# Kazi Akiloddin vs State Of Maharashtra on 10 July, 2024

## Author: Surya Kant

## Bench: Surya Kant

2024 INSC 505 REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6776-6777 OF 2013

KAZI AKILODDIN APPELLANT(s)

VERSUS

STATE OF MAHARASHTRA & ORS. RESPONDENT(s)

WITH

Civil Appeal No. of 2024
(arising out of SLP (C) No. 21611 of 2018)

Civil Appeal No. of 2024
(arising out of SLP (C) No. 6490 of 2022)

Civil Appeal No. of 2024
(arising out of SLP (C) No. 2892 of 2023)

Civil Appeal No. of 2024
(arising out of SLP (C) No. 2324 of 2023)

Civil Appeal No. of 2024
(arising out of SLP (C) No. 2753 of 2023)



Civil Appeal No. of 2024



(arising out of SLP (C) No. 6817 of 2023)

Reason:



Civil Appeal No. of 2024
(arising out of SLP (C) No. 6820 of 2023)

Civil Appeal No. of 2024
(arising out of SLP (C) No. 6819 of 2023)

JUDGMENT

K.V. Viswanathan, J.

I. Civil Appeal Nos. 6776-6777/2013 (Kazi Akiloddin Vs. State of Maharashtra & Ors.) A. Facts

1. These Civil Appeals call in question the correctness of the judgment dated 17.06.2013 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in First Appeal No. 1210 of 2008 (filed by the appellant herein) and First Appeal No. 6 of 2009, which was a cross appeal filed by the State of Maharashtra & Ors. By the said judgment, the High Court had dismissed the appeal of the appellant. Dealing with the appeal of the State, the High Court, while allowing the same, directed that the appellant shall refund the excess amount withdrawn with interest @ 9% p.a. from the respective dates of withdrawal.

2. The facts lie in a narrow compass. The appellant is the owner of the land bearing Survey No.1 admeasuring 1 hectare and 1700 sq. meters (1,25,937 sq. ft.) at Mouza Akola (Bujurg), Taluk and District Akola.

3. A Section 4 notification under the Land Acquisition Act, 1894 (for short 'the Act') was issued for acquisition of the subject land on 03.06.1999. Prior to this, on 15.11.1998, in view of the proposal to acquire the subject land for construction of a flood protection wall, the appellant was approached for handing over the subject land on the assurance of rental compensation. On 15.11.1998, the possession was also taken. A Section 6 notification under the Act was issued on 02.12.1999. In the award proceedings, the appellant claimed compensation @ of Rs. 500 per sq. ft. On 04.08.2000, the Land Acquisition Officer passed an award to the tune of Rs. 5,61,000/- per hectare for the subject land, which works out to Rs. 5/- per sq. ft. (approx.). Importantly, in the award, there is no reference to the land falling under 'Blue Zone' which has become the main issue in controversy between the parties before the Reference Court, the High Court and this Court.

4. Before the Reference Court, the appellant claimed additional compensation of Rs. 4,30,84,000/- @ of Rs. 500/- per sq. ft. for the acquired land of 84,481 sq. ft. on the premise that in the said area 43 plots have been carved out by him. In the break up given for 1 Hectare, 17 R totalling 1,25,937 sq. ft. following was provided:

> Total under plots area - 84481 sq. ft. (68.3% approx.) Total under roads area – 30106 sq. ft.
>
> Total under open space area – 11298 sq. ft.
>
> He also claimed compensation of Rs. 25 lakhs for the expenditure made on the road and also prayed for damages of Rs. 50 lakhs.

Except for claiming expenditure for laying road to the tune of Rs.

25 lakhs, no enhanced compensation was claimed for an area of 41,404 sq. ft. (The area of the road and the open space area as stated above).

5. Before the Reference Court, the appellant examined himself as PW-1, Mohd. Nadir, photographer, was examined as PW-2 and T.N. Bhoob, Civil Engineer, was examined as PW-3. The State examined K.S. Bhoyar, Sub-Divisional Engineer, as DW-1 and Laxman Bhika Raut, Land Acquisition Officer, as DW-2. The appellant in his deposition stated that he had planned to convert the land to non-agricultural purposes. Accordingly, the appellant deposed that he had measured and demarcated all the 43 plots in the land; that the land was allotted Seat No. 28-D and Plot No. 20 in Akola City Nazul record and that the payment receipt evidencing payment for conversion to non-agricultural purpose was also available on record. The appellant deposed that the land was touching the Akola Gaothan and that all the adjacent lands were put to residential use; that the surrounding lands have been converted to non-agricultural purpose; that the acquired land was within the municipal limits of Akola City surrounded by police quarters, other government quarters, Maratha Mahasangh Hostel, Swami Vivekanand Ashram, Jaju Housing Society, Geeta Nagar, Laxmi Nagar, Sneh Nagar, A.P.M.C. Sub- Market, Luxury Bus Stand, Dr. Ambedkar Nagar, BR High School and Kamala Nagar.

6. As exemplars, certified copies of sale transaction dated 10.05.1999 (exhibit-71) whereby plot no. 50 of an area of 3,000 sq. ft. out of layout Survey No. 7/2 purchased for a consideration of Rs. 5,25,000/- averaging to Rs. 175/- per sq. ft. was produced by the appellant. A Sale Deed of 17.11.1999 (exhibit-72) evidencing an average price of Rs. 601/- per sq. ft. was also produced. Index of Sale Deed of 14.07.1998 @ of Rs. 1047 per sq. ft. (exhibit -73) was produced. Sale Deed of 24.08.1998 @ of Rs. 422 per sq. ft. (exhibit-

33) was produced. The appellant/claimant pleaded that the above transactions were at a nominal distance of 200 ft. to 500 ft. and on that basis, he claimed an additional compensation @ of Rs. 500/- per sq. ft. for the 84,481 sq. ft. land as indicated above.

7. PW-2 Mohd. Nadir, photographer, also spoke about the land being adjacent to the Akola Gaothan and the existence of Rahat Nagar Police locality towards west and Maratha Mahasangh towards north. Photographs were marked.

8. PW-3, T.N. Bhoob, deposed that he referred to the town planning development plan at the time of inspection of the property and that the acquired land did not fall within the ‘Blue Zone’ area.

9. DW-1, K.S. Bhoyar, deposed that a joint measurement was carried out and a map was prepared depicting the acquired land. In the map, the zones were shown. According to DW-1, the land in question in field survey no. 1 was situated in ‘Blue Zone’ and was also on the river bed. DW-1 stated that the land was an agricultural land but at the relevant time, it was barren and was never converted to non-agricultural purpose. According to DW-1, the land was valueless as it came under ‘Blue Zone’; that the land was always covered by water whenever there was flood and that is the reason why the land was taken for the construction of flood protection wall and even the appellant

executed a Rajinama letter. DW-1 stated that he had consulted the Town Planning Authority and collected the town planning map also.

10. In the cross-examination on 22.01.2008 , DW-1 deposed that he had not brought the original map on the basis of which Exh.141 was prepared and that he was not in a position to say in which year Exh.141 was prepared. He though added that it could have been prepared probably in 1998-99 but even he could not definitely provide the date and month of its preparation. DW-1 also stated that after joint measurement, the Taluka Inspector of Land Records (TILR) office gave the measurement map and in that map the 'Blue Zone' is not shown. He denied the suggestion that there was no joint measurement and no map was prepared.

11. DW-2 Laxman Bhika Raut, Land Acquisition Officer, deposed that he visited the site and inspected the same and found the land to be in the river bed and comes under 'Blue Zone'. DW-2 stated that in the award he had not noted the location and other descriptions of the property and he could not assign any reason as to why he had not so mentioned in the award. DW-2 admitted that he did not mention in the award about the inspection of the property. DW-2 stated that the sale instance referred to in the case of Brijmohan Bhartiya was not considered as that land was far away from the suit property. DW- 2 admitted that there was no reference in the award Exh.46 to the effect that the suit property was in a 'Blue Zone' and that he could not assign any reason why it was not so referred.

B. Findings of the Reference Court

12. The Reference Court, by its judgment dated 02.08.2008, after setting out the legal position that the potentiality of the acquired lands is to be seen as relevant consideration, set out to analyze the evidence. It noticed the deposition of the claimant witnesses to the effect that the land was abutting the Akola Gaothan; that adjoining properties have been converted to non-agricultural purpose; that the suit property was surrounded by residential houses, societies, sub- markets and luxury bus stand; that maps and photographs establishing the said fact have been produced and held that the claimant had discharged the initial onus. Dealing with the evidence of the State, it held that maps produced at Exh.57 to Exh.59 and Exh.141 only showed that a small strip of blue colour was shown as passing through the suit property and that it was not clear whether the whole area of the property is covered under 'Blue Zone'. It highlighted the fact that in the award Exh.46 there was no reference about the suit property falling in the 'Blue Zone' and that the said factor had no bearing while computing the award amount. After discussing the proximity of the property to developed areas, it held that the acquired property was within the municipal limit of Akoli city and that evidence on record showed that the property was surrounded by public offices, roads and Government residential quarters.

13. The Reference Court held that the Land Acquisition Officer had not worked out the market value properly since many relevant factors were ignored. It referred to Exh.71 Sale Exemplar dated 10-5-1999 and the index II extracts at Exh.73(14-7-98) and Exh.74(27-8-1998) to conclude that the suit property had high potential value. It noticed that under award Exh.46, the suit property (Survey No. 1), Survey No. 5/2, Survey No. 7 and Survey No. 2 situated at Akoli (Bk) were acquired by the

same notification for the same purpose of construction of the said protection wall. On that basis, it held that the claimants were entitled to get the compensation at the same rate. It took on record the certified copy of the award passed in LAC No. 183 of 2000 dated 15.10.2005 at Exh.88 and found that in that case the Reference Court determined the market value @ of Rs. 100/- per sq. ft. It also noticed that copy of the award of LAC No. 209 of 2022 dated 10.08.2006 with regard to Survey No. 6, Survey No. 7 and Survey No. 60 of Akoli Khurd were acquired by another notification for the same purpose. In that case also, the Reference Court determined the market value @ of Rs. 100/- per sq. ft. Though the certified copy of the said award was not exhibited, it was taken on record as Exh.131 C. Thereafter, it held that the appropriate market value would be Rs. 100/- per sq. ft. for the acquired property and ordered the same with all the other consequential benefits. C. Findings of the High Court

14. The appellant and the State filed Appeals and cross Appeals before the High Court. The High Court held that on perusal of the maps, it was clear that the suit land was just on the bank of the river Morna and that the other Survey Nos. 5, 6 and 7 [which were the lands acquired in the awards relied upon by the Reference Court] were well above survey no. 1 beyond the Gaothan of Akoli (Bk) away from the river. The High Court found that Survey Nos. 5, 6 and 7 were further sub-divided and Survey No. 7/2 had been converted to non-agricultural use by order dated 08.07.1982. According to the High Court, the sale deed (Exh.71) dated 10.05.1999 was in respect of Plot No. 50 admeasuring 3000 sq. ft. from Survey No. 7/2 @ of Rs.175 per sq. ft. The High Court held that the sale deed (Exh.71) could not be taken into account since the acquired land in the present appeals (Survey No. 1) were never converted to non-agricultural use. Insofar as the sale deed (Exh.72) dated 17.11.1999 was concerned, it rejected the same holding that the sale deed was after the Section 4 notification and that the sale deed dealt with a small piece of land and also appeared to be suspicious for the reason that while Exh.71 showed value @ of Rs. 175 per sq. ft., Exh.72 which was after the notification under Section 4 showed value @ of Rs. 601 per sq. ft. Insofar as Exh.33 was concerned, the High Court held that it was not shown from which survey number it arose and as to when the property was converted to residential use.

15. The High Court further held that the acquired land in the appeal was situated on the bank of river Morna and relied on the evidence of DW-2 Laxman Bhika Raut, the Land Acquisition Officer in support of the same. It relied on the findings of the Reference Court with regard to the blue colour only affecting a small strip of the land and held that the appellant had not seriously challenged the findings. It further held that upon perusal of Exh.141 map the finding of the Reference Court that only a small strip of land was affected by blue colour was also wrong since in Exh.141, major area of the suit land was in the 'Blue Zone'. Thereafter, it held that since the suit property was affected by the 'Blue Zone', the same could not have been converted into non-agricultural use like other adjoining survey numbers and observed that perhaps that was why no attempt to convert the land to non-agricultural use was made. It relied on Exh.67 dated 25.02.2000 which was a communication by the Assistant Director, Town Planning, Akola to the Land Acquisition Officer. That letter mentioned in para 2 that the acquired land in the appeal fell in a no development zone and as such was not eligible to be converted to non-agricultural purpose.

16. Thereafter, the High Court concluded that the suit land was not having non-agricultural potential unlike Survey Nos. 5/2, 6, 7 and 8. It held that the award @ of Rs. 100/- per sq. ft. was incorrect. It rejected the contention about the proposed layout of 43 plots since the land could not be converted.

17. In spite of noticing that certain areas claimed by the appellant as developed areas were reckoned and excluded from the computation of market value, the High Court still held that the value required for carrying out development ought to be deducted. Holding so, it held that deduction to the extent of 70% area was required to be made and as such went on to allow the appeal of the State and restored the award of the Land Acquisition Officer. It further ordered refund by the appellant of the compensation withdrawn with interest @ 9% p.a. Ultimately, the Appeal of the appellant was dismissed and that of the State allowed. Aggrieved, the appellant is in Civil Appeal Nos. 6776-6777 of 2013 before us.

D. Contentions:

18. Mr. Himanshu Chaubey, learned counsel, diligently presented the case for the appellant. Learned Counsel contended that Exh.141 was prepared on the basis of another map and admittedly the original map was never produced in Court; that under Section 83 of the Indian Evidence Act, plans made for the purpose of any cause must be proved to be accurate; that DW-1 K.S. Bhoyar (Sub Divisional Engineer) deposed that Exh.141 was prepared as part of joint measurement to show the exact situation of the land and hence presumption of Section 83 is not available to the State; that Exh.141 was at best a secondary evidence and is admissible only if it is proved that the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable time and as such argued that the ingredients for admitting secondary evidence has not been established.

19. Learned counsel further argued that there was no notification or order brought on record by the respondent to prove that the subject land was specified as a 'Blue Zone' and that the development plan, as placed on record by the appellant, showed that no markings were present. Learned counsel relied on Section 14(j) and 22(j) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the 'MRTP Act') to contend that the master plan must show the flood control area as the 'Blue Zone' and contended that no such marking was in the master plan. Learned counsel argued that no rules or regulations have been brought on record to prove that respondent no. 2 the Special Land Acquisition Officer is authorized to prepare the map in the absence of any order; that the High Court erred in only going by the evidence of DW-1, particularly when DW-1 did not remember as to when the map was made and furthermore the author of the map-Sh. A.K. Kulkarni was also not examined. Learned Counsel relied on the affidavit filed by the State of Maharashtra dated 02.04.2024, to buttress his submission.

20. Learned counsel contends that admittedly as on the date of issuance of Section 4 notification i.e. 03.06.1999, the blue zone lines had not been demarcated and the construction was solely governed by the 1974 byelaws. Learned counsel contends that even the documents sought to be relied upon by the respondent-State have been brought on record for the first time before this Court and admittedly

other than the map i.e. Exh.141, no other document has been brought on record to establish that the land of the appellant fell under the 'Blue Zone'. Learned Counsel contends that the High Court has failed to consider Exh.52, namely, the map issued by the Authority whereby the land of the appellant was granted Nazul Sheet No. 28-D and Plot No. 20. Learned counsel contends that any land for which Nazul Sheet is issued is considered as a non-agricultural land and relies on the award dated 05.02.2008 in relation to acquisition of Survey No. 11 Shahnawazpur, Akola City. Learned counsel contended that the Land Acquisition Officer did not whisper about the 'Blue Zone' issue in his award; and that the Land Acquisition Officer proceeded on the basis of the exemplar from Survey No. 9/1A and the issue of the 'Blue Zone' was raised for the first time before the Reference Court.

21. Learned counsel argued that the potentiality of the land as established by the evidence has been ignored by the High Court. Learned counsel submits that pending the Appeal before the High Court, the Income Tax Department had passed an order dated 31.08.2012 wherein the land of the appellant was considered as an urban land and a non-agricultural land. Learned counsel stated that the respondent in the said proceedings did not object to the same and rather acceded to the finding that the land of appellant which is acquired is a non-agricultural land.

22. Learned counsel relying on the standardized building byelaws and Government resolution of 02.04.1974 contended that the acquired land was not in a no-construction zone and argued that the State Authorities have failed to bring on record any document to establish any average flood mark. Learned Counsel stated that as per the Joint Measurement Report submitted by the respondent-State Irrigation Department before this Court, the distance between the land of the appellant and the defined boundary of the water course is between 15 to 20 meters and therefore, as per the extant byelaws the land of the appellant is outside the no-construction zone. The learned counsel argued that the said Joint Measurement Report was prepared by the respondent at the time of the acquisition and has even been referred to in the evidence of DW-1. It is stated that DW-1 further admitted that based on Exh.32 there was an open land between the river Morna and Survey No. 1. According to the learned counsel, the explanation offered by the VIDC (Vidarbha Irrigation Development Corporation) during the hearing that the gap is due to the curved bank of the river and ought not to be considered as a gap is unacceptable. According to the learned counsel, such an argument is itself an admission to the fact that firstly the land of the appellant was at a height from the river and secondly that there is a gap between the river and the land of the appellant. According to the learned counsel for the appellant, the width of the flood wall is 30 meters taking the measurement from the defined boundary water course till the end of the wall; that as per the Joint Measurement Map the width of the appellant land is on an average between 50 to 55 meters and the counsel contended that hence the total distance from the boundary of the water course till the end of the appellant land is 65 meters. Learned counsel contended that in spite of the rules declaring that only land upto 15 meters from the defined boundary of the water course as falling under the no development zone, the whole land of the appellant has been considered as falling under the no development zone.

23. The learned counsel assailed the finding of the High Court about failure to convert the land to non-agricultural by contending that the appellant had obtained a Nazul Plot No. from the revenue authority and carved out 43 plots and even fees were paid and the receipt was placed on record; and

that the only reason why steps could not be taken was in the meantime Section 4 notification came to be issued. Learned counsel contended that sale instances cited have not been taken into consideration by the High Court. In this regard, he relied on Exh.33 (Rs. 422 per sq. ft.), Exh.71 (Rs. 175 per sq. ft.) and the sale index of Survey No. 5/1,in Akholi Bk where there was a transaction of sale deed dated 12.02.1999 of Rs. 1,50,000/- for 1500 Sq. ft. area of plot no 78. Learned counsel contended that the highest exemplar should have been considered. Learned counsel argues that the question of development charges does not arise since that purpose of acquisition did not entail any development.

24. Mr. Uday B. Dube, learned Counsel for the Vidarbha Irrigation Development Corporation (VIDC) strongly opposed the appellant's submissions and contended that admittedly the land is situated on the bank of the river and concurrent findings have been recorded in that regard. Learned counsel placed reliance on the evidence of DW-1 in respect of the location of the land. Learned counsel relied on Exh.67 dated 25.02.2000 wherein it is recorded that Survey No. 1 fell in a no development zone. Learned counsel relied on the evidence of DW-2-the Special Land Acquisition Officer. Learned Counsel argued that the soil for the wall was obtained from digging the land of the appellant. Learned counsel submits that the appellant in spite of being a developer has not obtained a non-agricultural use permission; learned counsel contends that the land was prone to floods and that the award of Rs. 100/- per sq. ft. in the case of appellant was totally untenable. Learned counsel stated that the map relied upon by the appellant to show that there was a road in between the land of the appellant and river is completely incorrect and that the dotted land denoted the slope. Learned counsel prayed that the map produced during the hearing in this Court should be rejected.

25. Insofar as the issue of 'Blue Zone' is concerned, learned counsel contended that it was the duty of the Irrigation Department to draw blue or red line and that the Irrigation Department has done its duty. In the written submission of VIDC, it is categorically averred as follows :-

> "Mere failure on the part of the Town Planning Department to give effect to it in Development Plan would not have any bearing on the valuation".

26. Learned counsel submitted that three sale deeds produced in the matter of Bhartiyas (LAC No. 183) were suspicious transactions between related parties, and hence prayed that the Appeals be dismissed.

27. We have also heard Mr. Shrirang B. Varma, the learned counsel for the State who has placed reliance on the affidavit dated 02.04.2024 filed by them pursuant to the order of 20.03.2024. We have considered the affidavit in detail hereinbelow.

28. We have given our anxious consideration to the contentions urged by the parties.

E. Questions

29. The following questions arise for consideration:

(i) What should be the market value of the land of the appellant as on 03.06.1999? To answer this, the following further questions need to be considered.

(a) Does the site of the appellant fall within 'Blue Zone' as contended by the acquiring body –VIDC?

(b) If it falls within the 'Blue Zone', what should be the market value for the land?

(c) If the land or any part thereof is not to be determined as a 'Blue Zone', what was the 'No Construction Zone' as per the extant laws and what should be the market value payable for that portion?

(d) What should be the market value payable for any portion, falling outside the 'No Construction Zone'?

Reasoning and conclusion:

We have considered question no. 1(a) to 1(d) together for convenience.

30. During the course of hearing on 20th March, 2024, we made the following order:

"1. Arguments by the parties remained inconclusive. Meanwhile, original records have been requisitioned.

2. Learned counsel for the parties seek and are granted time to inspect the original record and make further submissions.

3. An officer of the Irrigation Department is present along with some latest photographs of the site. However, he has not brought the original record regarding fixation of blue line by the Irrigation Department in purported exercise of its power under the Maharashtra Regional & Town Planning Act, 1966.

4. Mr. Uday B. Dube, learned counsel for the respondent Corporation undertakes to produce such record."

31. Pursuant to the said Order, a duly sworn affidavit of 2nd April, 2024 has been filed by the Assistant Director of Town Planning (Branch Office, District Akola) which reveals certain telling facts. The affidavit states that its contents are confined to marking of flood lines in the city Akola and the maps thereof. It avers that the land in question in these Appeals was situated outside the Municipal Council of Akola which fact, however, is disputed by the appellant. Be that as it may, the affidavit acknowledges that under Section 14(j) of the MRTP Act, the proposals for irrigation, water supply and hydro-electric, works, flood control and prevention of river pollution are the constituents of the regional plan. It further avers that as per the provisions of Section 22(j) of the MRTP Act, the proposals for flood control and prevention of river pollution are constituents of the development

plan.

32. Digressing a bit from the affidavit, it may be pointed out herein that under the MRTP Act, Section 2(25) defines regional plan to mean a plan for the development or redevelopment of a region which is approved by the State Government and has come into operation under the Act. Under Section 21, development plan is defined to mean a plan for the development or redevelopment of the area within the jurisdiction of a planning authority and includes revision of a development plan and proposals of a special planning authority for development of land within its jurisdiction. Section 14 which deals with the contents of the regional plan along with sub-clauses - a and j are extracted herein below:

> "14. Contents of Regional Plan Subject to the provisions of this Act and any rules made thereunder for regulating the form of a Regional Plan and the manner in which it may be published, any such Regional plan shall indicate the manner in which the Regional Board propose that land in the Region should be used, whether by carrying out thereon development or otherwise, the stages by which any such development is to be carried out, the network of communications and transport, the proposals for conservation and development of natural resources, and such other matters as are likely to have an important influence on the development of the Region; and any such plan in particular, may provide for all or any of the following matters, or for such matters thereof as the State Government may direct, that is to say-
>
> (a) allocation of land for different uses, general distribution and general locations of land, and the extent to which the land may be used as residential, industrial, agricultural, or as forest, or for mineral exploitation;

xxx xxx

(j) proposals for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution;"

33. Section 21 speaks of the Development plan and Section 22 which speaks of the contents of the development plan, insofar as they are relevant, are extracted herein below:

> "21. Development Plan (1) As soon as may be after the commencement of this Act, but not later than three years after such commencement, and subject however to the provisions of this Act, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development plan for the area within its jurisdiction, in accordance with the provisions of a Regional plan, where there is such a plan [publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft Development plan has been prepared] and submit the plan to the State Government for sanction. The Planning Authority shall also submit a quarterly Report to the State Government about the progress made in carrying out the survey and prepare the plan.

22. Contents of Development Plan A Development plan shall generally indicate the manner in which the use of development land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational; ....

(j) proposals for food control and prevention of river pollution;"

34. Reverting to the affidavit of the State dated 02.04.2024, the affidavit avers that the draft regional plan was of the year 2002 and the draft development plan (revised) was of the year 2000. It is averred that under Section 26(1) of the MRTP Act, the publication of notice of draft development plan was of 03.02.2000. The affidavit avers that the notice of regional plan for Akoli Washim District in draft form under Section 16 was published on 25.12.2002. The draft regional plan itself is of 2002 and the affidavit indicates that it was sanctioned under Section 15(1) of the MRTP Act on 23.04.2012 and came into force on 15.06.2012.

35. The State makes out a case that both for the draft regional plan of 2002 for the Akola Washim region as well as draft development plan (revised) 2000, the blue and red flood lines which have been produced by the concerned Executive Engineer, Irrigation Section Akola vide letter dated 18.01.1999 were taken into consideration as constituents. It is a case that the blue and red flood lines were shown on the maps of the peripheral plan of the Akoli City based on the proposal of the Executive Engineer.

36. The affidavit has certain other interesting averments. It avers that the development plan for the original limits of the Akola Municipal Council was in force from 01.04.1977 where Survey no. 1 wherein appellant's land is situated, was not included in the No Development Zone. Thereafter, the development plan for the extended limits of the Akola Municipal Council was sanctioned by the Government on 30.12.1992 and came into force from 01.03.1993. In the said development plan, the affidavit states that the land in question was not part of the sanctioned development plan. The affidavit states that the Municipal Council was converted into Municipal Corporation since 01.10.2001 and that the revised development plan which came into force on 15.12.2004 also did not include the appellant's land. Thereafter, the following crucial paras occur in affidavit which have a great bearing in deciding the present controversy, particularly the issue as to whether the land of the appellant falls in the Blue Zone:-

> "vii. Meanwhile, the Regional Plan for Akola – Washim Region was published in the year 2002 wherein for the first time the Blue and Red flood lines were incorporated by taking into consideration the letter and circular of the concerned Irrigation Department as mentioned above. The said map of the Peripheral Plan of the said Regional Plan which further has been sanctioned by the Government in Urban Development Department vide Notification No. TPS-2502/205/CR-106/2009/UD-30, dated 23.04.2012 which came in force from

15.06.2012.

viii) According to the Peripheral Plan of the said Regional Plan, the land bearing Survey No. 1 of Mouza Akoli (Budruk) was included in the "Agriculture Zone/No Development Zone and also the part of this land is situated within the River Bank and Blue Flood Line, whereas, the other lands bearing Survey No. 6 and 7 of Mouza Akoli (Khurd) are included in Residential Zone. A true copy of the part plan of the said Peripherial Plan showing the aforesaid lands is annexed herewith and marked as Annexure R-5.

ix) Now, the Development Plan for the whole limits of the Municipal Corporation, Akola named as Draft Development Plan of Original Limit (2nd revision) + First Extended Limit (R.) + 2nd Extended Limit is being prepared for which notices has been published in the Maharashtra Government Gazette dated 25 -

31/01/2024 under the provisions of the section 26 of MRTP Act and further process is in progress as per the legal framework of the said Act.

x) According to the said draft Development Plan, the land under reference bearing Survey No. 1 & 7 of Mouza Akola (Budruk) and other lands bearing Survey No.6, 7 & 60 of Mouza Akoli (Khurd) are proposed to be included in 'Residential Zone'. In the said draft proposed development plan, the Blue and Red Flood lines are shown as per the information available from Akola Irrigation Department, Akola vide letter No. 5396/Line- 1/2023, dated 06/10/2023. A true copy of the letter dated 06.10.2023 is annexed herewith and marked as Annexure R-6.

xi) The land under reference bearing Survey No.1 of Mouza Akoli (Budruk) is situated between the Blue and Red Flood lines." (Emphasis supplied)

37. The affidavit clearly indicates that on the date of Section 4 notification i.e. 03.06.1999 there was no published notice of draft regional plan or draft development plan. The attempt made is to rely on the letter of the Executive Engineer of 18.01.1999 containing proposals for demarcation of red and blue lines. The affidavit further avers that on 03.06.1999 the statutory scheme that was in force was the Standardized Building Byelaws and Development Control Rules for 'B' and 'C' Class Municipal Councils of Maharashtra which were applicable for the outside Municipal limits as per Government resolution dated 02.04.1974. The affidavit avers that according to Rule No. 17.1.2 no permission to construct a building on a site shall be granted, if "the site is within 9 (nine) meters of the highest water mark, and if there be major water course nearby the distance of the plots from the same shall be 9 m. from average high flood mark or 15 mt. from the defined boundary of water course whichever is more."

38. The appellant has filed a response to the affidavit on 15.04.2024. The appellant has pointed out that the map annexed to the Engineer's letters as produced by the State Government in its affidavit of 02.04.2024 is at variance with Exh.141 produced before the Reference Court and submits that either of them cannot be correct. The appellant also controverts the fact that the land was outside

the municipal limits and relies on the letter of 25.02.2000 issued by the Deputy Director, Town Planning indicating that the land was within the municipal limits. The appellant avers that as on date of the acquisition admittedly none of the sanctioned development/regional plan demarcated the whole area of survey no. 1 as No Development Zone. The appellant also relied on the Standardized Building Byelaws and Development Control Rules for 'B' and 'C' Class Municipal Councils of Maharashtra referred to in the affidavit of the State Government.

39. In the written submissions of the appellant, it is submitted that since there is no valid document determining the flood mark, the no construction zone will have to be determined with reference to the defined boundary of the major water course. According to the appellant, as per the Joint Measurement Report submitted by the respondent-Irrigation Department, the distance between the land of the appellant and the defined boundary of the water course is 15 to 20 meters. The appellant disputes the explanation of the VIDC that the dotted lines indicate the curved bank of the river.

40. Be that as it may, the appellant submits that as per the Joint Measurement Map, the width of the appellant land is between 50 to 55 meters. The appellant submits that the extant rules declare that only in land up till 15 meters from the defined boundary of the water course shall fall in the no development zone and as such the whole land could not have been considered as falling under no development zone.

41. Having considered the facts and circumstances including the affidavit of the State filed before us, we are constrained to hold that the High Court was not justified in declaring the entire land of the appellant as falling within the blue zone.

42. As has been demonstrated hereinabove, the statutory documents under the MRTP Act demarcating the blue zone/blue line came in its draft form only in 2000 as far as the development plan was concerned and in 2002 as far as the regional plan was concerned. The Section 4 notification under the Act in this case is of 03.06.1999. Before the Reference Court, the document that was available was Exh.141 map. However, we are not inclined to place any reliance on the same for the reason that DW-1 K.S. Bhoyar, Sub-Divisional Engineer, who filed his affidavit in chief on 05.01.2008 clearly deposed that he was not in a position to definitely say as to in which year Exh.141 was prepared. He also deposed that he had not brought the original map on the basis of which Exh.141 was prepared. Since under the MRTP Act, there is a procedure for notifying the plans and since the whole process commenced after the Section 4 notification dated 03.06.1999 was issued, it will be very unsafe to proceed on the basis of the proposal, if any, in the letter of the Executive Engineer dated 18.01.1999, though it may have the basis for ultimately drafting the regional plan and the development plan.

43. If an acquiring body relies on a statutory injunction, to establish that the land has no potential, then the burden is on the said acquiring body to demonstrate without any ambiguity that such a statutory interdict is in place. In the present case, the VIDC has not discharged the burden in demonstrating that statutorily there was a valid demarcation of a "Blue Zone" on the date of the Section 4 notification, under the Act. What has been established is only the existence of the byelaw i.e. "Standardised Building Byelaws and Development Control Rules for "B" and "C" Class Municipal

Councils of Maharashtra".

44. The statutory regime that was in force admittedly, according to the State, was the Standardized Building Byelaws and Development Control Rules for 'B' and 'C' class Municipal Councils of Maharashtra which by a Government resolution of 02.04.1974 was even made applicable to lands outside Municipal limits. Going by that, the building permissions could be denied only if the site was within 9 meters of the highest water mark and if there be a major water course nearby, the distance of the plot from the same shall be 9 meters from the average high flood mark or 15 meters from the defined boundary of water course whichever is more.

45. There is no definitive evidence on record to indicate as to what was the highest water mark or the average high flood mark, with the result we conclude, in the peculiar facts of the case, that as on 03.06.1999, i.e. the date of the Section 4 notification for the appellant's land, the no construction zone can only be taken as 15 meters from the defined boundary of the water course which is the Morna river. If the site to the extent it is within the 15 meters of the defined boundary of water course, that part alone could be said to have no potential for development. The land beyond the 15 meters mark from the defined boundary of the water course in the site of the appellant should be treated independently and as to what would be the value thereof, we shall discuss herein below. For the land up to 15 meters (in the event of the site or part of the site falling within 15 meters of the defined boundary of the water course) shall be paid the amount as determined by the Land Acquisition Officer in the award dated 04.08.2000.

46. Now that we have concluded that the land of the appellant except to the extent of 15 meters from the defined boundary of the water course is not covered by the no construction zone, the question arises as to what should be the market value payable as on 03.06.1999. As has been narrated earlier, the LAO in his Award (Exh. 46) awarded an amount of Rs.5,61,000/- per hectare for the entire extent of 1,25, 937 sq. ft. which works out to Rs. 5/- per sq. ft. The Land Acquisition Officer relied on a sale transaction pertaining to one parcel of land in Survey No. 9/1A dated 24.04.1998. On a reference under Section 18, after noticing the status of the land and after concluding that the land is not covered under the blue zone and after finding that the Land Acquisition Officer made no reference to the land being on the blue zone in the award, the Reference Court awarded a sum of Rs.100/- per sq. ft.

47. The Reference Court found that the property was within the Akoli City Municipal limits and referring to Exh. 71, 73 and 74 had concluded that the land had high potential and value. Thereafter, it relied on the award of the Reference Court in LAC No. 183 of 2000 (Civil Appeal arising out of SLP (C) No. 6820 of 2023 and Civil Appeal arising out of SLP (C) No. 2753 of 2023) and LAC No. 209 of 2002 dated 10.08.2006 (Civil Appeal arising out of SLP (C) No. 6817 of 2023 and Civil Appeal arising out of SLP (C) No. 2324 of 2023) which are appeals in this very batch.

48. Our discussion hereinbelow on LAC No.183/2000 dated 15.01.2015 shall insofar as they are relevant, also apply to the disposal by this judgment of Civil Appeal arising out of SLP (C) No. 6820 of 2023 and Civil Appeal arising out of SLP(C) No. 2753 of 2023. Similarly, our discussion on LAC No. 209 of 2002 dated 10.08.2006 shall insofar as they are relevant also apply to the disposal by

this judgment of Civil Appeal arising out of SLP(C) No. 6817 of 2023 and Civil Appeal arising out of SLP(C) No. 2324 of 2023.

49. In Civil Appeal arising out of SLP (C) No. 6820 of 2023 and Civil Appeal arising out of SLP (C) No. 2753 of 2023, the Section 4 notification was common. In those appeals, the land was situated in Survey No. 7/2 of Akoli Village Bujurg (Bk). The Reference Court by judgment dated 15.01.2005 in LAC No. 183 of 2000 awarded Rs. 100 per sq. ft. which was the same rate awarded in LAC No. 209 of 2002 dated 10.08.2006, though in those matters lands were situated in Survey Nos. 6,7 and 60 at Akoli Khurd Village.

50. In matters involved in LAC No. 183 of 2000, the Land Acquisition Collector awarded Rs.5,61,000/- per hectare. It is important to note that even though the land was situated in Survey No. 7/2 of Akoli Bujurg, the Land Acquisition Collector awarded equal value for the lands in Survey No. 1 (the present appeals) as well as Survey No. 7/2 and the Reference Court also awarded Rs.100/- per sq. ft. for both the Survey Nos.

51. In LAC No. 209 of 2002, the Land Acquisition Officer awarded Rs.72,400/- per hectare for the land situated in Survey Nos, 6,7 and 60 of Akoli Khurd Village. The Reference Court and the High Court have awarded Rs.100/- per sq. ft. even for those set of lands, for plotted area of 359684.44 sq. ft.

52. The only reason why in the present the High Court did not award Rs.100/- per sq. ft. was the finding that the land was on the blue zone, which finding we have already set aside.

The Land Acquisition Officer found similarity between the lands that are subject matter of LAC No. 183 of 2000 dated 15.01.2005 and the present land. If we are persuaded to hold that the order of the Reference Court in LAC No.183 of 2000 with regard to the land in Survey No. 7/2 of Akola Bujurg Village is correct then there is no reason why the same value should not be awarded to the present appellant except to that extent of the land, if any, falling within the 15 meters restriction from the defined boundary of the water course as explained earlier.

53. If we peruse the award of the Reference Court dated 15.01.2005 in LAC No. 183 of 2000, as an exemplar, a sale deed marked in that case as (Exh. 45) executed by one Usha Santosh Gode in favour of Ashok Krushnarao Sapkal dated 12.02.1999 in respect of plot no. 78 was relied upon. This is the sale deed set out in the present case in the claim statement as well as in IA No. 85664 of 2019 which is an application for permission to file additional documents as Annexure- A3. Though what is given in the present case is an index of sale- purchase details as on 21.05.1999, the sale Exh.45 referred to in C.A. arising out if SLP (C) No. 6820 of 2023 and C.A. arising out of SLP (C) No. 2753 of 2023, is mentioned at entry No. 8 dated 12.02.1999. There an extent of 1500 sq. ft. was sold for Rs.1,50,000/- which would be @ 100 per sq. ft. Ultimately in the order of the Reference Court in LAC No. 183 of 2000 dated 15.01.2005, the Court considered the valuation offered by the valuer in that case of Rs.200/- per sq. ft.; sale instance of Rs.175/- per sq. ft. in one of the exemplars and after reducing the value of the land for fluctuations in the market value and the prevailing ambience had arrived at a figure of Rs.100/-. This coincidentally tallies with the sale instance mentioned in Exh.

45 therein. In that case, other statutory benefits were awarded.

54. Be that as it may, in law what is mandated is to examine the potentiality of the land. Indisputably, by a common award the appellant's land and the land in Survey No. 7/2 in Akoli Bujurg were treated on par by the Land Acquisition Officer. Admittedly, the surrounding areas have lands for which non-agricultural permission had been given. It has also come in evidence that the land is in a locality surrounded by bustling commercial establishments and educational institutions and even the evidence of the acquiring body admits that the Tehsil's office and Collector's office in Akola District and Akola Taluk are located in the nearby area (evidence of DW-1). Photographs produced by PW-2 also show that there have been developments around the area.

55. The question here is whether in the present appeals the Reference Court was justified in following the award in LAC No. 183 of 2000. The High Court has held that the land fell in the blue zone which finding we have set aside. It further held that while the land of the appellant was on the bank of the river Morna, other Survey Nos., namely, Survey Nos. 5, 6 and 7 were above Survey No.1 and beyond the Gaothan of Akoli Bk. and away from the bank of river Morna. It also held that Survey No.7/2 was converted into non-agricultural use. It held that Survey No. 1 was never converted to non-agricultural land and hence Exh.71 sale deed of 10.05.1999 could not be relied upon. The High Court also relied on Exh.67 a letter dated 25.02.2000 wherein it is mentioned in para therein that Survey No. 1 (suit land) Survey No. 5/2, Survey Nos. 5/1, 7, 8 2, 25, 9/1-A of mauza Akoli fell in the no Development zone and therefore could not be converted into non-agricultural purpose though the said lands fell within the municipal town. This finding has been countered by the appellant by stating that in fact non-agricultural permission has been granted for Survey Nos.5/1, 7 8, 9/1-A and 28 in the written submissions. The same has not been converted by the respondent- authorities.

56. The surrounding land to the appellant's land has already been converted and the appellant has been granted the Nazul sheet and necessary charges have also been paid. We say nothing more on this aspect except that while determining the market value we are really concerned with the potentiality of the land. If except to the extent of 15 meters from the defined boundary of the water course the other land was not in the no construction zone, there is no reason why the same market value could not be awarded. In view of the above, considering the potentiality of the land and its situs, except for the lands upto 15 meters from the defined boundary of the water course, we are inclined to award Rs.100/- per sq.ft. for 68.3% of the total admeasuring area. It should not be forgotten that the LAO treated the land in Survey No. 7 Akoli Bk. No.1, namely, the appellant's land alike. The Reference Court also awarded them @ Rs. 100/-. The High Court proceeded on the basis that the land was purportedly in the blue zone and set aside the order of the Reference Court and the award.

57. We are inclined to restore the award insofar as the land if any within the 15 meters of the defined boundary of the water course and for the rest of the land in Survey No.1 belonging to the appellant for the 68.3% of the balance area, we award the rate of Rs.100/- per sq.ft.

58. LAC No. 209 of 2002 dated 10.08.2006, is the Reference Court order which is under consideration in C.A. No. @ SLP (C) No. 6817 of 2023 and C.A. No. @ SLP (C) No. 2324 of 2023 which are part of this very batch of matters. The Land involved in the said reference case is situated in village Akoli Khurd bearing Survey Nos. 6, 7 and

60. Here again, the Section 4 notification was issued on 03.06.1999. The lands were no doubt converted to non-agricultural use on 03.03.1983.

59. The plot area involved in LAC No. 209/2002 is 33415.50 sq. mts and the applicants were claiming for the plotted area and not claiming compensation for the open area and roads. In LAC No. 209/2002, the LAO awarded Rs. 72,400 per hectare resulting in a reference under Section 18. There is no case for the government that the land is adjacent to Morna river. The Land in question in LAC No. 209/2002 was situated near several educational and other religious institutions. The claim for enhancement in LAC No. 209/2002 was based on Exh. 78 dated 10/11.05.1999 where plot no. 50 Survey No. 7/2 of Akoli Bk. was sold @ Rs. 175/- per sq. ft. The LAO admits that the Akoli (Bk) and Akoli Khurd are adjoining twin villages. It is also recorded that the lands lying therein are similar in nature. Based on the previous award Rs.100/- per sq. ft. was awarded. The High Court upheld the said award. Exh. 75 was the sale deed of 12.02.2009 of plot no. 75 of Akola Survey No.8 and Survey No. 5/1. The price in the said sale deed was Rs. 100 per sq.ft. for an area of 1500 sq.ft. This is the document which is Exh.45 in C.A.No. @ SLP (C) No. 6820 of 2023 and C.A. No. @ SLP (C) No. 2753 of 2023 and this document is also one of the basis for the enhancement. According to our conclusion in this batch of appeals, decided hereinabove, the High Court was right in rejecting the other sale deeds. Relevant Legal Principles:

60. It is well settled that in determining the compensation the court would take into consideration the potentialities of the land existing as on the date of the notification published under Section 4(1) (State of Orissa vs. Brij Lal Misra and Others, (1995) 5 SCC 203)

61. This Court in Sardara Singh and Others v. Land Acquisition Collector, Improvement Trust, Rupnagar and Others, (2020) 14 SCC 483, has held that the rates of compensation awarded in adjacent villages cannot be disregarded if in the given set of facts and evidence, similarity is established. Similarly, in Om Parkash and Others v. State of Haryana, (2016) 13 SCC 190, the Court held that compensation awarded in the adjoining village can be considered when there was similarity in potentiality. [See also Special Land Acquisition Officer v. Karigowda and Others, (2010) 5 SCC 708]. In view of this settled position of law, we see no ground to interfere with this finding.

62. When there is a choice between an exemplar where the transaction is between unrelated parties dealing at arm's length and between an exemplar where the transaction is between related parties of a higher value, both of which are broadly around the same period, prudence would dictate and common sense would command that we accept the value of set out in the transaction between unrelated parties. We are inclined to accept the transaction which is at arm’s length and accept the market value of the amount of Rs. 100/- per sq. ft. and reject the claim of Rs. 175/- per sq. ft.

63. It is well settled that market value is determined based on the price of a willing buyer- a willing seller at arm's length. In Administrator General of West Bengal Vs. Collector, Varanasi (1988) 2 SCC 150, it was held :

> "8. The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act, 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 arm's length. The determination of market value, as one author put it, is the prediction of an economic event viz. the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available."

64. In this case, when we have two exemplars, one between two independent parties and the other between two admittedly related parties and both transactions have taken place without much of a time gap.

65. Insofar as the where the exemplar is a small extent of land is concerned, it is now clear that even in these lands in Survey No. 1 where the permission is not yet obtained, except to the extent of those lands falling within the 15 meters from the defined boundary of the water course, they were also ripe for use for building purposes and hence to adopt the same value as was done in the case of sale deed dated 12.02.1999 @ Rs. 100/- per sq. ft. is justified. There is evidence on record to the effect that the area was plotted to the extent of 7948 sq. mtrs. and there were 43 plots. It is also in evidence given by them that roads were constructed. Though this is disputed in the evidence of the acquiring body, the evidence led by them is to the effect that the land is of agricultural use, barren and there is no development. There is no specific denial that there were no demarcated plots. It is also true that on the date of the acquisition there was no non-agricultural permission though the case of the appellant is he had taken preparatory steps and deposited the fees.

66. In Administrator General of West Bengal (Supra) dealing with the aspect of valuing large tracts of land based on the price fetched for smaller plots, this Court held as under:

> "12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. (See Collector of Lakhimpur v. B.C. Dutta [(1972) 4 SCC 236] ; Mirza Nausherwan Khan v. Collector (Land Acquisition), Hyderabad [(1975) 1 SCC 238] ; Padma Uppal v. State of Punjab [(1977) 1 SCC 330] ; Smt Kaushalya Devi Bogra v. Land Acquisition Officer, Aurangabad [(1984) 2 SCC 324] The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if

> it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made.... ..." The appellant was claiming compensation @ Rs. 500 per sq. ft. and examined the valuer to substantiate the same which the Reference Court was not inclined to award and we agree with the Reference Court in that regard. We are also not awarding any amount for the 32% (approx.) of the land which, even according to the claimant, pertain to the area covered by roads and open space. We are not inclined to award any compensation or damages. Additionally for that reason also, we are not inclined to make any deductions from the market value fixed @ Rs. 100 per sq. ft. for the 68.3% (approx.) of the land. We have evidence to show that the land was ripe for use for building purposes. We are not inclined to, in the special facts and circumstances of the case, to order any deduction based on extent of land and the cost for incurring development. The LAO in the award which in law is an offer, treated the appellant's land and the land in Survey No. 7/2 (subject-matter of LAC No. 183/2000) on par and the Reference Court also treated them on par.

67. In this case since the acquisition is for construction of a flood protection wall, the question of there being any development or any cost thereof cannot arise. It is well settled that the purpose for which the land is acquired must be taken into consideration while determining development charges.

68. In Himmat Singh & Ors. Vs. State of Madhya Pradesh & Anr. (2013) 16 SCC 392, this Court, dealing with the issue of deduction of development charges in the context of acquisition for a railway line held as under:

> "33. The approach adopted by the Reference Court and the High Court in making deductions towards the cost of development/development charges from the market value determined on the basis of the sale deeds produced by the appellants was clearly wrong. The respondents had not even suggested that the development envisaged by the Reference Court i.e. laying of roads, drains, sewer lines, parks, electricity lines, etc. or any other development work was required to be undertaken for laying the railway line. Therefore, 25% deduction made by the Reference Court and approved by the High Court under two different heads is legally unsustainable."

69. Insofar as the Development charge is concerned, as held in Himmat Singh, where no Development is envisaged like laying of roads, drains, sewer lines, parks etc. and what is required is

only construction of a flood control wall, the question of deducting any development charge cannot arise. [See also Nelson Fernandes vs. Land Acquisition Officer (2007) 9 SCC 447].

70. The VIDC has relied upon certain circulars to show the consequence of blue zone. Since the finding is that no construction area is limited to 15 meters from the boundary, the circulars do not carry the case of the State any further. In any event, the State Government's affidavit has clearly stated that what was in vogue in the relevant time was the Standardized Building Byelaws and Development Control Rules for B and C Class Municipal Councils of Maharashtra which was made applicable to even areas outside Municipal limits by Government resolution of 02.04.1974. The State does not in its affidavit make any reference to any applicable circular.

71. The appellant had averred that out of the total extent of 125937.8 sq. ft., he had claimed @ Rs, 500/- per sq. ft. for 84481 sq. ft. which constitutes 68.3% (approx.) of the total extent. The balance area of 41404 sq. ft. which constituted approximately 32%, according to him were the area covered by roads and open space. He had claimed Rs.25 lakhs for the extent of making the roads and also prayed for damages at Rs. 50 lakhs.

72. In view of our judgment, the appellant will be entitled to Rs.100/- per sq. ft. for the 68.3% (approx.) of the balance area, after excluding the land area, if any, which falls within the 15 meters from the defined boundary of the water course. For the land falling within the no construction zone, if any, as per the Standardized Building Byelaws, he will be paid at the rate determined by the Special Land Acquisition Officer in the award. Insofar as the market value of the land in question and other statutory benefits are concerned, the judgment of the Reference Court will continue to operate, subject to one modification. The possession of the land in this case was taken on 15.11.1998 before the issuance of Section 4 notification. In another Appeal decided by us in this batch today, we have held the appellant entitled to rental compensation at the rate of 8% of the awarded amount for the period from 15.11.1998 to 04.08.2000, the date of the award. In view of the same, direction no. 5 in the operative order of the Reference Court requires to be modified. That direction was under Section 28 of the Act. In view of the entitlement for the rental income till 04.08.2000, the appellant shall be entitled to interest on the enhanced amount at 9% for a period of one year from 04.08.2000 and at the rate of 15% for the period thereafter till payment of amount in the court. If the amount is already deposited, nothing further needs to be done. If not, the State may pay the deficit, if any.

73. In view of our findings hereinabove, Civil Appeal Nos. 6776- 6777 of 2013 are partly allowed. The impugned judgment dated 17.06.2013 in First Appeal No. 1210 of 2008 and First Appeal No. 6 of 2009 are set aside and will stand superseded by our present judgment. No order as to costs.

II. Civil Appeal arising out of SLP (C) No. 21611 of 2018 (Kazi Akiloddin Sujaoddin Vs. State of Maharashtra & Ors.)

74. Leave granted.

75. In this case, the facts are identical with Civil Appeal Nos. 6776- 6777 of 2013. The question involved is about the payment of rental compensation for the period from 15.11.1998 (when the

possession of the appellant's land was taken) to 04.08.2000 (when the award was passed by the Land Acquisition Officer). After the Reference Court enhanced the compensation on 02.08.2008, the appellant and the State filed Appeals and cross Appeals in the High Court, namely, First Appeal No. 1210 of 2008 by the appellant and First Appeal No. 6 of 2009 by the State. Pending the Appeal in the High Court, the appellant applied to the 3rd respondent herein, the Special Land Acquisition officer, for grant of rental compensation on the basis of enhanced compensation awarded by the Reference Court by its order dated 02.08.2008. Receiving no reply, the appellant filed Writ Petition No. 2763 of 2009 before the High Court. That Writ Petition was disposed off on 06.07.2009 by recording the statement of the Assistant Government Pleader that the application of the appellant would be decided on merits at the earliest.

76. Thereafter, on 05.10.2009, the application was rejected on the ground that order of the Reference Court was under challenge before the High Court.

77. Aggrieved, the appellant filed Writ Petition No. 3883 of 2010. By the judgment of 15.09.2011, Writ Petition No. 3883 of 2010 was allowed directing that enhanced rental compensation @ 8% of the enhanced amount as directed to be paid by the Reference Court, be deposited in the High Court. It further directed that the appellant could withdraw half the amount by furnishing the security and remaining amount to be kept in fixed deposit. It is undisputed that 8% was calculated for the period 15.11.1998 till the date of award i.e. 04.08.2000.

78. The State Government did not challenge the order dated 15.09.2011 which determined the entitlement for rental compensation from 15.11.1998 (the date of taking advance possession) till 04.08.2000 (date of the award). The appellant, aggrieved by the judgment of 15.09.2011 in Writ Petition 3883 of 2010, filed Civil Appeal No. 5084 of 2013 before this Court which was disposed off on 3rd July, 2013, directing that in case compensation is enhanced, the appellant shall be entitled for the rental compensation as per the enhanced amount. It did not interfere with the order of the High Court directing the State Government to deposit the rental compensation @ of 8% of the amount awarded by the Reference Court with the Appellate Court and allowing the appellant to withdraw only half the amount. Liberty was also reserved to the appellant to claim proportionate higher rental compensation, if the order of the Reference Court is upheld or further enhancement of compensation is made by the Appellate Court. So holding, the Appeal of the appellant was dismissed.

79. What is significant is that this Court by its judgment referred to above of 3rd July, 2013 in Civil Appeal No. 5084 of 2013 [Kazi Akiloddin Sujaoddin Vs. State of Maharashtra & Ors.] reported in (2013) 14 SCC 8, in the absence of any appeal by the State had no occasion to disturb the mandamus issued in Writ Petition 3883 of 2010 by the High Court, insofar as it fixed the entitlement to the rental compensation for the period 15.11.1998 till 04.08.2000. Hence, the State cannot challenge the period for which the appellant was entitled to rental compensation, in these proceedings. The rental compensation and the period were based on the Government Resolutions dated 02.05.1961, 01.12.1972, 02.04.1979 and 24.03.1998.

80. Hence, the appellant is entitled for the rental compensation for the period 15.11.1998 till 04.08.2000 on the basis of 8% of the awarded amount as decided by us today in Civil Appeal Nos. 6776- 6777 of 2013 by this very judgment. The Civil Appeal is allowed in the above terms and the impugned judgment in Writ Petition No. 4062 of 2018 dated 10.07.2018 stands superseded by the present judgment. No order as to costs.

III. Civil Appeal arising out of SLP (C) No. 6490 of 2022 (Sau. Dwarkabai Vs. The State of Maharashtra & Anr.)

81. Leave granted.

82. The present Appeal arises from the judgment of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in First Appeal No. 896 of 2016 dated 18.02.2021. The facts are as follows. Section 4(1) notification under the Act was published on 11.03.1999. The land of the appellant situated in Field Gut No. 4/2 admeasuring 0.86 Hectares i.e. 2 acres and 6 Gunthas at village Hingana Mhaispur, Tq. & District Akola (Maharashtra) was sought to be acquired by the respondents for the purpose of construction of a flood protection wall for Akola city. Thereafter, on 22.06.2000, award was passed awarding a total compensation of Rs. 56,588/- per hectare. On a reference being made under Section 18 of the Act, the appellant claimed higher compensation. Four witnesses were examined on the side of the appellant. The appellant examined himself as PW-1. A map was produced by him to show that the surrounding area was completely non-agricultural and developed. Three certified copies of sale deeds, one of which is a post-notification deed was also produced. A list pertaining to plots sold in Survey Nos. 7/1 and 7/2 of Akola Bujurg was also produced. The appellant contended that the situation of the land was in a developed area adjoining to Ramakrishna Vivekanand Vikri Kendra, Maratha Sewa Sangh, Vyankatesh Restaurant, Agricultural Produce Market Committee etc. Strangely, the State did not subject the appellant to any cross- examination.

83. The appellant examined two Talathies of the village, namely, Sudhakar Namdeorao Ambuskar (PW-3) and Bhagwan Shamrao Thite (PW-4). PW-3 marked the sketch of Hingana Mhaispur to establish that towards the north of the property is a cart track and towards the south of the cart track is the boundary of village Akoli. In the cross-examination, he deposed that Survey No.4 was adjacent to the river and since there was a possibility of proceeding of water only, it was not useful for non-agricultural purpose. To the similar effect is the evidence of PW-4.

84. The respondents did not adduce any evidence. The Reference Court awarded Rs. 100/- per sq. ft. Para 9, 10 and 11 of the order of the Reference Court are extracted herein below:

> "9. The acquired land physical situation is supported by oral evidence of P.W. Nos.3 and 4, who are Talathi and concern with the said landed portion. Both these witnesses have proved the vicinity of the landed portion, which is acquired. Not only the oral evidence of P.W. Nos.3 and 4 support to the vicinity of landed portion allegedly contended by the petitioner, but it is also supported to the blue-print map, which is available on record and other maps also available, which are drawn by the

revenue authorities itself. There are two maps filed on record. One is of Akoli Kd. and another is of Hingana Mhaispur. These two lands appears to be accessible and fetchable for the residential purposes before the time of notification. There is no any rebuttable evidence regarding the physical status of landed area in question and objection raised by respondent in their written statement.

10. It is exfacie proved on the basis of sale-deeds, maps, oral evidence in support of petitioner's case that the landed zone of Akoli Kd. and Hingana Mhaispur having concern with the residential zone, and therefore, there are so many possibilities of high escalation in market value that too, since the time of notification.

11. ...On the basis of materials on record and the oral evidence supported to the case, the petitioner's case for enhancement of the compensation appears to be well founded. Not only this, petitioner has supported with the relevant judgment passed in L.A.C.No.183/2000 dated 15/01/2005. Certified copy is on record, which clearly shows the fetchable prevailing rate as per market valuation of the concern land was Rs.100/- per square feet. This rate cannot be remained constant. In the present circumstances, there must be escalation in the market valuation. Considering this fact, petitioner did not make any amendment in his pleading. At of it, claiming the enhanced compensation at the rate of Rs.100/-, that found me justifiable and natural and supported with all backgrounds about market valuation." Other statutory benefits were also awarded.

85. Aggrieved by the order of the Reference Court, the State preferred First Appeal No. 896 of 2016 before the High Court. The State contended that reliance placed by the Reference Court on LAC No. 183/2000 was not justified as the judgment in the said LAC No. 183/2000 was pending Appeal in the High Court; that the land that was subject matter of LAC No. 183/2000 was located in a different village and the land was not similar in nature; that the judgment in LAC No. 183/2000 has been mechanically relied upon without considering its applicability to the case at hand; that the sale deeds relied upon related to small non-agricultural plots which had construction potentiality and are not comparable instances. The State further argued that in another First Appeal No. 1210 of 2008 arising from LAC No. 140/2000 (subject matter of the Appeal in Civil Appeal Nos. 6776-6777 of 2013 herein), the Appeal of the State was allowed and the compensation fixed at Rs. 100/- per sq. ft. was set aside and the compensation fixed by the Land Acquisition Officer at Rs. 5.30/- per sq. ft. was restored.

86. Mr. Nishant Katneshwarkar, learned counsel for the appellant contended that though the land is situated in Village Hingana Mhaispur, the said village is separated from Village Akoli (Bk) only by a bullock-cart track; that civic amenities were available in and around the acquired land; that the land had construction potentiality; that the judgment in LAC No.183/2000 was not the only basis and that sale deeds dated 04.05.1999 (Exh.40), 11.06.1998 (Exh.41) and 15.07.1998 (Exh.42) were relied upon which showed that the land located in the same vicinity was sold @ of Rs. 110/- per sq. ft., Rs. 60/- per sq. ft. and Rs. 50/- per sq. ft. It was also submitted that there was no evidence to show that the land was along the riverbank and was prone to flooding. It was also submitted that the judgment

in First Appeal No. 1210 of 2008 (subject matter in Civil Appeal Nos.6776-6777 of 2013 herein) had not attained finality.

87. The High Court, in the impugned order, proceeded as if the only basis of the judgment of the Reference Court was the order in LAC No. 183/2000. That is clear from the reading of para 8 of the impugned order which states that "the Reference Court has determined the market rate of the acquired land on the basis of the judgment in LAC No.183/2000." This may not be entirely an accurate statement as a careful perusal of the portions of the Reference Court judgment extracted herein above indicates that the order in LAC No. 183/2000 was an additional factor. Be that as it may, the High Court held that the land in LAC No. 183/2000 pertained to a small plot, namely, Survey No. 7/2 which was converted to non-agricultural use way back in the year 1982. It was also found that unlike the present plot, the land that was subject matter in LAC No. 183/2000 was not on the riverbank. The High Court found that the sale deed of 04.05.1999 (Exh.40) was a post notification transaction. As far as the sale deeds dated 11.06.1998 (Exh.41) and 15.07.1998 (Exh.42) are concerned, the High Court held that they pertained to plot nos. 117, 162 and 12 respectively carved out from Survey Nos. 6, 7 and 60 of village Akoli (Khurd) which was converted to non-agricultural land way back in the year 1982. Thereafter, the High Court held as follows:

> "11. The Respondent had also relied upon the sale-deed dated 04/05/1999 at Exh.40, which is a post notification transaction. The said sale-deed as well as sale-deeds dated 11/06/1998 at Exh.41 and 15/07/1998 at Exh. 42 relate to plot Nos.117, 162 and 12 respectively carved out from Survey No.6, 7 and 60 of village Akoli (khurd), which was converted to non-agricultural land way back in the year 1982. These sale-deed plots were sold at the rate of Rs. 50-60 per sq.ft. It is not in dispute that these sale-deed plots are situated in village Akoli khurd which is separate from village Hingana by a bullock cart track. These sale-deed plots were small in size and were suitable for construction purpose. Moreover, these sale-deed plots were away from the river bank and were not prone to getting submerged during rainy season or floods.
>
> 12. As compared to the sale-deed land, the acquired land is a vast track of agricultural land, along the river bank and was prone to getting inundated during rainy season and hence was not suitable for construction purpose. On account of these dissimilarities, the acquired land would not have fetched the same price as that of the sale-deed land. The above stated disadvantageous factors possessed by the acquired land would warrant appropriate deductions.
>
> 13. The above referred sale-deed plots were sold in the year 1998 at the rate of Rs. 50-60 per sq.ft.. Considering the fact that the notification under Section 4 is of the year 1999, and further considering increase in the price of land at 10% per annum, the rate of these developed plots can be considered at Rs.60/- per sq.ft. upon deducting 30% towards development charges, 30% towards the difference in area and 15% in view of disadvantageous location of the acquired land vis-a-vis the sale-

deed land, the price works out to Rs.15/- per sq. ft." So holding, the compensation was fixed at Rs. 15/- per sq. ft. The High Court not only deducted 30% towards development charges, which we find is unjustified, it further went on to deduct 30% towards the difference in area and 15% in view of the disadvantageous location.

88. We notice that the State is not in the Appeal in this matter and there is no dispute about the applicability of the exemplars Exh.41 dated 11.06.1998 and Exh.42 dated 15.07.1998 to determine the base value. We also note that the appellant's own witness PW 3 and 4 deposed in cross-examination that the land could not be put to non- agricultural use. The appellant did not re-examine them.

89. While we do not fault the judgment of the High Court in fixing Rs. 60/- per sq. ft and applying 30% towards difference in area, we feel that further deduction towards development charges while the acquisition was for the construction of the wall involving no development and further 15% due to disadvantageous location was completely unjustified. Hence, we award the compensation for the land in question in this Appeal @ of Rs. 42/- per sq. ft. The Rest of the order with regard to the statutory benefits and interest is maintained. We are conscious that the amount of Rs. 42 per sq. ft. awarded by us is above the amount claimed.

90. In the affidavit-in-chief of the appellant, there is a poignant averment to the following effect "…. But as I could not be able to arrange for the Court fee, I have claimed the price of the land @ Rs. 30/- per sq. ft. which comes to Rs.19,35,000/-. The Land Acquisition Officer paid Rs. 56,585/- towards the value of the land and hence I am claiming Rs.18,78,450/- towards the balance market value of the land along with all other benefits, interest and solatium and also give other benefits given to landless persons. I have no land on my own now."

91. We are supported in this course of action by the earlier judgments of this Court in Bhag Singh and Others vs. Union Territory of Chandigarh through the Land Acquisition Collector, Chandigarh, (1985) 3 SCC 737 where Chief Justice Bhagwati held while tempering law with justice:-

> "3… The learned Single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge,

there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned Single Judge should have allowed the appellants to pay up the deficit court fee and awarded to them compensation at the higher rate or rates determined by them." The said principle has been followed in other cases including in Ashok Kumar and Another vs. State of Haryana, (2016) 4 SCC 544 wherein para 7 it was held as under: -

"7. The pre-amended provision puts a cap on the maximum : the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, puts a cap on the minimum : compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

92. The above are classic instances where this Court ensured that justice and fairness triumphed over technicalities. By the said course, it is ensured that a balance was struck between recognizing the right of the State in exercising its power of eminent domain with the right of the citizen to receive what was legally due. In accordance with the above judgment, we also direct that the deficit court fee which will now become payable when compensation is awarded @ of Rs. 42/- per sq. ft along with other statutory benefits shall be payable by the appellant.

93. The Civil Appeal is allowed in the above terms and the impugned judgment dated 18.02.2021 in First Appeal No. 896 of 2016 stands set aside and will be superseded by the present judgment insofar as fixing the market value is concerned. All statutory and other benefits as ordered by the Reference Court shall continue to operate. No order as to costs.

IV. Civil Appeal arising out of SLP (C) No. 6817 of 2023 (Smt. Vijayadevi Navalkishore Bhartia & Ors. Vs. State of Maharashtra & Anr.) and Civil Appeal arising out of SLP (C) No. 2324 of 2023 (The Executive Engineer Vs. Smt. Vijayadevi Navalkishore Bhartia & Ors.)

94. Leave granted in both the matters.

95. Civil Appeal arising out of SLP (C) 6817 of 2023 is filed by the family of landowners aggrieved by the judgment of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in First Appeal No. 643 of 2006 dated 27.09.2022. Civil Appeal arising out of SLP (C) 2324 of 2023 is filed by the State against the dismissal of their First Appeal No. 541 of 2007 by the same judgment dated 27.09.2022. By virtue of the said judgment, the High Court confirmed the judgment of the Ld. Ad-hoc Additional District Judge, Akola awarding compensation @ of Rs. 100/- per sq. ft. for the plot area admeasuring 359684.44 sq. ft., further @ of Rs. 50/-per sq. ft. for open belt area admeasuring 108501.12 sq. ft. and @ of Rs. 25/- per sq. ft. for the plot area created due to division admeasuring 28809.84 sq. ft. with consequential benefits.

A. Brief Facts:

> 96. Brief facts giving rise to the case are as follows. The lands of the claimants are situated in Survey Nos. 6, 7 and 60 at Mauza Akoli Khurd district Akola. According to the appellants, on 03.03.1983 the land was converted to non-agricultural use. Survey No. 7 was reserved for development of residential tenements by the Nagpur Housing and Area Development Board vide gazette notification dated 11.10.1984. A notification under Section 4 of the Act was issued on 03.06.1999 for acquiring the land for construction of flood protection wall. On 06.10.1999, notice under Section 6 of the Act was published. On 09.04.2001, an award was passed @ of Rs.

72,400/- per hectare. The appellants have a case that originally the award was proposed for higher amount but the same was re- evaluated and reduced ultimately in the final award of 09.04.2001. This issue need not detain the Court as ultimately there is no dispute that the amount as awarded by the Land Acquisition Officer was Rs. 72,400/- per hectare. In fairness to the claimant owners, no serious argument in this Court was even canvassed. In fact, a Writ Petition was filed, namely, Writ Petition No. 753 of 2003 challenging the decision of the Commissioner in reducing the compensation. That Writ Petition was dismissed and in Civil Appeal No. 2045 of 2003 filed in this Court, an order was made on 12.02.2004. By the said order, the claimant owners were asked to raise all the issues before the Reference Court.

97. In the meantime, on 13.05.2002, aggrieved by the award passed by the Land Acquisition Officer, the appellants filed reference application bearing LAC No. 209 of 2002. Evidence was adduced about the situs of the land and a claim was made that compensation should be awarded @ of Rs. 175/- per sq. ft. Primarily, four sale deeds were relied upon being (i) Exh.75 dated 12.02.1999 pertaining to plot no. 78 of Akoli (Bk) from Survey Nos. 8 and 5/1. The total area of the plot was 1500 sq. ft. and it was sold @ of Rs. 100/- per sq. ft. (ii) Exh.76 dated 04.05.1999 pertained to plot no. 58 from Survey Nos. 6, 7 and 60 of Akoli (Kh) and it was sold @ of Rs. 100/- per sq. ft. (iii)

Exh.77 dated 04.05.1999 was in respect of plot no. 117 from Survey Nos. 6, 7 where the plot wasa sold at Rs. 110/- per sq. ft. and (iv) Exh. 78 is the sale deed of Plot No. 50 dated 11.05.1999 from Survey No. 7/2 of Akoli (Kh) and it was sold @ of Rs. 175/- per sq. ft.

98. The main case of the claimant owners is that compensation should have been awarded based on the sale deed of 11.05.1999 which pertained to plot No. 50 from Survey no. 7/2 of Akoli (Bk) where the price was Rs. 175/- per sq. ft.

99. By the judgment of 10.08.2006, the Reference Court awarded enhanced compensation. For the plot area admeasuring 359684.44 a sum of Rs. 100/- per sq. ft. was awarded. For area under open belt admeasuring 108501.12 sq. ft. enhanced compensation at Rs. 50 per sq. ft. was awarded. For the balance area of divided plots admeasuring 28809.84 sq. ft., Rs. 25/- per sq. ft. was awarded.

100. This judgment dated 10.08.2006 was challenged by filing First Appeal No. 643 of 2006 by the claimant owners and the First Appeal No. 541 of 2007 by the State. The High Court by the impugned judgment has affirmed the findings of the Reference Court. The appellants and the State are in Appeal.

B. Contentions:

101. Shri Ranjit Kumar, learned senior counsel for the appellants contended that land was developed non-agricultural land converted to non-agricultural use on 03.03.1983; that the area around the land is fully developed and is abutting the road leading to national highway at 1 km; that roads are available; development works were going on and that the land did not fall under 'Blue Zone' and in any case the said contention was given up by the State insofar as the appellant's land was concerned. The learned senior counsel further contended that the highest exemplar at Rs. 175/- per sq. ft. ought to have been taken and the stand that the sale was between the related parties ought to be rejected since there was no evidence to show that the sale was intended to obtain higher compensation. Additionally, the sale was in favour of the legal entity. The learned counsel relied upon the judgments in Munusamy v. Land Acquisition Officer, (2021) 13 SCC 258 and Mehrawal Khewaji Trust (Registered), Faridkot and Others v. State of Punjab and Others, (2012) 5 SCC 432 to contend that Exh. 78 the sale dated 11.05.1999 of plot no. 50 in Survey No. 7/2 of Akoli (bk) should have been taken being the highest exemplar. The learned senior counsel also submits that no deduction for development charges ought to have been made. According to learned counsel, since it is for the construction of a flood wall no development is required and in any event no compensation has been awarded for the portions of the land consisting of roads, lanes and open space. Learned counsel relied on Bhagwathula Samanna and Others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam, (1991) 4 SCC 506; Charan Dass (Dead) by LRs. Vs. H.P. Housing & Urban Development Authority & Ors., (2010) 13 SCC 398 and State of M.P. vs. Radheshyam, 2022 SCC OnLine SC 162.

102. Rebutting the arguments, Shri Uday B. Dube, learned counsel for the Vidharbha Industrial Development Corporation (hereinafter referred to as 'VIDC') contends that of the four sale deeds, Exh.75 dated 12.02.1999 was a transaction between unrelated parties. The other three Exh.76,

Exh.77 and Exh.78 were also executed just prior to the issuance of the Section 4 notification and were between the related parties. The sale deeds were executed just prior to the initiation of the acquisition and according to the State, the parties had full knowledge regarding sanction of the project for construction of flood control wall and as such sale deeds are suspicious in nature and are intended only for the purpose of getting more compensation for the plots which could not be sold for 15 to 16 long years. The State relied upon State of Maharashtra and Others Vs. Digamber Bhimashankar Tandale & Ors. (1996) 2 SCC 583 to contend that though the lands were converted for non-agricultural purpose, there was no development and hence compensation on per sq. ft. basis could not have been awarded. According to the State, the claimant owners were not available to sell a single plot for 15 to 16 long years.

103. It is further contended that the land extend to more than 7 lac sq. ft. in all the matters pertaining to the family and as such compensation at Rs. 100/- per sq. ft. relying on an exemplar sale deed involving sale of an area measuring 1500 sq. ft. was not justified.

104. The State vehemently argues that the intra family sale deed Exh. 78 dated 11.05.1999 executed just twenty-three days prior to the notification under Section 4 cannot be the basis for the award of compensation @ of Rs. 175/- per sq. ft. In fact, the claimants prayed only for an average compensation of Rs. 121.25/- per sq. ft. So praying, the State prayed for restoration of the award passed by Land Acquisition Officer.

C. Findings of the High Court:

105. The High Court in the impugned order has found that the land was reserved for development of residential tenements. It relied on Exh. 67 a notification dated 21.09.1984 published in the Government Gazette. In fact, the High Court records that the witness for the respondent-State had not countered this fact that the document was produced and the document had remained unrebutted. Dealing with the argument of the claimants/land owners that the Commissioner could not sit in appeal against the proposed award, the High Court rightly rejected the plea stating that in the reference proceedings all the issues have been raised and as such no prejudice has been caused to the claimant land owners. Dealing with the situs of the land, the High Court recognized the fact that the land was in close proximity to the various institutions of prominence in Akola City. It recorded the following finding:

> “20. ....It is to be noted that in the award passed by the SLAO, a reference has been made to the prominent location of the acquired land. The distance of the acquired land from various institutions of prominence and the close proximity of the land to Akola city has been mentioned. It has been proved that on the Northern side of the acquired land, there are police quarters known as Rahat Nagar, Sneh Nagar and to the North-west, there is Ambedkar Nagar, Vijay Oil Industries and Krushi Utpanna Bazar Samiti market. So also, near the acquired land, there are Ramkrushna Vivekanand Ashram, Maa Sharda Balak Mandir, Ramkrushna Vivekanand Sahitya Kharedi Vikri Kendra and Saint Anne's School of Hyderabad etc. It has been proved that temple of Lord Vyankatesh Balaji, Maratha Seva Sangh, Swami Vivekanand High

> School, Jijau Vasatigruha. Vyankatesh Restaurant, Wholesale Grain Merchant's Housing and Commercial Complex Society and Alankar Petrol Pump, are located in the close proximity of the acquired land.
>
> 21. PW2 Brijmohan Modi, a registered valuer, examined by the claimants has proved the Valuation Reports at Exhs.63 and 64.

The map drawn by the valuer is at Exh.83. On the basis of the evidence of PW1 and PW2, prominent location of the acquired land in close proximity of Akola city has been proved. It has been proved that in the vicinity of the acquired land, there has been development. There are residential and commercial complexes. Evidence adduced in rebuttal by the respondents is not sufficient to disprove the above aspects. The only statement reiterated time and again by the respondents is that the acquired land being situated on the bank of Morna river, it had no future prospects of development. In our opinion, this contention of the respondents cannot be accepted in view of the positive evidence adduced by the claimants. Learned Presiding Officer of the Reference Court has accepted this evidence. We do not see any reason to discard or disbelieve this evidence."

106. Analysing Exh. 75 to Exh. 78 relied upon by the Appellants, the High Court observed as follows:

> 23. In order to prove that the market price of the land on the date of Section 4 notification was not less than Rs.200/- per sq.ft., the claimants have placed on record four sale instances at Exhibits-75 to 78. Exh.75 is the sale deed dated 12.02.1999 of plot no.78 of Akoli (Bk.) from survey nos. 8 and 5/1. Total area of the plot was 1500 sq.ft. It was sold @ Rs.l00/- per sq.ft. It has come on record that this plot was sold by one Usha Santoshrao Gole to Ashok Krushnarao Sapkal and Shalikram Ramkrushna Zamre. It is to be noted that this sale transaction has been made the basis for quantifying the enhanced compensation by the learned Presiding Officer of the Reference Court. The vendor and vendee are not concerned with the claimants in any manner.

In our opinion, therefore, the contention of the respondents that this sale instance was brought into existence to claim excessive and exorbitant compensation by the claimants cannot be accepted. On a perusal of the oral evidence adduced by the claimants and supporting documentary evidence, we do not see any reason to discard and disbelieve this sale instance."

107. Hence, the High Court ultimately confirmed the order of the Reference Court relying upon Exh. 75 sale deed dated 12.02.1999 for Rs. 100/- per sq. ft. It expressly recorded that the vendor and vendee were not concerned with the claimants in any manner and that was also the admitted case of the State. Rejecting Exh. 76, Exh. 77 and Exh. 78, the High Court recorded that the sale deeds were executed by members of the family and as such it did not chose to rely upon the same.

Findings:

108. We have already in this judgment while dealing with Civil Appeal Nos. 6776-6777 of 2013 hereinabove, discussed the correctness of the judgment and order in LAC No. 209 of 2002, which reference concerned the present appellants. We have also discussed the law on reliance of exemplars of unrelated parties and related parties and as to how when there are two exemplars, one between unrelated parties at arm's length and the other between related parties mentioning a higher value and when both are within reasonable time gap, prudence would dictate and common sense would command the acceptability of the exemplars involving unrelated parties. The same reasoning applies here also.

109. We have also therein discussed the law on the applicability of the development charges and also dealt therein the aspect of in what circumstances the value fetched by smaller plots can be applied in valuing larger tracts of land. Additionally, it has also to be borne in mind that while Rs.100/- per sq. ft. was awarded by the Reference Court for plotted area admeasuring 359684.44 sq. ft., for the open belt area admeasuring 108501.12 sq. ft., the enhanced compensation was only @ Rs. 50/- per sq. ft. Additionally, for the plot area created due to division admeasuring 28809.84 per sq. ft., the enhanced compensation was @ Rs. 25/- per sq. ft. For this reason also, additionally, we are not inclined to make any deduction in the amount of Rs.100/- per sq. ft. awarded for the plot area admeasuring 359684.44 sq. ft. In view of the above, both the Civil Appeals are dismissed. No order as to costs.

V. Civil Appeal arising out of SLP (C) No. 6819 of 2023 (Vijayadevi Navalkishore Bhartia & Ors. vs. The State of Maharashtra & Anr.) and Civil Appeal arising out of SLP (C) No. 2892 of 2023 (The Executive Engineer Vs. Smt. Vijayadevi Navalkishore Bhartia & Ors.)

110. Leave granted in both the matters.

111. These Appeals are similar to Civil Appeal arising out of SLP (C) 2324 of 2023 and Civil Appeal arising out of SLP (C) No. 6817 of 2023. The only difference being that the land is situated in Survey No. 6 and Survey No. 7 in Akoli (kd) and measures 26016.59 sq. ft. Section 4 notification under the Act was dated 21.07.2000; and Section 6 notification of the Act was dated 02.02.2001. The Special Land Acquisition Officer published the award on 27.06.2002 @ of Rs. 96364/- per hectare. On 20.04.2006, the Reference Court allowed LAC No. 53/2005 and granted Rs. 100/- per sq. ft. The High Court has dismissed the First Appeal No. 384/2006 filed by the claimant and First Appeal No. 621/2006 filed by the respondents. Both parties have relied on the arguments raised in Civil Appeal arising out of SLP (C) No. 2324 of 2023 and Civil Appeal arising out of SLP (C) No. 6817 of 2023 and as such whatever has been held therein holds good for these Appeals also. In view of the above, both the Civil Appeals are dismissed. No order as to costs.

VI. Civil Appeal arising out of SLP (C) No. 6820 of 2023 (Smt. Taradevi Chimanlalji Bhartia & Ors. Vs. The State of Maharashtra & Anr.) and Civil Appeal arising out of SLP (C) No. 2753 of 2023 (The Executive Engineer Vs. Smt. Taradevi Chimanlalji Bhartia & Ors.)

112. Leave granted in both the matters.

113. The claimants filed First Appeal No. 282 of 2005 and the State filed First Appeal No. 155 of 2005 arising out of LAC No. 183/2000. The facts are same as in Civil Appeal arising out of SLP (C) No. 6817 of 2023 and Civil Appeal arising out of SLP (C) No. 2324 of 2023. The slight difference being the area involved i.e. plot area of 15562 sq. ft. and open sub divided area of 9464 sq. ft. On 03.06.1999, Section 4 notification under the Act was issued and Section 6 notification under the Act was issued on 02.12.1999. On 04.08.2000, the LAO made award @ of Rs. 5,61,000/- per hectare. On a reference being filed, the Reference Court in LAC No. 183/2000 awarded compensation @ of Rs. 100/- per sq. ft. Both the claimants and the State filed Appeals. We have already in this judgment affirmed the findings in LAC No. 183/2002 out of which these Appeals arise. By the impugned order, the High Court confirmed the order of the Reference Court. Arguments are similar, hence, whatever has been held in Civil Appeal arising out of SLP (C) No. 6817 of 2023 and Civil Appeal arising out of SLP (C) No. 2324 of 2023 would hold good for these Appeals also. In view of the above, the Civil Appeals of the appellant landowners as well as the acquiring body are dismissed. No order as to costs.

.....J. [SURYA KANT] .....J. [K. V. VISWANATHAN] New Delhi;

July 10, 2024.