Bombay High Court State Of Maharashtra vs Prashram Jagannath Aute on 19 July, 2007 Equivalent citations: AIR 2007 Bom 167, 2007 (5) CTC 97, 2008 (1) JCR 431, 2007 (5) MhLj 403 Author: S Kumar Bench: S Kumar, N Dabholkar, M Gaikwad JUDGMENT Swatanter Kumar, C.J. 1. Law, despite its source, is essentially mutable and has to change with the need of the society to ensure that the legislative intent is achieved. It may not be essential to construe statutory provisions strictly or apply the existing judicial dictums so strictly and mechanically that it overreaches the concept of stare decisis. The law of precedents is an accepted precept of administration of justice. Judicial discipline requires precedents to be followed but without transgressing its own limitations. Precedents are described as "Authorities to follow in determination in Courts of Justice. Precedents have always been greatly regarded by the Sages of the Law. The precedents of the Courts are said to be the laws of the Courts and the Courts will not reverse a judgment contrary to many precedents" (Law Lexicon - 1997 Edition). To the rule of precedents there are exceptions founding on the doctrine of ratio decidendi, sub-silentio and stare decisis. For a precedent to be binding, it cannot be without judicial discussion on arguments. An extra judicial opinion given out of Court or without context is not a good precedent. To be a precedent, it has to be an adjudged case or decision of a Court of competent jurisdiction, considered as furnishing an example or authority for an identical or similar case afterward arising or a similar question of law. It is the ratio understood in its correct perspective that is made applicable to a subsequent case on the strength of a binding precedent. The ratio is variously defined to be the relation between two magnitudes of the same kind in terms of quality and quantity. Ratio decidendi is the reason for deciding as reasoning is the soul of decision making process. It is formulation of an opinion by the Judge which is necessary in the facts of the case for determination of the controversy. In the case of C.D. Kamdar v. State of Orissa (1985) Tax L.R. 2497, expressing its views in relation to the binding precedents, the Court held as under: Mr. R. Mohanty, the learned Counsel for some of the petitioners submitted that the power of the Board under Section 90(7) of the Act is to levy fees simpliciter. He cited the case reported in (1968) 34 Cut LT 122 (SC), Laxmidhar Sahu v. Supdt. of Excise Berhampur in support of the contention. Reading the entire judgment, the contention as raised by Mr. Mohanty, is not spelt out. A Decision is an authority only for what it actually decided and not for what may logically follow from it. Every judgment must be read as applicable to the particular factors proved, or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law but governed or qualified by particular facts of the case in which such expressions are to be found. See , Sreenivasa General Traders etc. v. State of Andhra Pradesh. The case of Laxmikanta Sahu (supra) was considered by the Supreme Court in , Harsankar v. Dy. Excise and Taxation Company. In para 61 at page 1134 it has been observed that in that case it was expressly contended on behalf of the State of Orissa that the levy was a tax and not a fee. The decision being based on a concession did not involve the determination of the point whether the fee levied under Section 90(7) of the Act is a fee simpliciter. 2. We have

already indicated that the law in its due course changes its form and application but existence of reasoning with the changing law is a mandatory requirement of judicial process. Ratio est legis anima, mutata legis ratione, mutatur et lex is a maxim for the proposition that law must state reasons and reasons should have a reasonable nexus to the facts of the case. It is said that reason and authority are the two brightest lights of the world and thus it follows that providing of correct reasoning for every decision is the basic feature of rule of law. 3. In line with the requirements of judicial discipline in following the precedents, a Bench of this Court, while dealing with the question of fixation of fair market value of the land which had been acquired in consonance with the provisions of the Land Acquisition Act, 1894, hereinafter referred to as "the Act", expressed certain reservations in applying the principle enunciated by a Division Bench of this Court in the case of The State of Maharashtra and Ors. v. Vithal Rodbaji Shinde 1993 LAC 233. The single Judge of this Court expressed certain reservations in following the principle stated by a Division Bench of the Court in the case of Vithal Rodbaji Shinde (supra) as, according to the Judge, the principle was in contradiction to the judgment of the Apex Court in the case of Hookiyar Singh and Ors. v. Special Land Acquisition Officer, Moradabad and Anr. and chose to refer the matter to a Larger Bench. The order of reference dated 30th September, 2003 reads as under: Heard Shri Shinde, learned AGP for the applicant. The civil application is filed for condonation of delay in filing First Appeal St. No. 21347/98, FA St. No. 21361 and 21349 of 1998. The reasons for non-filing appeals within limitation are given in para 2 of the civil application. In spite of service of rule, none appears for respondents. For the reasons stated in para 2 of the civil application, I am of the view that the delay in not filing appeal within limitation is properly explained. Delay condoned. Civil Application allowed. Rule made absolute. No costs. Appeal is taken up for motion hearing. On hearing the learned AGP for the appellants and considering the reasons given in the impugned judgment and the fact that the learned District Government Pleader appearing for the Government before the Civil Court has accepted that the prevailing market value on the date of notification under Section 4 was Rs. 1500 per Are for irrigated land. Accepting this statement and considering the judgment in LAR 399/96 the learned Civil Judge enhanced the compensation by determining the market value of the acquired land at the rate of Rs. 1500 per Are. The Land Acquisition Officer by his award has determined the market value at Rs. 350 per Are and considering the judgment delivered in LAR No. 399 of 1996 and considering the judgment of this Court in State of Maharashtra and Ors. v. Vithal Rodbaji Shinde, 1993 Land Acquisition Cases 233, determined the market value of the acquired land. In LAR No. 399 of 1996 the Civil Court has determined the market value of the acquired land as Rs. 750 per Are. It appears from the observation made in the order that the land which was subject-matter of LAR No. 399 of 1996 was Jirayat land. The civil judge has relied on the judgment of this Court in Vithal (supra) and considering the said judgment the learned civil judge granted compensation at the rate of Rs. 1500 on the basis that the bagayat lands always fetch double price than dry i.e. jirayat land. In fact the learned civil judge should have con-

sidered evidence on record and then should have considered whether the ratio in Vithal (supra) can be made applicable. Even otherwise also there is no fixed criteria to award double compensation to bagayat i.e. irrigated land than the dry land. The duty of the Court in awarding the compensation to the acquired land in a reference under Section 18 of the Land Acquisition Act is clarified by the Apex Court in case of Hookiyar Singh v. State of Punjab . In view of the law declared by the Apex Court in Hookiyar Singh (supra) in my judgment the judgment of this Court in State of Maharashtra v. Vithal (supra) is required reconsideration. I direct the Addl. Registrar to place the papers of this appeal before the Hon'ble the Chief Justice for constituting and placing it before the Full Bench to reconsider the judgment of this Court in State of Maharashtra and Ors. v. Vithal Rodbaji Shinde 1993 Land Acquisition Cases 233. Admit Print dispensed with. The appellants are directed to prepare paper book and supply decree forms within three months from today. If the paper books and decree forms are not supplied within the specified period, the appeals shall stand dismissed without reference to the Court. The Addl. Registrar is directed to call for the record and proceedings immediately. The Addl. Registrar to take necessary order from the Hon'ble the Chief Justice to place the appeal before the Full Bench as there are number of appeals pending on which reliance is placed on the judgment of Vithal's case. In order to have authentic pronouncement on the issue, the reference is required to be decided as early as possible. As a result of the above order, all these three appeals have been placed before the Full Bench for reconsideration of the Division Bench judgment of this Court in the case of Vithal... (supra) The above order of reference shows that the learned Single Judge did not find merit in the submissions made on behalf of the claimants that the bagayat land be awarded double the compensation given to jirayat land (irrigated land and dry or unirrigated land). Further on this point the Court observed that in view of the judgment in Hookiyar Singh and Ors. v. Special Land Acquisition Officer, Moradabad and Anr. , the law laid down in State of Maharashtra and. ors. v. Vithal Rodbaji Shinde and Ors. reported in 1993 Land Acquisition Cases 233, was not a good law. The finding or observations of the Division Bench that "It was hence urged that the difference between the two being three folds, the price difference should also be the same. It is difficult to accept this contention. The ceiling areas specified with reference to the type or class or land. It has nothing to do with the market price which these lands would fetch in case of sale. We cannot import the analogy on the basis of the above provision that the price of irrigated land would be three times the price of dry crop land. We hence cannot accept the contention raised on behalf of the claimants. There, however, cannot be any doubt that the lands under acquisition are much higher in value than the dry crop lands-The claimants are entitled to much higher price than what has been fixed. In our opinion, the market price of the lands under acquisition must be at least double the value of dry crop land. We have already pointed out that the market value of the dry crop land would be Rs. 13,000 per acre. Therefore, Rs. 26,000 should be the value of the perennially irrigated lands and that price the claimants are entitled to receive from the State Government. The market

value per hectare would be Rs. 65,000. 4. Before we proceed to discuss the merit or otherwise of the contentions raised questioning the above findings of the Division Bench, we feel it appropriate to refer to the statutory provisions and various judicial pronouncements relating to the matter in controversy. Part II of the Act deals with various matters commencing from issuance of public notification in terms of Section 4 of the Act and deals with declaration to be made for acquisition of land including the urgency provisions. However, Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies that are available to them under the scheme of the Act. Under Section 18 of the Act the Reference Court determines the quantum of the compensation payable to the claimants in furtherance to the reference made to it under Section 18 of the Act. Section 23 provides guidelines, which would be taken into consideration by the Court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section 24 of the Act is a negative provision and states what should not be considered by the Court while determining the compensation. In other words Sections 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the Court while determining the market value of the acquired land. These provisions provide a limitation within which the Court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land. Keeping in view the scheme of the Act and interpretation that these provisions have received in the past, it is difficult even to comprehend that there is any possibility of providing any strait-jacket formula which can be treated as panacea to resolve all controversies uniformly in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of Pannalal Gupta v. Land Acquisition Officer , the Court reiterated the principle stated in Bala Ram Gupta's case to state that the onus is upon the claimants and it is expected of the claimants to lead cogent and proper evidence in support of their claim. Thus it is essential that each case would have to be examined on its own facts and scrutinizing the evidence led by the claimants or the State as the case may be. It cannot be stated as an absolute proposition of law that no onus lies on the State. Wherever the claimants have led evidence some onus lies on the State to produce any counter evidence if it so desires, but primarily the onus always lies on the claimants, as held in the case of Basant Kumar and Ors. v. Union of India and Ors. (1996) IISCC 542. This has been the consistent view of the Supreme Court as well as the various High Courts that there cannot be any hard and fast rule, universally applicable to all cases relating to determination of compensation for the acquired land. It will be essential to refer to the facts of each case and apply considerations contemplated under Section 23 of the Act in light of judgments of the Court while ignoring the factors stated in Section 24 of the Act. In the case of Chimanlal Hargovinddas v. Special Land Acquisition Officer and Anr. . The Court stated the principles beyond ambiguity and the Court capsulized

the factors regulating the discretion of awarding compensation by the Court as under: Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated the award rendered by the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized. 4. The following factors must be etched on the mental screen: (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court. (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court. (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose. (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections 6 and 9 are irrelevant). (6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price. (7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provided the index of market value. (8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land). (9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. (10) The most comparable instances out of the genuine instances have to be identified on the following considerations: (i) proximity from time angle, (ii) proximity from situation angle. (11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition. (12) A balance-sheet of plus and minus fac-

tors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do. (13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors. (14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors: Plus factors Minus factors 1. smallness of size. 1. largeness of area. 2. proximity to a road. 2. situation in the interior at a distance from the road. 3. frontage on a road. 3. narrow strip of land with very small frontage compared to depth. 4. nearness to developed area. 4. lower level requiring the depressed portion to be filled up. 5. regular shape. 5. remoteness from developed locality. 6. level vis-a-vis land under acquisition. 6. some special disadvantageous factor which would deter a purchaser. 7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

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

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

9. The more serious grievance of the appellant however is that the High Court has depressed the market value excessively in evaluating the land in question at Rs. 7,000 per acre as compared to the land abutting on the Ganeshkhind Road valued at Rs. 20,000 per acre, the land abutting in the interior of Survey No. 86 valued at Rs. 16,000, and land abutting on Pashan Road valued at Rs. 12,000 per acre. A glance at the sketch on the record shows that the appellant's land is situated very much in

the interior as compared to the other parcels of land. It is in the midst of large blocks of undeveloped land. A hypothetical purchaser would not offer the same market value for lands with such a situation as lands which are nearer to the developed area and abut on a road or are nearer to a road. The development of lands which are nearer to the developed area and nearer to the road can reasonably be expected to take place much earlier. Only after such lands are developed and construction comes up, the development would proceed further in the interior. It would not be unreasonable to visualize that a considerable time would elapse before development could reach the block of undeveloped land located in the interior. Besides, the land which is situated in the interior does not fetch the same value as the land which is nearer to the developed area and nearer to the road. If a hypothetical purchaser opts to purchase the land situated in the interior in the midst of an undeveloped area, he would doubtless take into account the factor pertaining to the estimated time for development to reach the land in the interior. For, his capital would be unprofitably locked up for a very long time depending on the estimated time required for the development to reach the land in the interior. Meanwhile he would have to suffer loss of interest. It is, therefore, understandable that the land in the interior would fetch much smaller price as compared to the lands situated nearer to the developed locality. Moreso as all these factors are incapable of precise or scientific evaluation. The valuer has to indulge in some amount of guess work and make the best of the situation. The High Court having accorded anxious consideration to all these factors of uncertainty has arrived at the valuation of Rs. 7000 per acre. Says the High Court in paragraph 51 of the Judgment: This brings up for final consideration the plots which we have described as interior plots in all the survey numbers and which do not have a frontage on the roads. A lower price will have to be provided for these plots, since the plot-holders will have to spend moneys for getting water and drainage connections which are given only upto the Municipal Roads. Then again, in our opinion, the interior plots would not be sold at all as long as any of the plots having a frontage on Pashan Road or Baner Road are sold, though once such plots have been disposed of the demand for interior plots would certainly pick up. Here again, it is impossible to be precise in fixing the value; but in our opinion the interior plots may fairly be valued at Rs. 7,000 per acre. As stated earlier, the sales of these plots would commence after all the plots having a frontage on Pashan Road and Baner Road are disposed of i.e. after 12 years, and we may say that those plots would be sold within a period of about 4 years. It is not possible to find fault with the reasoning or conclusion of the High Court. The High Court was day in and day out engaged in valuation of the lands in different parts of the State and was fully aware of the landscape. There is no yardstick by which the future can be foreseen with any greater degrees of preciseness. The High Court has made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment. Having taken into

account all the relevant factors, the High Court has arrived at the aforesaid determination. And in doing so, the High Court has not committed any error or violated any principle of valuation. It is purely a question of fact and it is not possible to detect any error even in the factual findings recorded by the High Court. In fact the High Court has been extremely considerate and has approached the question of valuation with sympathy and understanding for the landowner. The High Court did not opt for an easy way out by taking the view that since there was no comparable instance of undeveloped lands in the interior on the basis of which the valuation of the appellant's land could be made, the Award made by the Land Acquisition Officer should remain undisturbed. Improbability of prescribing uniform principles for determination of market value and necessity to refer and decide the cases on the basis of evidence produced, upon giving proper reasoning for the order, the reason was held to be the essence for enhancement of compensation or otherwise as unreasoned views would not sustain judicial order, which essentially in terms should refer to the evidence on record. The Supreme Court in the case of ONGC Ltd. v. Sendhabha Vastram Patel and Ors. (2005) 6 SCC 454, stated as under: While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the Court may take recourse to other methods viz. Judgments and awards passed in respect of acquisition of lands made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert, and other relevant evidence, however, would have only evidentiary value. Market value is ordinarily the price the property may fetch in open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. The amount of compensation cannot be ascertained with mathematical accuracy, A comparable instance has to be identified having regard to the proximity from time angle as well; as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. In the case of Land Acquisition Officer (Revenue) Divisional Office Nalgonda (A.P.) v. Morisetty Satyanarana and Ors. , the Supreme Court stated that normally the Court would not consider post notification sale instances and where the Court bases its finding on such sale instances or small land etc., appropriate deduction is to be made. In

the case of Union of India and Ors. v. Pramod Gupta , the Supreme Court, while elucidating various principles relating to the acquisition proceedings under the provisions of the Act, observed that 'market value' is ordinarily the price the property may fetch in open market if sold by a willing seller unaffected by the special needs of a particular purchase. In the case of Hookiyar Singh (supra) the Supreme Court had raised the question what is the just and adequate compensation, to which the lands would command determination. In this judgment the principle of law was hardly discussed. The Supreme Court had observed that the principles enunciated by the Courts in different cases should be applied and compensation should not be awarded on imaginary basis. Of course it is stated that the burden of proof would lie upon the claimants. The most particular principle was stated by a three Judge Bench in the case of Special Dy. Collector and Anr. v. Kurra Sambasiva Rao and Ors. wherein the Supreme Court has stated as under: It is, therefore, the paramount duty of the Courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, though some guesswork is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the beneficiaries, the Judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes. Whether fair, and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, not facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the armchair of the said willing buyer and seek an answer to the question whether in the given set

of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in termination of the market value of the acquired land and compulsory acquisition.

10. The analytical examination of the above enunciated principles of law would lead to no other conclusion but each case of determination of market value of the acquired land has to be decided on its own facts, existing statutory guidelines stated in Sections 23 and 24 of the Act and in the backdrop of judicial pronouncements controlling exercise of jurisdiction under Section 18 of the Act. The evidence led by the parties and, particularly the claimants, would have to be scrutinized so as to arrive at a just, fair and adequate compensation. Another facet of this aspect of acquisition law is what kind of methodology the Court would adopt while arriving at a conclusion. Should it adopt capitalization method, multiple method, belting system or evolve any other method which necessarily would have to depend on record before the Court. Location and potential of the land cannot be a question of law; it will ever be a matter of fact. The enunciated principle of law which, de hors the evidence on record, can be applied to every case, is not only improbable but is even impermissible. It can be said that normally an irrigated land would get higher compensation than the unirrigated or jirayat land, but there can be cases where this principle is commonly appears to be true, may not be applicable. For example irrigated agricultural land is located away from the national highway or industrial area but non-irrigated land is located adjacent to the industrial area, which is fully developed and/or is adjacent to the national or State highway. Parties have to lead evidence to show that the lands have greater potential and value, which is higher than the agricultural land. In those circumstances the Court would have to consider the entire matter objectively and may be in all probability the bagayat land may get higher compensation than the agricultural land. Thus it cannot be stated as an universal rule that irrigated agricultural land must always get price higher or the double compensation than the non irrigated agricultural land.

11. Having answered the legal controversy with reference to the general principles, now we will proceed to examine the reference in the present case. The learned Division Bench was, while hearing the appeal for determining the market value in relation to the acquired land, noticed the contentions of the appellants that the value of the irrigated land was Rs. 1500 per acre and keeping in view the judgment in LAR No. 399 of 1996 the market value should be enhanced. It also referred to the judgment in the case of Vithal Rodbaji Shinde (supra) as in LAR No. 399 of 1996, which related to jirayat land, the civil judge had relied upon the Division Bench judgment and enhanced the compensation to Rs. 1500 per acre. The learned judge then proceeded to form an opinion that the Division Bench in the case of Vithal Rodbaji Shinde had stated the principle of law universally applicable to all cases and it was not in the line with the judgment of

the Supreme Court in Hookiyar Singh's case and then proceeded to make the present reference. In our considered view neither the Division Bench in the case of Vithal Rodbaji Shinde laid down any absolute principle of law universally applicable to all the cases wherever agricultural land or jirayat land had been acquired, nor the judgment of the Supreme Court in Hookiyar Singh's case was applicable on correct or objective application of the principle of ratio decidendi. Be that as it may. Still we will dwell on the controversy so as to clearly state the law applicable to such a case. The Division Bench primarily had dealt with the facts and circumstances of the case and considered various contentions raised on behalf of the claimants and the State in relation to the enhancement or otherwise of the compensation awarded to the claimants. In the context of the facts of the case the general observations made that there cannot be a doubt that the lands under acquisition are much higher in value than the dry crop lands, was the observation or fact recorded by the Court on the basis of the record before it. Thus, on any analogy or settled cannons of judicial dictum above observations cannot be stated to be any proposition of law. This statement would have to be applied, keeping in mind the facts and circumstances of the case and the evidence adduced by the parties. The Bench felt that in that case the claimants were entitled to double value of dry crop land. The observations have to be read in its proper perspective and need not be treated as an absolute statement of law. In the case of Hookiyar Singh, the Supreme Court interfered with the market value keeping in view the facts of that case and again no proposition of law was stated, which could be treated as precedent to the case in hand before the learned Single Judge. This proposition can be tested in another way, that is, in the event the claimants led no evidence of the extent of superiority of the land to jirayat land, he would not be entitled to double price of jirayat land in view of the decision in the case of Kantaben Manibhai Amin and Anr. v. The Special Land Acquisition Officer, Baroda , where only increase of 25% excess compensation was given to the agricultural land. We may also notice that the Division Bench of the Court in Vithal Rodbaji Shinde's case did not discuss any law or referred to any judgment of the Court so as to satisfy the observation made to be treated as law. In our view, the statement or observation is restricted to the facts of that case. At this stage we may also refer to a decision of a Division Bench of Punjab and Haryana High Court in the case of Pradeep etc v. State of Haryana where the Court in somewhat similar circumstances observed as under: The grounds indicated by the Division Bench in the case of Subhash Chand (supra) in fact are the grounds specifically incorporated by the Legislature under Sections 3 and 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act. This Act is limited in its operation and scope. Thus, to us it appears that these provisions are ancillary to the basic provisions regulating the bail during appeal and consequently cannot circumscribe or limit the scope of the larger provisions. Though they operate in different fields but on some spheres and grounds they indicate

the same legislative intent. To impose limitations which are not incorporated in the statute itself to the disadvantage of the convict, may result in decimate of valuable right arising out of a statute "expressum facit cessare taciturn" is a well accepted principle of interpretation of statutes. In other words expression precludes implications and to imply what is not provided for by the Legislature is normally not permissible. To our mind reading of such limitations into the provisions of Section 389 is not necessitated on the principles of necessary implication. The practice and pronouncements of the Court for over such a long period clearly indicate that it is neither possible nor permissible to provide any hard and fast rules consisting of limitation or guidelines which would govern and apply universally in determining the fate of every bail application preferred by the convict during the pendency of the appeal. We are of the view that various judgments aforestated were not brought to the notice of the Hon'ble Bench dealing with the matter. Consequently, we feel that keeping in view the settled principles of stare decisis it appears to us that the observations made by the Hon'ble Bench are per incurium. In this regard, it will be appropriate to make a reference to the judgments of the Supreme Court in the cases of Assistant Collector of Estate Duty, Madras v. Smt. V Devki Ammal, Madras and Bhagwan Dass Arora v. First Additional District Judge, ampur and Ors. . In this regard reference can also be made to the cases of Fitrat Raza Khan v. State of Uttar Pradesh and Ors. , Bachan Singh v. The State of Punjab etc; etc. , and A.R. Antulay v. R.S. Nayak and Anr. . The observations of the Hon'ble Bench appear to us to introduce into the section some thing what has not been intended or provided by the legislation in the provisions of Section 389 of the Code. At this stage it may also be relevant to make a reference to the judgment of the Supreme Court in the case of Karnal Improvement Trust Karnal v. St. Parkash Banti JT 1995(5) SCC 151. Therefore, we are of the considered view that the observations of the Hon'ble Division Bench of this Court in the case of Subhash Chanel (supra) are not intended to lay down the law, but were of the observations of the Bench in the peculiar facts and circumstances of that case. The law of the land as stated by the Hon'ble Supreme Court of India veritably has enunciated that provisions of Section 389 of the Code does not admit limitation on the exercise of power by the Court in its discretion. Certainly discretion must be governed and guided by well established cannons of criminal jurisprudence. Being bound by such law of the land we are unable to persuade ourselves to accept the contention raised on behalf of the State as aforestated. Being of that view, we reject the objections raised on behalf of the State that bail application in the grave offences where the accused has been convicted and punished for life for an offence under Section 302, Indian Penal Code would not be maintainable except for medical grounds, natural calamity or serious disease of the accused or his relation(s).

12. Before a precedent can be applied to a subsequent case the Court has to examine that such a precedent satisfies the principles of ratio decidendi. It

must apply on facts and on question of law. A peculiar decision taken on the facts of a given case would per se not be the law applicable to the other cases. Firstly the judgment of the Division Bench in a given case stricto sensu enunciates no principles of law and secondly it is not a settlement of law being sub-silentio. It is hardly in conflict with the judgment of the Supreme Court that the irrigated land should get higher or even double compensation than the dry land. This is the finding recorded on the basis of the evidence before the Court. It could hardly be stated to be an absolute proposition of law, much less of universal application to the lands acquired de hors the facts and evidence of that case. The judgment of the Supreme Court as already noticed in Hookiyar Singh's case again is no discussion on law on the subject and merely reiterates the existing principles, of course stating that duty of the Court is to carefully examine and scrutinise the evidence and then proceed to determine the just and adequate compensation in each case. In our view, it would hardly be necessary to make a reference to that case as the various judgments of the Supreme Court and the High Courts applicable to the facts of the case were available to the parties to be placed for the consideration of the learned Single Judge. Having considered the controversy in issue or on analytical analysis of the principles enunciated, we have no hesitation and in fact would answer the question on law crystalinely as follows:

1) The Division Bench judgment of the Court in Vithal Rodbaji Shinde's case does not state any absolute legal principle as panacea and uniformally applicable or capable of being applied as binding precedent de hors the facts of that case or proposition of law. We also see no conflict in the judgment in Hookiyar Singh's case and the Division Bench judgment of this Court and they are judgments on their own facts. However, since the matter has been referred to the Full Bench we would state the principle of law as well.
2) The Court has to determine the amount of compensation/market value of the land at the date of publication of the notification under Section 4 in consonance with the statutory provisions of Sections 23 and 24 of the Act read in conjunction with the various judicial pronouncements for arriving at such determination with reference to the facts and circumstances as also evidence led by the parties in each case. It is neither permissible nor proper for the Court to lay down any strait-jacket formula universally applicable to all land acquisition cases at any level of proceedings.