2009 (C) GLR 467

Before the Hon'ble MR H K RATHOD, JUSTICE

THE MANAGING DIRECTOR Vs. SUNDERLAL MANEKLAL MODI AND ANR.

CIVIL APPELLATE No: 2766 of 2009 , Decided On: 20/07/2009

Nanavati Associates, for the Appellant.

H. K. RATHOD, J. Heard learned senior Advocate Mr. Mihir Joshi for Nanavati Associates appearing on behalf of appellant and learned A.G.P. Mr. Janak Raval and learned A.G.P. Mr. Anand L. Sharma appearing on behalf of respondents-State authorities.

2. The appellant is challenging an award passed by Reference Court, Bharuch by way of these appeals.

3. In First Appeal Nos. 2773 to 2790 of 2009, where, Reference Court had decided L.A.R. Case Nos. 555 of 1988 to 572 of 1988 (Main L.A.R. Case No. 565 of 1988) Group of 18 cases were decided on 29th September, 2007 vide Exh. 114. The Reference Court has awarded additional market value of lands acquired by State Government Rs. 365/- per Are together with consequential benefits in favour of claimants.

4. In First Appeal Nos. 2838 of 2009 to 2844 of 2009, Reference Court has decided Land Reference Court Nos. 88 of 1987 to 94 of 1987 (Main L.A.R. No. 88 of 1987) on 17th March, 2008 vide Exh. 115. The Reference Court has awarded additional amount of compensation in favour of claimants of L.A.R. No. 88 of 1987 Rs. 17-50 ps., per sq.mtrs., in L.A.R. Nos. 89 of 1987 and 90 of 1987 are entitled to get Rs. 19/- per sq.mtrs., the claimants of L.A.R. Nos. 91 of 1987 to 93 of 1987 are entitled to get Rs. 18/- per sq.mtrs., and claimants of L.A.R. No. 94 of 1987 are entitled to get Rs. 16/- per sq.mtrs., for their acquired rent as additional compensation over and above compensation already awarded by Special Land Acquisition Officer.

5. First Appeal Nos. 2766 of 2009 to 2771 of 2009, Reference Court has decided L.A.R. Case Nos. 448 of 1988 to 453 of 1988 on 31st July, 2008 Exh. 96 and awarded Rs. 435/- per Are as additional compensation over and above awarded by Land Acquisition Officer (in short L.A.O.).

6. In all three group of appeals, where, award passed by Reference Court concerned are under challenge by appellant. In all group of appeals as referred above, almost challenge are common. The first challenge of appellant is that Reference Court has committed gross error to consider post notification and sale-deed in absence of evidence as there is no price-rise adduced by claimant which cannot be taken into account. There is no evidence that prices remained stable during interim period. The award passed by L.A.O. on basis of consent of claimants and Rs. 173/- per Are was paid to claimants on basis of agreement prior to Sec. 4 notification.

7. The contention is also raised in detail in respect of limitation by learned senior Advocate Mr. Joshi. In case of post-notification, Exh. 12 sale-deed cannot be relied in view of decision of Apex Court in case of K. Posayya v. Special Tahsildar reported in AIR 1995 SC 1641. The claimants have received amount of compensation from acquiring body before Sec. 4 notification and contention of consent given by claimant is also raised before Reference Court.

8. Learned senior Advocate Mr. Joshi submitted that method which has been adopted by Reference Court in respect of each award which is under challenge is contrary to settled principles of law laid down by Apex Court in case of Administrator Genl. of West Bengal v. Collector, Varanasi, reported in AIR 1988 SC 943, in case of Mehta Ravindra Ajitrai (Deceased by L.Rs.) & Ors. v. State of Gujarat, reported in AIR 1989 SC 2051 and in case of Pal Singh & Ors. v. Union Territory of Chandigarh, reported in AIR 1993 SC 225. He submitted that under Sec. 18(2) if claimant was not remained present before L.A.O. at the time when award is declared, then, within six months, reference is to be made, but in facts of this case, References have been made beyond period of six months, therefore Reference Court has no jurisdiction and References are barred by limitation. He also raised contention that Limitation Act, 1963 is not applicable for condoning delay of period of six weeks or six months under Secs. 18(1) and 18(2) of Land Acquisition Act (for short L.A. Act). Therefore, according to him, Reference Court has committed gross error in deciding Reference awarded additional compensation in favour of claimants. He relied upon decision in case of Pal Singh & Ors. v. Union Territory of Chandigarh, reported in AIR 1993 SC 225, Para 5 is quoted as under :

"5. No doubt, a judgment of a Court in a land acquisition case determining the market value of land in the vicinity of the acquired lands, even though not inte partes, could be admitted in evidence either as an instance on one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H. K. Mallicks case (supra) based on the authority of the Judicial Committee of the Privy Council in Secretary of State v. Indian General Steam Navigation and Railway Co., 1909 (36) ILR Cal. 967, where the Judicial Committee did refuse to interfere with High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the cases on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to market value of land in the vicinity. Much less is there any evidence aliunde adduced by them in the cases on hand to show that due regard being given to all attendant facts and circumstances, it could form the basis for determining the market value of their acquired lands. Hence, there is no justification for us to act upon a subsequent judgment of the High Court, cited before us from a Law Report, to enhance the market value of the acquired lands of the petitioners merely because it was claimed on their behalf that the market value of the lands concerned therein could become evidence for determining the market value of the lands concerned in the appeals respecting which the present Special Leave Petitions are filed. Moreover, when judgment is rendered by a Court determining the market value of lands acquired under the Act, by agreement of parties, such judgment becomes final and it would not be open to any of the parties thereto to appeal

against that judgment. Hence, these Special Leave Petitions are liable to be dismissed. S.L.P. (C) Nos. 7391, 7392, 7394 and 7395 of 1980."

9. Learned senior Advocate Mr. Joshi also relied upon decision of Apex Court in case of Administrator Genl. of West Bengal (supra) reported in AIR 1988 SC 943. The relevant is Head Note C, therefore, it is quoted as under :

"(C) Land Acquisition Act (1 of 1894) - Sec. 23 - Acquisition of Land - Evidence - Market value - Determination - Sale transactions subsequent to preliminary notification in respect of land acquired can be relied upon for determining market value of land under acquisition on proof that market was stable between date of preliminary notification and transaction in question - Burden to prove aforesaid is on party wanting to rely on it - Evidence Act (1 of 1872) - Sec. 101, Sec. 102, Sec. 103, Sec. 104.

Subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further, under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. But this principle can be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction. (Para 6)"

10. He also relied upon decision of Apex Court in case of Mehta Ravindra Ajitrai (Deceased by L.Rs.) & Ors. (supra) reported in AIR 1989 SC 2051 - Head Note A to C, which is quoted as under :

"(A) Land Acquisition Act (I of 1894) - Sec. 23 - Acquisition of Land - Market value - Determination - Sale of adjacent land - Relevancy - Agreement of sale five months after Sec. 4 notification - Acquisition though for construction of industrial estate, no sharp or speculative rise in price after acquisition - Sale could not be ignored.

The market value of a piece of property for purposes of Sec. 23 is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. (Paras 4 and 5)

Where the sale of land adjacent to acquired land was cited as instance for determination of market value, the same could not be altogether ignored merely because it was a post-acquisition sale when there was no evidence indicating that there was sharp or speculative rise of the land after acquisition. Of course, some deduction from the price indicated in the sale-deed had to be made for factors such as rise in prices of land after the acquisition. (Paras 4, 5 and 8)

(B) Land Acquisition Act (I of 1894) - Sec. 23 - Acquisition of Land - Market value - Determination - Sale-deed over a year prior to notification of acquisition - Sale, distress sale in that it was at Govt. auction - Execution applications pending against vendor - Price appearing in the sale does not furnish reliable guidance. (Para 6)

(C) Land Acquisition Act (I of 1894) - Sec. 23 - Acquisition of Land - Market value -

Determination - Instance of sale - Relevancy - Neither vendor nor purchaser nor any person conversant with sale, examined - Only certified copy produced - Person for whom property was purchased and who was minor at time of execution of sale-deed, examined - Witness not having personal information regarding transaction - Another witness also not having personal knowledge about sale - Sale-deed cannot be relied upon. (Para 7)"

11. He also referred and relied upon provisions of Sec. 18 of Land Acquisition Act and submitted that as per Sec. 18, from date of award passed by L.A.O. within six months, reference is to be made by claimant. He submitted that in this group of appeals, award passed by Reference Court concerned is also challenged on ground of delay means reference is barred by limitation. That aspect is also not properly considered by Reference Court.

12. In short, submission of learned senior Advocate Mr. Joshi is that in each award of three groups, Reference Court has not properly decided matters and Reference Court has committed gross error in deciding References as well as evidence produced by appellant is not properly appreciated and no detailed reason is given in support of his conclusion and there is also not a clear conclusion that how award passed by Land Acquisition Officer (for short L.A.O.) is inadequate and having meagre amount. Therefore, according to him, interference is required by this Court. Except that, no other submission is made by learned senior Advocate Mr. Joshi on behalf of appellant.

13. Learned A.G.P. Mr. Raval as well as learned A.G.P. Mr. Sharma, both, support the award passed by Reference Court. They submitted that Reference Court has rightly awarded compensation and Reference Court has not committed any error. Therefore, no interference is required by this Court.

14. I have considered submissions made by all learned Advocates appearing on behalf of respective parties. I have also perused award passed by Reference Court in each group of Appeals.

15. I am considering award passed by Reference Court concerned in respect of First Appeal Nos. 2766 of 2009 to 2771 of 2009.

16. The Reference Court concerned has decided L.A.R. Case Nos. 448 of 1988 to 453 of 1988 (Main L.A.R. Case Nos. 448 of 1988) on 31st July, 2008 Exh. 96. The L.A.O. has passed an award on 23rd March, 1987 in L.R. Case No. 14 of 1985 in respect of claimants land situated within revenue boundary of village Chanderiya, Tal. Valiya, District Bharuch. As L.A.R. Case Nos. 448 of 1988 to 453 of 1988 have arisen out of common award passed in Land Acquisition Case No. 14 of 1985. The Special L.A.O., Bharuch at the instance of Narmada Valley Fertilizer Company was pleased to publish notification under Sec. 4 dated 3rd January, 1986 for acquiring present claimants land. Section 6 notification is dated 17th April 1986. Sec. 9 has been complied by giving opportunity of being heard on 19th July 1986. Thereafter, L.A.O. has passed an award on 23rd March, 1987 where Rs. 50/- per Are has been awarded being a compensation in favour of claimants. According to claimant, amount of compensation awarded at a very low rate than rates prevailing as a market rate of land at the relevant time. According to claimant, considering geographical situation, fertility and crops, etc., of land under acquisition, Special L.A.O. ought to have awarded compensation at the rate of Rs. 500/- per Are, but pending trial of reference petitions of present group, they have raised their claim from Rs. 500/- per Are to Rs. 1800/- per Are with other consequential benefits. The Government Pleader - opponent No. 1 had appeared and objections were filed vide Exh. 6. The appellant-Managing Director, Narmada Valley Fertilizer Company, Bharuch, was a party to reference. The contention raised by Government that references made by claimants are barred by limitation and Sec. 9 notice was issued to claimants, but not

submitted any sale instances for assessment of market value of their lands under acquisition and claimants have accepted amount unconditionally, present references are not tenable. Further contention was raised by Government that amount awarded by L.A.O. being a just, adequate and does not warrant any interference by Reference Court. The appellant has filed objection Exh. 12, wherein, contention is raised that market value of claimants land has been fixed with consent of parties i.e. acquiring body and claimants. Before L.A.O., Bharuch, number of documents were produced by acquiring body and after considering it, compensation has been, awarded therefore, award passed by L.A.O. does not warrant any interference of Reference Court. Thereafter, issues have been framed by Reference Court Exh. 14 and reasons have been given in support of Issue Nos. 1 and 2 in Para 8. Relevant Paras 12 to 14 of award passed by Reference Court are quoted as under :

"12. Considering the arguments of both the sides, learned Advocates, a serious question has surfaced for the determination by this Court that whether under Sec. 51A of the said Act, the certified copies are admissible in evidence without examining the vendor or the vendee of concerned sale transaction and if they are admissible in evidence whether they can be taken as conclusive evidence or rebuttable evidence. In the case of Meharban & Ors. v. State of U.P. & Ors., 1997 (2) LAC 225, relied upon by the learned Advocate Shri A. R. Chauhan, no doubt it is held by the Honble Supreme Court,

"Since none connected with the sale-deeds was examined, the sale-deeds are inadmissible in evidence though certified copies marked under Sec. 51A are available. So, all the sale-deeds stand excluded."

"Even recently in the case of Vasudev Chunilal Pancholi (deceased) through his heirs & Legal representative Narhari Vasudev Pancholi & Ors. v. Land Acquisition Officer (on Special Duty) & Ors., reported in 2007 (3) GLR 2280. The sale-deed placed on record was discarded by the Reference Court. Being aggrieved and dissatisfied from the award passed by the Reference Court, the matter was carried before the Honble High Court of Gujarat. The Honble High Court of Gujarat (Coram : Honble Mr. Justice Jayant Patel) has held that the trial Court has not committed any error in discarding the said sale-deed, for non-examination of either the vendor or the vendee, but the same question was raised before the Honble Supreme Court in the case of Cement Corporation of India Ltd. v. Purya, AIR 2004 SC 4830 and the Constitutional Bench of the Honble Supreme Court (Honble Mr. Justice N. S. Hegde, Honble Mr. Justice S. N. Variava, Honble Mr. Justice B. P. Singh, Honble Mr. Justice H. K. Sema and Honble Mr. Justice S. B. Sinha after referring to various case-law on this point was pleased to hold :

Section 51-A of the L.A. Act may be read literally and having regard to the ordinary meaning which can be attributed to the term acceptance of evidence relating to transaction evidenced by a sale-deed, its admissibility in evidence would be beyond any question. Only by bringing a documentary evidence in the record it is not automatically brought on the record, for bringing a documentary evidence on the record, the same must not only be admissible, but the contents thereof must be proved in accordance with law. But when the statute enables a Court to accept a sale-deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale-deed by itself could not be held to be inadmissible, as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale-deed would automatically be accepted. The legislature advisedly has used the word may. A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking

into consideration the relevant factors.

13. In the aforesaid case-law, the Honble Supreme Court was further pleased to hold

A registered document in terms of Sec. 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the Court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the Court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf.

14. Thus, considering the principles laid down by the Honble Supreme Court in the case of Cement Corporation of India Ltd. v. Purya, AIR 2004 SC 4830. Now it is settled position of law that the certified copies of a registered sale-deed are admissible in evidence under Sec. 51A of the said Act and the genuineness of the sale transaction is presumed, but the contents of the sale transaction does not carry a conclusive proof but they are rebuttable."

17. The Reference Court has considered sale instances of part of same or surrounding land is the best method to assess market value of land in question. Shri Ismail Ahemad Shaikh - claimant of L.R.C. No. 449 of 1988 was examined before Reference Court vide Exh. 63 and documentary evidence is produced on record vide Exh. 58 containing three documents i.e. map of revenue boundary of village Chanderiya (Exh. 59), copy of previous award passed by Reference Court in L.R.C. No. 392 of 1993, etc., previous award passed in L.R.C. No. 220 of 1993, etc., at Exhs. 60 and 61, respectively. After considering evidence of claimant, claimants have neither placed on record nor have relied upon on any sale instances, even on behalf of opponent No. 1 neither any sale instances have been placed on record nor any reliance has been placed on any sale instances. But, on behalf of Opponent No. 2, present appellant, one Shri Hiteshkumar Premabhai Tadvi, an employee of Sub-Registrar office is examined at Exh. 87. Further, on behalf of opponent No. 2, xerox copies of sale-deed are placed on record at Exhs. 15 to 18 and index of registration of sale-deed and xerox copy of sale-deed registered with Sub-Registrars office are placed on record with list Exh. 88 from Mark 88/1 to 88/24 through witness called from Sub-Registrars office Shri Hiteshkumar Premabhai Tadvi.

18. On behalf of claimants, contention has been raised that no doubt, xerox copies of sale-deed are placed on record on behalf of opponent No. 2 at Exhs. 15 to 18 and index of registration of sale-deed and xerox copies of sale-deed at mark 88/1 to 88/24. But, as neither vendor nor vendee of either of sale transaction has been examined by or on behalf of opponents, no reliance can be placed on Exhs. 15 to 18 or mark 88/1 to 88/24.

19. On behalf of appellant, one decision of Apex Court in case of Cement Corporation of India Ltd. v. Purya reported in AIR 2004 SC 4830 has been relied upon and contended that certified copy of registered sale-deed are admissible in evidence, and there is no need to examine either vendor or vendee of registered sale transaction.

20. After considering arguments from both sides, Reference Court has examined matters in details.

21. The Apex Court in case of Meharban & Ors. v. State of U.P. & Ors., reported in 1997 (2) LAC 225, where following observations have been made which is quoted as under :

"Since none connected with the sale-deeds was examined, the sale-deeds are inadmissible in evidence though certified copies marked under Sec. 51A are available. So, all the sale-deeds stand excluded."

22. Event this Court, in a case of Vasudev Chunilal Pancholi (Deceased) Through His Heirs & Legal Representative Narhari Vasudev Pancholi & Ors. v. Land Acquisition Officer (on Special Duty) & Ors., reported in 2007 (3) GLR 2280 has held that trial Court has not committed any error in discarding sale-deed for non-examination of either vendor and vendee, but same question was raised before Apex Court in case of Cement Corporation of India Ltd. (supra).

23. After referring various case-law on this point, Apex Court in Ranvir Singh v. Union of India, AIR 2005 SC 3467, has held as under :

"Section 51A of the Land Acquisition Act may be read literally and having regard to the ordinary meaning which can be attributed to the term "acceptance of evidence" relating to transaction evidence by a sale-deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record, it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a Court to accept a sale-deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of a sale-deed by itself could not be held to be inadmissible as thereby a secondary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This however, would not mean that the contents of the transaction as evidenced by the registered sale-deed would automatically be accepted. The legislature advisedly has used the word may A discretion, therefore, has been conferred upon a Court to be exercised judicially i.e. upon taking into consideration the relevant factors."

24. The Apex Court further held as under :

"A registered document in terms of Sec. 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the Court may act only the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the Court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf."

25. Therefore, Reference Court has relied upon decision of this Court as well as Apex Court considering Sec. 51A of L.A. Act and genuineness of sale transaction is presumed, but contents of sale-transaction does not carry a conclusive proof, but they are rebuttable.

26. The appellant has produced certain documents relating to sale-deed of different blocks as referred in Para 15, but these are all xerox copies of sale-deed. In support of that Mr. Tadvi has examined by appellant and admitted that after a document is presented for registration in Registrar office, an officer of cadre of Deputy Collector has been appointed to check stamp duty and Deputy Collector (sic.) stamped after examining document has to consider that whether valuation of property is done properly or not, and if valuation has not been done properly then party is called

upon to deposit deficit stamp duty. He further admitted that though, he has produced index of registration of sale-deed and xerox copies of sale-deed, but he is not in a position to say that whether valuation of property shown in said sale-deed have been found proper by Deputy Collector stamped. Further, though, he has admitted that Government publishes a jantri about valuation of property of each area, and accordingly, stamp duty is charged, but he is not in a position to say that whether documents placed on record by him have been valued as per rate fixed by Government. He also admitted that he is not in a position to say that valuation made in document placed on record is proper valuation. Therefore, judicial notice has been taken by Reference Court for avoiding stamp duty, vendor and vendee of immovable properties are not showing correct valuation in sale-deed and considering Exhs. 16 to 18 and mark 88/1 to 88/24, valuation of property shown between Rs. 1200/- to Rs. 1800/- per Acre which certainly appears to be much below to prevailing market rate of landed property at the relevant time. Except that, no other sale-deed has been produced by appellant. The claimants have discharged their burden of rebuttal evidence by cross-examining opponents and witness and have proved to the satisfaction of Court that xerox copies of sale-deed placed on record, does not disclose correct market value of land under sale by those sale-deed. Therefore, Reference Court has come to conclusion that claimants land cannot be assessed on basis of Exhs. 16 to 18, and mark 88/1 to 88/24. The appellant has further raised contention that during acquisition proceeding, except owner of Block Nos. 230 and 205, owners of other land under acquisition had agreed to sell their lands at rate of Rs. 7000/- per Acre and had executed agreement, which are placed on record at Exhs. 72 to 76. Therefore, claimants are not entitled to get any compensation more than Rs. 7,000/- per Acre. The claimants raised contention that Exhs. 72 to 76 are documents which were executed by claimants for delivery of possession, but, by committing fraud, signature of claimants were taken on Exhs. 72 to 76 and when claimants came to know about fraud, even they had served notice for fraud to acquiring body and further contention raised by claimant that if claimant had agreed to sell their land at the rate of Rs. 7000/- per Acre and had executed agreement, in that case, L.A.O. ought to have declared award by compromise instead of declaring award after adjudication. Therefore, according to claimant, these Exhs. 72 to 76 were obtained by fraud. Section 11(2) of L.A. Act has been taken into account and if any stage of inquiry under said Act, if Collector has satisfied that parties have agreed in writing on matter to be included in award of Collector then he has to declare award in terms of agreement without any further inquiry. But, L.A.O. has proceeded further for assessing market value of claimants land at the rate of Rs. 50 per Are. Therefore, Reference Court has observed that Reference Court is unable to understand that if, agreement Exhs. 72 to 76 was placed before L.A.O., where Rs. 175/- per Are under Sec. 11(2) of the said Act, then, L.A.O. is bound to declare his award in terms of agreement arrived at between parties, if, he was satisfied that agreement is with free consent. But, L.A.O. has decided matter on merits and ignored rightly Exhs. 72 to 76. The Reference Court has considered Exhs. 72 to 76, where, name of owner of land, block number, area and date of taking possession in hand written and in Para 11, compensation agreed upon is printed which shows that some fraud was committed on claimants and their signatures on Exhs. 72 to 76 were obtained under pretext of taking their signature on possession receipt.

27. According to evidence of claimant, Shri Ismailbhai Ahmadbhai Sheth has filed his examination-in-chief in form of affidavit, wherein, after giving details of acquisition proceedings, he has stated that claimants land were black alluvial fertile soil and claimants by taking crop of cotton, millet, pigeon pea and paddy were getting gross annual yield at rate of about Rs. 50,000/- per Acre, out of which, 40% deducted for spending towards agriculture expenses. Out of their total land under acquisition, 50% land was having irrigation facility, but, in support of aforesaid contention, claimants have not placed any documentary evidence on record much less, 7/12 extract to show as to what crops, claimants were taking in their land under acquisition. Therefore, in absence of evidence from claimant, Reference Court has come to conclusion that land cannot be assessed on

basis of annual yield. The Reference Court has considered a map of revenue boundary of village Chanderiya with village Dharoli which is adjoining to each other having common revenue boundary and copy of previous award passed in respect of claimants land of village Dharoli in group of L.A.R. No. 392 of 1993 at Exh. 60, where, Reference Court, Bharuch has awarded Rs. 800/- per Are, but, in that case, notification under Sec. 4 Exh. 60 was published on 1st September, 1988 as in present case, publication of Sec. 4 notification was 2 years and 7 months later. Therefore, according to claimant, Rs. 600/- per Are may be awarded. The copy of previous award passed in L.A.R. No. 220 of 1993 was produced on record by claimant, where, Rs. 1300/- per Are with 10% market price Exh. 61 has been awarded and in that case, Sec. 4 notification was dated 9th April, 1991 which is about 5 years and 6 months later. The Reference Court has considered various decisions; in case of Land Acquisition Officer, Ganjam v. A. Krishna Murty Patnaik reported in AIR 1984 Orissa 6, in case of Officer on Special Duty (Land Acquisition) G.I.D.C., Ahmedabad v. Jamkuben Kalidas Sodha & Ors., reported in 1992 (1) GLH 417, in case of Second Additional Special Land Acquisition Officer & Ors. v. Chunilal Gangaram & Ors., reported in 1999 (2) GLR 1357 and certain other decisions are also considered. Thereafter, Reference Court has considered Sec. 23(1)(A) and Sec. 28 of Land Acquisition Act. The relevant discussions are made in Paras 24 to 26, which are quoted as under :

"24. In the present group of land reference cases, on behalf of the claimants, the reliance has been placed on previous award Exh. 60 passed by the learned 3rd Jt. Civil Judge (Sr. Div.), Bharuch in the group of L.R. Case Nos. 392 of 1993, 393 of 1993 and L.R. Case Nos. 777 of 1992 and 778 of 1992, in respect of the claimants land, situated in the revenue boundary of village Dharoli, and the previous award Exh. 61, passed by the learned Extra Assistant Judge, Bharuch, in the group of L.R. Case Nos. 220 to 227 of 1993 also in respect of the claimants land situated within the revenue boundary of village Dharoli. No doubt, considering Exh. 60, the learned 3rd Jt. Civil Judge (S.D.), Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 392 of 1993, 393 of 1993, L.R. Case Nos. 777 and 778 of 1992 at the rate of Rs. 800/- per Are. Whereas, considering Exh. 61, the learned Extra Assistant Judge, Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 220 to 227 of 1993 at the rate of Rs. 1300/- per Are, but as under Sec. 23 of the "said Act", the compensation has to be assessed on the date of issuance of the notification, under Sec. 4 of the "said Act". The date of issuance of the notification under Sec. 4 of the "said Act" is material, for assessing the compensation. Considering the previous award Exh. 60, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 392 and 393 of 1993 was published on 1-9-1988, and the notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992, was published on 2-11-1998. Whereas, considering Exh. 61, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 to 227 of 1993, was published on 9-7-1991. Whereas, the notification, under Sec. 4, for acquiring the present claimants land was published on 3-1-1986, that means the notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 392 and 393 of 1993 (dated 1-9-1988) was published 2 - years, 7 - months and 28 - days, i.e. about 32 months later than the publication of the notification under Sec. 4, for acquiring the present claimants land. Whereas, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 of 1992 and 7778 of 1992 (dated 2-11-1988) was published 2 - years, 10 - months and 29 - days i.e. about 35 months later than the publication of notification, under Sec. 4, for acquiring the present claimants land, and the notification under Sec. 4, for acquiring the claimants land, and the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 to 227 of 1993 dated 9-7-1991 was published 5 - years, 6 - months and 6 - days i.e. about 66 - months later than the publication of the notification under Sec. 4 of the "said Act", for acquiring the present claimants land. That means the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 to 227 of 1993 was published much later than the publication of notification, under Sec. 4, for acquiring the present claimants

land, but, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 392 of 1993, 393 of 1993 was published only about 32 - months later than the publication of notification under Sec. 4, for acquiring the present claimants land, and the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 and 7778 of 1992 was published only about 35 months later than the publication of notification under Sec. 4, for acquiring the present claimants land. Therefore, in the considered opinion of this Court, as Exhs. 60 and 61, are the previous awards, in respect of the claimants land of the revenue boundary of village Dharoli itself, it would be better to assess the market value of the present claimants land on the basis of Exh. 60 instead of Exh. 61.

25. As the learned 3rd Jt. Civil Judge (S.D.), Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 392 of 1993 and 393 of 1993 at the rate of Rs. 800/- per Are, but the notification under Sec. 4 of the "said Act", for acquiring the present claimants land having been published on 3-1-1986 i.e. 32-months earlier than the publication of notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 392 and 393 of 1993. Therefore, considering the market price-rise of the agricultural produce and the landed property day in and day out, if, the market price-rise is considered at 12% p.a. in conformity with Sec. 23(1A) of the "said Act", if, the market value of the present claimants land is assessed at 68% of the assessed market value of the claimants land of L.R. Case Nos. 392 and 393 of 1993 (Exh. 60) incomes (68% of Rs. 800/- = Rs. 544/-) Rs. 544/- per Arey. Further, as the notification under Sec. 4, for acquiring the present claimants land was published about 35 - months earlier than the publication of notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992 (Exh. 60) it comes to (65% of Rs. 800/- = 520) Rs. 520/- per Are, but, reading Exh. 60 between the lines, it appears that the claimants land of that group of L.R. Cases was also divided in parts and that aspect was also considered by the learned 3rd Jt. Civil Judge (S.D.), Bharuch at page No. 13 of Exh. 60, and proviso thirdly appended to Sec. 23(1) of the "said Act" provides that :

"The damage, if any sustained by the person interested at the time of Collector taking possession of the land by reason of severing such land from his other land". Meaning thereby if, due to acquisition, the land is divided in parts that aspect has also to be considered while assessing the compensation. In the instant case, the claimants have not come forward with a case that due to acquisition their land has been divided in parts. Therefore, as on the basis of the previous award Exh. 60, the market value of the present claimants land comes to Rs. 544 and/or 520/- per Are. Considering the none severance of the present claimants land, if, the market value of the present claimants land is assessed at Rs. 485/- i.e. about 10% less than the assessed market value of the claimants land of Exh. 60 due to severance of their property. The end of justice will be served.

26. As on the basis of the previous award Exh. 60, the market value of the present claimants land has been assessed at Rs. 485/- per Arey, but, the Spl. L.A.O. having awarded only Rs. 50/- per Arey, certainly it can be said that the market value awarded by the Spl. L.A.O. is unreasonably low. In the result, I answer issue No. 1 in the affirmative."

28. The Reference Court has decided Issue No. 2 and come to conclusion that amount of Rs. 485/- assessed as a market value after deducting Rs. 50/- which comes to Rs. 435/- per Are being an additional amount of compensation in favour of claimant.

29. Issue No. 3 is in respect of limitation. The Reference Court has discussed it in Paras 31 to 33 as well as in Para 35 and considered law on subject limitation under Sec. 18 of L.A. Act. The relevant observations made in Para 35 which is quoted as under :

"35. Now, so far as the later part of proviso (b) appended to Sec. 18(2) is concerned, it provides that if, the claimants were neither present, nor represented before the Collector (Dy. Collector & Spl. L.A.O. in the instant case) when he declared his award, nor they have been served with the notice under Sec. 12(2) of the "said Act", in that case, the reference has to be made within six months from the date of the Collectors award. In case of Shambhunath Kshetri & Ors. v. State of West Bengal & Ors., 2002 LAC 389 (Calcutta High Court), and the case of Rameshchandra Bhogilal Parikh v. Collector of Dadra Nagar Haveli & Ors., 1997 (2) LAL 419 (Bombay High Court), and in the case of Special Land Acquisition Officer v. Nathaji Kacharaji, 2002 (1) GLR 642 : 2002 (1) GCD 108 (Honble High Court of Gujarat). The question before the Honble High Court of Calcutta, Bombay and Honble High Court of Gujarat was the later part of proviso (b) appended to Sec. 18(2) of the "said Act", which provides "or within the six months from the date of Collectors award", and in the aforesaid judgments, the emphasis was "the date of collectors award". The need for interpreting "the date of Collectors award" arose, because the reference application was preferred after the expiry of six months from the literal date of the Collectors award (as in the instant case). Therefore, the consideration before the Honble High Court of Calcutta, Bombay and Honble High Court of Gujarat was that "the date of Collectors award" has to be construed from the date, on which it is signed or filed in the Collectors office, or the date on which the affected person came to know about the necessary ingredients of the award. In the instant case, no doubt, the impugned award was declared on 23-3-1987 and the present reference applications having been moved on 15-10-1987 i.e. after six months and 22 days from the literal date of passing of the award. Therefore, they prima facie appears to be barred by limitation. But, on behalf of the opponents, as no evidence has been placed on record as to when the claimants came to know about the necessary ingredients of the award. Therefore, in view of the principles laid down by the Honble High Court of Calcutta, Bombay and Honble High Court of Gujarat in the case of Shambhunath Kshetri v. State of West Bengal, Rameshchandra Bhogilal Parikh v. Collector of Dadra Nagar Haveli, and in the case of Special Land Acquisition Officer v. Nathaji Kacharaji (supra), the period of limitation under later part of clause (b) appended to Sec. 18(2) of the "said Act" has to be reckoned not from the date of the literal date of the award, but the date on which the claimants came to know about the necessary ingredients of the award, and in the instant case, as there is nothing on record as to when the claimants came to know about the necessary ingredients of the award. The period of limitation under later part of clause (b) appended to Sec. 18(2) of the "said Act" does not start to run, hence, the present reference applications are held to be within the prescribed period of limitation. In the result, I answer issue No. 3 in the negative."

30. In respect of First Appeal Nos. 2773 to 2790 of 2009, where, Reference Court has considered evidence of claimant. The land is situated in village Singla, Tal. Valiya, District Bharuch. Section 4 notification is dated 17th April, 1986 and award passed by L.A.O. is dated 17th August, 1987, where, Rs. 50/- per Are has been awarded. Thereafter, reference has been made. It is necessary to note that reply is filed by respondent No. 2 means present appellant Exh. 25 before Reference Court. The appellant has produced certain sale-deeds on record, which has been relied upon by L.A.O. Therefore, contention raised that no interference is required by Reference Court. The issues have been framed by Reference Court in Para 7, and thereafter, evidence of respective parties have been discussed by Reference Court. The evidence of claimant Hiralal Modi who was examined before Reference Court. One Narharilal Modi was examined at Exh. 9 before Reference Court, who gave evidence in support of their lands under acquisition that lands were fertile, black alluvial, soil and certain receipts issued by Agriculture Produce Market Committee, Valiya are also placed on record Exh. 58 and receipt issued by Sunderlal Ramkrishna Giri at Exhs. 59 and 60 were also produced on record. The evidence of claimant has been discussed and one claimant Dilipsinh Dolatsinh Exh. 12 was examined at Exh. 64. The certified copy of consent award passed by L.A.O., Bharuch in L.A.R. No. 1 of 1986 is placed on record at Exh. 18, wherein, by consent of parties,

Special Land Acquisition Officer has assessed market value of claimants land situated within revenue boundary of village Valiya at the rate of Rs. 495-15 ps., per Are. The relevant discussions made in Paras 18 and 19 are quoted as under :

"18. Learned Advocate Shri A. R. Chauhan appearing on behalf of the claimants has raised the contention that as the claimants have failed to place necessary documentary evidence on record to prove the annual yield of their land under acquisition, if, the Court comes to the conclusion that the market value of the claimants land cannot be assessed on the basis of the annual yield, by applying the method of capitalisation, in that case, as the claimants have placed the map of the revenue boundary of village Chanderiya at Exh. 59, and Exh. 59 shows that the revenue boundary of village Dharoli are adjoining to the revenue boundary of village Chanderiya, the claimants have placed the copy of the previous award passed in respect of the claimants land of village Dharoli, in the group of Land Reference Case No. 392 of 1993 etc. at Exh. 60, wherein, the learned 3rd Jt. Civil Judge (Sr. Div.), Bharuch was pleased to assess the market value of the claimants land at the rate of Rs. 800/- per Are. But, as the notification under Sec. 4 of the "said Act", for acquiring the claimants land of Exh. 60 was published on 1-9-1988, i.e. about 2-years, 7-months later than the publication of the notification under Sec. 4, for acquiring the present claimants land, the claimants may be awarded the compensation at the rate of Rs. 600/- per Are.

19. Learned Advocate Shri A. R. Chauhan has further raised the contention that the claimants have placed the copy of the previous award passed in L.R. Case No. 220 of 1993 etc., wherein, the Extra Asst. Judge, Bharuch was pleased to assess the market value of the claimants land at the rate of Rs. 1300/- per Arey with 10% market price-rise and as per the schedule attached with Exh. 61, the market value of the claimants land had been assessed at Rs. 1755/-, but the notification under Sec. 4, for acquiring the claimants land of Exh. 61, having been issued on 94.91 i.e. about 5-years, 6-months, after the publication of notification of the present claimants land, the market value of the present claimants land be assessed at the rate of Rs. 800/- per Are."

31. The opponents relied upon Exh. 76 which has been rightly discarded when Vendor Shri Jayantilal Chhotalal Modi (P.W. 7) is examined at Exh. 75 and it has come to conclusion that land was a grass land and totally unfertile, it was under cultivation of Shri Govindbhai Vasava and he was paying only Rs. 200/- per annum. Therefore, he had sold the same to Shri Govindbhai Vasava on a negligible price. Therefore, sale-deed Exh. 76 cannot be made basis for assessment of market value of claimants land under acquisition. The Reference Court has discussed issue in Paras 22 to 28 which are quoted as under :

"22. In the case of Second Additional Special Land Acquisition Officer & Ors. v. Chunilal Gangaram & Ors., 1999 (2) GLR 1357. It is held by the Honble High Court of Gujarat that :

"It is no more res integra that the decision of the Reference Court, given in earlier case is a relevant and material piece of evidence for the purpose of determining compensation to be awarded in other cases".

23. Thus, considering the principles laid down in the case of Land Acquisition Officer v. V. Krishnamurty, AIR 1983 Orissa. The case of Officer on Special Duty (Land Acquisition) G.I.D.C., Amdavad v. Jamkuben Kalidas Sodha, 1992 (1) GLH 417, and the case of 2nd Addl. Special Land Acquisition Officer & Ors. v. Chunilal Gangaram & Ors., 1999 (2) GLR 1357. It is settled position of law that if, no other method, for assessment of the compensation is feasible, in that case, the amount of compensation can be awarded on the basis of the previous award.

24. In the present group of land reference cases, on behalf of the claimants, the reliance has been placed on previous award Exh. 60 passed by the learned 3rd Jt. Civil Judge (Sr. Div.), Bharuch in the group of L.R. Case Nos. 392 and 393 of 1993 and L.R. Case Nos. 777 and 778 of 1992, in respect of the claimants land, situated in the revenue boundary of village Dharoli, and the previous award Exh. 61, passed by the learned Extra Assistant Judge, Bharuch, in the group of L.R. Case Nos. 220 to 227 of 1993 also in respect of the claimants land situated within the revenue boundary of village Dharoli. No doubt, considering Exh. 60, the learned 3rd Jt. Civil Judge (S.D.), Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 392 and 393 of 1993, L.R. Case Nos. 777 and 778 of 1992 at the rate of Rs. 800/- per Are. Whereas, considering Exh. 61, the learned Extra Assistant Judge, Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 220 to 227 of 1993 at the rate of Rs. 1300/- per Arey, but as under Sec. 23 of the "said Act", the compensation has to be assessed on the date of issuance of the notification, under Sec. 4 of the "said Act". The date of issuance of the notification under Sec. 4 of the "said Act" is material, for assessing the compensation. Considering the previous award Exh. 60, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 392 and 393 of 1993 was published on 1-9-1988, and the notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992, was published on 2-11-1998. Whereas, considering Exh. 61, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 to 227 of 1993, was published on 9-7-1991. Whereas, the notification, under Sec. 4, for acquiring the present claimants land was published on 3-1-1986, that means the notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 392 of 1993 and 393 of 1993 (dated 1-9-1988) was published 2 - years, 7 - months and 28 -days, about 32 months later than the publication of the notification under Sec. 4, for acquiring the present claimants land. Whereas, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992 (dated 2-11-1988) was published 2 - years, 10 - months and 29-days i.e. about 35 months later than the publication of notification, under Sec. 4, for acquiring the present claimants land, and the notification under Sec. 4, for acquiring the claimants land, and the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 to 227 of 1993 dated 9-7-1991 was published 5 - years, 6 - months and 6 - days i.e. about 66-months later than the publication of the notification under Sec. 4 of the "said Act", for acquiring the present claimants land. That means the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 220 of 1993 to 227 of 1993 was published much later than the publication of notification, under Sec. 4, for acquiring the present claimants land, but, the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 392 of 1993, 393 of 1993 was published only about 32 - months later than the publication of notification under Sec. 4, for acquiring the present claimants land, and the notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992 was published only about 35 months later than the publication of notification under Sec. 4, for acquiring the present claimants land. Therefore, in the considered opinion of this Court, as Exhs. 60 and 61, are the previous awards, in respect of the claimants land of the revenue boundary of village Dharoli itself, it would be better to assess the market value of the present claimants land on the basis of Exhs. 60 instead of Exh. 61.

25. As the learned 3rd Jt. Civil Judge (S.D.), Bharuch was pleased to assess the market value of the claimants land of L.R. Case Nos. 392 of 1993 and 393 of 1993 at the rate of Rs. 800/- per Are, but the notification under Sec. 4 of the "said Act", for acquiring the present claimants land having been published on 3-1-1986 i.e. 32-months earlier than the publication of notification under Sec. 4 for acquiring the claimants land of L.R. Case Nos. 392 and 393 of 1993. Therefore, considering the market price rise of the agricultural produce and the landed property day in and day out, if, the market price rise is considered at 12% p.a. in conformity with Sec. 23(1A) of the "said Act", if, the market value of the present claimants land is assessed at 68% of the assessed market value of the claimants land of L.R. Case Nos. 392 and 393 of 1993 (Exh. 60) in comes (68% of Rs. 800/- = Rs.

544/-) Rs. 544/- per Arey. Further, as the notification under Sec. 4, for acquiring the present claimants land was published about 35 - months earlier than the publication of notification under Sec. 4, for acquiring the claimants land of L.R. Case Nos. 777 and 778 of 1992 (Exh. 60) it comes to (65% of Rs. 800/- = 520) Rs. 520/- per Arey, but, reading Exh. 60 between the lines, it appears that the claimants land of that group of L.R. Cases was also divided in parts and that aspect was also considered by the learned 3rd Jt. Civil Judge (S.D.), Bharuch at page No. 13 of Exh. 60, and proviso thirdly appended to Sec. 23(1) of the "said Act" provides that

"The damage, if any sustained by the person interested at the time of Collector taking possession of the land by reason of severing such land from his other land". Meaning thereby, if due to acquisition, the land is divided in parts that aspect has also to be considered while assessing the compensation. In the instant case, the claimants have not come forward with a case that due to acquisition their land has been divided in parts. Therefore, as on the basis of the previous award Exh. 60, the market value of the present claimants land comes to Rs. 544 and/or 520/- per Arey. Considering the none severence of the present claimants land, if, the market value of the present claimants land is assessed at Rs. 485/- i.e. about 10% less than the assessed market value of the claimants land of Exh. 60 due to severance of their property. The end of justice will be served.

26. As on the basis of the previous award Exh. 60, the market value of the present claimants land has been assessed at Rs. 485/- per Arey, but, the Spl. L.A.O. having awarded only Rs. 50/- per Arey, certainly it can be said that the market value awarded by the Spl. L.A.O. is unreasonably low. In the result, I answer issue No. 1 in the affirmative.

27. As the market value of the present claimants land on the date of publication of notification under Sec. 4 of the "said Act" i.e. 371 of 1986 has been assessed at Rs. 485/- per Arey, but, the Spl. L.A.O. had awarded only Rs. 50/- per Arey, the claimants are entitled to get additional market value at the rate of (Rs. 485/- assessed market value - Rs. 50/- awarded by Spl. L.A.O. = Rs. 435/-) Rs. 435/- per Arey, hence, I answer issue No. 2 accordingly.

28. Section 23(1-A) of the Land Acquisition Act provides that :

"In addition to the market value of the land as about stated, the Court shall in every case award an amount, calculated at the rate of 12% p.a. on such market value for the period, commencing on and from the date of the publication of the notification, under Sec. 4(1) of the Land Acquisition Act in respect of such land to the date of the award of the Collector or the date of taking the possession of the land whichever is earlier."

Thus, reading Sec. 23(1A) between the lines, the claimants are entitled to get market price-rise at the rate of 12% p.a., from the date of publication of notification, under Sec. 4 of the "said Act" till the date of the award or taking possession of the land under acquisition whichever is earlier, but, in the instant case, there is no dispute between the parties that the possession of the land under acquisition was taken from the claimants on 1-12-1985 (as per Exhs. 72 to 76) prior to the date of publication of notification under Sec. 4 of the "said Act". Therefore, the claimants are not entitled to get any market price-rise under Sec. 23(1A) of the "said Act"."

32. Accordingly, Reference Court has awarded Rs. 365/- per Are being additional market value of land in question.

33. In these groups of references and first appeals, question of limitation has not been raised by appellant before Reference Court.

34. In respect of First Appeal Nos. 2838 of 2009 to 2844 of 2009, where, Reference Court has considered previous award in Para 14 which is quoted as under :

"14. I fully agree with the legal aspects narrated in the above judgments, but it appears from the earlier judgment of L.A.R. No. 161 of 1998 and 162 of 1998 produced at Exh. 111 the notification under Sec. 4 was published in the year 1990 whereas in the present case, notification under Sec. 4 was published in the year 1983 so prior to lands of earlier judgment of Exh. 111 the lands of present reference cases are acquired. Therefore, in my view, the claimants are entitled 10% decrease in the market value per year on Rs. 100/-. The difference between two notifications is of seven years, and therefore, the claimants are entitled for decrease in price for one year Rs. 10/- and for seven years Rs. 70/- (Rs. 10 x 7) and hence, the market value would come to Rs. 30/- (Rs. 100 - Rs. 70) per sq.mtrs. Hence, claimants are entitled following amounts as additional compensation after deducting the amounts awarded by the Special Land Acquisition Officer :

Sr. L.A.R. Court Spl. Land Acqui. Additional No. No. awarded Officer awarded Compensation

of 87

1. 88 Rs. 30 Rs. 12-50 Rs. 17-50

2. 89 Rs. 30 Rs. 11-00 Rs. 19-00

3. 90 Rs. 30 Rs. 11-00 Rs. 19-00

4. 91 Rs. 30 Rs. 12-00 Rs. 18-00

5. 92 Rs. 30 Rs. 12-00 Rs. 18-00

6. 93 Rs. 30 Rs. 12-00 Rs. 18-00

7. 94 Rs. 30 Rs. 14-00 Rs. 16-00

35. The Reference Court has considered decision of Apex Court in detail and facts of this case also, and thereafter, considering previous award passed by Reference Court in L.A.R. Nos. 161 and 162 of 1989 Exh. 111, where, notification under Sec. 4 was published in year of 1990 and in present case, it is of year 1983. So, there were seven years, deducting Rs. 70/- from Rs. 100/- market price, which comes to Rs. 30/-. Accordingly, total market price of land in question was fixed after deducting award passed by L.A.O., rest of amount is considered to be an additional compensation given to claimant.

36. The contention raised by learned senior Advocate Mr. Joshi is that subsequent award cannot be considered for previous notification because of development of land in question, where award is passed in year of 1990.

37. I have considered this contention, but simultaneously, Reference Court has decreased 10% of each year from Rs. 100/, then, it comes to Rs. 70/- which has been deducted and remaining Rs. 30/- has been awarded which cannot consider to be unreasonable or higher amount which has been awarded by Reference Court. Similarly, if previous award is there, and subsequent notification of land in question, then, 10% rise is also permissible to find out or to determine exact market price of

land in question. While considering previous award as well as previous notification, 10% increase or 10% decrease for determining market price is permissible to find out market price of land in question. So, method which has been adopted to find out market price in all three cases cannot consider to be contrary to settled principles of law. The submissions which are made before this Court by learned senior Advocate Mr. Joshi, same were not raised before Reference Court in respect of subsequent previous award from date of notification Exh. 111.

38. In respect of contention about barred by limitation, recently, this Court had an occasion to consider same question in First Appeal Nos. 2601 to 2636 of 2009 dated 14th July, 2009. The relevant discussions are made by this Court in Paras 13 to 17 which are quoted as under :

"13. The said view has been taken by Calcutta High Court in case of Nirmala Bala Sen v. Jatindra Nath Sen reported in AIR 1977 Calcutta 205. The relevant discussion is made in Para 4 which is quoted as under :

"4. The petitioner states that she did not receive any notice under Sec. 12(2) though it appears, it was served on her son. It will be seen under sub-sec. (2) of Sec. 45 that it is always desirable whenever practicable that the service of the notice shall be made on the person named therein. Sub-section (3) provides that if such person cannot be found service may be made on any adult member residing with him. This provision, it appears to us, does not imply that in the even of a casual absence of the person interest, the notice is to be served on any other adult member of the family. The use of the word cannot in sub-sec. (3) is of significance and it amounts in our opinion to habitual absence of the person interest at the recorded address and not to a casual absence of such person. In the facts and circumstances of the case it would appear that the notice was served on the very first attempt on the son of the petitioner and this service cannot be considered to be a proper service of the notice under Sec. 12(2) of the Act in the context of the discussion indicated above. We accordingly hold that in this circumstances, the question of limitation of the application under Sec. 18 does not arise, and accordingly, the Additional Land Acquisition Officer committed error in exercise of jurisdiction in holding that the application for reference was time-barred. We, therefore, set aside the impugned order and hold that the application under Sec. 18 was not time-barred. We further direct that this application will not be entertained and considered in accordance with law. It however appears that the application under Sec. 18 suffers from lack of material particulars. The petitioner will furnish the number of items in the award in respect of which reference is sought to be made together with the names of the persons concerned against whom the relief is claimed. Such supplementary statement will be filed by the petitioner within a month from the date of arrival of the records at the office of the L.A. Collector, and in default, the application as originally filed will be dealt with and disposed of by the authority concerned in accordance with law."

14. The Division Bench of this Court has also taken said view in case of Rajat Hirabhai Motibhai & Ors. v. Deputy Collector, Land Acquisition & Rehabilitation, Panam Project, Godhra & Ors., reported in AIR 1985 Gujarat 170. The relevant observations are made in Paras 3 and 4 which are quoted as under :

"3. The question, therefore, is whether under Sec. 12(2) of the Land Acquisition Act, there is an obligation upon the Collector merely to intimate about the passing of the award or he is obliged to convey the matters contained in the award by serving either a copy of the award or the essential part of it. In State of Punjab v. Mst. Qaisar Jehan Begum, AIR 1963 SC 1604, the Supreme Court had occasion to consider the purpose of the notice under Sec. 12(2) in the context of a plea as to whether mere knowledge of the passing of the award would be sufficient as a starting point reckoned for the purpose of filing a reference application. It is in dealing with this that the Supreme

Court observed :

"Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Sec. 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly, when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act, we think that knowledge of the award must mean knowledge of the essential contents of the award."

This Court has expressed the same view referring to the above-said decision in Rasulkhanji v. H. P. Rathod, 1975 (16) GLR 911. In this view, it is clear that there is an obligation on the part of the Collector not merely to intimate about the passing of the award, but he has to communicate the essential contents of the award, if not a copy of the award. That has not been fulfilled in this case and we direct that this shall be done within a month.

4. In view of what we have said about the obligation of the Collector, it follows that the time for reckoning the period for filing a reference application will commence with the service of the copy of the award and if such an application is made within, time thereafter, it shall be disposed of in accordance with law."

15. The same view has been also taken by Division Bench of this Court in case of Gopalbhai Becharbhai v. State of Gujarat & Anr. reported in AIR 1989 Gujarat 56. The relevant Para 2 is quoted as under :

"2. This Special Civil Application is filed for quashing and setting aside the order at Annexure C to the Special Civil Application and also to direct the respondent No. 2 in this petition to make a reference to the District Court as prayed for by the petitioner, by issuing a suitable writ, direction or order. This matter pertains to the land acquisition effected by respondent No. 2. In this matter, the award was passed as early as 26-6-1981. Notice under Sec. 12(2) of the Land Acquisition Act was issued on 18-9-1981. The petitioner actually received copy of the Award on 30-5-1985. Immediately thereafter, the petitioner filed an application before the 2nd respondent, requesting him to refer the matter under Sec. 18 of the Land Acquisition Act to the District Court. This application was filed on 30-7-1985. The 2nd respondent rejected this application as time-barred. While rejecting the application, the 2nd respondent has taken into consideration the date of the award, which is 26-6-1981 and the notice, which is dated 18-9-1981 and came to the conclusion that there is an inordinate delay in making the application. No doubt, the application has to be made within 6 weeks, as per the provisions of the Act. In the decision in the case of Rajat Hirabhai Motibhai v. Deputy Collector. Land Acquisition and Rehabilitation, Panam Project, Godhra, reported in 1985 (1) GLR 275 : AIR 1985 Guj. 170, a Bench of our High Court has clearly held that the notice in law is deemed to have been served only when the copy of the contents of the Award is served on the party concerned. In this case, copy of the Award was served only on 30-5-1985. Hence, according to this judgment, limitation starts only from 30-5-1985. No doubt, there is two weeks delay in filing the application by the petitioner for the purpose of directing the 2nd respondent to refer the matter under Sec. 18 to the District Court. In the decision in the case of Mohan Vasta v. State of Gujarat, reported in 1985 GLH 199 : AIR 1985 Guj. 115 it has been clearly held that Sec. 5 of the Limitation Act is applicable for an application for reference under Sec. 18 of the Land Acquisition Act. In view of this specific observation made by the Bench of our High Court in the abovesaid decision, there cannot be any difficulty for respondent No. 2 to condone the delay and refer the matter to the

District Court under Sec. of the Act, inasmuch as there is only two weeks delay in this case. We have examined ourselves the reasons for such delay in preferring the application under Sec. 18. If only the 2nd respondent had understood the prevailing position of the law as to when exactly the limitation starts running against such a party, he would have definitely condoned the delay of two weeks, which has occurred in this case. We find that the petitioner is a poor agriculturist and has rushed up to the 2nd respondent for filing necessary application, even though, there is a delay of two weeks in doing so. The reasons given by the petitioner in his application filed before the 2nd respondent, in our view, sufficiently explains the delay of two weeks, that has occurred in this case. We are satisfied that there is sufficient explanation for such a delay of two weeks by the petitioner herein, and as such following the decision referred to above, we direct the 2nd respondent to refer the matter to the District Court under Sec. 18 of the Land Acquisition Act, within six weeks from this date. Rule is made absolute with the above said observations. There will be no order as to costs."

16. The Andhra Pradesh High Court has also taken same view in case of Special Deputy Collector, Land Acquisition (S.S.P.), Kurnool v. C. Sai Reddy & Ors. reported in AIR 1984 AP 24. Paras 3 to 5 and 7 are relevant, therefore, the same are quoted as under :

"3. The right to seek a reference is provided under Sec. 18(2) of the Act. If a person is not present when the award was made, as per the amendment made in the year 1959 under Act 20 of 1959, the person must seek a reference within two months from the date of service of notice from the Collector under Sec. 12(2). With respect to the compensation determined as payable to the persons interested, the persons who have put in a claim, have been given a right to seek a reference. In other words, the persons whose property is being compulsorily acquired for a public purpose, is entitled to seek a reference within the period stipulated under the Act which period would begin to run from "the notice of the award to such of the persons interested as are not present," It is, therefore, necessary to determine what the notice under Sec. 12(2) of the Act should contain. When Sec. 12(2) requires the Collector to give a notice of his award, it must necessarily mean, in our view, the award itself. Mere intimation that in respect of certain lands, certain amount is payable to a certain person, does not constitute a notice of the award. The award contemplated by Sec. 11 of the Act must be with reference to the date of the notification. It must contain the claim made by the claimant. If there is a dispute as to the measurement of the land acquired, there should be determination of the extent and if there is a dispute as to the amount of compensation payable for such land, it should be determined having regard to the factors mentioned in Secs. 23 and 24 of the Act. If, in a particular case, the land has been taken possession of invoking the emergency provisions, the claimant would be entitled not merely to the value of the land as such but also interest from the date of taking possession. If there is a dispute as to the person or persons entitled to receive compensation, the Land Acquisition Officer is required to determine the person or persons entitled to receive compensation and if there are more than one person he has to apportion the compensation among the persons who, according to him, are entitled to receive compensation. It is left to the discretion of the Collector under Sec. 29 to apportion the amount among several claimants or refer the dispute as to apportionment to the Court under Sec. 30. Nonetheless, these are the several matters which have to be recorded in the award and under Sec. 12(2) of the Act, the Collector is required to give notice of such award. A mere statement as is referred to above on which the signatures of some of the claimants have been obtained, in our opinion, does not constitute notice of the award made by the Collector, nor does it fulfill the requirements of Sec. 12(2) of the Act.

4. The learned Government Pleader Mr. Innayya Reddy, however, contended that the expression "notice of his award" envisaged by Sec. 12(2) does not mean that the award itself should be served on the claimants. According to him, it is enough if the extent of the land acquired, the total amount of

compensation determined as payable to the claimants, the name of the claimant entitled to receive the same are furnished and that would constitute sufficient notice of the award and fulfill the requirement of Sec. 12(2). If within two months of receipt of such a notice an application is not made, then under the proviso (b) of Sec. 18(2) the claimant would be disentitled to seek a reference under the Act. We are unable to agree with this contention. In order that a person may be entitled to seek a reference, he must know on what grounds his claim for a higher amount of compensation has been rejected. He must also know whether the Collector has determined the compensation with reference to the date of the notification. If there is a dispute as to the apportionment, on what grounds his claim has been rejected or accepted only in part, as the case may be, should be made known to the claimant. Without knowing the basis on which a lesser amount is awarded, he would not be in a position to seek a reference. The law would not except the claimant to seek a reference in every case irrespective of whether the amount awarded is reasonable or not. The legislature in incorporating sub-sec. (2) of Sec. 12 could not have intended only the substance of the award to be intimated to the claimants. In our view, the expression "notice of the award" occurring in sub-sec. (2) of Sec. 12 clearly postulates that the award as such should have been communicated to the claimants.

5. The Supreme Court in State of Punjab v. Qaisar Jehan Begum, AIR 1953 SC 1604, dealing with proviso (b) to sub-sec. (2) of Sec. 18 of the Act which lays down inter alia that reference may be sought "within six weeks from the date of the Collectors award" which words are deleted by Act 22 of 1959 in the application of the Land Acquisition Act to the State of Andhra Pradesh observed that any period of limitation should commence from the date of the knowledge of the award. As to what constitutes "knowledge", the Supreme Court held thus (at p. 1607) :

"It seems clear to us that the ratio of the decision in Harish Chandras case, AIR 1961 SC 1500 is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Sec. 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not.

xxx xxx xxx

Having regard to the scheme of the Act, we think that knowledge of the award must mean knowledge of the essential contents of the award."

On the facts of that case, the Court held that merely because the claimant had filed a petition on a particular date, though it was with reference to the land acquired and the compensation paid, he could not be attributed knowledge of the award. If knowledge of the award means knowledge of the essential particulars, the present notice under Sec. 12(2) does not even refer to the essential particulars, nor does it make a mention of the claim made by the writ petitioners. It does not refer to the date of taking possession nor the amount awarded towards the value of the land, or structures and the interest if any paid. It does not state what the decision of the Land Acquisition Officer was with reference to the rival claims, if any, made. In those circumstances, it cannot be said that the claimants were given notice of the award.

7. Since, the notice under Sec. 12(2) itself has not been issued as contemplated by the Act and the statement prepared in respect of the lands acquired referred to above, in our view, (does not?) constitute "notice of the award", the writ petitioners are not precluded from seeking a reference

under Sec. 18(2) beyond the period of two months from the date of the award."

17. In 2005, the Apex Court has also taken the same view in case of Parsottambhai Maganbhai Patel & Ors. v. State of Gujarat & Anr., reported in AIR 2005 SC 3464. The relevant Para 7 is quoted as under :

"7. This Court, therefore, held that the limitation under the latter part of Sec. 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Sec. 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July, 1988. They had therefore, filed the application under Sec. 18 of the Act on September 22, 1988 well within the period of limitation. The Reference Court recorded a finding in favour of the appellants but the High Court has reversed that finding without applying the principle laid down in Raja Harish Chandra (supra). Moreover, we find from the grounds of appeal filed before the High Court that the assertion of the claimants that they came to know of the declaration of the award only when compensation was being paid to them in July, 1988, has not even been challenged."

39. It is necessary to note that contentions raised by learned senior Advocate Mr. Joshi that burden is upon claimant to prove that they were not aware about award passed by L.A.O. But, I failed to understand this contention because contention is raised by appellant before Reference Court, that reference is barred by limitation, then, it is a burden upon appellant to prove it that claimants are having knowledge of award in question on a particular date and reference is made beyond period of six months or six weeks. Therefore, it is barred by limitation. In all three cases, appellant has not proved before Reference Court that claimants were aware about knowledge of award passed by L.A.O. Therefore, from date of knowledge, reference is made within six months, period therefore, that cannot consider to be barred by limitation. It is also not a case of appellant before Reference Court that at the time when L.A.O. has passed an award, claimants were remained present or it is also not a case of appellant that under Sec. 12(2), notices were received by claimants, then, only question is to be considered that whether claimants were aware about award passed by L.A.O. or not. That aspect has been rightly examined by Reference Court. For that, Reference Court has not committed any error which requires interference by this Court.

40. Therefore, contentions raised by learned senior Advocate Mr. Mihir Joshi cannot be accepted in all three groups of appeal and accordingly, same are rejected.

41. The Reference Court has considered evidence and material which was placed before Reference Court and this Court cannot interfere with such finding given by Reference Court which is based upon evidence on record as no sufficient justification and reasons has been pointed out by appellant to interfere with award passed by Reference Court. (See : JT 2009 (5) SC 225 - Mahesh Dattatray Thirthkar v. State of Maharashtra).

42. The said view has been taken by Apex Court in case of Mohammad Raofuddin v. The Land Acquisition Officer, reported in JT 2009 (7) SC 55 is held as under :

"HELD : One of the principles for determination of the market value of the acquired land would be

the price an interested buyer would be willing to pay if it is sold in the open market at the time of issue of Notification under Sec. 4 of the Act. But finding a direct evidence in this behalf is not an easy exercise, and therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for working out the market value of the land in acquisition cases is the comparable sales method. The comparable sales i.e. the lands sought to be compared must be similar in nature and potentiality. Again, in the absence of sale-deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to determine the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Secs. 23 and 24 of the Act. Undoubtedly, an element of some guess-work is involved in the entire exercise. (Para 9)

Comparable sale instances of similar lands in the neighbourhood at or about the date of notification under Sec. 4(1) of the Act are the best guide for determination of the market value of the land to arrive at a fair estimate of the amount of compensation payable to a land owner. Nevertheless, while ascertaining compensation, it is the duty of the Court to see that the compensation so determined is just and fair not merely to the individual whose property has been acquired but also to the public which is to pay for it. (Para 12)

It may be true that in the absence of the instance relied upon by the High Court, Exh. A-6 could be taken into consideration as one of the comparable sale instances but at the same time reliance on its earlier judgment in respect of a land situated in the same village, acquired only six months ago, could not be said to be an irrelevant factor affecting the determination of market value/compensation in respect of the land of the appellant. As observed in Pal Singhs case (supra), said judgment is a valid instance from which the market value of the subject land could be deduced. Merely because a different conclusion could be possible on two sets of sale/acquisition instances, in our judgment, is no ground to interfere with the award of the High Court when it has taken into consideration an instance which is more closer to appellants land in respect of the date of acquisition; happened to be in the same village and acquired for the same purpose. (Para 18)"

43. It would be just and proper to consider view taken by Apex Court in case of Mahesh Dattatray Thirthkar v. State of Maharashtra, 2009 AIR SCW 2962 wherein Apex Court has considered interference with finding of fact, summarized and stated principles. Enhancement of compensation by Reference Court on basis of evidence and material on record was reversed by High Court. It was held by Apex Court that reversal of finding of fact by High Court merely on basis of suggestions given by State not justifiable. Relevant Head Notes (A), (B), (C), (D), (E) and Para 37 of said judgment are reproduced as under :

"(A) Constitution of India - Art. 136 - Jurisdiction under - Interference with finding of fact - Principles regarding, summarized and stated - Land Acquisition Case - Enhancement of compensation by Reference Court on basis of evidence and material on record - Reversal of finding of fact by High Court merely on basis of suggestions given by State - Not justifiable.

F.A. No. 875 of 2003, Dated 6-12-2004 (Bom.) (Aurangabad Bench), Reversed.

Land Acquisition Act (1 of 1894) - Sec. 11.

On the question of exercising power to interfere with findings of fact by the Supreme Court under Art. 136, the following principle emerge :

* The powers of Supreme Court under Art. 136 are very wide.

* It is open to Supreme Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

* The appreciation of evidence and finding is vitiated by any error of law procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.

* The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.

* Where findings of subordinate Courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the Court feels that justice has failed and the findings are likely to result in unduly excessive hardship.

* When the High Court has redetermined a fact in issue in a Civil Appeal and erred in drawing inferences based on presumptions.

* The judgment was not a proper judgment of reversal.

AIR 1975 SC 1534; AIR 1989 SC 1247; 2000 (2) SCC 185; 1994 (6) SCC 29; AIR 1979 SC 1284; AIR 1972 SC 975; AIR 1958 SC 61, Foll. (Para 22)

Where in a land acquisition matter, the evidence and material was duly considered by the Reference Court and the compensation amount was enhanced, there was no justification for the High Court to interfere with the findings of the Reference Court and to set aside order of the Reference Court and to restore the order of L.A.O. merely on suggestions given by the State in cross-examination of the witnesses of land owners. The findings made by the High Court were arbitrary and improper inasmuch as the High Court had failed to consider the total lack of evidence adduced by the State and disregarded the witnesses produced before it without sufficient justification for doubting their credibility. Such arbitrariness in findings had caused serious miscarriage of justice as against the land-owner by denying him a just and reasonable compensation for property acquired from him by the State. F.A. No. 875 of 2003, dated 6-12-2004 (Bom.) (Aurangabad Bench), Reversed. (Paras 24 and 36)

(B) Land Acquisition Act (1 of 1984) - Sec. 23 - Market value of acquired property - Burden of proof - Burden of inadequacy of compensation amount successfully discharged by claimant - State not adducing any evidence in support of its claim of sufficiency - Order of High Court setting aside award by Reference Court - Not justifiable.

F.A. No. 875 of 2003, dated 6-12-2004 (Bom.) (Aurangabad Bench), Reversed.

The burden of proving the true market value of acquired property is on the State that has acquired it for a particular purpose. Where the land-owner has been able to show by the testimony and valuation report of the expert valuer, that the award of compensation passed by the Land Acquisition Officer was inadequate, the onus now shifts on the State to adduce sufficient evidence to sustain the award. The burden of proof in civil cases is that of balance of probability and not that of beyond reasonable doubt. Thus, minor inconsistencies in evidence are not relevant in civil cases

in considering the question of discharge of this burden. If the State has been unable to produce any evidence at all to support its claim of sufficient of the award, and the conclusion of the High Court is backed only by assertions rather than by acceptable reasoning, based on proper appreciation of evidence, the order of the High Court cannot be sustained.

F.A. No. 875 of 2003, dated 6-12-2004 (Bom.) (Aurangabad Bench), Reversed.

(C) Land Acquisition Act (1 of 1894) - Sec. 23 - Market value of acquired land - Valuation report by expert valuer based on his personal visit to site, map drawn after measurements and after deducting cost of depreciation - P.W.C.D. Practice and standard engineering norms adopted for deciding value - All such factors, held, made the report worthy of credence - He being expert in his field he can rely on his knowledge, expertise and judgment to come to conclusion regarding type of material used in construction and its source - Not necessary for him to rely on report of some other person.

2004 AIR SCW 5534, Rel. on. (Paras 28 and 34)

(D) Land Acquisition Act (1 of 1894) - Sec. 51A - Expression may - Meaning Reliance on certified copy of sale transaction without examining vendor or vendee - Discretionary.

Interpretation of statutes - Word may - Connotation.

Section 51-A permits acceptance of the certified copy of the sale transaction, as produced by the witness, even without examination of the vendor or vendee. However, the use of the term may in the said provision shows that there is discretion with the Court to the extent of reliance to be placed on the same. Where the State has been unable to produce any evidence to rebut the sale-deed, reliance on the same and to consider it genuine is permissible. (Para 31)

(E) Land Acquisition Act (1 of 1894) - Sec. 23 - Market value of acquired property - Proximity of acquired property to developed area - cannot be over - looked on basis of minor inconsistency and technicalities.

Proximity to develop urbanized area needs to be necessarily considered, while deciding on the compensation to be paid for acquisition of land, on the basis of evidence available. Where there is evidence to show that acquired property is situated near Highway and the State has not given any evidence to rebut this contention, the Court cannot overlook the proximity of the acquired property to a developed area, and the High Court cannot set aside the order of the Reference Court merely on the grounds of minor inconsistencies and technicalities. The compensation provision the Act is in the nature of a welfare stipulation and the State Government must be just and fair to those whose land it acquires.

AIR 1985 SC 1576 : AIR 1989 SC 1222, Rel. on. (Para 37)

44. The Apex Court has also considered same in case of Special Land Acquisition Officer, U.K. Project v. Mahaboob & Anr., reported in 2009 AIR SCW 3323 - Paras 7 and 8, which are quoted as under :

"Plight of land-losers

7. We may now advert to the facts of this case. The acquisition is of the year 1990. The extent of

land acquired is 1 acre 13 gunthas. The Land Acquisition Officer awarded a sum of Rs. 4,000/- per acre which is about nine paise per sq.ft. Not much argument is needed to show that the compensation was very low. The total compensation as per the award of the L.A.O. made in 1991, was Rs. 5,300/- (excluding statutory additions). Having lost his land, and consequently, the means of livelihood, the land-loser had to engage a lawyer and fight for a reasonable compensation by seeking reference to the Court. The Reference Court determined the compensation as Rs. 30,420/- per acre on 10-3-2005. This means an increase of about Rs. 35,000 in compensation (plus statutory additions) for the acquired land. But the land-loser was not given this amount. The State Government files a first appeal, then a second appeal and then a S.L.P. The result is except the paltry amount which he must have received when the L.A.O. made the award, the land-loser has not received any compensation for nearly 17 years and had to fight the litigation before three Courts for a total compensation of Rs. 40,000/- (excluding statutory benefits). Apart from the fact that the land-loser would have spent virtually the entire amount for litigation, whatever amount he may ultimately receive will not get him even one-fourth or one-fifth of the extent of land which he lost by acquisition. Unless the process of acquisition gives him a reasonable compensation either at the time of or immediately after the dispossession, the compensation will be a mirage for most land-losers.

8. Statistics show that most of the acquisitions relate to lands held by small farmers, whose livelihood depends upon the acquired land. The land is taken purportedly in accordance with law by resorting to acquisition proceedings. The Collector (L.A.O.) is supposed to offer a fair compensation by taking all relevant circumstances relating to market value into account. To safeguard the interests of the land-loser, the Act requires the Collector to make the award before the land-owner is dispossessed. The intention is that the land-loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice, the Collectors (L.A.Os.) seldom make reasonable offers. They tend to err on the safer side and invariably assess very low compensation. Such meagre awards force the land-loser to seek reference to civil Court for increase in compensation in regard to almost every award made by the L.A.O. In fact, many a time, even the Reference Courts are conservative in estimating the market value and it requires further appeals by the land-loser to the High Court and Supreme Court to get just compensation for the land. We can take judicial notice of the fact that in several States the awards of the Reference Court or the judgments of the High Court and this Court increasing the compensation, are not complied with and the land-losers are again driven to Courts to initiate time consuming execution process (which also involves considerable expense by way of lawyers fee) to recover what is justly due. Resultantly, the land-losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the acquisition. The effect may be highlighted by the following illustration :

A farmer owns 3 acres of land in a village, which is his sole means of livelihood. The land is acquired for some project in the year 1990. The true market value of the land was around Rs. 1,50,000/- per acre in 1990. If he got the said price, that is Rs. 4,50,000/- with solatium, additional amount and interest in the year 1991, he has a reasonable opportunity of purchasing some alternative land, so that he can eke out his livelihood and continue to live with dignity. But this rarely happens in practice. The final notification is made in 1992 and the L.A.O. makes an award in the year 1993 offering Rs. 50,000/- per acre. So the land-loser is constrained to seek a reference to the Court. The Reference Court takes three to four years to decide the reference and increases the compensation to Rs. one lakh per acre in the year 1996. The increased amount is deposited in 1997-1998. The land-loser is constrained to file a further appeal to the High Court and the High Court takes another three to four years and increases the compensation to Rs. 1.5 lakh per acre in the year 2000 and such increase is deposited in the year 2001-2002. That is, the loser is forced to fight at

least in two Courts to get the compensation commensurate with the market value of Rs. 1.5 lakhs per acre. To add to his woes, when the Reference Court or the High Court increases the compensation, the Government does not pay the increased amount immediately and drives him to execution proceedings also. This means that the land-owner gets compensation piecemeal, that is Rs. 50,000/- per acre in 1993, another Rs. 50,000/- per acre in 1997-1998, and another Rs. 50,000/- per acre in 2001-2002. At every stage, he has to incur expenses for litigation. As he does not get the full compensation in one lump-sum, he is not in a position to purchase an alternative land. When the land is acquired, he loses his means of livelihood, as he knows no other type of work. The result is, he is forced to spend the compensation received in piecemeal, on sustenance of his family when he fights the legal battles for increasing the compensation and for recovering the increases granted, by levying execution. The result is that whatever compensation is received piecemeal, gets spent for the sustenance of the family, and litigation cost during the course of prolonged litigation. At the end of the legal battle, he is hardly left with any money to purchase alternative land and by then the prices of land would have also increased manifold, making it impossible to purchase even a fraction of the land which he originally possessed. Illiteracy, ignorance, and lack of counselling add to his woes and the piecemeal compensation is dissipated leaving him with neither land, nor money to buy alternative land, nor any means of livelihood. In short, he is stripped of his land and livelihood."

44. Recently, Apex Court has also considered same in case of Chandrashekhar & Ors. v. Additional Special Land Acquisition Officer in Civil Appeal Nos. 4163-4165 of 2009 dated 8th July, 2009. The relevant Paras 15 and 16 are quoted as under :

"15. In the case of Pal Singh (supra), this Court had examined the question whether a judgment of a Court in a land acquisition case determining the market value of a land in the vicinity of acquired lands, even though, not inter-partes, was admissible in evidence in a subsequent case, either as an instance or one from which the market value of the acquired land could be deduced or inferred. The Court had analyzed the same and expressed the following opinion :

"5. No doubt, a judgment of a Court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though, not inter-partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H. K. Mallicks case (H. K. Mallick v. State of West Bengal, 79 Calcutta Weekly Notes 378) based on the authority of the Judicial Committee of the Privy Council in Secretary of State v. Indian General Steam Navigation and Railway Co., 1909 ILR 36 Cal. 967, where the Judicial Committee did refuse to interfere with High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it."

So, it seems that the Court in principle recognised the admissibility of such previous decisions in a subsequent case as far as the market value of the acquired land was concerned. However, the Court further held that :

"...But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court, and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land..."

16. Thus, for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of that same Court and this requirement is fulfilled in the present case. However, the requirement was that it must have been proved by the person relying upon such judgment by adducing evidence aliunde and that due regard being given to all other attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land, is in our opinion, the more important test for admission of such previous decision of the High Court for determination of the market value of the land acquired in the present case. On a perusal of the materials submitted before us by the appellants, we must conclude that the appellants had failed to satisfactorily furnish the basis for determining the market value of the acquired land according to the decision of the same High Court in Assistant Commissioner & The L.A.O. (supra) at Rs. 100-50/-. per sq.ft. Thus, we conclude that this plea of the appellants is not acceptable in the present case."

45. In view of aforesaid observations made by Apex Court and considering reasoning given by Reference Court in each case of award, according to my opinion, finding given by Reference Court in each group of appeals based on legal evidence is proper and just, which cannot consider to be baseless and perverse or arbitrary and Reference Court has rightly examined matters and amount of compensation which has been awarded cannot consider unreasonable and or on higher side.

46. Therefore, there is no substance in first appeals. Accordingly, present first appeals are dismissed.

47. When appeals are dismissed by this Court today, no order is required to be passed in civil applications. Hence, civil applications are disposed of.

48. Decree be drawn accordingly.

49. Record and proceedings, if any, be sent to Reference Court concerned forthwith.

(SBS) Appeals dismissed.