

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

LAND ACQUISITION REFERENCE NO.1 OF 2004

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The Special Land Acquisition Officer (3)
Mumbai & Mumbai Suburban District
Old Custom House, Fort, Mumbai 400023.

And

Godrej & Boyce Mfg. Co. Ltd.
Phirojshanagar, Vikhroli,
Mumbai 400079

.. Claimant

And

The Dy. Chief Engineer,
Metropolitan Transport Project (Railways),
Near Platform No. 4, Ghatkopar Station,
Ghatkopar (E), Mumbai – 400077

.. Acquiring Body

Mr. Bhushan Deshmukh i/b Bachubhai Munim & Co. for the Petitioner
Mr. Amar Mishra - AGP for Respondent - State
Mr. T. J. Pandian for the Acquiring Body

CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 20TH FEBRUARY 2026

PRONOUNCED ON : 8TH JUNE 2026

JUDGEMENT :

1. The present Land Acquisition Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as, the “*said Act*”) has been preferred by the Claimant seeking enhancement of compensation in respect of land bearing 193.90 sq. mts. of CTS no. 8 (pt) and 71 sq. mts. bearing CTS no. 90 (pt), totally admeasuring 264.90 sq. mts. village Vikhroli, Taluka Kurla, Mumbai Suburban District (hereinafter, referred to as. the “*said land*”).

BRIEF FACTS

2. Before advertng to the merits of the Reference, a brief recital of facts, insofar as they are relevant for adjudication of the present proceedings, is set out hereunder:
 - a) The said land came to be acquired for a public purpose, namely for the construction of the 5th and 6th railway lines between Kurla and Thane, as part of the Central Railway’s expansion project.
 - b) Notification under Section 4 of the said Act was published in the Maharashtra Government Gazette on 5th July 2000. The relevant date for valuation *viz.* the last date of notification for the purposes of determination of market value of the said land is 16th September 2000.

- c) The notification under Section 6 of the said Act was published on 25th July 2001.
- d) Notice under Sections 9(3) and 9(4) of the said Act was issued to the Claimant on 24th September 2001.
- e) On 30th August 2003, the Special Land Acquisition Officer (3) (hereinafter, referred to as the “**SLAO**”) passed an Award granting compensation of Rs. 14,10,611 to the Claimant. The market value of the said land, as determined by the SLAO in the Award was assessed at Rs. 3,220 per square meter.
- f) Notice under Section 12(2) of the said Act was issued to the Claimant on 30th August 2003 and the possession of the said land was handed over to the SLAO on 16th September 2003.
- g) Being dissatisfied with the quantum of compensation awarded, the Claimant sought the present Reference under Section 18 of the said Act for enhancement in compensation of the said land, on the basis of market value, which was claimed at Rs. 16,146 per square meter.
- h) Accordingly, pursuant to the said application made by the Claimant, the SLAO has made the present Reference before this Court.

SUBMISSIONS OF THE CLAIMANT

3. At the very outset, Mr. Bhushan Deshmukh, learned counsel appearing on behalf of the Claimant states, on instructions, that notwithstanding the enhanced compensation of Rs. 16,146 per square meter claimed made by his client in the present Reference, on the basis of the evidence led by them, they are restricting it to Rs. 14,000 per square meter.

4. He then invites my attention to the Judgment dated 5th May 2017 passed by this Court in another Reference, being LAR No. 7 of 2000 with a view to establish a baseline for the valuation of the said land. He submits that the said Reference was instituted by the SLAO in respect of a contiguous plot of land admeasuring 800.70 sq. mtrs. belonging to the Claimant, forming part of the same CTS No. 90 (part), and which was acquired for the same public purpose as the said land. He points out that in the said Reference, the initial compensation computed by the SLAO in his Award dated 9th June 2000 at the rate of Rs. 3,220 per square meter has been enhanced by this Court to Rs. 5,000 per square meter vide the said judgment dated 5th May 2017. He submits that whilst the Claimant has challenged this Judgment and Order in Appeal No. 256 of 2019, which has since also been admitted and is pending final determination before the Division Bench of this Court, the SLAO has not challenged the said judgment. Therefore, Mr. Deshmukh submits that

without prejudice to his clients' submissions in the said Appeal, the said enhanced rate of Rs. 5,000 per square meter is deemed to be accepted by the SLAO in the said Reference for the said contiguous land.

5. Mr. Deshmukh relies on the said Reference and submits that notwithstanding that the relevant date for determination of the market value was 18th October 1997 *viz.* almost 3 years prior to the relevant date of 16th September 2000 in the case of the present Reference, the SLAO has passed the Award on 30th August 2003 computing the compensation at the same rate of Rs. 3,220 per square meter. He therefore submits that the Awarded compensation is required to be enhanced considering the increase in the market value of the of the said land, both – on account of the time gap of approximately three years and considering certain other factors which he submits would indicate that the said land is more advantageously situated and possesses superior potential. In support of the aforesaid submission, he relies on the decisions of the Supreme Court *in Printers House Pvt. Ltd. V/s. Mst. Saiyadan (deceased) by LRs. & Ors*¹; *State of Madras V/s. A.M. Nanjan & Anr*²; *The Land Acquisition Officer, City Improvement Trust Board V/s. H. Narayanaiah & Ors*³, as well as the decision of this Court in *State of*

1 (1994) 2 SCC 133
2 (1976) 1 SCC 973
3 (1976) 4 SCC 9

Maharashtra V/s. Poshu Rangu Mhatre⁴ .

6. Mr. Deshmukh then relies on the decision of the Supreme Court in ***Chimanlal Hargovinddas V/s. Special Land Acquisition Officer, Poona***⁵ and submits that the Award passed by the SLAO is merely in the nature of an offer and the present Reference is required to be treated as an original proceeding, wherein the market value of the said land is required to be determined by this Court afresh, on the basis of the evidence and material placed on record. He also relies on the decision of the Supreme Court in ***Viluben Jhalejar Contractor v. State of Gujarat***⁶ , to submit that whilst determining the market value of land under acquisition, appropriate adjustments are required to be made having regard to the various *positive* and *negative* factors, as more particularly delineated therein.
7. In this backdrop, Mr. Deshmukh points on that the SLAO has merely referred to the rates prescribed in the Ready Reckoner for determining the market value of the said land in the Award and contends that such reliance is entirely misplaced. In support, he relies on the decision of the Supreme Court in ***P. Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority***⁷ and contends that Ready Reckoner rates

4 2006 (2) Mh.L.J. 149
5 (1988) 3 SCC 751
6 (2005) 4 SCC 789
7 (1995) 2 SCC 305

cannot be adopted as a safe or sole basis for determining the market value of an acquired land.

8. Mr. Deshmukh points out that the Claimant had led the evidence of two witnesses to prove the market value of the said land by examining Mr. Dilip Kamlapurkar, its Senior Manager (Liaison) and also an expert witness, Mr. Bhalchandra D. Wadke who is an Architect, Surveyor and a Registered Valuer.
9. He has then painstakingly taken me through the evidence of the said Mr. Dilip Kamlapurkar (CW-1) from which, he asserts that the following position has been established:
 - i) The said land was notified for acquisition in the year 2000 and forms part of CTS Nos. 8 (part) and 90 (part), which together admeasure 20,860.10 sq. mtrs.
 - ii) Prior to the present acquisition, an area admeasuring 2,982 sq. mtrs. out of CTS No. 90 (part) was acquired in or about the year 1970 for an arterial railway siding, and a further area of 800.70 sq. mtrs. was acquired in the year 1997 for the same public purpose.

- iii) The said land, including CTS No. 90 (part), was levelled and enclosed by a compound wall.
- iv) The said land had a frontage of approximately 92.5 metres abutting the Central Railway line, possessed significant commercial potential, particularly for display of signboards.
- v) The said land is situated in a well-developed locality comprising residential complexes as well as commercial and industrial establishments.
- vi) During the period between 1997 and 2000, there was substantial development in the surrounding area of the said land, in terms of infrastructure, civic amenities, and overall standard of living.
- vii) The said land abuts an internal road having a width of 18.30 metres.
- viii) Under Municipal Circular No. CHE/2407/DPC dated 4th October 1996, commercial development is permissible on the said land.
- ix) During the intervening period of approximately three years between the two acquisitions, there was considerable

development activity in the surrounding locality, including the construction of residential and industrial buildings.

- x) The Claimant has developed convenience shops on the remaining portion of CTS No. 90 (part) at Vikhroli.
- xi) The said land is situated in proximity to a BEST bus depot within walking distance, with rickshaw and taxi stands located opposite the said depot.
- xii) The Claimant has also relied upon and sought to incorporate the evidence led in the said Land Acquisition Reference No. 7 of 2000 as part of its evidence in the present Reference.

10. Mr. Deshmukh has also taken me through the evidence of the expert witness, Mr. Bhalchandra D. Wadke (CW-2) who is stated to have been in practice since 1965. He points out that Mr. Wadke adopted the *comparable sales method* for the purposes of valuation and upon such analysis, has determined the market value of the said land at Rs. 14,000 per square meter, based on a comparable sale instance registered on 29th February 2000 in the manner set out below:

- i) The Valuer has first determined the market value of the built-up

property reflected in the said sale instance at Rs. 17,500 per square meter;

- ii) In order to do so, the Valuer mainly relied upon a certified copy of an agreement for sale dated 29th February 2000 in respect of a flat admeasuring about 80 square meters on the 14th floor of Tower – A of the building Presidential Tower, situated at LBS Marg, Ghatkopar, Mumbai – 400086 on land bearing CTS No. 167, 167/1 to 167/22 of village Ghatkopar that was sold by M/s. Ashford Investment and Treading Co. Pvt. Limited to Mr. Nooruddin Abdul Desai and Ms. Noorjahn Nooruddin Desai for consideration of Rs. 14,00,000. The Valuer has also placed reliance on the certified copy of the Index-II issued by the Sub-Registrar of Assurances in respect of the said flat. On the basis of this consideration, the Valuer has calculated its market value at Rs. 17,500 per square meter of built up area on the date of the said agreement;
- iii) Upon analyzing the nature and quality of construction, amenities provided, cost of materials and labour, as well as other associated expenses including architectural fees, legal charges, permissions, and miscellaneous outgoings, the Valuer

has assessed the total construction and related costs at Rs. 8,400 per square meter which amount has been deducted from the aforesaid value.

- iv) Thereafter, the expert has accounted for the developer's profit at the rate of 15% and on such basis, has derived the land component at Rs. 7,800 per square meter.
- v) The expert has further applied a positive adjustment of 5% towards the time gap, thereby arriving at a rate of Rs. 8,200 per square meter as on the relevant date.
- vi) Having thus determined the land value component, the expert has thereafter undertaken a comparative analysis between the said land and the land forming the subject matter of the sale instance, on the basis of several relevant factors, including size, shape, access, frontage, availability of civic amenities, potential user, proximity to the railway line and highways, availability of special amenities, and the nature and character of the surrounding locality and thereafter arrived at the computation of Rs. 14,000 per square meter after giving positive allowances and negative deductions in respect of the said factors.

11. Mr. Deshmukh points out that the Valuer has categorically deposed in his Valuation Report that no sale instances of freehold land were available near the relevant date within the nearby locality of the said land. Hence, on the basis of the constructed property viz. Flat, the Valuer has calculated the market value of the said land.

12. In contrast, Mr. Deshmukh points out that the Respondents only led the evidence of Mr. Sanjay Raghunath Kurve, Deputy Director of Town Planning, who has in turn, relied upon a valuation report in which has also admitted that there were no reasonable sales/documents available for open lands in the vicinity of the said land under acquisition and therefore sought to rely upon a sale instance dated 7th April 1995, also of a built-up property. He also relied on two other sale instances dated 23rd May 1998. However, in the very same report, Mr. Kurve has himself discarded this sale instance by admitting that the property/site was far away from the Vikhroli Railway station and related to built-up property. In so far as the remaining two instances are concerned, Mr. Kurve has also discarded them since they involved a very low rate land value and could not be considered. Mr. Deshmukh has meticulously taken me through his cross-examination when Mr. Kurve has fairly admitted that the SLAO had made a mistake whilst considering sale instance nos. 2 and 3 separately when they related to a

single transaction, which mistake was repeated by him, whilst preparing his valuation report. Thus, it is argued that in such circumstances, when the witness himself has admitted the error on his part in relying on the sale instance/s and discarded them, the original testimony of such witness (contained in his witness statement) cannot be taken into consideration for determining the market value of the said land. Instead, it is submitted that the main thrust of the testimony of Mr. Kurve was to challenge the testimony and valuation report of the Claimant's Valuer which is impermissible and not within the scope of evidence that can be led by a party. Hence, it is argued that the testimony of Mr. Kurve is required to be discarded.

13. Mr. Deshmukh therefore submits that considering the legal principles governing the determination of the market value and the comparable sale instance relied upon by the Claimant, they are entitled to enhancement in the compensation Awarded and accordingly prays that the market value of the said land be enhanced to and fixed at Rs. 14,000 per square meter.

SUBMISSIONS OF THE SLAO

14. In response, Mr. Amar Mishra, learned Counsel appears for the SLAO and submits that the market value of Rs. 3,220 per square meter, as determined by the SLAO in his Award was correctly done after considering the details

and particulars of a prior Award relating to a contiguous portion of the Claimants' own land, acquired for the same public purpose. He submits that the Claimant is not entitled to any upward revision for the period between 1997 and 2000, particularly in view of the admissions elicited in the cross-examination of the Claimants' witness that the Ready Reckoner rates for the period 1998 to 2000 remained unchanged. Thus, he argues, that the SLAO was justified in adopting the said rate. For convenience, the relevant portion of the cross-examination of the Claimants' witness is reproduced hereunder:

“10. The distance between the subway and the acquired land in LAR 1 of 2004 is about 100 mtrs. (Shown Exhibit - E to LAR 1 of 2004 alongwith encloses especially the extract of the Ready Reckoner). As per the extract of the Ready Reckoner shown to me, the prices pertaining to Zone-N-11 concerning the area of the acquired land during the period 1997-98 for developed land had gone down. It will be correct to say therefore that the prices of the area mentioned above had gone down by 10%. Thereafter the prices had remained stagnant for the period 1998-2000. It is not true that therefore there was no increase in the prices of the land mentioned above for the period 1997-2000.”

15. Mr. Mishra then submits that the valuation methodology adopted by the Claimant is fundamentally flawed since it is based on a non-comparable sale instance, namely, a transaction involving a built-up residential flat admeasuring approximately 80 sq. mtrs. in a high-rise building. He submits that such a transaction cannot form a valid basis for comparison while determining the market value of a vacant parcel of land, particularly one, which is narrow and irregular in shape. He further contends that the facilities

and amenities relied upon by the Claimant's witness, Mr. Kamlapurkar to justify enhancement in market value are not public amenities available at large, but are primarily restricted to the employees of the Claimant. He submits that such restricted facilities cannot be treated as factors enhancing the general market value of the said land. Mr. Mishra also submits that the positive adjustments sought to be applied by the Claimant, including those on account of locality, special amenities, and potential user, are arbitrary and self-serving, and are intended solely to inflate the valuation. In support, Mr. Mishra relies on the decision of the Supreme Court in *Saibanna (Dead) by LRs. v. Assistant Commissioner and Land Acquisition Officer*⁸, and submits that the merely because land is situated in or adjacent to a developed area, does not *ipso facto* render every parcel of such land valued as a developed building site, more so when large tracts of land have been acquired.

16. The next submission of Mr. Mishra is that the testimony of the Claimants' witnesses does not support their case of enhancement. In particular, he relies on the evidence led by Mr. Dilip Kamlapurkar (CW-1) and submits that CW-1 has erroneously sought to rely upon instances of development to justify an enhancement in the market value, which pertain to a period post the last date of publication of the Section 4 notification dated 16th September 2000. He

8 (2009) 9 SCC 409

submits that such post-notification developments are irrelevant for the purpose of determining the market value of the said land. To support this submission, he places reliance on the decision of the Supreme Court in ***General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel***⁹, wherein it has observed that in the absence of evidence of comparable sale transactions in the vicinity, recourse may be taken to determining market value by applying appropriate escalation to the proved market value of nearby lands in the preceding years. The Apex Court also observed that such a method is reasonably safe, provided, the earlier acquisition is within a proximate period of about four to five years; beyond which period, the Court cautioned that its reliability would diminish. The Apex Court further observed held that reliance on subsequent transactions is inherently unsafe, particularly when such transactions reflect a sudden or steep increase in prices, which may not furnish a proper basis for comparison with the acquisition at hand.

17. Mr. Mishra then points out that the evidence of the SLAO's Valuer, Mr. Sanjay Kurve, supports the methodology adopted in the Award. He contends that the said witness has properly discarded the sale instances initially referred to by him upon finding them to be non-comparable and instead opined that reliance upon the prior Award relating to the contiguous land

9 (2008) 14 SCC 745

constituted the most appropriate basis for determining the market value of the said land. He submits that there is no flaw in this approach adopted by the said witness.

18. Mr. Mishra then points out that the said land suffers from inherent physical disadvantages, which are relevant factors in the determination of its market value. In this regard, he points out that the SLAO's Award describes the said land as a triangular and narrow strip, and submits that, owing to its peculiar shape and limited width, the land is not amenable to meaningful development so as to justify any enhancement in value. He relies on the decision in *Chimanlal Hargovinddas* (*supra*), wherein the Supreme Court has identified various positive and negative factors relevant for the determination of market value of land. He submits that the negative factors enumerated therein, *inter alia*, include land being in the nature of a narrow strip with limited frontage and the existence of any special disadvantage likely to deter a willing purchaser. In the present case, he submits that access to the said land is available only through property that otherwise belongs to the Claimant *viz.* Godrej property, which, he asserts, constitutes a disadvantage that would dissuade a prudent purchaser.

19. Mr. Mishra further submits that, insofar as accessibility is concerned, the Award records that the said land does not have any direct access to any

public road and is approachable only through a narrow internal layout road. According to him, this position is contrary to the Claimants' assertion that the land enjoys superior access and frontage. He submits that, when the various aforementioned factors are considered cumulatively, the negative attributes of the said land outweigh the positive factors relied upon by the Claimant. Consequently, the claim for a 70% positive adjustment is, according to him, are wholly unjustified.

20. In conclusion, Mr. Mishra submits that, in view of the aforesaid circumstances and the inconsistencies and admissions emerging from the evidence of the Claimants' witnesses, the compensation Awarded by the SLAO at the rate of Rs. 3,220 per square meter is fair, just, and reasonable. He submits that the Claimant has failed to establish any valid basis for enhancement and accordingly, the present Reference deserves to be dismissed.

SUBMISSIONS OF THE ACQUIRING BODY

21. Mr. Pandian, learned Counsel appears on behalf of the Acquiring Body – Central Railways. He submits that this Court, whilst deciding LAR No. 7 of 2000 pertaining to a contiguous land had duly considered both, the valuation Awarded by the SLAO which was Rs. 3,220 per square meter and that of the

Claimants' valuer which was Rs. 3,700 per square meter. He points out that, although the Claimant had sought an addition of 70% towards various advantageous factors such as location, shape, availability of civic amenities and connectivity to the railway station and highway, this Court, in a detailed Judgment and Order dated 5th May 2017 found such enhancement to be excessive and after meticulous consideration, restricted the enhancement to only 30% and determined the market value at Rs. 4,810 per square meter, which was then, rounded off to Rs. 5,000 per square meter. He is at pains to point out that in both the matters, *viz.* LAR No. 7 of 2000 and the present Reference, the valuation report relied upon by the Claimant was almost similar.

22. Mr. Pandian however submits that a crucial aspect which warrants consideration in the present Reference is that the said land is not capable of being developed. He contends that the land forming part of LAQ No. 383, which was subject matter of LAR No. 7 of 2000, had already been acquired and vested with the Acquiring Body *viz.* Central Railways, upon possession being taken on 4th June 1999 under Section 17 of the said Act which was prior to the date of the Award in the present Reference on 30th August 2003. He submits that in view of the Development Control Regulations and the applicable Railway Board Circulars, no development is permissible within

30 metres of the railway land boundary. Mr. Pandian therefore points out that the said land falls within such restricted zone and is therefore, not capable of development. On this basis, he submits that the method of valuation adopted by the Claimants' Valuer is inapplicable and incorrect and the market value as claimed by them cannot be accepted. He submits that this aspect was not and could not have been considered by this Court whilst deciding LAR No. 7 of 2000, and that the non-developability of the said land constitutes a significant negative factor which must be taken into account whilst determining its market value, as on the relevant date.

23. Mr. Pandian further submits that, in the written submissions filed on behalf of the Claimant, it is fairly acknowledged *albeit*, subject to the outcome of the pending Appeal that the rate of Rs. 5,000 per square meter, as determined by this Court in LAR No. 7 of 2000, may be treated as a comparable benchmark for the purpose of determining the market value in the present Reference. He submits that the evidence on record indicates that the civic amenities and development features as relied upon by the Claimants' Valuer were already in existence as on 18th October 1997, being the relevant date for computation of market value in LAR No. 7 of 2000. It is his contention that there was no material increase in market rates between 1997 and 2000. On this basis, he submits that the rate of Rs. 5,000 per square meter, as determined by this

Court in LAR No. 7 of 2000, represents a fair and reasonable market value, even as on the relevant date in the present Reference, and the same ought to be considered by this Court.

ANALYSIS, REASONS & FINDINGS

24. The scope of the inquiry to be undertaken by this Court in a Reference under Section 18 of the Land Acquisition Act, 1894, stands authoritatively settled by the Supreme Court in its seminal decision in *Chimanlal Hargovinddas* (supra), wherein the governing principles for determination of market value have been comprehensively enunciated. It is now trite that a Reference under Section 18 is not in the nature of an appeal against the Award of the Land Acquisition Officer, but constitutes an original proceeding in which the Reference Court is required to independently assess and determine the market value of the acquired land on the basis of the evidence adduced before it. The Award of the Land Acquisition Officer is merely an offer made on behalf of the State and cannot be regarded as a judgment under challenge. Equally, the material relied upon by the Land Acquisition Officer cannot be looked into by the Reference Court unless the same is duly brought on record and proved in accordance with law. The Claimant occupies the position of a Plaintiff and bears the burden of establishing that the compensation awarded is inadequate, though, in arriving at a just

determination, this Court is entitled to take into consideration the evidence led by either party.

25. It is equally well settled that the determination of market value must be undertaken with reference to the date of publication of the notification under Section 4 of the said Act, this Court placing itself in the position of a hypothetical prudent purchaser negotiating with a willing vendor in an open market. The accepted and preferred method of valuation is to ascertain the market value on the basis of the most comparable genuine sale instance, due regard being had to its proximity in point of time, geographical situation, and similarity in nature and potentiality to the acquired land. Even transactions post-dating the notification may furnish a safe guide for valuation, provided they are reasonably proximate in time, bonafide in character, and not influenced by the acquisition proceedings or the likelihood thereof. Having identified the most comparable sale instance, this Court is required to suitably adjust the price disclosed therein by applying appropriate positive and negative factors so as to account for the relative advantages and disadvantages of the acquired land vis-à-vis the land covered by the sale instance. Such an exercise must be undertaken in a realistic and practical manner, informed by commercial realities and ordinary common sense. It must be borne in mind that large extents of undeveloped land

cannot ordinarily be valued on the same basis as small, fully developed plots. Accordingly, where the facts and circumstances so warrant, suitable deductions towards development expenditure, provision of roads and civic amenities, the time lag involved in development and realization of the land's potential, as well as the attendant entrepreneurial risks, may legitimately be effected while arriving at a fair and reasonable estimate of the market value.

26. Ultimately, the aforesaid decision underscores that the determination of compensation is not a matter of mathematical precision but one of judicial estimation founded upon the facts of each case. The governing principles furnish broad guidelines; they do not constitute inflexible rules of universal application. This Court must, therefore, place itself in the position of a hypothetical prudent purchaser and, having regard to the entirety of the evidence and surrounding circumstances, determine the market value by the application of informed judicial discretion, tempered by commercial realities and guided by common sense.
27. The relevant excerpts from *Chimanlal Hargovinddas* (supra) are quoted hereunder for ease of reference:

“3. *Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the trial court has virtually treated the Award rendered by the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to same extent. The true position therefore requires to be*

capsulized.

4. *The following factors must be etched on the mental screen:*
 - (1) *A reference under Section 18 of the Land Acquisition Act is not an appeal against the Award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the court.*
 - (2) *So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.*
 - (3) *The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.*
 - (4) *The claimant is in the position of a plaintiff who has to show that the price offered for his land in the Award is inadequate on the basis of the materials produced in the court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.*
 - (5) *The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).*
 - (6) *The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.*
 - (7) *In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.*
 - (8) *Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)*
 - (9) *Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.*
 - (10) *The most comparable instances out of the genuine instances have to be identified*

on the following considerations:

- (i) *proximity from time angle,*
- (ii) *proximity from situation angle.*
- (11) *Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.*
- (12) *A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.*
- (13) *The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.*
- (14) *The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:*

Plus factors

- 1. *smallness of size*
- 2. *proximity to a road*
- 3. *frontage on a road*
- 4. *nearness to developed area*
- 5. *regular shape*
- 6. *level vis-a-vis land under*
- 7. *special value for an owner of an adjoining property to whom it may have some very special advantage*

Minus factors

- 1. *largeness of area*
- 2. *situation in the interior at a distance from the road*
- 3. *narrow strip of land with very small frontage compared to depth*
- 4. *lower level requiring the depressed portion to be filled up*
- 5. *remoteness from developed locality*
- 6. *some special disadvantageous acquisition factor which would deter a purchaser*

- (15) *The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50*

per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) *Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.*

(17) *These are general guidelines to be applied with understanding informed with common sense.”*

28. In the subsequent decision in ***Viluben Jhalejar Contractor*** (supra), the Supreme Court reiterated that the determination of compensation in land acquisition matters is not an exercise capable of mathematical exactitude, but one that must necessarily rest upon a comparable and genuine sale instance possessing reasonable proximity both in point of time and situation to the acquired land. The Supreme Court further reaffirmed that, while assessing market value on the basis of such exemplar transactions, this Court is required to undertake a comparative evaluation of the acquired land and the exemplar land and make appropriate adjustments by taking into consideration the relevant positive and negative factors bearing upon their respective advantages and disadvantages. The various factors relevant for such an exercise were also illustratively enumerated therein.

29. In ***Printers House*** (supra), the Supreme Court reiterated that the compensation payable for acquired land is required to be determined with

reference to its market value as obtaining on the date of publication of the preliminary notification under Section 4(1) of the said Act. The Supreme Court observed that market value denotes the price which a willing and prudent purchaser would reasonably offer to a willing vendor in an open market transaction, having regard to the existing condition of the land, its attendant advantages, and its future potentialities. At the same time, any enhancement in value attributable solely to the acquisition proceedings or the scheme underlying the acquisition is liable to be excluded from consideration. The Supreme Court further held that, amongst the recognised methods of valuation, the comparable sales method ordinarily constitutes the safest and most reliable guide for determining market value and is, therefore, to be preferred over other recognised methods such as capitalisation of income or valuation based on expert opinion. Bona fide sale transactions relating either to the acquired land itself or to lands similarly situated and possessing comparable characteristics and advantages were held to furnish the best evidence of market value and, consequently, to provide the most dependable basis for assessing compensation.

30. The Supreme Court further held that reliance upon a comparable sale transaction or an earlier Award is permissible only where the exemplar satisfies the requisite tests of comparability, namely, that the transaction is

genuine and bonafide, reasonably proximate in point of time to the notification under Section 4 of the said Act, relates to land possessing similar characteristics and potentiality, and pertains to land situated in the vicinity of the acquired land. The Supreme Court cautioned that, where material dissimilarities exist with regard to location, extent, shape, tenure, user, level of development, or potentiality, appropriate adjustments are required to be made by applying suitable positive and negative factors so as to arrive at a fair and realistic estimate of market value. The Supreme Court further observed that, for the purposes of valuation, a comparable Award stands on substantially the same footing as a comparable sale instance, provided the requisite degree of comparability is established. It was, therefore, held that genuine and reliable transactions relating either to the acquired land itself or to neighbouring lands possessing comparable characteristics and advantages constitute the most dependable evidentiary foundation for determining market value in land acquisition proceedings.

31. In *A. M. Nanjan* (supra), the Supreme Court held that where the lands forming the subject matter of earlier Awards are shown to be comparable in nature, possess similar advantages and potentiality, and are situated in reasonable proximity to the acquired land, the rates determined therein constitute relevant and reliable material for the assessment of compensation.

The Supreme Court observed that previous Awards pertaining to similarly situated lands cannot be excluded from consideration merely on the ground that they relate to an earlier acquisition. On the contrary, where the requisite degree of comparability is established, such Awards may legitimately be relied upon as a safe and dependable guide for determining the market value of the land under acquisition.

32. In *H. Narayanaiah* (supra), the Supreme Court held that the determination of market value in land acquisition matters is essentially a question of fact, to be decided on the basis of the evidence adduced in the facts and circumstances of each individual case. The Supreme Court observed that even seemingly minor variations in the location, situation, surroundings, or other attendant features of land may have a material bearing on its market value and, therefore, the question of comparability must be examined with due care and caution. At the same time, the Supreme Court held that previous judgments and Awards relating to lands similarly situated and possessing comparable characteristics, wherein market value has been determined with reference to dates reasonably proximate to the relevant date of acquisition, constitute relevant and admissible evidence under Sections 11 and 13 of the Indian Evidence Act, 1872. Such Judgments and Awards may, therefore, be legitimately relied upon as evidentiary material for determining

compensation, provided the requisite similarity and comparability of the lands concerned are satisfactorily established.

33. In *Posha Rangu Mhatre* (supra), a Division Bench of this Court reiterated the principles laid down by the Supreme Court in *SLAO, Bangalore v. T. Adinarayan Setty*, AIR 1959 SC 429, and held that, in the matter of evaluation of market value of acquired land, the Court is ordinarily required to consider three recognised modes of valuation, namely, (i) opinion of experts, (ii) bona fide sale transactions in respect of the acquired land or of adjoining lands similarly situated and effected within a reasonable time, and (iii) capitalisation of the actual or reasonably prospective income derived from the land. This Court further observed that where material relating to more than one of the aforesaid modes is available on record, the Reference Court is under an obligation to consider and analyse the entire evidence in its proper perspective before arriving at a determination of market value. It was further held that although the absence of evidence under one particular head does not per se preclude assessment on the basis of the remaining available material, the Reference Court cannot arbitrarily adopt one method while ignoring other relevant and admissible evidence on record.
34. In *Saibanna* (supra), the Supreme Court reiterated that there can be no straitjacket formula or rigid rule governing the determination of deductions

towards development charges, and that the extent of such deduction must necessarily depend upon a variety of factors, including the extent of the acquired land, its location, and its proximity to municipal limits and other developed areas. In the said decision, the Supreme Court approved and relied upon its earlier judgment in *Kasturi v. State of Haryana, (2003) 1 SCC 354*, wherein the distinction between fully developed areas and those yet to be developed was emphasised. It was observed that the mere fact that the acquired land is situated in or adjacent to a developed area does not, by itself, render the entire extent of land as developed or capable of being valued as residential plots or building sites, particularly where large tracts of undeveloped land are acquired. Accordingly, appropriate deductions towards development are ordinarily warranted to arrive at the fair market value.

35. I have carefully considered the pleadings on record with the able assistance of Mr. Deshmukh, learned counsel appearing for the Claimant, Mr. Mishra, learned Assistant Government Pleader appearing for the Special Land Acquisition Officer, and Mr. Pandian, learned counsel appearing for the Acquiring Body. I have also perused the relevant documentary material and the evidence led by the parties and their respective witnesses, and have duly considered the rival submissions advanced by them.
36. As noted hereinabove, the principal thrust of the Claimant's submissions is

directed towards enhancement of the compensation awarded in respect of the said land from Rs. 3,220 per square meter, as determined in the Award passed by the SLAO, to Rs. 14,000 per square meter. In support of the said claim, the Claimant has relied upon the oral testimony of its two witnesses. On the other hand, while the SLAO seeks to sustain the Award as passed, it is contended that the compensation cannot, in any event, exceed Rs. 5,000 per square meter, being the rate awarded by this Court in LAR No. 7 of 2000 in respect of contiguous land, which was acquired barely about three years prior to the acquisition in the present case.

37. In the Award, the SLAO first assessed the value of the subject land at Rs. 2,930 per square meter on the basis of sale instances prevailing as on the relevant date of valuation. The SLAO thereafter referred to the Ready Reckoner and determined the market value at Rs. 3,150 per square meter on that basis. Finally, reliance was placed upon the Award passed in LAQ No. 383 dated 30th June 2000 in respect of contiguous land, wherein the land value had been determined at Rs. 3,220 per square meter as on 18th October 1997. Since the first two valuations were lower than the said figure of Rs. 3,220 per square meter, and further considering the Ready Reckoner for the period 1997 – 2000 which did not indicate any material fluctuation in market value in the said locality, the SLAO adopted the rate of Rs. 3,220 per square

meter, as the final market value for the purposes of the Award.

38. In ***P. Ram Reddy*** (supra), the Supreme Court, while relying upon its earlier decision in *Jawajee Nagnatham vs. Revenue Divisional Officer, (1994) 4 SCC 595*, reiterated that the Basic Valuation Register, prepared and maintained for the purposes of collection of stamp duty under the Stamp Act, has no statutory foundation or force, and therefore cannot form the basis for determination of market value of lands under Section 23 of the said Act.
39. Accordingly, the reliance placed by the SLAO upon the market value of the land as reflected in the Ready Reckoner, to conclude that there was no increase in the market value of the subject land, and thereby to justify adoption of the rate of Rs. 3,220 per square meter determined in LAQ No. 383 as the market value as on 18th October 1997, cannot be sustained. This is particularly so since, in the present case, the market value of the subject land was required to be determined as on 19th September 2000. The said approach is, therefore, not well-founded and cannot be accepted.
40. In ***Printers House*** (supra), the Supreme Court has clearly held that an earlier acquisition award relating to another parcel of acquired land is a legally recognized comparable instance for determination of market value, provided

the land covered by the earlier award is sufficiently comparable to the acquired land in terms of time, situation, shape, potentiality and other relevant factors. By a judgment dated 5th May 2017 passed in LAR No. 7 of 2000, this Court has enhanced the initial compensation computed by the SLAO in his Award dated 9th June 2000 at the rate of Rs. 3,220 per square meter to Rs. 5,000 per square meter. In the case of the said acquisition, the relevant date for determination of the market value was 18th October 1997. It is not in dispute that the land covered by the earlier award was also owned by the same Claimant and is contiguous to the said land. It was also acquired for the same public purpose. Its fair market value was determined less than *three* years prior to the relevant date of 16th September 2000 in the case of the present Reference. Therefore, the same can be considered by this Court as a legally recognized comparable instance for determination of market value of the said land. Accordingly, the very fact that the fair market value of the acquired land as on 18th October 1997 has been enhanced and determined at Rs. 5,000 per square meter suggests that the rate of Rs. 3,220 per square meter awarded by the SLAO in the Award almost three years thereafter requires to be enhanced.

41. In the aforesaid circumstances, this Court is required to apply the principles laid down in the decisions referred to hereinabove for determining the fair

market value of the said land as on the relevant date, namely 16th September 2000, being the last date of publication of the notification under Section 4 of the said Act. Such determination is to be undertaken by adopting the comparable sales method and by applying the well-settled test of the price which a willing purchaser would offer and a willing seller would accept in an open market transaction in respect of the subject land. In this context, the Claimant has examined Mr. Dilip D. Kamlapurkar (CW-1), a qualified architect, who has deposed both on the basis of his professional expertise and personal knowledge regarding the location, description, and physical characteristics of the acquired land, as well as the nature and extent of development in the surrounding area as on or about the relevant date.

42. CW-1 has categorically deposed that the subject land was levelled and enclosed by a proper compound wall, and abutted an internal road having a width of 18.30 metres. He has further stated that commercial development was permissible thereon. According to him, the subject land had a frontage of more than 92 metres abutting the Central Railway line, thereby conferring upon it significant commercial potential, particularly for the display of hoardings and signboards. CW-1 has also deposed that the land is situated in a well-developed locality comprising both residential buildings/complexes and commercial and industrial premises. He has further stated that between

1997 and 2000, the surrounding area had witnessed substantial development and improvement in civic amenities, infrastructure and overall standard of living, including establishment of a bank, post office, consumer provision stores and convenience shops. He has additionally pointed out that a BEST bus depot is situated at a walking distance of about five minutes from the subject land, from where buses operate to various parts of the city. Opposite the said depot, there exists a rickshaw stand as well as a taxi stand, thereby augmenting the transport facilities in the area. He has further stated that an Aarey Milk Stall is located at a walking distance of about three minutes from the subject land.

43. CW-1 has further deposed that the entire surrounding area of the subject land is environmentally congenial, being densely lined with trees which, according to him, provide a rare canopy cover in Mumbai and a pleasant atmosphere. He has also stated that the Claimant had constructed a reservoir with a capacity of 40 lakh litres exclusively for supplying water to the residents of the locality. CW-1 has further deposed that the Claimant has undertaken maintenance of cleanliness in the area and has developed well-laid roads and a storm water drainage system for the entire locality, in the absence of any municipal drainage facility. He has also stated that street lighting and compound lighting have been provided by the Claimant.

Relying upon the aforesaid factors, CW-1 has stated that the market value of the subject land had substantially appreciated between 1997 and 2000, a circumstance which, according to him, has not been duly considered by the SLAO while passing the Award.

44. The Claimant's valuer, Mr. Bhalchandra Wadke (CW-2), has relied upon a solitary sale instance in support of his valuation. In contradistinction, the valuer examined on behalf of the Special Land Acquisition Officer, Mr. Kurve, has referred to three sale instances in his valuation report, though he has assigned reasons for treating each of them as unsuitable for purposes of valuation.
45. In this backdrop, the first question that arises for consideration is whether the sale instance relied upon by the Claimant satisfies the requirements of a comparable sale and can, therefore, be legitimately adopted as the basis for determining the market value. If the same is answered in the affirmative, it would then be necessary to examine the relevant distinguishing features by drawing up a balance sheet of the positive and negative factors affecting comparability, and to make appropriate adjustments in value in the manner in which a prudent purchaser would assess the property in an open market transaction. It is in this context that the evidence on record falls for consideration.

46. CW-2 is stated to be a qualified Architect and Valuer since 1965. He has prepared a valuation report for the purpose of determining the fair market value of the said land as on 16th September 2000. For this exercise, he has considered a sale instance of built-up property, which he has treated as comparable. In order to arrive at the fair market value, he has first derived the land value from the said sale instance property and thereafter compared the same with the subject land by applying various plus and minus factors, *inter alia*, relating to size, shape, situation, surroundings, location, time lag, potential and permissible user of the two properties. On this basis, he has arrived at the fair market value of the subject land at Rs. 14,000 per square meter. CW-2 has further deposed that the Claimant is entitled to statutory benefits, including 12% component, 30% solatium, as well as statutory interest in accordance with the provisions of the said Act. Along with his valuation report, CW-2 has relied upon and annexed a location plan stated to have been prepared by him in respect of the subject land and its surrounding areas, the sanctioned Development Plan (DP) sheet E/19 of Greater Mumbai for 1981 – 2001 obtained from the MCGM, a land acquisition plan prepared by him, and a potential user plan also prepared by him. He has also relied upon and produced a certified copy of the agreement dated 22nd February 2000 along with the certified copy of Index II pertaining thereto, as the comparable sale instance referred to in his report. CW-2 has stated that in the

absence of any available sale instance of vacant land, he was constrained to consider a sale instance of built-up property, from which he has derived the value of the said land.

47. For this exercise, CW-2 is stated to have analysed the sale instance of the built-up property as a comparable transaction and determined the market value of the said built-up property as on the date of the sale instance. From the said value, he has derived the land value of the plot on which the said built-up property stands. He has thereafter bifurcated the said value by taking into account, *inter alia*, land value, cost of construction, nature and type of construction, development profit and miscellaneous charges, and accordingly brought the land value of the sale instance property at par with the relevant date, namely 16th September 2000. Finally, he has compared the sale instance plot with the subject land on the basis of various relevant features and factors, by making positive adjustments and negative deductions, so as to arrive at the fair market value of the said land.
48. After analysing the agreement dated 29th February 2000, which relates to a consideration of Rs. 14,00,000 for a flat admeasuring about 80 sq. metres on the 14th floor, CW-2 has computed the market value of the built-up property at Rs. 17,500 per square meter, inclusive of the land component, as on 29th

February 2000. He has thereafter analysed the construction of the building and the amenities provided therein and has assessed the construction cost at Rs. 8,000 per square meter. In addition thereto, he has considered miscellaneous expenses, including legal costs, architect's fees, and fees and charges for obtaining various permissions and approvals from statutory and local authorities, as well as other incidental expenses, which he has computed at Rs. 400 per square meter of built-up area. He has further taken the developer's profit at 15% of the total value and, on that basis, computed the cost of construction at Rs. 9,660 (i.e. Rs. 8,000 + Rs. 400 + Rs. 1,260, being 15% of Rs. 8,400). After deducting the said amount from Rs. 17,500, which represents the market value of the built-up property inclusive of the land component, he has arrived at the value of the land component at Rs. 7,840 per square meter, which he has rounded off to Rs. 7,800 per square meter.

49. He has thereafter considered the time gap between the date of the sale instance, namely 29th February 2000, and the relevant date of valuation, namely 16th September 2000, and has applied an escalation of 5% to the figure of Rs. 7,800 on the basis of an assumed annual increase of 10% in market value. On that basis, he has arrived at a figure of Rs. 8,190 which he has rounded off to Rs. 8,200 per square meter.

50. He has thereafter carried out a comparative analysis of various factors pertaining to the two plots, namely, the said land and the sale instance plot, including *inter alia* its size, shape, access, frontage, availability of civic amenities, potential user, proximity to the railway station, proximity to the highway, and other special advantages. On such comparison, he has assigned positive and negative adjustments in respect of each of the said factors. On the basis of the said exercise, he has concluded that the value of the said warrants an upward adjustment of 70% over the value of the sale instance plot, and has accordingly arrived at the market value of Rs. 14,000 per square meter in respect of the said land.
51. As against the aforesaid evidence led on behalf of the Claimant, the valuer examined by the SLAO, Mr. Kurve, has fairly admitted that in the absence of comparable sale instances of vacant land, he has also considered sale instances of flats and built-up properties in the vicinity of the said land. However, he has rejected all three sale instances relied upon by him on the grounds that the land component reflected therein was on the lower side and that the properties were situated at a considerable distance from the said land. Thereafter, he has proceeded to comment upon and dispute the valuation report of CW-2, i.e. the Claimant's valuer, without rendering any independent valuation of his own. Thus, no positive evidence as to the

market value of the said land has been adduced by the valuer examined on behalf of the SLAO. The tenor of his testimony is largely directed towards discrediting the valuation adopted by CW-2, rather than providing an independent basis for determination of market value. In the absence of any independent valuation evidence, such an approach cannot be accepted. If the SLAO sought to challenge any portion of the valuation report of CW-2, the same ought to have been tested in cross-examination, rather than sought to be dislodged through the testimony of another valuer.

52. In the present case, save and except for the admission elicited from CW-2 in his cross-examination that the area of 80 square meters of the flat in the identified sale instance was based on carpet area and that, for arriving at the built-up area, an addition of 20% would be required, thereby increasing the area of the flat to 96 square meters and consequently, affecting the calculations in his valuation report, no other material anomalies or inconsistencies have been pointed out on behalf of the SLAO.
53. The principal thrust of the submissions advanced by Mr. Mishra is that the valuation arrived at by CW-2 is based on a reverse engineering exercise from a solitary sale instance of a built-up residential flat, which, according to him, cannot constitute a comparable sale instance for determining the value

of vacant land, the two being fundamentally distinct in nature, potential, and marketability. This submission is without prejudice to his other objections to the 70% positive adjustment adopted by CW-2. However, during the course of arguments, he was unable to cite any judicial precedent in support of the broad proposition that the market value of vacant land can, in no circumstance, be determined with reference to the market value of built-up property or residential premises, particularly in the absence of any comparable sale instances of vacant land.

54. However, a perusal of the Award dated 30th August 2003 passed by the SLAO itself belies the said submission. The SLAO has categorically recorded that, despite best efforts made by his office to procure instances of sale of open lands from Village Vikhroli from the office of the Sub-Registrar, no comparable sale instances of vacant land were available. Consequently, the SLAO also considered sale instances of flats and built-up properties in the vicinity of the subject land, collected from the office of the Sub-Registrar, and in all, eight sale instances were taken into account. Out of the said eight sale instances, the first two, which pertained to land with structures, were found to reflect comparatively low rates and were accordingly discarded. The remaining six sale instances (Sr. Nos. 3 to 8) related to built-up properties. The SLAO has expressly taken into consideration the rates

reflected in the said sale instances and has made deductions towards cost of construction, cost of amenities, fees and other charges. Upon making such adjustments and applying suitable allowances while comparing the subject land with sale instances at Sr. Nos. 3 to 8, the SLAO has arrived at the valuation of Rs. 2,930 per square meter. However, the Award does not disclose any detailed computation or working as to how the said figure has been derived, despite the fact that some of the comparable sale instances amongst Sr. Nos. 3 to 8 reflected rates as high as Rs. 25,400 per square meter.

55. Be that as it may, ultimately in the said Award, the SLAO has discarded the figure of Rs. 2,930 per square meter and has instead adopted the higher rate of Rs. 3,220 per square meter on the basis of the valuation determined in the Award passed in LAQ No. 383 dated 30th June 2000 in respect of the contiguous plot of land, which also belonged to the Claimant and was acquired about three years prior thereto for the same public purpose.
56. During the course of arguments, Mr. Mishra was at pains to point out various computations adopted by CW-2, contending that the same are unsupported by cogent material on record, and placing reliance upon the cross-examination of CW-2 conducted on behalf of the SLAO. However, this Court is mindful of the fact that CW-2 is an expert witness, stated to have

been practising for more than 60 years, and would, therefore, be entitled to draw upon his professional experience while determining the market value of the subject land, for which his services were engaged. The mere absence of documentary evidence in support of the developer's profit margin of 15% adopted in his calculations, or the absence of an item-wise break-up of the amount of Rs. 400 per square meter considered towards miscellaneous expenses, by itself, would not warrant rejection of his opinion. This is particularly so in the absence of any positive valuation evidence led by the valuer examined on behalf of the SLAO on these aspects. It is also pertinent to note that there was no effective cross-examination directed specifically at the 70% positive adjustment adopted by CW-2 on the basis of a comparative analysis between the said land and the sale instance property, which formed the basis for arriving at the rate of Rs. 14,000 per square meter.

57. Moreover, during the course of cross-examination, the valuer examined on behalf of the SLAO appears to have, in substance, corroborated not only the methodology adopted by CW-2 but also the positive adjustments attributed by him. In view thereof, the objections raised by Mr. Mishra cannot be said to be entirely correct and/or justified. The relevant portion of his cross-examination in this regard is reproduced hereunder:

“Q.190. Is it correct that in the above four exhibits, you have compared the acquired land with the three sale instances?”

Ans. Yes.

Q.191. Will you agree that if you adopt the comparable sales method, you will have to ascribe positive and negative allowances?

Ans. Yes.

Q.192. As an Expert Valuer, if the size of the acquired land and the sale instance land which you have considered is compared, then will it be fair to give no allowances i.e. Nil for the factor of size?

Ans. Yes.

Q.193. As an Expert valuer, if the shape of the acquired land and the sale instance land which you have considered is compared, then will it be fair to give an allowance of +5% to + 10% for the factor of the shape?

Ans. Yes.

Q.194. As an Expert Valuer, if the access from LBS road of the acquired land is compared with the access available to the sale instances, then will it be fair to give a negative allowance of - 5%?

Ans. Yes.

Q.195. As an Expert Valuer, if the frontage on road of the acquired land and the sale instance land which you have considered is compared, then will it be fair to give allowance i.e. Nil for the factor of frontage because both have a frontage either on a 60'LBS Marg or 40'D.P. Road?

Ans. Yes.

Attention is drawn to the plans at Exhibit D-5 and D-15.

Q.196. As an Expert Valuer, if the civic amenities, potential user, distance from railway station, distance from highway, special amenities, locality of the acquired land and the sale instances land which you have considered is compared, then will it be fair to give the allowances of +15%, +10%, + 10%, + 10%, +15% and + 15% in view of your opinion given in column no. 7?

Ans. Yes. I have considered the aforesaid allowances in my Valuation Report generally with the same percentage.”

“Q.216. *In Exhibit H i.e. Valuation Report in LAR No.1 of 2004, the Claimant's Valuer has considered a different sale instance for the relevant date. Do you agree that for the purpose of proximity of time, a sale instance which is within 7 months from the relevant date can be considered?*

Ans. Yes”

“Q.218. *Do you now agree that the factorization answers which you have given from question Nos. 190 to 196 has not been stated by you in Exhibit D-10?*

Ans. *Yes. Because I have just done an analysis of the Valuation Reports submitted by the Claimant's Valuer in both the LARs.*

Q.219. *In Exhibit D-2, while making an analysis of Sale Instance No.1, you have considered a rise/escalation of rate 10% per annum between 1995 and 1997. Is that correct?*

Ans. Yes.

Q.220. *Will you agree as an Expert Valuer that there was a steady rise in the rate of lands and immovable properties from 1995 onwards until 2001 after which there was a recession which was set into and which lasted up to 2004?*

Ans. Yes.”

“Attention of the witness is drawn to Exhibit "D-14" Valuation Report in LAR Bo.1 of 2004.

Q.224. *On internal page 6 of your Valuation Report, you have considered a rise factor of 70% on the value/rate of the acquired land as on the relevant date in LAR No.7 of 2000 for computing and calculating the rate of the acquired land in LAR No.1 of 2004 Valuation Report, you have considered a rise factor of 70% on the value/rate of the acquired land as on the relevant date in LAR No.7 of 2000 for computing and calculating the rate of the acquired land in LAR No.1 of 2004. Is that correct?*

Ans. *Yes. My statement is in relation to Mr. Wadke's Valuation Report.*

Q.225. *Is it correct that in Exhibit "D-14", you had considered evaluation of the same three instances which you have considered in Exhibit "D-2" (LAR No.7 of 2000) and on internal page 4 of Exhibit D- 14, you have discarded all three*

sale instances?

Ans. Yes.

Q.226. Is it correct to state that your Exhibit D-14 and the Annexures thereto viz. the two sales instances, Plan 1, Plan 2 and 4 Tabular statements are exactly identical to Exhibit D-2?

Ans. Yes.

Q.227. Is it correct to state that the only difference in Exhibit D-2 and D-14 is that in LAR Number of the respective matters are LAR No.7 of 2000 and LAR No.1 of 2004?

Ans. Yes.

Q.228. In that case, would you agree that the answer you have given to the questions asked in respect of Exhibit D-2 and the Annexures thereto Viz. Exhibit D-2 to Exhibit D-2 to Exhibit D-10 would be identical and same in respect of Exhibit D-14 i.e. LAR No.1 of 2004?

Ans. Yes.

Q.229. Do you wish to change any of your answers in respect of LAR No.1 of 2004 and more specially, Exhibit D-14 relating to factorization of the various factors since in Annexure 8 to your Valuation Report, you have given your opinion but have left the column of allowances as blank?

Ans. No, I do not wish to change any of my answers relating to factorization and I maintain the same.

58. In view of the above discussion, this Court finds no merit in the submissions advanced on behalf of the SLAO, and the same are accordingly rejected. This Court is, therefore, of the view that, for the purpose of determining the fair market value of the subject land, reliance can be placed upon the comparable sale instance of built-up property produced and relied upon by the Claimant.

59. As already noted above, the SLAO has failed to lead any evidence in support of his contention that the market rate of Rs. 3,220 per square meter, as determined in the Award, ought to be upheld by this Court. No witness has been examined on behalf of the SLAO to justify the basis or methodology adopted for arriving at the said valuation. In *Chimanlal Hargovinddas* (supra), the Supreme Court has categorically held that a reference under Section 18 of the said Act is to be treated as an original proceeding, wherein the Reference Court is required to determine the market value of the acquired land afresh on the basis of the evidence and material placed before it. In view thereof, and in the absence of any cogent evidence led by the SLAO in support of the awarded rate, this Court is duty-bound to undertake an independent assessment of the market value of the acquired land and determine just and fair compensation payable to the Claimant on the basis of the material available on record.
60. However, before proceeding further, it is necessary to deal with an additional contention advanced on behalf of the Acquiring Body, namely, Central Railways. It was submitted that the subject land was incapable of any development whatsoever, since the land forming the subject matter of LAQ No. 383, which was acquired under LAR No. 7 of 2000, had already vested in Central Railways upon acquisition and had consequently become railway

property. It was further contended that possession of the said land was taken on 4th June 1999 and, in view of the applicable Railway Board Circulars and the Development Control Regulations then in force, no development was permissible within a distance of 30 meters from the railway boundary line. On this basis, it was urged that the said land had no development potential, and the same ought to be factored while determining its market value.

61. The aforesaid contention cannot be accepted. Significantly, Central Railways has not led any evidence whatsoever in support thereof. If Central Railways intended to rely upon such a contention, it was incumbent upon it to establish by cogent evidence, firstly, that the subject land was in fact situated within the alleged prohibited distance of 30 meters from the railway boundary, and secondly, that by reason thereof no development was legally permissible on the subject land as on the relevant date. No such foundational evidence has been adduced.

62. Equally, the witnesses examined on behalf of the Claimant were never confronted in cross-examination with the Railway Board Circulars, the Development Control Regulations, or any other material now sought to be relied upon during final arguments. Had such material been put to the witnesses, they would have had an opportunity to meet the same, including by challenging its applicability or demonstrating that, notwithstanding such

restrictions, the subject land continued to possess development potential. In the absence of any foundational pleadings or evidence, and having regard to the fact that the issue raised involves disputed questions of fact, Central Railways cannot be permitted to raise and substantiate such contention for the first time at the stage of final arguments. The said contention is, therefore, rejected.

63. This Court is also mindful of the submission advanced by Mr. Mishra that certain developments in the vicinity of the subject land, relied upon by the Claimant in support of its claim for enhanced compensation, including the construction of a high-rise residential tower, came into existence subsequent to the date of issuance of the Section 4 notification. In *Oil and Natural Gas Corporation* (supra), the Supreme Court has reiterated the well-settled principle that post-notification transactions and developments are ordinarily to be excluded while determining the market value of acquired land, as the acquisition itself, and the consequent developmental activity in the surrounding area, may result in a sudden or artificial escalation in prices.
64. This Court shall now proceed to determine the market value of the subject land which forms the subject matter of the present Reference. Upon consideration of the evidence on record, the comparable sale instance relied upon by CW-2 in his valuation report is the Agreement for Sale dated 29th

February 2000, under which a flat admeasuring 80 square meters (carpet area) on the 14th floor was sold for a consideration of Rs. 14,00,000. From the cross-examination of CW-2, it emerges that the said area was stated in terms of carpet area, and that, for the purposes of valuation, the corresponding built-up area would be approximately 20% higher, viz. 96 square meter. On that basis, the market value of the said flat works out to Rs. 14,584 per square meter (i.e. Rs. 14,00,000 ÷ 96 square meters).

65. However, in order to ascertain the market value of the said land, necessary deductions are required to be made from the aforesaid figure towards, inter alia, cost of construction and miscellaneous expenses. On the basis of the material placed on record, the said deductions aggregate to Rs. 8,400. In addition thereto, developer's profit at 15% on the said amount (viz. Rs. 1,260) is also required to be deducted. Accordingly, a total deduction of Rs. 9,660 (Rs. 8,400 + Rs. 1,260) is required to be made from the figure of Rs. 14,584 in order to arrive at the value of the land component. On such computation, the value of the land component works out to Rs. 4,924 per square meter. This Court is of the view that no further addition on account of escalation is warranted, and accordingly, the value of the land component of the sale instance property is determined, on a rounded-off basis, at Rs. 4,900 per square meter.

66. The next exercise required to be undertaken is a comparison of relevant factors between the sale instance plot and the subject land, including *inter alia* its size, shape, access, frontage, availability of civic amenities, potential user, proximity to the railway station, proximity to the highway, and other special advantages, followed by the assignment of appropriate positive and negative adjustments while comparing the two properties, as laid down in *Chimanlal Hargovinddas* (supra). The aforesaid position has been reiterated in *Viluben Jhalejar Contractor* (supra), wherein the Supreme Court has observed that determination of compensation in land acquisition matters cannot be made with mathematical precision. Bearing the aforesaid principles in mind, this Court is of the view that an upward adjustment of only 30% is warranted on the value of the land component of the sale instance property. The said adjustment works out to Rs. 1,470 (*viz.* 30% of Rs. 4,900), resulting in a figure of Rs. 6,370 per square meter (Rs. 4,900 + Rs. 1,470). The same is accordingly rounded off to Rs. 6,400 per square meter, as the fair market value of the said land.
67. In view of the above findings and observations, the present Land Acquisition is party allowed in the following terms :

- (i) The Claimant is entitled to compensation towards market value of the said land at the rate of Rs. 6,400 per square meter as on the relevant date, namely, 16th August 2000.
- (ii) The Claimant is entitled to statutory interest 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 Claimant is entitled to solatium at the rate of 30% on the enhanced compensation under Section 23(2) of the said Act.
- (iv) The Claimant is entitled to interest under Sections 28 and 34 of the said Act, as applicable, on the enhanced compensation until realisation.
- (v) The amount already paid to the Claimant 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 Claimant and ensure disbursement thereof in accordance with law.
- (vii) The Claimant 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 already paid under the Award under Section 11 of the said Act, shall pay the balance amount to the Claimant 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 present Land Acquisition Reference is accordingly disposed of. There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil