instance and is required to be considered subject to appropriate deductions having regard to the nature and disadvantages attached to the acquired land.

114. Whilst the Development Agreement is subsequent to the Section 4 Notification, it is to be noted that the same pertains to the remaining portion

of the larger property. Hence, the said Development Agreement cannot be altogether discarded. The acquired land forms part of the same larger property and the Development Agreement reflects the market trend and potentiality of the larger holding situated in the same locality. The same may therefore be used only as a broad guiding circumstance, subject to substantial deduction.

115. Even assuming the said rate is taken as indicative, the same is required to be reduced substantially having regard to the negative factors attached to the acquired land. These factors include the narrow and elongated shape of the acquired strip, absence of proper frontage, access through Ramji Ashar Lane, proximity to the railway boundary, requirement of Railway NOC for development within 30 meters, and tenant encumbrances, as pointed out by the SLAO and the Acquiring Body.

116. The Acquiring Body has contended that development within 30 meters of the railway boundary is restricted. However, the said restriction cannot be treated as a ground for denying enhancement altogether. This is more so when there is no material on record from which an absolute embargo to construction on the acquired land or any part thereof, on account of such restriction, has been established. Even otherwise, the Acquiring Body is the

relevant authority from whom prior permission is required before undertaking any development within 30 meters of the railway boundary. Hence, it is only a factor which would affect the price that a willing purchaser would offer in the open market. The acquired land was admittedly situated in a good locality, within walking distance from Ghatkopar Railway Station, close to Rajawadi Hospital and near M.G. Road. Therefore, while the railway restriction and other disadvantages justify deduction, they do not justify retention of the low rate of Rs. 3,750/- per square meter determined by the SLAO.

117. The sale instances relied upon by the SLAO also support the conclusion that the rate of Rs. 3,750/- per square meter was on the lower side. Though the said sale instances cannot be adopted as final comparable instances, since they pertain to the year 1994 and some of them relate to built-up properties, they show that the values in the locality ranged from Rs. 3,700/- per square meter to Rs. 15,230/- per square meter, almost 4 years prior to the relevant date of acquisition. The said material, therefore, reinforces the conclusion that the determination done by the SLAO does not adequately reflect the locational advantage and potentiality of the acquired land.

118. In these circumstances, this Court is of the view that the proper course is to

determine the fair market value of the acquired land by treating the said Development Agreement as an indicative circumstance and a comparable sale instance and by applying a substantial deduction therefrom.

119. Having regard to all the negative factors discussed above, this Court considers it appropriate to apply a deduction of approximately 60% from the said indicative rate of Rs. 17,644.61 per square meter. Upon such deduction, the rate works out to approximately Rs. 6,175.61 per square meter. Rounding off the same, this Court determines the market value of the acquired land at Rs. 6,200/- per square meter.

120. Accordingly, this Court holds that the market value of Rs. 3,750/- per square meter determined by the SLAO under the Award dated 22nd December 2000 is not just, fair or reasonable. At the same time, the claim of the owner for determination of market value at Rs. 19,368/- per square meter cannot be accepted. Instead, as computed above, the fair market value of the acquired land is determined at Rs. 6,200/- per square meter as on the relevant date of acquisition.

D. ANALYSIS, REASONS AND FINDINGS IN LAR NO. 5 OF 2003

121. Having dealt with the issue of enhancement of compensation that is raised in LAR No. 9 of 2005, the issue that remains to be considered is that of apportionment of this amount of (enhanced) compensation, which is raised in LAR No. 5 of 2003. On the one hand, the owner contends that no part/portion of the awarded amount is payable to the tenants for several reasons, and in particular since they have already surrendered their tenanted premises and accepted permanent alternate accommodation from the MMRDA, free of cost; whilst on the other, the tenants contend that notwithstanding such surrender, a major portion of the awarded amount is required to be paid to them and the owner would be entitled to only a small portion thereof.

122. MMRDA have also been impleaded in this Reference and accordingly, they contend that no part/portion of the awarded compensation should be paid over to the tenants and instead, their share is required to be given to MMRDA by relying on the undertakings dated 28th June 2005 that have been executed by all 12 tenants in their favour against which, they are stated to have been put in possession of the permanent alternate accommodation,

on or about 4th September 2005.

123. In the circumstances, it is necessary to advert to the provisions of Section 30 of the said Act under which provision, the said dispute between the owner and tenants came to be referred by the SLAO to this Court. The said provision reads thus:

> *"30. Dispute as to apportionment.*
>
> *When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."*

124. A plain reading of Section 30 shows that where a dispute arises either as to the apportionment of compensation or as to the persons to whom such compensation is payable, such dispute may be referred to this Court to determine.

125. The dispute regarding apportionment is required to be considered with reference to the nature of the rights held by the owner and the tenants in the acquired property at the relevant stage of acquisition. The owner claims entitlement on the basis of ownership of the acquired property. The tenants claim entitlement on the basis of their protected tenancy/occupancy rights in the structures standing on the acquired property. The controversy, therefore,

is not merely one of title to the land, but of the value of the respective interests which stood affected by compulsory acquisition.

126. The material on record, including the Award, shows that the tenants were in occupation during the acquisition proceedings and that their occupation was recognised. Therefore, the first question which arises for consideration is whether such protected occupation constitutes a compensable interest for the purpose of apportionment under Section 30 of the said Act.

127. The owner has relied upon ***Sheshambal*** (supra) to contend that subsequent events can be considered for molding relief. On that basis, it is submitted that subsequent developments after the acquisition proceedings ought to be considered while deciding the entitlement of the tenants. However, this Court is unable to accept the said submission in the manner in which it is canvassed. The judgment in ***Sheshambal*** (supra) arose in the context of eviction proceedings based on bona fide requirement. In such proceedings, subsequent events have a direct bearing on the continuance or survival of the relief claimed. However, the said principle cannot be bodily applied to a proceeding under Section 30 of the said Act, where the Court is required to determine the respective interests which stood affected by compulsory acquisition as on the last date of publication of the Section 4 Notification,

namely, 12th March 1998.

128. In the present case, the relevant enquiry is whether, at the stage of acquisition, the tenants had a recognised and protected interest in the acquired property. If such interest existed, subsequent events cannot retrospectively wipe out the compensable character of such interest. Therefore, reliance upon ***Sheshambal*** (supra) does not assist the owner in contending that the tenants are not entitled to any share in the awarded compensation.

129. The owner has also relied upon ***Anand Nivas*** (supra) to contend that a statutory tenant does not possess an estate or transferable interest in the premises. The said judgment explains the distinction between a contractual tenant and a statutory tenant, particularly in the context of the right to sub-let or transfer tenancy rights. The said decision cannot, however, be read to mean that a protected tenant has no valuable or compensable interest when his occupation is extinguished by compulsory acquisition. A protected tenant may not be the owner of the land and may not have a freely transferable estate in the property. However, his right to remain in lawful/protected occupation is nevertheless a valuable right. When such right is destroyed by compulsory acquisition, the tenant answers the description of a person

interested to the extent of the value of the right lost by him. Therefore, ***Anand Nivas*** (supra) does not support the proposition that the tenants are to be completely excluded from compensation.

130. Similarly, reliance placed ***on Tatoba Krishna Hargude*** (supra) also does not advance the case of the owner. Even if the said judgment is read as laying down that certain tenancy rights are restricted in nature and cannot be treated as equivalent to ownership, the same does not lead to the conclusion that the tenants have no compensable interest at all. The issue in the present Reference is not whether the tenants were owners, but whether their protected occupation had value which stood extinguished by acquisition.

131. The distinction between ownership rights and tenancy / occupancy rights is material. The owner's title to the land gives rise to one species of interest. The tenants' protected occupation gives rise to another species of interest. Both interests stood affected by the acquisition. The compensation awarded for compulsory acquisition represents the value of the acquired property along with the interests subsisting therein. Therefore, the compensation cannot be awarded exclusively to the owner merely because the owner held title to the land.

132. The owner has also relied upon ***Vishnu Namdeo Kumar*** (supra). The said judgment deals with the effect of vesting after acquisition and the inability of the erstwhile owner to seek restoration of acquired land merely because the land may not have been used for the original public purpose. That principle has no direct application to the present dispute. The present issue is not restoration of land after acquisition, but apportionment of compensation between the owner and the tenants under Section 30 of the said Act.

133. The vesting of land after acquisition extinguishes private interests in the acquired property. However, the consequence of such extinguishment is not that only the owner must be compensated. Where different persons hold different interests in the acquired property, the compensation must be distributed amongst such persons according to the value of their respective interests. The owner's submission, if accepted, would ignore the protected tenancy/occupancy rights which existed in favour of the tenants during the acquisition proceedings.

134. In ***Ramacharya Narayanacharya Burli*** (supra), the Full Bench of the Mysore High Court recognised that, in a dispute of apportionment, the Court is required to determine the value of the respective interests of the competing claimants and distribute the compensation accordingly. Though the said

decision may not be binding on this Court, it is certainly of persuasive value, particularly because the Full Bench relied upon the decision of this Court in ***Dossibai Nanabhoy v. P.M. Bharucha***, 1958 SCC OnLine BOM 90, wherein, it was observed that while apportioning compensation, the Court must give to each claimant the value of the interest which he has lost by compulsory acquisition. The said decision therefore supports the principle that apportionment is not confined only to title but extends to determining the value of different interests in the acquired property.

135. Applying the said principle to the present case, the compensation cannot be apportioned by applying the test of the unexpired period of a fixed-term lease. The tenants claim on the basis of protected / statutory occupation of the tenanted premises and not under a time-bound lease. The proper enquiry is whether their protected interest subsisted at the relevant stage of acquisition and, if so, what value ought reasonably to be attributed to such interest.

136. In ***A. Ajit Singh*** (supra), the Supreme Court was considering the question of apportionment of compensation between the landlord and the tenant. The Court noted that although the tenancy had earlier been terminated, the tenant continued to remain in possession when acquisition was initiated. The

relevant observations are extracted below:

> *"7. The next question is to what proportion the landlord and the tenant are entitled to vis-à-vis the compensation. Though the appellant had terminated the tenancy, on appeal, it was restored. Thereafter, they remained in possession as tenant. The appellant initiated the acquisition under the Land Acquisition Act, though the covenant in the lease deed provided the right of dispossession and for taking possession for public purpose. In view of the fact that the order became final and the possession was not taken, pursuant to the termination of the tenancy, and since the acquisition was initiated under the Act, the respondent is entitled to the payment of the compensation. The right of tenancy is a right under which a tenant is entitled to enjoy the possessory title and enjoyment of the leased land subject to covenants relating to ejection after due determination of tenancy. It is seen that the lease was granted in 1949 and it was terminated in 1960 and the acquisition was initiated in 1967 on which date he continued to be in possession of the property; therefore, this Court has to consider the apportionment of the compensation on that basis."*

> *"9. The Court is required to take into consideration relevant factors, viz., the duration of the lease, the nature of the right to enjoyment of the leasehold interest and the improvements the tenant made on the land etc. It is equally settled law that if the Government is the owner of the land, before initiating the acquisition, it is entitled to terminate the lease and take possession of the lands in terms of the lease. Necessarily, in the above case the tenant cannot have any right to compensation as he is bound by the terms of the lease. In a case where the Government, in spite of the covenant contained in the sale deed, chooses to acquire the land, necessarily the tenancy right of a tenant is required to be assessed and the compensation has to be awarded suitably. In view of the fact that the lease is for 99 years and the part of the lease has been enjoyed for a period of 18 years, we think that the apportionment of the compensation in the ratio of 60% to the tenant and 40% to the landlord would be a reasonable ratio and payment should accordingly be made."*

137. However, the aforesaid judgment cannot be applied mechanically for computing apportionment on the basis of the unexpired period of lease. In

A. Ajit Singh (supra), the Supreme Court considered the duration of the lease because the property was held under a fixed-term lease of 99 years. The present case stands on a different footing, since the tenants claim on the basis of protected / statutory occupation and not under a time-bound lease. The said judgment is therefore relevant only for the broader principle that where a tenant's interest subsisted at the relevant stage of acquisition, such interest is required to be assessed for apportionment.

138. The aforesaid observations make it clear that, for the purpose of apportionment, the relevant consideration is whether the tenant had a subsisting tenancy interest or possessory right when the acquisition was initiated. If the tenant continued in possession on the date of the Section 4 Notification, his tenancy interest is required to be assessed for the purpose of apportionment. Subsequent events such as handing over of possession or rehabilitation may be relevant for determining the extent of apportionment, but they cannot by themselves erase the compensable character of the tenancy right which existed when acquisition was initiated.

139. In ***Inder Parshad*** (supra), the Supreme Court was considering the question of apportionment of compensation between the lessor and the lessee in respect of Nazul land held on perpetual lease. The Court noticed that the land had

been acquired by a notification under Section 4(1) of the Land Acquisition Act and that the lessee was in possession and enjoyment of the demised land with superstructure at the relevant stage of acquisition. The relevant observations are extracted below:

> *"5. In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition.... Compensation becomes payable for the leasehold right or interest held by the lessee or grantee when the land is acquired. ... The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment..."*

140. The aforesaid judgment arose in the context of a leasehold interest and not in the context of statutory tenancy. Therefore, the said decision cannot be applied mechanically to determine the percentage of apportionment in the present case. However, the judgment is relevant for the limited principle that the Court must examine the existence of the claimant's interest at the

relevant stage of acquisition. In this case, the Supreme Court noticed that the lessee was in possession and enjoyment of the demised land with superstructure "*on the date of acquisition*", thereafter, held that compensation becomes payable for the leasehold right or interest held by the lessee when the land is acquired. Thus, the emphasis of the Court was on the existence of the interest when acquisition operated upon the property.

141. In ***Gangabai w/o Devsi Khona*** (supra), the Court observed as under:

> *"9. This Court has considered the rival submissions. At the outset, this Court finds that although claimant Nos.3 to 48 are represented by an advocate, there is no representation on their behalf for the past number of hearings. They have chosen not to participate in the reference proceeding.*
>
> *10. In any case, this Court finds substance in the contention that since the said claimants were merely tenants in the structure constructed by the lessee and they were provided with alternate accommodation by MMRDA, they cannot be heard to claim any percentage of amount of compensation in the present proceeding. Therefore, the claim of claimant Nos.3 to 48 is rejected."*

142. In that case, the Court proceeded on the footing that the tenants in the structure constructed by the lessee had already been provided alternate accommodation by MMRDA and, on that basis, rejected their claim to apportionment. However, the judgment does not indicate the date on which the tenants vacated the premises in their occupation and/or the date on which such permanent alternate accommodation was provided to them by

MMRDA, nor does it examine whether such rehabilitation had taken place prior to the relevant stage of acquisition or only thereafter. This distinction is material, because in the present Reference, the entitlement to compensation is required to be tested with reference to the interest of the tenants existing in the acquired property at the relevant stage of acquisition.

143. In the absence of any discussion in ***Gangabai*** (supra) as to when MMRDA rehabilitated the tenants in that case, the said judgment cannot be applied mechanically to the facts of the present case. The mere fact of rehabilitation, without reference to the point of time at which such rehabilitation took place, cannot by itself determine whether the tenants had a compensable interest in the acquired property when the acquisition operated upon it. The said judgment is therefore distinguishable and cannot be read as laying down an absolute proposition that subsequent rehabilitation by MMRDA, irrespective of its timing, extinguishes the tenants' right to claim apportionment of compensation.

144. Applying the said principle to the present case, the tenants' claim to apportionment is required to be tested with reference to whether they had a subsisting and protected occupation in the acquired property at the relevant stage of acquisition. Subsequent handing over of possession or rehabilitation

may have a bearing on the extent of apportionment, but the existence of the tenants' interest must be assessed with reference to the acquisition stage and not merely with reference to subsequent events.

145. In ***Mangat Ram*** (supra), apportionment between landlord and tenant was considered in the context of acquisition of property in occupation of the tenant. The Supreme Court accepted the principle that the tenant's right in the acquired property was required to be valued and compensated. The said judgment is relevant not for applying a fixed mathematical formula, but for recognising that the tenant's interest cannot be ignored while distributing compensation.

146. The principles emerging from the aforesaid judgments may therefore be summarised thus: *first*, ownership of land is a valuable interest and must be compensated; *secondly*, protected tenancy/occupancy rights are also valuable interests where such rights are recognised and are extinguished by acquisition; *thirdly*, there is no fixed mathematical formula for apportionment; and *fourthly*, the Court must make a broad, reasonable and equitable assessment having regard to the facts of the case and the nature of the competing interests.

147. Applying the aforesaid principles to the present case, I find that the owner is entitled to compensation in respect of ownership and reversionary interest in the acquired property. However, the owner cannot claim the entire compensation to the exclusion of the tenants merely on the basis of ownership. The tenants were in recognised occupation during the acquisition proceedings. Their protected tenancy / occupancy rights stood extinguished on account of the acquisition. Such extinguishment cannot be treated as having no compensable value.

148. This court also finds that the subsequent events relied upon by the owner do not alter the position that the tenants had a protected and recognised interest at the relevant stage of acquisition. The right to receive compensation under the Land Acquisition Act arises because a person's interest in property is compulsorily acquired or extinguished. Therefore, the rights of the owner and the tenants must be assessed with reference to the interests which stood affected by acquisition, and not on the footing that the tenants had no interest merely because they were not owners of the land.

149. The contention that the tenants are not entitled to any share in compensation is therefore rejected. Equally, the tenants cannot claim the entire compensation, since the ownership and reversionary interest of the owner is

also a valuable interest in the acquired property. The proper course is therefore to apportion the compensation between the owner and the tenants in a just and reasonable proportion.

150. In the present case, there is no precise valuation separately determining the market value of the owner's ownership/reversionary interest and the tenants' protected tenancy/occupancy rights. The Court is therefore required to undertake a broad equitable assessment, guided by the material on record and the principles laid down in the judgments referred to above.

151. Having regard to the nature of the acquired property, the recognised occupation of the tenants, the protected character of their tenancy/occupancy rights, the fact that the acquisition resulted in extinguishment of such rights, and at the same time the ownership and reversionary interest of the owner, I am of the view that the compensation is required to be apportioned in the ratio of 40% to the owner and 60% to the tenants.

152. The said apportionment, balances the competing interests of the owner and the tenants. It recognises that the owner cannot be deprived of compensation for ownership, while also recognising that the tenants' protected occupation was a valuable interest which stood lost by reason of acquisition.

153. Accordingly, this court holds that the owner shall be entitled to 40% of the compensation and the tenants shall be entitled to 60% of the compensation, the issue of apportionment is accordingly answered by holding that the owner is not entitled to receive the entire compensation to the exclusion of the tenants. The tenants were persons interested in the acquired property and their protected tenancy/occupancy rights constituted compensable interests. The compensation shall therefore be apportioned in the ratio of 40% to the owner and 60% to the tenants.

154. After having determined the apportionment between the owner and the tenants, the only issue that remains is whether Claimant No. 14 – MMRDA is entitled to an order in the present Reference directing that the amount apportioned to the tenants ought not to be directed to be paid over to them, but instead to MMRDA, in their place and stead. MMRDA contends that all the 12 tenants were rehabilitated by it against execution of undertakings wherein they had expressly agreed to hand over their share in the compensation to MMRDA. On that basis, MMRDA claims that it has stepped into the shoes of the tenants and is entitled to receive the share otherwise payable to the tenants.

155. The claim of MMRDA stands on a footing different from the claims of the

owner and the tenants. The owner claims compensation on the basis of title to the acquired land. The tenants claim apportionment on the basis of their protected tenancy / occupancy rights in respect of the structures standing on the acquired land. MMRDA, however, does not claim any ownership, tenancy, leasehold, possessory or other pre-existing interest in the acquired property as on the date of publication of the Notification under Section 4 of the said Act. Its claim is founded upon subsequent rehabilitation of the tenants done by them against execution of undertakings by the 12 tenants.

156. The question, therefore, is not merely whether MMRDA has incurred expenditure towards rehabilitation or whether undertakings have been executed in its favour. The anterior question is whether such a claim can at all, be adjudicated in the present Reference under Section 30 of the Land Acquisition Act, 1894.

157. Section 30 enables the Collector, where any dispute arises as to apportionment of compensation or as to the persons to whom the same or any part thereof is payable, to refer such dispute to the decision of the Court. The jurisdiction of the Reference Court is therefore a special jurisdiction activated by the reference made by the Collector. The Court cannot travel beyond the subject matter of the Reference or adjudicate independent claims

which do not arise from an interest held in the acquired property.

158. In the present case, the dispute for apportionment essentially concerns the competing claims of the owner and the tenants. MMRDA has not been able to establish any case of it having any independent interest in the acquired property at the relevant stage of acquisition. MMRDA's claim arises subsequently and is founded upon rehabilitation and undertakings stated to have been executed by the tenants. Such undertakings, even if assumed to exist and to be valid, may create rights *inter-se* between MMRDA and the tenants. They cannot, however, confer upon MMRDA, an independent interest in the acquired property or enlarge the jurisdiction of this Court in the present Reference under Section 30 of the said Act.

159. In ***Dattaram Deu Desai*** (supra), this Court held that a person who was not a party before the Land Acquisition Officer cannot subsequently seek impleadment in a Reference under Section 30 by invoking Order I Rule 10 of the Code of Civil Procedure, 1908. The rationale of the said judgment is that the Reference Court derives jurisdiction only upon a reference being made to it, and such jurisdiction remains confined to the reference so made.

160. Applying the aforesaid principle to the present case, MMRDA cannot be

permitted to convert the present Reference into proceedings for enforcement of undertakings stated to be have been executed by the tenants. MMRDA may have a separate remedy against the tenants, if such undertakings are otherwise valid and enforceable in law. However, such claim cannot be adjudicated in the present Reference.

161. The reliance placed by MMRDA on the decision in ***Jal Sansthan*** (supra) also does not alter the position. The said judgment recognises that the right to receive compensation consequent upon acquisition is a valuable and enforceable right flowing from an interest held in the acquired property. There can be no dispute with the said proposition. However, the said principle assists a person who had an existing interest in the acquired property at the relevant stage of acquisition.

162. In the present case, MMRDA's alleged right does not flow from any ownership, tenancy, leasehold, possessory or other pre-existing interest in the acquired land. It flows only from a subsequent arrangement with the tenants after rehabilitation was undertaken. Therefore, ***Jal Sansthan*** (supra) is distinguishable and cannot be read to mean that a person having no interest in the acquired property on the date of acquisition can, merely on the basis of a subsequent undertaking, be treated as a person entitled to

apportionment in a Section 30 Reference.

163. At the highest, therefore, the undertakings relied upon by MMRDA may furnish a separate cause of action against the tenants. That question is not required to be decided in the present Reference. MMRDA must work out such remedies, if any, in appropriate independent proceedings. The present Reference cannot be converted into proceedings for enforcement of undertakings executed between MMRDA and the tenants.

164. Accordingly, this court holds that Claimant No.14 - MMRDA has no independent right to claim payment of the tenants' share directly in the present Reference. Any claim of MMRDA to recover the amount payable to the tenants on the basis of the undertakings dated 28th June 2005 is left open to be agitated in appropriate proceedings, if so advised. All rights and contentions of parties in that regard all expressly kept open.

E. OPERATIVE ORDER

165. In view of the above findings and observations, Land Acquisition Reference No. 9 of 2005 is partly allowed in the following terms:

(i) The Claimants are entitled to compensation towards market value of the said land at the rate of Rs. 6,200 per square meter as on the relevant date, namely, 12th March 1998.

(ii) The Claimants are entitled to additional amount/component under Section 23(1-A) of the said Act, at the rate of 12% per annum on the enhanced compensation, from the date of notification till the date of taking possession, as applicable.

(iii) The Claimants are entitled to solatium at the rate of 30% on the enhanced compensation under Section 23(2) of the said Act.

(iv) The Claimants are entitled to interest under Sections 28 and 34 of the said Act, as applicable, on the enhanced compensation until realisation.

(v) The amounts, if any, already paid to the Claimants under the Award passed under Section 11 of the said Act shall be adjusted against the compensation awarded by this Court in the present Reference.

(vi) The SLAO shall compute the balance amount payable to the Claimants and ensure disbursement thereof in accordance with law.

(vii) The Claimant No. 1 shall submit its calculation and computation of the compensation and statutory benefits payable to the SLAO and the

Acquiring Body within a period of two weeks from the date of uploading of this Award.

(viii) The SLAO and the Acquiring Body, after making due adjustment of amounts, if any, already paid under the Award under Section 11 of the said Act, shall pay the balance amount to the Claimants within a period of four weeks from the date of submission of such calculation, along with all statutory benefits as directed hereinabove, in accordance with law.

(ix) The Land Acquisition Reference No. 9 of 2005 is accordingly disposed of. There shall be no order as to costs.

166. In view of the above findings and observations, Land Acquisition Reference No. 5 of 2003 is also disposed of, in the following terms :

(a) The owner, namely, Claimant No. 1, is entitled to 40% of the enhanced compensation, whilst the tenants, namely, Claimant Nos. 2 to 13, are entitled to the remaining 60% of the said amount, as determined above in LAR No. 5 of 2003.

(b) Similarly, the owner, namely, Claimant No. 1 is also entitled to 40% of all the other amounts awarded in LAR No. 9 of 2005 hereinabove whilst the tenants, namely, Claimant Nos. 2 to 13 are entitled to the remaining 60% of the said amounts, as determined above in LAR No.

5 of 2003 including inter alia, the awarded amounts of additional amount/component under Section 23(1-A) of the said Act; solatium at the rate of 30% on the enhanced compensation under Section 23(2) of the said Act; and interest under Sections 28 and 34 of the said Act; as applicable, on the enhanced compensation until realisation thereof.

(c) Claimant No.14 - MMRDA has no independent right to claim payment of the tenants' share (of 60% of enhanced compensation and all other amounts awarded in LAR No. 9 of 2005) directly in the present Reference. Any claim of Claimant No. 14 – MMRDA to recover the amounts payable to the tenants – Claimant Nos. 2 to 13, on the basis of the undertakings dated 28th June 2005 is left open to be agitated in appropriate proceedings, if so advised.

(d) Land Acquisition Reference No. 5 of 2003 is accordingly disposed of. There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

Jyoti Pawar