Sayali

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

LAND ACQUISITION REFERENCE NO.07 OF 2004

The Special Land Acquisition Officer ... Applicant

And

1. Shri. Kapu A. Shetty
2. Century Developers Pvt Ltd ... Claimants

And

Shree Siddhivinayk Ganapati Temple Trust ... (Acquiring Body)

SAYALI DEEPAK UPASANI

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WITH

LAND ACQUISITION REFERENCE NO.04 OF 2005

The Special Land Acquisition Officer ... Applicant

And

Prop. Sadanand Garage Shri. Kappu A. Shetty Kakasaheb Gadgil Marg ... Claimants

And

Shree Siddhivinayk Ganapati Temple Trust ... (Acquiring Body)

WITH

LAND ACQUISITION REFERENCE NO.05 OF 2005

The Special Land Acquisition Officer ... Applicant

And

1. Century Developers Pvt Ltd
2. Smt. Nethra Sanjeeva Shetty,
3A. Nethra Sanjeeva Shetty w/o Sanjeeva Babu Shetty since Deceased.

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4. Balkrishna N. Shetty
5. Smt. Nagaveni B. Shetty,
6. Mudhusudan Reddy,
7. Minal Finances P. Limited ... Claimants

And

Shree Siddhivinayk Ganapati
Temple Trust ... (Acquiring Body)

Dr. Milind Sathe, Advocate General with Ms. Anjali Helekar, GP with Ms. Jyoti Chavan, Additional GP, Mr. Prashant Kamble., AGP for State.

Mr. Prasad Dhakephalkar, Senior Advocate with Mr. Vivek Walavalkar i/b Mr. Sameer Bhalekar, for Claimant No. 5 in LAR/07/2004.

Mr. Pravin Samadani, Senior Advocate with Mr. Shashikant Surana, Mr. Madhur Surana, for Acquiring Body.

Mr. Yatin R. Shah with Mr. Harsh Y. Shah, Ms. Tejashree Tawde, for Claimant No. 3 in LAR/7/2004 and Claimant in LAR No.04/2005.

Mr. Siddharth Rajamohan i/b Punit B. Anand, for Claimant No. 2 in LAR/05/2005.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 27, 2026.

PRONOUNCED ON : NOVEMBER 03, 2026

JUDGMENT:

1. The present Land Acquisition References have been filed by the claimants. Since the questions of fact and law arising in all the References are similar and connected with each other, they have been heard together and are being decided by this common judgment to avoid repetition of facts.

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2. The present land acquisition references concerned the determination of compensation and its apportionment in respect of Final Plot No. 901, T.P.S. IV, Mahim Division, bearing C.S. No. 1/1209 of Lower Parel Division, situated at Prabhadevi, Mumbai. The acquired property measured about 642.92 square metres and included the structure known as Sadanand Garage. The land was acquired for a public purpose connected with Shree Siddhivinayak Trust. The claimants in LAR No. 7 of 2004, who claimed to be the owners of the acquired land, challenged both the amount of compensation awarded by the Land Acquisition Officer and the manner in which that amount was divided among the persons claiming an interest in the property. They submitted that the valuation adopted and the apportionment made in the award were incorrect. The Land Acquisition Officer had referred three matters to this Court. LAR No. 7 of 2004 concerned the owners, namely the Ambekars. LAR No. 4 of 2005 concerned M/s. Sadanand Garage. LAR No. 5 of 2005 concerned M/s. Century Developers, flat purchasers Nethra Saneeva Shetty, Sanjeev Babu Shetty, Balkrishna N. Shetty, Nagveni B. Shetty and Madhusudan Shetty, and M/s. Minal Finance Pvt. Ltd. Since all three references related to the same acquired property, this Court, by its order dated 8 August 2007, directed that common evidence be recorded in all of them. The acquired property measured 642.98 square metres and was identified as Final Plot No. 901, corresponding to C.S. No. 1/1209, T.P.S. IV, Mahim Division, Mumbai. Its boundaries were Final Plot No. 899 on the north and east, Kakasaheb Gadgil Marg on the south, and Final Plot No. 903 on the west.

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3. The notification under Section 4 of the Land Acquisition Act was dated 3 September 2002 and was published in Aaple Mahanagar on 13 September 2002 and in Daily Navshakti on 14 September 2002. The notification under Section 6 was dated 11 July 2003 and was published on 24 July 2003. It was published in Tarun Bharat on 17 July 2003 and The Asian Age on 19 July 2003. The property had been inspected on 5 October 2001, and the joint survey report was received on 5 December 2002. The joint survey records described the owners as Dattaram Vitthal Ambekar, Sulina N. Shinde, Sunita Dattaram Ambekar and Shubhangi Dattaram Ambekar, represented through their constituted attorney, Ajit Dattaram Ambekar. The report named Mahaian N. Irani and Taramati Mohanlal Desai as lessors and Maheli Karsetji Pande as lessee. M/s. Sadanand Garage, described as a partnership firm, and M/s. Century Developers Pvt. Ltd. were recorded as agreement holders or developers. The total plot area was recorded as 642.98 square metres. The survey report recorded four coconut trees and one gulmohar tree, each approximately 34 feet in height, with an average breadth of about 5.2 feet. It recorded two structures. One measured 420.38 square feet and the other 226.94 square feet. The land was described as non-agricultural. The award under Section 11 of the Land Acquisition Act was made by the Special Land Acquisition Officer, MHADA, on 16 February 2004. The total compensation awarded was ₹2,01,37,662/-. According to the apportionment recorded in the material supplied, ₹1,38,07,301/- was allocated to Mr. Ambekar and ₹43,30,360/- to Kappu Shetty. The entry relating to Century Developers does not specify an

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amount in the supplied table. The total compensation was calculated by applying a rate of ₹21,679/- per square metre to 500 square metres and a rate of ₹19,511/- per square metre to the remaining 142.98 square metres. The latter rate was derived from the rate of ₹21,679/- per square metre. The rate of ₹21,679/- per square metre was calculated by multiplying ₹16,300/- by 1.33, which represented the permissible FSI available on the relevant date. The Land Acquisition Officer adopted ₹16,300/- per square metre as the market rate on the basis of the 2002 Ready Reckoner.

4. Mr. Siddharth Rajamohan, learned Advocate appearing for Claimant No.2 in LAR No.5 of 2005, submitted that Claimant Nos.2 and 3 had entered into agreements in 1993 for purchase of proposed Flat Nos.301 and 302 in the property bearing Final Plot No.901, T.P.S. IV, Mumbai. Claimant No.1 had paid Rs.18,00,000/- and Claimant No.2 had paid Rs.13,80,500/- towards the purchase, but the sale transactions could not be completed because the land was acquired. It was submitted that, before the acquisition, the Acquiring Body had entered into an agreement dated 10 March 1999 with Century Developers and Claimant Nos.2 and 3. Under this agreement, the Acquiring Body had agreed to pay Rs.25,00,000/- each to Claimant Nos.2 and 3 for settling their claims. Clause M provided that they would release their claims after receiving the agreed amounts. However, the payments were not made and the releases were not completed due to the subsequent acquisition. According to the claimants, this agreement showed that the Acquiring Body had accepted their claims and had agreed to pay them for giving up their rights. Learned Advocate

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submitted that Section 3(b) of the Land Acquisition Act, 1894 gives a wide meaning to the expression “person interested”. It includes a person claiming an interest in the compensation and is not confined only to the owner of the land. The SLAO had issued notices under Section 9 to Claimant Nos.2 and 3 and had referred to them as proposed flat purchasers in the acquisition record. The award dated 16 April 2004 had recorded the amounts paid by them towards the proposed purchase. It was, therefore, contended that the SLAO had knowledge of their claims and payments, and ought to have examined their entitlement instead of ignoring the same. The recording of these amounts in the award was relied upon as supporting evidence of the payments made by the claimants.

5. Learned Advocate submitted that the award did not give proper reasons for rejecting the claims of Claimant Nos.2 and 3 and had failed to consider their agreements, the amounts paid by them and the subsequent agreement dated 10 March 1999 with the Acquiring Body. It was contended that Section 55(6)(b) of the Transfer of Property Act, 1882 gives a buyer, in the circumstances stated therein, a charge upon the property for the purchase money paid in anticipation of delivery, together with interest. According to the claimants, merely because their earlier agreements were executed before 1999, their rights arising from the payments made under those agreements could not be ignored. Learned Advocate submitted that the SLAO's observation that the earlier agreements could not be considered as comparable sale instances because they were prior to 1998 had no bearing on the separate contractual

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claims of Claimant Nos.2 and 3. The question whether those transactions could be used for determining the market value of the acquired land was different from the question whether the purchasers had any enforceable right against the compensation payable for the acquired property. It was, therefore, submitted that the claims ought to have been separately examined, at least to the extent of the amounts paid and applicable interest, subject to proof of their legal entitlement. The non-payment of the amounts promised under the agreement dated 10 March 1999 and the fact that the proposed releases were never completed were relied upon. The claimants accordingly requested that their contractual and statutory rights be considered and that compensation be apportioned in their favour to the extent permissible in law. In support of these submissions, learned Advocate relied upon the judgment of this Court in *Mohammed Akil Khan v. Premraj Jawanmal Surana*, 1971 SCC OnLine Bom 77.

6. Claimant No. 3, M/s. Sadanand Garage, submitted that it had been in occupation of the entire Final Plot No. 901, admeasuring 769 square yards or 642.98 square metres, since 1971. According to it, the property was taken on rent by Sadanand R. Shetty from the original owners, the Kowlis, and the garage business was later converted into a partnership firm in 1985 or 1986. Claimant No. 3 stated that it was carrying on garage business in a structure admeasuring about 2,500 square feet, having a mezzanine floor of about 800 square feet, and was using the open portion of the plot. In support of its occupation, it relied upon the rent receipts issued by the original owners, the BEST

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electricity bill dated 25 May 1978, the Ward Officer's receipt dated 23 June 1977, the Shop Act licence dated 4 April 1975 and the receipt issued by the Assessor and Collector on 11 August 1978. It relied upon the proceedings in RAE Suit No. 1014/3093 of 1988, filed by Claimant No. 1 against the garage, which came to be dismissed by the Small Causes Court on 16 November 1988. According to Claimant No. 3, no steps were taken to restore the suit or obtain its eviction. It was submitted that the documents and the earlier proceedings showed that the garage was an existing occupant of the property and that its occupation was known to the owners. Claimant No. 3 relied upon the agreement dated 18 July 1992 entered into between the owners and M/s. Century Developers Pvt. Ltd. for sale of the property for Rs.51 lakhs. The agreement itself referred to the garage as a tenant of the entire plot and recorded that the property was being dealt with on an “as is where is” basis, subject to the rights and occupation of the existing occupants. The subsequent power of attorney dated 20 July 1992 and the tenancy agreement dated 3 July 1995 were relied upon to show that Century Developers had dealt with the garage as an occupant of the property.

7. Claimant No. 3 submitted that the agreement dated 2 January 1996 between the garage and Century Developers provided for surrender of its rights in the property when redevelopment was undertaken. Under that arrangement, the garage was to receive six flats, three having an area of 900 square feet each and three having an area of 950 square feet each, along with four car parking spaces, against payment of construction costs

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of Rs.37 lakhs. According to the claimant, this arrangement showed that the garage had substantial rights in the property and that its occupation was required to be settled before redevelopment could take place. It was submitted that Century Developers had entered into arrangements with the garage for the purpose of preventing encroachment on the open land and ensuring that redevelopment would not be obstructed. The tenancy agreement of 3 July 1995 recorded rent of Rs.140/- per month for the garage structure and Rs.600/- per month for the remaining open space. Claimant No. 3 maintained that the developers had permitted it to continue using the open space until the development work was ready to commence, when it was expected to vacate and cooperate with the construction. The claimant relied upon Clauses 7 and 8 of the agreement dated 2 January 1996, which provided for its cooperation and surrender of rights against allotment of the agreed flats and parking spaces. It was submitted that the owners had not challenged these arrangements when they were made and had not taken any effective steps to develop or manage the property. According to the claimant, the cross-examination of Claimant No. 5 showed that he had not visited the property for several years and was not aware of the possession handed over to Century Developers or the steps taken by them for development. Claimant No. 3 therefore contended that the owners could not now disregard the documents executed by Century Developers during the period when it was acting under the authority given to it by the owners.

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8. Claimant No. 3 relied upon the agreement dated 10 March 1998 executed with the Siddhivinayak Temple Trust or the Acquiring Body. Under this agreement, the Trust had agreed to pay Rs.2,73,50,000/- to the garage for surrender of its rights in Plot No. 901 and for enabling it to obtain alternative accommodation. The agreement provided for payment of interest at 12% per annum after the stipulated period. According to the claimant, the agreement was entered into pursuant to the decision taken by the Trustees and was signed by the Trustees then in office. It showed that the Trust had accepted the existence and value of the garage's rights in the property and had agreed to pay the amount for obtaining vacant possession. Claimant No. 3 relied upon the Trust's valuation report dated 19 July 1999, prepared by M/s. Joshi and Parulekar, which assessed the value of the entire property at Rs.4.6 crore. It was submitted that the report was obtained by the Trust itself for the purpose of purchasing the property and therefore deserved consideration while deciding the compensation. The claimant referred to the letters issued by the Trust from time to time, including its letter dated 8 March 2001, which described the plot as being in the possession of Claimant No. 3 and having a garage shed standing on it. The minutes of the meeting of the Trustees dated 16 April 2001 were relied upon to show that the Trust was considering purchase of the property and settlement of the rights of the tenants and occupants. According to Claimant No. 3, the proposed amounts payable under the arrangement were Rs.2,73,50,000/- to the garage, Rs.1,31,50,000/- to Century Developers and Rs.95,00,000/- to the owners. These amounts, it

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was submitted, showed that the Trust itself had treated the rights of the garage and the developers as having substantial value. The claimant therefore contended that the agreed consideration and the Trust's own valuation were important material for deciding the value of the interest taken away from it by acquisition.

9. Claimant No. 3 submitted that the acquisition proceedings were initiated despite the earlier agreement with the Trust and its objections regarding the requirement of the land. It referred to the steps taken by the Trust and the Government from 2001 onwards, including the correspondence with the Revenue Department and the Collector, the approval granted on 9 May 2002 and the appointment of the Special Land Acquisition Officer. According to the claimant, the initial proposal referred to Plot No. 905, which was later corrected to Plot No. 901 by a corrigendum dated 16 June 2003. The notification under Section 4 was issued on 12 September 2002 for the public purpose of providing a “Waiting hall and rest house for the devotees” and was published in the newspapers on 14 September 2002. Claimant No. 3 objected to the acquisition on the ground that the Trust had already agreed to pay consideration for surrender of its rights and that the acquisition was being used to avoid that agreement. It questioned whether the Trust actually required the property and requested an enquiry into the availability of space in the existing Trust building and the adjoining portion of Plot No. 903. The claimant complained that its request for a personal hearing was initially not accepted and that the steps towards issuance of the notification under Section 6 were being taken before completion of the enquiry under Section

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5A. It filed Writ Petition No. 551 of 2003 challenging the approval and the notification under Section 4. After receiving a notice for personal hearing and submitting objections, the petition was withdrawn on 20 June 2003 with liberty to approach the Court if the objections were overruled and a notification under Section 6 was issued. The notification under Section 6 was thereafter issued on 9 July 2003, and Claimant No. 3 filed Writ Petition No. 2019 of 2003. The award was made on 16 February 2004. Under the award, Rs.43,30,360/- was granted to Claimant No. 3, whereas Rs.1,38,07,302/- was granted to Claimant No. 5. Claimant No. 3 pointed out that these amounts were far below the consideration which the Trust had earlier agreed to pay for surrender of its rights and possession.

10. Claimant No. 3, through its learned Advocate Mr. Yatin R. Shah, submitted that the evidence and documents on record established that it was in actual possession and use of the entire plot. It relied upon the rent receipts issued in the name of Sadanand Garage, the property tax receipts paid to the BMC from 1978 until 21 March 2003, the electricity and telephone bills, the municipal licences and the inspection reports. It was submitted that no other person had paid property taxes in respect of the property during this period. The claimant relied upon the rent receipts issued by Century Developers and the documents relating to the tenancy agreement, which, according to it, showed that the developers had recognised its occupation of the structure and the open land. It relied upon the cross-examination of Claimant No. 5 to contend that the owners had neither visited the plot nor taken

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effective steps to manage it after the agreement with Century Developers. The claimant submitted that the earlier suit filed against it had been dismissed and no proceedings were taken to recover possession. It therefore claimed that it continued in possession until 30 March 2005, when the Trust forcibly dispossessed it. According to the claimant, on 10 March 2005, the Trust, through its agents and security personnel, entered the property, removed vehicles and demolished the garage with the help of a bulldozer. Several vehicles belonging to customers were damaged and the garage's spare parts, furniture, tools and repair equipment were removed without giving it an opportunity to take them away. It complained that the police had refused to register its complaint. Claimant No. 3 relied upon paragraphs 23 to 25 of its affidavit of evidence and the answers given in cross-examination, particularly Questions Nos. 30, 32, 44, 101, 113, 130, 131, 147, 151, 156 to 159, 169, 171, 182, 199 to 211, 243 and 263, to support its case regarding possession and damages. It relied upon the documents showing that the Trust had sought its permission to use a portion of the property on Angaraki Chaturthi. According to the claimant, these requests were made to it and not to the owners, which showed that the Trust itself recognised it as the person in actual occupation and control of the plot.

11. On the basis of these facts, Claimant No. 3 submitted that it was entitled to a substantial share of the compensation. It contended that the actual consideration agreed to be paid by the Trust for surrender of its rights was the best available evidence of the value of its interest, as it represented an arrangement between

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parties who were willing to settle the matter. The claimant relied upon the valuation report obtained by the Trust and submitted that, since it was in exclusive possession of the property, it was entitled to 75% of the compensation, leaving 25% to the owners. It relied upon *Mathura Prosad Rajgharia and Others v. State of West Bengal*, AIR 1971 SC 465; *Kachrulal Hiralal Dhoot v. The Gurudwara Board, Nanded and Others*, AIR 1979 Bom 31; *Mangat Ram, Etc. v. State of Haryana and Others*, AIR 1996 SCW 2700; *Sadasheorao Krishnarao Buti, Money-Lender v. Collector, Nagpur*, AIR 1942 Nagpur 86; *Batan Singh and Others v. Nathu Birju*, AIR 1961 Punjab 503; *Bai Saraswati Jeshankar and Another v. Agent, Bharatkhand Textile Manufacturing Co. Ltd., Ahmedabad and Others*, AIR 1967 Guj 36; *Shamalbhai Lallubhai Patel v. The Additional Special Land Acquisition Officer*, AIR 1977 SC 899; *Thakur Kuldeep Singh (Dead) through Legal Representatives and Others v. Union of India and Others*, AIR 2010 SC 1272; and *State of West Bengal v. Muss. Nurjahan Sakil and Another*, AIR 1985 Cal 39. These decisions were relied upon in support of the claim that a tenant or occupant having an interest in the acquired property could receive compensation for the rights taken away by acquisition and that the compensation could be apportioned by considering the nature and value of the respective interests. Claimant No. 3 sought compensation for the damage caused to its vehicles, goods, equipment and other movable property during demolition and dispossession. It requested that the amount already awarded to it be enhanced by considering the agreement with the Trust, the valuation report and the evidence regarding its

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possession and occupation. It claimed the applicable interest and other statutory benefits, contending that the amount awarded by the Land Acquisition Officer did not represent the value of the rights which it had lost.

12. Claimant No. 5 submitted that the market value of the acquired property was required to be determined with reference to the date of the notification under Section 4(1) of the Land Acquisition Act, which was stated to be 12 December 2002. It was contended that the Land Acquisition Officer had before him 12 registered sale transactions received from the office of the Assistant Registrar, Old Custom House, Mumbai. These transactions related to land, buildings, flats, shops and commercial or industrial properties for different years between 1994 and 2000. However, except Sale Instance No. 10, which was considered but rejected, the remaining sale instances were not properly examined. Claimant No. 5 submitted that Sale Instances Nos. 10 and 12 were particularly relevant because they related to nearby properties and transactions of the year 2002. The objection that Sale Instance No. 10 included a ground-floor structure could have been dealt with by making suitable deductions for the value of the structure. Similarly, Sale Instance No. 12 could not have been rejected only because it related to commercial or industrial property. According to the claimant, after making proper adjustments for the difference in use and nature of the properties, such transactions could be considered for finding the market value of the acquired land. It was pointed out that the Land Acquisition Officer had relied upon the Ready Reckoner rate of land with residential construction, while rejecting

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a sale instance on the ground that it included a structure. This, according to the claimant, was not consistent. Claimant No. 5 therefore submitted that the market value could not have been fixed at only ₹21,679/- per square metre and claimed a much higher rate on the basis of actual sale transactions and the evidence of Mr. Hitendra Mehta, Architect and Valuer.

13. Claimant No. 5 relied upon the valuation report dated 5 February 2010 submitted by Mr. Hitendra Mehta. The valuer had considered two sale instances. The first related to Plot No. 967, admeasuring 665.55 square metres, sold under an agreement dated 6 December 2002. On the basis of this transaction, he assessed the value of the acquired land at ₹1,74,518.29/- per square metre. The second related to Plot No. C-4, comprising parts of Final Plot Nos. 952 and 954, admeasuring 1,239.86 square metres, under a transaction dated 5 March 2001. On that basis, he assessed the rate at ₹1,52,988.31/- per square metre. The valuer ultimately considered the first sale instance to be more suitable and arrived at a rate of ₹1,70,200/- per square metre for the acquired property. Claimant No. 5 submitted that the valuer had been cross-examined, but his evidence had not been shaken. The acquiring body had not examined any expert to dispute his valuation. It was submitted that the acquired land was non-agricultural land situated in an important area of Mumbai, close to Siddhivinayak Temple. The land had residential as well as commercial development potential, with permissible FSI of 1.33 on the relevant date. The claimant relied upon the development plans and the Intimation of Disapproval issued on 8 April 1986 for

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construction of a building having a stilted ground floor and seven upper floors. According to the claimant, the valuer had considered the location, development potential, FSI, proximity of the comparable properties and the rise in prices between 2000 and 2002. He had made suitable adjustments for the differences between the properties. The claimant relied upon *Ashok Kumar & Ors. v. State of Haryana & Ors.*, (2015) 15 SCC 200; *Krishan Kumar v. Union of India & Ors.*, (2015) 15 SCC 220; *P. Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad*, (1995) 2 SCC 305; *Suresh Kumar v. Town Improvement Trust*, (1989) 2 SCC 329; *Viluben Jhalejar Contractor v. State of Gujarat*, (2005) 4 SCC 789; and *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona*, (1988) 3 SCC 751. On the basis of these decisions, it was submitted that the development potential of the land and the advantages and disadvantages of the comparable properties were required to be considered while determining its market value. The claimant therefore sought compensation on the basis of the valuation made by Mr. Mehta.

14. Claimant No. 5 raised an alternative objection regarding the Ready Reckoner zone applied by the Land Acquisition Officer. It was submitted that the acquired property was C.S. No. 1/1209 of Lower Parel Division and Final Plot No. 901 of Mahim, T.P.S. IV. The Property Register Card showed the correct C.S. number as 1/1209. According to the claimant, the Land Acquisition Officer wrongly treated Final Plot No. 901 as C.S. No. 901 and applied the rate of Zone 19/123 instead of Zone 17/115. The applicable rate was stated to be ₹20,350/- per square metre instead of ₹16,300/-

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per square metre. On this alternative basis, the claimant sought compensation of ₹2,54,19,286/-. Without prejudice to this alternative claim, the claimant submitted that, in the absence of comparable transactions involving vacant plots in the vicinity, the value of nearby developed properties could be considered after making appropriate deductions for construction, development expenses, developer's profit, plot size, road width, location and FSI. In rejoinder, it was submitted that the acquired land was closer to Siddhivinayak Temple than the properties covered by Sale Instances Nos. 1 and 2. Its location and other advantages therefore justified a higher valuation. The acquiring body had not produced any expert evidence to disprove the valuation report. It was submitted that the valuer had considered both sale instances and had preferred Sale Instance No. 1 because it was more suitable for comparison. Sale Instance No. 2 was not discarded and continued to support the valuation. Referring to paragraph 24.0 of the valuation report, the claimant pointed out that the valuer had found both transactions comparable. The claimant submitted that the 95% negative adjustment shown in the valuation report was an admitted arithmetical mistake and that the correct adjustment was 49%, having regard to the difference between the FSI of 2.59 available to the comparable property and the FSI of 1.33 available to the acquired land. After correcting this figure, the claimant claimed that the total positive adjustment would be 96% and that the market value would work out to ₹2,28,037.24/- per square metre. On this basis, the value of the acquired land admeasuring 642.98 square metres was claimed at ₹14,66,23,383.80/-.

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15. Claimant No. 5 challenged the amounts awarded to M/s. Century Developers Pvt. Ltd. and Mr. Kappu A. Shetty. So far as Century Developers was concerned, it was submitted that its suit for specific performance of the development agreement dated 18 July 1992 had been dismissed on 5 May 1999. The agreement had been terminated by notice dated 27 March 1996. According to the claimant, Century Developers had not complied with the agreement and had failed to pay the balance consideration. The power of attorney dated 20 July 1992 was stated to have been given only for negotiating with the tenant and the municipal authorities. It did not authorise Century Developers to sell flats or create tenancy rights in the property. The claimant relied upon Clause 23 of the development agreement, which provided for forfeiture of the amount paid in case of failure to comply with the agreement. It was therefore contended that Century Developers was not entitled to the amount of ₹20,00,000/- awarded to it, particularly when it had not produced evidence to establish its entitlement. The claimant questioned the valuation of ₹57,72,480/- made in respect of 184.32 square metres and submitted that the award did not disclose the basis for arriving at that figure. The division of that amount, under which 75% was given to Mr. Kappu A. Shetty and 25% to the claimants, was challenged. It was submitted that Mr. Shetty had not paid rent to the owners and had failed to establish any lawful relationship with them. He was alleged to be in occupation without authority. The claimant relied upon its affidavit in lieu of evidence dated 13 December 2006 and submitted that Mr. Shetty had not led

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evidence to establish his claim for compensation. It was therefore contended that no amount should have been awarded to him. Claimant No. 5 sought deletion of Claimant Nos. 1 and 2 from the proceedings through Chamber Summons No. 1617 of 2016, on the ground that they had no right, title or interest in the acquired property.

16. Mr. Prasad Dhakephalkar, learned Senior Advocate appearing for Claimant No. 5, strongly disputed the claim of M/s. Sadanand Garage and its assertion that it was a tenant of the entire acquired property. He submitted that the original rent receipt dated 10 April 1977 was issued in the name of M/s. Sadanand Garage, Proprietor Sadanand R. Shetty, and showed payment of ₹140/- towards rent of the workshop shed. According to him, this document could establish, at the highest, tenancy of the shed measuring about 184 square metres. It did not establish tenancy of the entire plot admeasuring 642.98 square metres or the surrounding open land. He pointed out that the case of the garage was that it was originally a proprietary concern and was later converted into a partnership firm in 1986. However, no partnership deed or other document was produced to show when and how the proprietary concern became a partnership firm, whether Sadanand Shetty was a partner, or whether the original tenancy was transferred to the partnership firm. The registration extract dated 31 July 1993 did not disclose the names of the partners or show that the tenancy was an asset of the firm. It was submitted that no rent receipt in the name of the partnership firm had been produced for the long period between 1977 and 1995. The rent receipts issued by

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Century Developers could not establish any valid tenancy because Century Developers had never become the owner of the property. Its agreement with the Ambekars was only an agreement to sell. It had been terminated on 26 March 1996 and its suit for specific performance had been dismissed on 5 May 1999. The agreement did not authorise Century Developers to create a new tenancy or transfer the earlier tenancy to the partnership firm. Learned Senior Advocate relied upon the evidence in RAE Suit No. 1014/3093 of 1988 and the cross-examination of Deepak Kappu Shetty. He submitted that Deepak had no personal knowledge of the original tenancy or the circumstances in which the garage was taken on rent. Though his father was alive, he was not examined to prove the claim. The evidence contained different versions about the year in which the partnership firm was constituted, namely 1985 and 1986. It was pointed out that Sadanand Shetty had died in 1986 and his legal heirs had not come forward to establish how the alleged partnership firm acquired his tenancy rights. Learned Senior Advocate therefore submitted that the garage had failed to prove that the partnership firm was the lawful tenant of the entire plot or even that the original tenancy of the shed had been transferred to it. He contended that the agreement dated 10 March 1998 with the Siddhivinayak Temple Trust could not create tenancy rights in favour of the garage. For these reasons, he sought dismissal of LAR No. 5 of 2005 and submitted that Century Developers was not entitled to any share in the compensation.

17. In submissions, Mr. Dhakephalkar addressed the method of valuation and the amounts claimed by the owners. He submitted

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that the property measured 642.98 square metres and was situated near Siddhivinayak Temple. However, on the date of acquisition, tenants and other occupants were in possession and two structures were standing on the land. The property was therefore subject to claims and occupation which affected its marketability. The value of vacant land between a willing buyer and a willing seller could not be directly applied without considering these circumstances. At the same time, he submitted that the development agreement with Century Developers had already been terminated and its suit had been dismissed before acquisition. Therefore, no subsisting right under that agreement could be treated as an encumbrance against the owners. He alternatively submitted that, in the absence of reliable sale instances of vacant land, the Ready Reckoner method adopted by the Land Acquisition Officer could be considered, subject to correction of the applicable zone from Zone 19/123 to Zone 17/115. He pointed out that the owners had sought only ₹1,69,922.90/- as enhancement in their reference under Section 18. He nevertheless supported the use of nearby developed properties for valuation, provided suitable deductions were made for construction and other factors. On the basis of the revised valuation, the claimants sought enhanced compensation of ₹14,59,59,554/-, with the value of land assessed at ₹14,66,23,383.80/-, together with construction value, tree value, solatium at 30% and additional amount under Section 23(1-A). After deducting ₹1,38,07,302/- already paid to the owners, they claimed that the excess compensation payable as on the award date was ₹20,22,91,435.55/-. They sought interest under Section

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28 of the Land Acquisition Act at 9% per annum for the first year and 15% per annum thereafter until realisation. Relying upon *Sunder v. Union of India*, (2001) 7 SCC 211; *Jai Krishan v. State of Uttarakhand & Ors.*, (2014) 12 SCC 164; *NHAI v. Tarsem Singh*, 2026 SCC OnLine 481, and the other authorities referred to in their submissions, they contended that interest on enhanced compensation could not be denied arbitrarily. It was pointed out that the award was made on 16 February 2004, the owners filed their objections on 29 March 2004 and the reference was made on 3 September 2004. There was, according to them, no delay on their part in seeking enhancement. They opposed the request of the acquiring body to exclude the period during which the status quo order remained in force, contending that they were entitled to the statutory interest under Section 28.

18. Mr. Milind Sathe, learned Advocate General appearing for the State of Maharashtra, submitted that the Land Acquisition Officer had considered 12 sale instances while determining the market value of the acquired land. Referring to the Stamp Duty Ready Reckoner for 2002, he submitted that the applicable zone was Zone 19/123, which included Plot No. 901. According to him, the Ready Reckoner rate used by the Land Acquisition Officer supported an enhanced compensation calculation of ₹2,54,19,286/-. The applicable rate for developed land in Zone/Sub-zone 19/123 was ₹16,300/- per square metre. Referring to clause 22.3 of the valuer's report, the learned Advocate General submitted that Claimant No. 5's case was supported by the entry at Serial No. 9 concerning permissible Floor Space Index (FSI). He

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pointed out that the permissible FSI for Sale Instance No. 1 was 2.59, whereas the FSI available for the acquired land was 1.33. In his submission, the adjustment should have been a reduction of 49%, rather than 95%. He submitted that Sale Instance No. 1 involved a transaction between a developer and a bank, in which the bank's particular requirements would have affected the price. It was, therefore, not a suitable instance for determining the market value of the acquired land. The learned Advocate General submitted that the entire building, including the constructed portion, formed part of the sale transaction relied upon by the valuer. That transaction could not, therefore, be treated as a reliable basis for fixing the market value of the land alone. He submitted that both sale instances relied upon by Claimant No. 5's valuer should be rejected and that the Ready Reckoner rate should be used to determine the market value.

19. Mr. Pravin Samdani, learned Senior Advocate appearing for the Acquiring Body, submitted that the acquired land admeasures 642.98 square metres and, on the relevant date, it was occupied by tenants, mainly M/s. Sadanand Garage, which was carrying on its business there. There were two existing structures on the property and an earlier agreement with M/s. Century Developers Pvt. Ltd. was in existence. Thus, according to the Acquiring Body, the property was not vacant land and was subject to different rights and claims. A purchaser would have to take into account these existing occupants and agreements while deciding whether to purchase the property and at what price. Its market value could not, therefore, be determined in the same manner as vacant land

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available for sale between a willing buyer and a willing seller. Learned Senior Advocate submitted that the valuation made by the Land Acquisition Officer on the basis of the Ready Reckoner rates should be accepted, since no reliable sale instance of vacant land in the vicinity was available. He, however, accepted that the Ready Reckoner rate had been taken from the wrong zone. The correct zone was 17/115 and not 19/123, and the valuation would have to be reconsidered by applying the rate of the correct zone. He pointed out that the owners, while seeking a reference under Section 18 of the Land Acquisition Act, had claimed enhancement of only Rs.1,69,922.90/-. Without prejudice to this submission, he stated that Sale Instance No. 10 obtained by the Land Acquisition Officer from the Sub-Registrar could be considered after making proper deductions. Though that transaction related to premises situated on the ground floor, this difference could be taken care of by making a suitable deduction. deductions would be necessary towards the developer's profit, administrative expenses, construction costs, size of the plot, location and width of the adjoining road. According to the Acquiring Body, this sale instance could at the highest be used only after making such adjustments.

20. Learned Senior Advocate submitted that the two sale instances relied upon by the claimants' valuer were not proper comparisons for determining the value of the acquired land. So far as Sale Instance No. 2 was concerned, he submitted that the valuer himself had not considered it as the more suitable instance. As regards Sale Instance No. 1, he pointed out that the property covered by that transaction related to a building constructed in

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1951 and having an FSI higher than 1.33, which, according to the Acquiring Body, was not permissible for the acquired land on the date of the Section 4 notification. The transaction involved sale of the entire building to a single purchaser for its own particular use. It was therefore a special transaction and the price could not be treated as the ordinary market rate of the acquired land. It was submitted that the property covered by Sale Instance No. 1 was a redevelopment property under Regulation 33(7), having the benefit of incentive FSI of about 2.56, whereas the basic permissible FSI was only 1.33. The building was newly constructed and consisted of residential flats. It was sold as a whole to a financial institution, ICICI, under a package transaction. The price paid in such a transaction was influenced by the additional development potential and the special requirements of the purchaser. The property stood on a plot of about 665.55 square metres and offered greater development possibilities than the acquired land. Learned Senior Advocate pointed out that the property covered by Sale Instance No. 1 was situated in a more peaceful residential locality, on a wider road, whereas the acquired land was on a narrower road in a congested area and very close to Siddhivinayak Temple. The temple attracted a large number of devotees from early morning until about 10:00 p.m., resulting in considerable crowd and traffic throughout the day. According to the Acquiring Body, these circumstances were disadvantages and ought to result in a negative adjustment. The valuer's positive adjustment of 50% on account of proximity to the temple was therefore disputed. The suggestion that the acquired property had

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potential for use as a clinical nursing home or for commercial purposes was denied. It was submitted that such use could not be assumed merely because the property was situated near the temple. On these grounds, the Acquiring Body contended that Sale Instance No. 1 was not a proper comparable transaction and should not be relied upon.

21. Without prejudice to the above objections, learned Senior Advocate submitted that even if Sale Instance No. 1 was considered, the calculations made by the valuer required substantial correction. According to the Acquiring Body, apart from deducting 20% towards the developer's profit, a 10% had to be deducted towards administrative expenses. The construction cost adopted by the valuer at Rs.7,000/- per square metre, equivalent to about Rs.650.32/- per square foot, was disputed. It was submitted that the construction cost during the relevant period could not have been less than Rs.1,500/- per square foot. On making these deductions, the Acquiring Body calculated the net land value at Rs.5,09,80,875/-, instead of Rs.7,74,33,771.39/- adopted by the valuer. After dividing this amount by the plot area of 665.55 square metres, the basic land rate would work out to Rs.76,599.62/- per square metre, instead of Rs.1,16,345.53/- per square metre. The Acquiring Body disputed the adjustments made by the valuer for the differences between the two properties. It submitted that no positive adjustment should be given for the shape of the plot, frontage, road access or proximity to a public garden. A negative adjustment of 10% was proposed for the user potential and another negative adjustment of 10% for proximity to

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Siddhivinayak Temple. The negative adjustment for the difference in permissible FSI was proposed at 49%, having regard to the FSI of 2.59 available to the property covered by Sale Instance No. 1 and the FSI of 1.33 available to the acquired land. The total corrected adjustment was thus shown as a negative 69%, instead of the positive 50% adopted by the valuer. On this calculation, the Acquiring Body claimed that the market rate of the acquired land would be only Rs.23,745.88/- per square metre, equivalent to Rs.2,206.07/- per square foot. It placed a comparative calculation before the Court showing the transaction value of Rs.10,88,82,500/-, deduction of developer's profit, additional deduction of administrative expenses, construction cost at Rs.1,500/- per square foot and the resulting net land value. It set out the proposed adjustments for size, shape, locality, civic amenities, road frontage, access, user potential, topography, FSI and proximity to the public garden and Siddhivinayak Temple. According to the Acquiring Body, while the valuer's calculation resulted in a rate of Rs.1,74,518.29/- per square metre, the corrected calculation would result in a rate of only Rs.23,745.88/- per square metre. It was therefore submitted that the valuation report could not be accepted without making these corrections.

22. Learned Senior Advocate submitted that an order of status quo was in force from 20 February 2004 until 10 March 2005 and that the occupants of the garage had not handed over possession during that period. According to the Acquiring Body, if interest was otherwise found payable, the period covered by the status quo order should be excluded while calculating it. In conclusion, it was

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submitted that no sale instance on record could be treated as a proper comparison with the acquired property. The two transactions relied upon by the claimants' valuer related to constructed properties and were not subject to the same occupation and other claims which affected the acquired land. The Acquiring Body maintained that Sale Instance No. 10 could be considered only after making suitable adjustments. It submitted that, since the Ready Reckoner rate had been applied from the wrong zone, the market value could be reconsidered by applying the rate of the correct zone and making appropriate adjustments for the advantages and disadvantages of the acquired property. In support of these submissions, learned Senior Advocate relied upon the judgments of the Supreme Court in *New Okhla Industrial Development Authority v. Harnand Singh (Dead) through Legal Representatives and Others*, 2024 SCC OnLine SC 1691, and *M. B. Gopala Krishna and Another v. Special Deputy Collector, Land Acquisition*, (1990) 3 SCC 594.

REASONS AND FINDINGS:

Relevant date, nature of the property and principles for deciding market value:

23. The first question which has to be decided is what was the market value of Final Plot No. 901 of Town Planning Scheme No. IV, Mahim Division, situated at Kakasaheb Gadgil Marg, Prabhadevi, Mumbai, on the date of acquisition. The area of this property is stated to be 642.98 square metres. It is described as C.S. No. 1/1209 of Lower Parel Division. The property was

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acquired for the public purpose of constructing Bhakti Niwas and a waiting room for the devotees coming to Shree Siddhivinayak Ganapati Temple.

24. Before looking at the different valuations relied upon by the parties, the relevant date for deciding the market value has to be fixed. The notification under Section 4 of the Land Acquisition Act, 1894, is stated to have been issued on 3 September 2002. According to the owners, it was published in the newspapers on 13 September 2002 and 14 September 2002. The valuation report of C.W.2, Hitendra K. Mehta, shows that the notification was published in the Government Gazette on 19 September 2002. Thus, 19 September 2002 is the last date of the publications referred to above. C.W.2 has taken this date while calculating the market value. One of the letters written in December 2002 refers to a notice under Section 4 of the Land Acquisition Act dated 12 December 2002. However, from the material placed before me, it appears that the acquisition was carried forward on the basis of the notification dated 3 September 2002 and its publication in September 2002. Merely because there is a letter written in December 2002, it cannot be said that the notification under Section 4 was published for the first time on 12 December 2002. I proceed on the basis that 19 September 2002 is the relevant date for deciding the market value. It is necessary to decide the actual area of the acquired property. Some documents mention the area as 642.96 square metres or 642.92 square metres. One part of the valuation report gives a different area. However, the award, the comparison tables in the valuation report and the final calculation

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made by C.W.2 all proceed on the basis of 642.98 square metres. The description of the property and the award support this area. I take the area of the acquired land as 642.98 square metres for deciding the present issue.

25. Section 23(1) of the Land Acquisition Act, 1894, requires the Court to find the market value of the land on the date when the notification under Section 4(1) was published. The question is not how much the acquiring body was ready to pay because it had some special need for the land. The question is what price the property could reasonably have received in the open market if a willing seller had offered it to a willing purchaser on the relevant date. In this connection, the Supreme Court in *Thakur Kuldeep Singh*, in paragraph 12, has observed that the nature of the land, its suitability, its proposed use, the income received or which could be received from it, its special features and the sale transactions of land covered by the same notification are all relevant factors. In paragraph 13, the Supreme Court has observed:

> "The Land Acquisition Collector as well as the court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of 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 notification under Section 4(1) of

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> the Act. In other words, the Judge who sits in the armchair of the willing buyer and seeks 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 market value so determined should be just, adequate and reasonable."

26. From the above principle, it is clear that the Court cannot decide the market value merely by looking at the amount demanded by one party or offered by the other. The Court has to consider the property as a normal purchaser would consider it before agreeing to buy. The benefits available to the property have to be taken into account. Its difficulties and disadvantages have to be seen. If any special feature is said to increase the value, there must be some evidence to support that increase. Normally, the most useful evidence for deciding market value is the evidence of genuine sale transactions of similar properties. In Jawajee Nagnatham v. Revenue Divisional Officer, (1994) 4 SCC 595, paragraph 5, the Supreme Court considered the different methods of valuation and observed:

> "Generally the second method of valuation is accepted as the best."

27. The second method referred to by the Supreme Court means considering the price paid in a genuine sale transaction within a reasonable period. The transaction may relate to the acquired land or to nearby land having similar advantages. The Supreme Court has again explained what conditions should be considered before relying upon sale transactions. In paragraph 25, it has held:

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> "However, for utilizing these sale deeds as the foundation for determining compensation, it is imperative that these sale instances satisfy certain criteria of comparability. In this regard, it is necessary that the sale deeds adhere to the following factors:
>
> i. the sale must be a genuine transaction;
>
> ii. the sale deed must have been executed at the time proximate to the date of the notification issued under Section 4 of the 1894 Act;
>
> iii. the land covered by the sale must be in the vicinity of the acquired land; and
>
> iv. the nature of such land, including its size, must be similar to the acquired land."

28. The Supreme Court has held in paragraph 26 of the same decision that a sale transaction relating to a smaller or bigger plot cannot be rejected only because its area is different. Such a transaction can be considered after making proper deductions or adjustments. A small developed plot may get a higher rate than a large piece of land. In the case of a large plot, some area may have to be kept aside for roads, open spaces and other facilities. Therefore, the difference in the area of two properties has to be considered while comparing them. Applying these principles to the present case, it is clear that every sale transaction cannot be accepted without examining its details. At the same time, a sale transaction cannot be rejected only because the property is not exactly the same as the acquired property. Differences in area, frontage, road access, permitted use, shape and development possibility can be considered by making proper adjustments. But such adjustments must be reasonable and should have some

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support from the evidence.

Award of the Land Acquisition Officer, Ready Reckoner and earlier valuation obtained by the Trust:

29. The Land Acquisition Officer, MHADA, declared the award on 16 February 2004. The total compensation awarded was Rs. 2,01,37,662/-. The amount was directed to be divided between the persons interested in the property. While calculating the market value, the Land Acquisition Officer took the rate of Rs. 16,300/- per square metre and multiplied it by the permissible FSI of 1.33. In this manner, the rate of Rs. 21,679/- per square metre was calculated for 500 square metres. For the remaining area of 142.98 square metres, a different rate of Rs. 19,511/- per square metre was applied.

30. The learned Advocate General submitted that the Land Acquisition Officer had correctly relied upon Zone 19/123 of the Ready Reckoner for the year 2002. According to the State, the acquired property falls within this zone and the correct rate is Rs. 16,300/- per square metre. The State submitted that twelve sale transactions had been obtained from the office of the Registrar and were considered by the Land Acquisition Officer. On this basis, it was submitted that the valuation made by C.W.2 is too high and that the Ready Reckoner rate should be accepted. On the other hand, the owners have relied upon the valuation report of C.W.2. C.W.2 has stated that the correct zone under the Ready Reckoner for 2002 was Zone 17/115. According to him, the rate in that zone was Rs. 20,350/- per square metre for FSI of 1.00. After applying

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FSI of 1.33, he calculated the rate at Rs. 27,065.50/- per square metre. He tried to find out the land rate from the rate of a residential flat mentioned in the Ready Reckoner. After deducting the developer's profit and construction cost, he arrived at Rs. 34,666.67/- per square metre. Thus, there is a dispute between the parties even about the zone in which the acquired property falls. The State relies upon Zone 19/123, whereas C.W.2 relies upon Zone 17/115. The material placed before me does not contain any independent and clear certificate from the competent authority which finally decides this issue. In such a situation, it would not be proper to accept either zone only because one party says that its zone is correct.

31. However, the more important question is whether the Ready Reckoner can be treated as final proof of the market value. In *Jawajee Nagnatham*, paragraph 5, the Supreme Court considered the legal position regarding the Basic Valuation Register and held:

> "we hold that the basic value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands under Section 23 of the Act."

32. The Supreme Court has made it clear that the market value has to be decided on the basis of genuine sale transactions or other proper evidence. The Ready Reckoner may be referred to for some purpose. But it cannot replace actual market transactions. I do not accept the submission of the State that the rate of Rs. 16,300/- per square metre, or the rate arrived at after multiplying it by FSI of 1.33, must be treated as the market value only because it is mentioned in the Ready Reckoner. There is a dispute between the

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parties about the correct zone. This makes it more difficult to accept the Ready Reckoner as the only basis for deciding the value.

33. I have considered the submission that the Land Acquisition Officer had obtained twelve sale transactions. The valuation report of C.W.2 records that the Land Acquisition Officer had called for sale transactions from the Registrar of Assurances. According to C.W.2, several of those transactions were not suitable for comparison because they related to flats, shops or properties having buildings. They did not give a clear basis for finding the value of vacant land. The Land Acquisition Officer ultimately relied upon the Ready Reckoner for making the main calculation. Merely because twelve sale transactions were collected, it does not mean that all of them were suitable for comparison. The nature of the property, date of sale, area, permitted use and the price paid have to be examined. A sale transaction relating to a small flat or shop cannot be directly compared with a plot of land measuring 642.98 square metres. Before making such a comparison, the value of the building and other necessary adjustments have to be considered.

34. I have considered *Mathura Prasad Rajgharia*, paragraph 15. The Supreme Court observed that an award based upon an agreement between the acquiring authority and the claimant can have evidentiary value. It observed:

> "Even if an order made by the Collector valuing land with the consent of the acquiring authority and the claimant may not strictly be regarded as an award made on a consideration of all the relevant materials, the agreement formally reached between the acquiring authority and the claimant agreeing to a certain amount to be paid as compensation for the land

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acquired is good evidence of the market value of the land."

35. In that case, there was an agreement between the claimant and the acquiring authority. The Collector accepted that agreement and made the award on that basis. The facts of the present case are different. The Ready Reckoner entry is not an agreement between a willing buyer and a willing seller. It is not shown that the award of the Land Acquisition Officer was made on the basis of a final agreement between the owners and the acquiring body about the market value of the entire land. Therefore, the principle laid down in Mathura Prasad does not make the Ready Reckoner rate final or conclusive in the present case. I am unable to accept the submission of the State that the market value should be restricted to the Ready Reckoner rate. The award of the Land Acquisition Officer is relevant for understanding how the compensation was calculated. But the actual market value has to be decided independently after considering the evidence placed before this Court.

36. I have considered the valuation report dated 19 July 1999 prepared by M/s. Joshi and Parulekar on the instructions of Shree Siddhivinayak Ganapati Temple Trust. This report relates to the same Final Plot No. 901. It records the area as about 642.96 square metres and describes an old structure standing on the plot. The report states that the structure was being used as a motor repairing garage and that a major part of the plot was vacant, though it was being used for repair work and parking. The said report was prepared because the Trust wanted to obtain additional land for expanding its premises. It records that the existing temple

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premises were not enough for the large number of devotees visiting the temple. The Trust wanted to join the acquired plot with the adjoining plot and use the combined land for its own requirements. The report states that the Trust was ready to pay some additional amount over and above the market value because of its special requirement. The report valued the land at Rs. 5,000/- per square foot of FSI area. By taking the area of 9,202 square feet, it arrived at Rs. 4,60,10,000/-. However, the report makes it clear that this valuation was made because the Trust had a special requirement. It proceeds on the assumption that all legal difficulties would be cleared and that the property would be available free from all encumbrances. The claimant, relying upon this report, submitted that the Trust had valued the property at Rs. 4.60 crores in 1999. It was submitted that the market value in September 2002 must be much higher. This submission has some importance. The report was prepared by a professional valuer who had inspected the property and considered the locality. It is an important fact that the Trust was ready to pay a higher amount because the plot was specially useful for expanding its temple premises. However, this report cannot be treated as a sale deed or a completed sale transaction. It was prepared at the request of the Trust for its own requirement of purchasing the property. The report says that the Trust was prepared to pay an additional amount over and above the market value. It assumes that the property would be free from all encumbrances. Therefore, the amount of Rs. 4.60 crores cannot be treated as the actual market value of the property on the relevant date of acquisition. It can

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only be considered as some supporting material showing the value which the Trust was considering for its own purpose in 1999.

37. The submissions regarding the agreement with the Trust dated 10 March 1998 and the minutes of the Trust dated 16 April 2001 require consideration. Claimant No. 3 relies upon the proposal and the amounts which the Trust had agreed or offered to pay to different persons interested in the property. It is submitted that the Trust had offered a total amount of Rs. 2,73,50,000/- and that the amount proposed for the tenant and other persons was much more than the amount proposed for the owners. These documents may have some importance while deciding the claims of persons who say that they had tenancy, development or other rights in the property. But the amount proposed for settling different rights cannot be treated as the market value of the entire property. The Trust wanted the property for expanding its own premises. It was negotiating with different persons who were claiming different rights. The amount offered to a tenant or developer may include the value of their individual rights, the amount required for getting vacant possession and other settlement conditions. It cannot be treated as the price which an independent purchaser would pay for the land in the open market. In this regard, the principle stated by the Supreme Court in *Mathura Prasad* has to be applied carefully. A final agreement between the acquiring authority and the claimant, where the amount is accepted as compensation for the land, can be good evidence. But an internal valuation report or a proposal made for settling different claims is not the same as a completed sale

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transaction or an agreed award. I give some evidentiary value to the 1999 report and the later proposals of the Trust. However, I do not treat them as the final basis for deciding the market value.

Sale Instance No. 1 and Sale Instance No. 2 relied upon by C.W.2:

38. C.W.2, Hitendra K. Mehta, is an architect and a Government registered valuer. He has stated that he has been working as an architect since 1985 and was familiar with the Prabhadevi locality. He inspected the acquired property on 12 August 2009 and the places of the sale instances on 17 September 2009. His report is dated 5 February 2010. He has stated that he could not find suitable sale transactions of vacant land. Therefore, he considered transactions relating to land with buildings. He then deducted the construction cost and the developer's profit to find out the value of the land. I do not find that this method can be rejected only because the sale transactions included buildings. When there is no suitable direct sale transaction of vacant land, a transaction of land with a building can be considered. But before doing so, the value of the structure and the cost of construction have to be deducted. The Supreme Court in the decision reported as *New Okhla Industrial Development Authority*, paragraph 26, has recognised that sale transactions of properties having different sizes and nature can be considered after making proper deductions or adjustments.

39. The first sale instance relied upon by C.W.2 is a Deed of Conveyance dated 5 December 2002. The vendor was M/s. Suraj Estate Developers Pvt. Ltd. and the purchaser was ICICI Bank Ltd.

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The property was Final Plot No. 967 of Town Planning Scheme No. IV, Mahim, situated at Shankar Ghanekar Marg, Prabhadevi. The area of the land was 665.55 square metres. The consideration was Rs. 10,88,82,500/-. This transaction related to land with a proposed building. The proposed development consisted of a stilt and seven upper floors with residential flats. The total carpet area was stated to be 17,045 square feet. C.W.2 calculated the built-up area at 20,454 square feet by adding 20%. He then deducted 20% towards the developer's profit and deducted the construction cost. After making these deductions, he arrived at a net land value of approximately Rs. 7,74,33,771/-. On the basis of the land area of 665.55 square metres, the land rate was calculated at approximately Rs. 1,16,346/- per square metre.

40. The State has submitted that this transaction should not be considered because the purchaser was a bank and the transaction included a building. The State has submitted that the transaction may have been affected by the special requirements of the purchaser. I do not find that the transaction can be rejected only for these reasons. The transaction is recorded in a registered conveyance. The consideration is mentioned in it. The area of the land is close to the area of the acquired land. Both properties fall within Town Planning Scheme No. IV, Mahim. Both are situated in the Prabhadevi locality. The sale property is about 350 metres away from the acquired property. These similarities are important and cannot be ignored.

41. The objection that the transaction included a building is answered to a considerable extent by the method used by C.W.2.

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He has not treated the entire consideration as the value of the land. He has deducted the developer's profit and construction cost and calculated the land value. The State has not produced any separate expert calculation to show that the construction cost or the developer's profit deducted by C.W.2 is completely wrong. The fact that ICICI Bank Ltd. was the purchaser does not make the transaction a special or artificial transaction. There is no evidence to show that the consideration was increased because of any special benefit available only to the bank. The transaction has to be considered on its own facts. The consideration recorded in a registered conveyance is relevant evidence, unless there is material to show that it was not a genuine market transaction. At the same time, there are some difficulties in relying upon this transaction. The report refers to a Memorandum of Intent dated 24 October 2000, which recorded that the price had been decided. It refers to payments made over a period starting from 1995 and continuing up to the date of conveyance. Therefore, the price was not first decided on 5 December 2002. This fact affects the importance which can be given to this transaction.

42. C.W.2 has explained that the transaction continued over a long period and that it would be safer to take the date of the conveyance as the effective date. He then applied an annual increase of 10% and made a downward adjustment of about 2.45% to bring the transaction rate from 5 December 2002 to 19 September 2002. In this manner, he arrived at approximately Rs. 1,70,200/- per square metre. I agree that the date of the registered conveyance cannot be ignored. However, the earlier Memorandum

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of Intent is an important fact. The consideration had been decided before the relevant date. I do not treat this sale transaction as final proof. I consider it a strong comparable transaction because its area, locality, and Town Planning Scheme are similar. But I keep in mind the earlier date on which the price appears to have been settled. C.W.2 has compared the shape, frontage, access, user potential, FSI and closeness to public facilities of the two properties. According to him, the acquired plot has a more regular shape, better frontage and some other advantages over the first sale property. He has made positive adjustments in favour of the acquired land. He has made a substantial negative adjustment because of the difference in FSI.

43. The second sale instance relied upon by C.W.2 is a conveyance dated 5 March 2001. The property was Plot No. C-4, bearing part of Final Plot Nos. 952 and 954 of Town Planning Scheme No. IV, Mahim, situated at Appasaheb Marathe Marg, Prabhadevi. It was sold by M/s. Solar Developers to K. Vysya Bank Ltd. The area of the land was 1,239.86 square metres. The consideration for the land and building was Rs. 24,85,00,000/-. The property had a building which was constructed in 1951. C.W.2 removed the value of furniture and fixtures and took the consideration of Rs. 24,85,00,000/-. He deducted 20% towards the developer's profit. He deducted the construction cost after giving 40% depreciation because the building was constructed in 1951. After making these deductions, he arrived at a net land value of approximately Rs. 19,96,67,464/-. On the basis of the land area of 1,239.86 square metres, the land rate was calculated at

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approximately Rs. 1,61,040/- per square metre. This second property is larger than the acquired property. Its area is almost twice the area of the acquired plot. It had an existing building and was being used for office purposes. The acquired property, on the other hand, had residential development potential with some permitted commercial use along with it. There was a difference in access. The second sale property could be reached through a right of way about six metres wide, whereas the acquired property directly touched Kakasaheb Gadgil Marg.

44. C.W.2 made adjustments for these differences. He gave a positive allowance because the acquired property was smaller, had better frontage and had direct access. He made negative adjustments for the difference in permitted use and FSI. He considered the difference in the distance of the properties from Siddhivinayak Temple and the public garden. After making these adjustments, he arrived at a rate of approximately Rs. 1,52,988/- per square metre for the acquired land as on 5 March 2001. He then applied an increase of 15.40% for the period between 5 March 2001 and 19 September 2002. The resulting rate came to about Rs. 1,76,548/- per square metre. He rounded this amount to Rs. 1,76,500/- per square metre. The State has submitted that the second sale transaction should be rejected because it relates to land with an old building. It is submitted that the property is larger and its use is different. I accept that there are differences between the two properties. However, these differences do not make the transaction completely useless for comparison. C.W.2 has not compared the full consideration as if it was the value of vacant

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land. He has deducted the construction cost and depreciation. Thereafter, he has made adjustments for area, use, FSI, frontage and access. The second sale property is not as close in size to the acquired property as the first sale property. It is older by about one year and six months from the relevant date. The increase of 15.40% is based on an assumed annual increase of 10%. The report does not refer to any separate group of sale transactions which independently proves that the market during that period increased at exactly 10% every year. Therefore, the increase calculated by C.W.2 is only an estimate. It cannot be treated as an exact figure. Even then, the second sale transaction gives an important check on the rate arrived at from the first sale transaction. After making the stated adjustments, it gives a rate of approximately Rs. 1,76,500/- per square metre. This is close to the rate of Rs. 1,70,200/- per square metre arrived at from the first sale transaction. The difference between the two adjusted rates is not very large, particularly when the difference in the size, date and use of the properties is kept in mind. I find that Sale Instance No. 1 is the more useful and more comparable transaction. Sale Instance No. 2 is not being taken as the main basis for deciding the market value. However, it gives support to the rate arrived at from the first transaction. Both transactions have to be considered together. It would not be proper to look at either of them separately without considering the other.

<u>Cross-examination of C.W.2, disputed adjustments and effect of occupation and encumbrances:</u>

45. The evidence of C.W.2 has been tested in cross-examination.

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His answers are required to be considered because the final rate of Rs. 1,70,200/- per square metre depends upon the adjustments made by him in the comparison tables. In Question Nos. 98 and 99, C.W.2 admitted that the allowances mentioned in the last column of his report were based on his own satisfaction. He admitted that the final positive percentage was his own assessment. In Question No. 139, he again accepted that the percentages were based on his own satisfaction. He did not accept the suggestion in Question No. 120 that the percentages were incorrect. He did not accept the suggestions in Question Nos. 195 and 212 that the allowances and the valuation were wrong. From these answers, it is clear that the percentages were not taken from any fixed provision or statutory table. They were based upon the professional assessment of the valuer. This does not mean that they must be rejected. While valuing land, several factors have to be considered. However, the expert must explain why a particular factor has been given a particular percentage. The Court has to examine whether his explanation is reasonable and supported by the material on record.

46. There is an important admission regarding corrections in the valuation report. In Question No. 5, C.W.2 was asked when he realised that certain mistakes in the report required correction. He stated that he realised the mistakes after filing his affidavit, when he was studying the report for attending the cross-examination. In Question No. 6, he accepted that he had realised the mistakes before 1 April 2010. In Question No. 7, he stated that he had verbally informed his Advocate and had asked that the corrections

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marked in his copy be shown before the Commissioner before the cross-examination started. This answer requires some care while considering the report. A valuation report should be correct when it is filed. If any corrections are required, they should be brought on record so that the other side gets an opportunity to examine them. Corrections cannot remain only in the private copy of the expert. Since the corrections were not formally brought on record, the value of the report is reduced to that extent. However, this admission does not show that the entire valuation was deliberately or materially false. The report still contains the sale details, calculations, and the basis on which the expert arrived at the final rate. I will examine the actual calculations instead of rejecting the entire report only because some corrections were required.

47. The question of frontage was put to C.W.2. He had given an additional allowance of 40% to the acquired land as compared with both the sale properties. The acquired plot has a substantial frontage on Kakasaheb Gadgil Marg. Sale Instance No. 1 had a much smaller frontage. Sale Instance No. 2 did not have direct frontage and could be approached through a right of way. Thus, the difference in frontage is real and has to be considered. The State has questioned whether an allowance of 40% is too much. I agree that this exact percentage cannot be accepted only because the expert has stated it. However, it cannot be disputed that a plot directly touching a public road and having a frontage of about 18.29 metres has an advantage over a plot having a narrow frontage or no direct frontage. C.W.2 has considered an actual advantage of the acquired property. The exact percentage is a

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matter of valuation. But the basic advantage is supported by the details of the properties. In Question No. 100, the expert was questioned about the width of the road. The road in Sale Instance No. 1 was 27.44 metres wide, whereas Kakasaheb Gadgil Marg was 15.25 metres wide. C.W.2 explained that a wider road may have more traffic and congestion. According to him, a road of 15.25 metres may be more convenient in some situations. This explanation is possible. The value of a road frontage does not depend only upon the width of the road. The traffic and the use of the property are important. I do not find that the additional allowance of 5% for access is wholly unreasonable.

48. The shape of the plots was considered. In Question No. 134, the expert was asked why he had not given any difference for the shape of Sale Instance No. 2, which was described as polygonal, whereas the acquired plot was described as regular and rectangular. He explained that the sale plot had a right of way along with it and that both plots had the possibility of rectangular construction. He explained that Sale Instance No. 1 was more irregular in shape and that the acquired plot had a better shape. Thus, the difference in shape is a relevant factor. The allowance of 20% in the first comparison is not without any basis.

49. The issue of FSI requires closer consideration. In Question No. 88, C.W.2 stated that the FSI of Sale Instance No. 1 was calculated at 2.59 on the basis of the carpet area and the super built-up area recorded in the conveyance. He stated that the FSI of the acquired land was taken as 1.33 on the basis of the Development Control Regulations and the approved plans annexed

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to his report. In Question Nos. 89 and 90, he accepted that the same Development Control Regulations applied to both properties. In response to the question, he stated that the ordinary permissible FSI in both localities was 1.33, though certain concessions under the Development Control Regulations could result in the actual permissible FSI being different from one plot to another. The State has submitted that the allowance of minus 95% for the difference in FSI in Sale Instance No. 1 is not correct. According to the State, the difference between FSI 2.59 and FSI 1.33 would justify an adjustment of about minus 49%. This submission has force. The difference between FSI 2.59 and FSI 1.33 cannot, on a simple comparison, justify a deduction of 95%. The expert has not given a clear mathematical explanation for making such a large deduction. I find that the FSI allowance of minus 95% has not been explained. The submission of the State that an adjustment of about minus 49% would be more consistent with the numerical difference has merit. However, the expert has adopted the higher negative adjustment of minus 95%. In other words, he has made a larger deduction against the acquired land than what the State says would be justified. This fact does not show that the figure of Rs. 1,70,200/- per square metre is excessive. If the FSI deduction is reduced to minus 49%, the rate arrived at from this comparison would increase, subject to the other adjustments.

50. C.W.2 has relied upon the sanctioned plan dated 8 April 1986. He stated that the plan showed a stilt and seven upper floors. However, in Question No. 104, he accepted that no construction had been carried out according to that plan. In

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Question No. 105, he stated that he did not know why the construction had not been carried out. In Question No. 109, he accepted that he was not aware whether the plan had been renewed. In Question No. 110, he stated that the validity of an IOD and sanctioned plan was ordinarily one year, though the Corporation could permit revalidation up to three years under its policy. These answers show that the old sanctioned plan cannot be treated as a development permission which was still valid in 2002. The expert has not proved that the plan had been renewed. I do not accept the suggestion that the entire development shown in the plan of 1986 was certainly available as a legal right on the relevant date. However, the matter does not end here. C.W.2 has stated that the permissible FSI under the Development Control Regulations applicable to the locality was 1.33. This was not based only on the old plan. He has referred to the Development Control Regulations and has considered the approved plan while assessing the possible development. The permissible FSI of 1.33 is a relevant factor, though the higher development shown in the old plan cannot be treated as a confirmed right.

51. The permitted use of the acquired land has been considered. The report states that the property was in a residential zone, but certain commercial and other related uses were permitted under the Development Control Regulations. The expert referred to shops and other profitable uses such as banks and nursing homes. The State has questioned the positive allowance given to the acquired land while comparing it with Sale Instance No. 1. The comparison table describes both properties as having residential use with

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related commercial uses. It records that the acquired land had the advantage of shops on the ground floor. The positive allowance of 25% is not explained as as the advantage of frontage or access. I do not treat this percentage as final . However, the permitted use of the land and the possibility of commercial use on the ground floor are matters which a normal purchaser would consider.

52. The most disputed adjustment is the 50% allowance given because the acquired property is close to Shree Siddhivinayak Temple. The acquired land is stated to be about 15.25 metres from the temple. Sale Instance No. 1 is about 350 metres away and Sale Instance No. 2 is about 500 metres away. The expert has stated that the acquired land is separated from the temple by only a small plot and that the temple is a well-known landmark. In Question Nos. 111 to 115, C.W.2 accepted that the area around the temple was crowded and congested. He nevertheless stated that the closeness of the property to the temple added value. In Question No. 180, he accepted that his opinion was based on his own study and was not supported by any authoritative book on valuation. In Question Nos. 207 to 211, he accepted that the exact percentage was not given in any book and that the figure of 50% was worked out by him. I have carefully considered this admission. Merely because the temple is famous or important to devotees, it cannot justify an increase of 50% in the value of every nearby property. Market value has to be decided from the point of view of a normal purchaser. It cannot depend only upon religious feelings. The expert himself accepted that the locality was crowded and congested. This is a disadvantage which has to be considered. At

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the same time, the acquired plot is not merely situated somewhere in the general area of Prabhadevi. It is immediately next to the temple area and is separated from it only by a small intervening plot. The two sale properties relied upon by the expert are situated at a much greater distance. This is an actual difference in location. The acquired plot has frontage on a public road and the possibility of permitted commercial use. A normal purchaser may attach some value to such close location because of visibility, movement of people and the commercial opportunities which may arise from that position.

53. I do not accept that every plot situated within 700 or 800 metres of the temple must receive an increase of 50%. The expert himself clarified in Question Nos. 170 to 176 that the percentage would change from plot to plot depending upon the actual distance and location. His answers show that the 50% adjustment was intended for properties very close to the temple and not for the whole neighbourhood. The exact figure of 50% remains the expert's own assessment. It is not proved by any separate sale transaction of a plot situated at an equal distance from the temple. However, the advantage arising from the location is supported by the site plan and the distance mentioned in the report. The State has not produced any other valuation to show that such immediate closeness has no value or that the congestion has reduced the price of the land around the temple. I consider the closeness to the temple as an important factor. However, it cannot be treated as a fixed rule for every plot in Prabhadevi. The expert has been questioned about the closeness of the properties to railway stations

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and public transport. In Question Nos. 181 to 192, he accepted that railway access and public transport are relevant factors. He explained that all three properties were within about 500 metres of railway stations and that the difference was not important for the purpose of comparison. This explanation appears reasonable. The report refers to the availability of BEST buses, taxis and other public transport. I do not find any material error on this point.

54. It is true that the percentage adjustments in the report are not free from doubt. Some are based upon the expert's own assessment and some require a better explanation. The total allowance of 80% shown in the first comparison table does not match the individual percentages mentioned in that table. I have not accepted that total merely because it is mentioned in the report. The later calculation and conclusion in the report proceed on an adjustment which gives a rate of about Rs. 1,70,200/- per square metre. I have considered the calculation in the report, the individual factors and the answers given in cross-examination before deciding whether the final rate can be accepted. There is one more aspect. The 1999 valuation report of the Trust records that the property was being used as a garage and that a major portion of the plot was vacant. The submissions of Claimant No. 3 state that it was in possession of the entire plot and that the whole open space had been given to it under tenancy. The owners dispute this claim. The rent receipt dated 10 April 1977 is stated by the owners to relate only to a workshop shed. The material refers to other structures and the use of open space for parking and garage activities. I am not deciding the entire dispute about tenancy in

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this part of the judgment. That question relates to the nature and extent of the rights of the persons interested in the property and their entitlement to compensation. However, the physical condition of the land on the relevant date is important for deciding its market value. The record shows that there was a garage structure and that some portion was being used for repair activities and parking. It shows that a major portion of the plot was vacant. The claim that the entire area of 642.98 square metres was under the exclusive tenancy of Claimant No. 3 is not established merely from the 1999 valuation report.

55. In *M.B. Gopala Krishna*, paragraph 5, the Supreme Court has observed:

> "A freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A freehold land normally commands higher compensation while the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land."

56. The above principle is clear. If a lawful tenant is occupying the property, it is an encumbrance and a purchaser would consider it while deciding the price. But the extent of that encumbrance is important. In the present case, the material shows that there was a garage structure and that part of the land was being used for garage activities and parking. It does not establish that the whole plot was occupied by a tenant under one tenancy. The extent of lawful occupation and the rights of Claimant No. 3 have to be decided on the evidence led in the reference concerning

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apportionment.

57. I do not accept the claim that the entire market value should be reduced on the assumption that the whole plot was subject to one tenancy. At the same time, I do not ignore the fact that part of the property was occupied. The sale transactions considered by C.W.2 were transactions of land with buildings. He has deducted the construction cost before arriving at the value of the land. The record does not provide a reliable basis for making any numerical deduction for the disputed occupation. If a deduction is made without knowing the exact area and legal nature of the occupation, that deduction would have no proper basis.

58. The claim of Claimant No. 3 that it should receive 75% of the compensation has to be kept separate from the question of market value. First, the market value of the acquired property has to be decided. Thereafter, the amount payable to the owners, tenant, developer or any other person having an interest in the compensation has to be decided according to the nature of their respective rights. In *Kachrulal Hiralal Dhoot*, paragraph 5, this Court has held that the right to receive compensation is not restricted only to a person having a proprietary interest. It observed:

> "In our judgment, the right to receive compensation for compulsory acquisition of land is not restricted to those persons who have a legal or proprietary interest or estate in the land and is available to all persons who have a right or claim to land, even if such right or claim does not amount to legal or proprietary estate or interest in the land."

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59. This principle is relevant while considering who can be treated as a person interested in the compensation. However, it does not mean that every person claiming occupation becomes entitled to a particular percentage of the compensation. The right claimed and the extent of that right still have to be proved by evidence. In *Sadasheorao Krishnarao Buti*, paragraph 10, the Court observed:

> "As I have said, it is difficult to deduce any principle from these cases except the one that the first thing to do is to find out the market value of the land and then apportion that between the landlord and the tenant according to their several interests in the land."

60. I find this approach proper. First, the market value has to be decided. The claim of 75% by the tenant or any other share claimed by the owners or developers cannot be used for changing the market price. Claimant No. 3 has relied upon *Mangat Ram*, paragraph 7, where the Supreme Court directed that the tenant would receive three-fourths and the landlord one-fourth of the compensation. That decision was given after considering the facts and the nature of the tenancy in that case. It does not lay down that every tenant in every land acquisition is entitled to three-fourths of the compensation. The respective rights have to be decided on the evidence available in the present case. Similarly, the decision in *Mohammad Akil Khan v. Premraj Jawanmal Surana,* 1971 SCC OnLine Bom 77, paragraphs 14 to 16, deals with the rights of a purchaser under an agreement of sale where the contract could not be completed because of acquisition. The Court held that, in the facts of that case, the purchaser could claim

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from the compensation amount the purchase money and earnest money with interest because the land had been converted into compensation. This principle may be relevant while considering the claim of a person who proves a charge or other interest under an agreement of sale. However, it does not decide the market rate of the entire plot in the present case. I keep the decision regarding market value separate from the question of apportionment. The claim of Claimant No. 3 regarding its status as tenant, the extent of the area occupied by it, the rights of Century Developers and the rights of the other claimants will be considered on the basis of the documents and evidence relating to their respective claims. No particular percentage of compensation is being decided only on the basis of the findings recorded in this part.

Final assessment and determination of the market value:

61. I have considered the valuation report of C.W.2, the two sale transactions relied upon by him, his cross-examination, the Ready Reckoner for 2002, the award of the Land Acquisition Officer and the earlier valuation obtained by the Trust. I have considered the objections raised by the State and the submissions made on behalf of the owners and Claimant No. 3. The State is right in saying that the valuation report cannot be accepted without carefully examining it. Some percentage adjustments are based upon the expert's own assessment. The old sanctioned plan of 1986 has not been shown to have been renewed. The 50% allowance for closeness to the temple is not supported by any fixed formula in a valuation book. The total percentage shown in the first comparison table does not match the individual percentages. These matters

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require the Court to be careful before accepting the final figure. However, these shortcomings do not justify rejecting the entire valuation report. The report is based upon two registered sale transactions in the same general locality. The first sale property is in the same Town Planning Scheme and has an area of 665.55 square metres, which is close to the acquired land measuring 642.98 square metres. The second sale property is in the same locality, though it is larger in area and has a different use. The expert has deducted the construction cost and developer's profit and has made adjustments for the main differences between the properties.

62. The first sale transaction gives an adjusted rate of about Rs. 1,70,200/- per square metre as on 19 September 2002. The second sale transaction, after the adjustments and increase made by the expert, gives an adjusted rate of about Rs. 1,76,500/- per square metre. Both rates are close to each other. This is an important circumstance. It shows that the result obtained from the first comparison is not standing alone. The second sale transaction, though less similar in size and use, broadly supports the same range of market value. The State has submitted that, in Sale Instance No. 1, the FSI adjustment should be minus 49% and not minus 95%. I have accepted that the figure of minus 49% is more consistent with the numerical difference between FSI 2.59 and FSI 1.33. This correction would increase the rate arrived at from the first sale transaction. It would not reduce it. Therefore, this objection does not establish that the rate of Rs. 1,70,200/- per square metre is excessive. I have considered the objection that the

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purchaser in Sale Instance No. 1 was a bank and that the transaction included a building. There is no sufficient evidence to show that the consideration was artificial or was paid for some special benefit which had nothing to do with the land. C.W.2 has deducted the development profit and construction cost. The second sale transaction independently gives a rate close to the first transaction after adjustments. The objection regarding the building does not justify rejecting both transactions. The Ready Reckoner rate adopted by the Land Acquisition Officer is much lower. However, the State and the owners themselves have raised a dispute about the correct zone. More importantly, the Ready Reckoner cannot be the only basis for deciding market value under Section 23 of the Land Acquisition Act. Genuine sale transactions provide better evidence. I do not accept the submission that the market value must be restricted to the Ready Reckoner rate.

63. The 1999 valuation report of the Trust is not sufficient to decide the market value. It was prepared because of the special requirement of the Trust. It proceeded on the assumption that the land would be free from encumbrances and stated that the Trust was ready to pay more because the land was useful for expansion of its temple premises. The report is relevant, but it is not a completed sale transaction. The negotiations and offers made by the Trust to the owners, tenant, and developer relate to settlement of their separate interests. They do not establish the market price of the entire property as on 19 September 2002.

64. The location of the acquired land is an important factor. It is situated very close to Shree Siddhivinayak Temple and has direct

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frontage on Kakasaheb Gadgil Marg. By the relevant date, the locality was developed and had civic amenities, public transport, educational institutions and other facilities. The land had development potential under the Development Control Regulations. These are advantages which a normal purchaser would consider before purchasing the property.

65. There were some disadvantages. The area around the temple was crowded. The property had a garage structure and was being used for repair activities and parking. The old sanctioned plan was not shown to have been renewed. These matters have been considered. However, they do not take away the value of the property or make it comparable with land situated in a less developed or less accessible locality.

66. I have considered whether any deduction should be made because of the claim of tenancy. The record does show occupation of a garage structure and use of part of the open land. But the material does not establish that the entire acquired land was under one tenancy. The 1999 valuation report records that a major portion of the plot was vacant. The extent and legal nature of the occupation will have to be considered while deciding the apportionment of compensation. In the absence of reliable evidence to calculate a reduction in the market price of the entire plot, I do not consider it proper to make any deduction without a proper basis.

67. The final figure of Rs. 1,70,200/- per square metre given by the expert is supported by the second sale transaction, which gives

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a rate of about Rs. 1,76,500/- per square metre. The second rate is higher. However, the first sale transaction is more similar in area and is situated in the same Town Planning Scheme. I consider it proper to give greater importance to Sale Instance No. 1. I am aware that the expert has admitted that some of the percentage allowances were based upon his own assessment. However, market valuation is not a matter of applying one fixed mathematical formula to every property. The Court has to look at the actual circumstances and arrive at a reasonable figure. The expert has explained the physical and development differences between the sale properties and the acquired land. His evidence is sufficient to show the general level of the market rate, though some individual adjustments have to be considered with care. The final figure of Rs. 1,70,200/- per square metre is not higher than the figure independently arrived at from Sale Instance No. 2. The fact that the two adjusted rates are close to each other is an important check on the result. I find that the rate of Rs. 1,70,200/- per square metre represents a fair and reasonable market value of the acquired land on 19 September 2002.

68. The area of the acquired land is 642.98 square metres. The market value of the land is calculated as follows: 642.98 square metres × Rs. 1,70,200/- per square metre = Rs. 10,94,35,196/-. The valuation report has separately considered the structures and trees. C.W.2 has taken Rs. 3,33,634/- for the structure, Rs. 46,666/- for four coconut trees and Rs. 5,000/- for the Gulmohar or Raintree. The total value of these items is Rs. 3,85,300/-. The valuation of the structure is stated to be based upon the valuation

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made by the Executive Engineer, P.W.D.

69. Accordingly, the total value of the land and the separately assessed items is calculated as follows:

> (i) Market value of land: Rs. 10,94,35,196/-. (ii) Structures and trees: Rs. 3,85,300/-. (iii) Total: Rs. 10,98,20,496/-.

70. The above amount represents the market value of the land and the separately assessed value of the structures and trees. The statutory additions, solatium and interest, if payable, will have to be calculated separately according to the provisions of the Land Acquisition Act, 1894. These amounts are not included in the market value per square metre decided above. I hold that the market value of Final Plot No. 901 of Town Planning Scheme No. IV, Mahim Division, admeasuring 642.98 square metres, was Rs. 1,70,200/- per square metre as on 19 September 2002. The total market value of the land is Rs. 10,94,35,196/-. After adding the separately assessed value of the structures and trees amounting to Rs. 3,85,300/-, the total amount comes to Rs. 10,98,20,496/-.

71. The claim for enhancement beyond the above rate is not accepted. The objection of the State that the market value should be restricted to the Ready Reckoner rate is rejected. The question of division of compensation between the owners, the tenant, the developer and other persons interested in the property will be decided separately on the basis of the rights proved by each of them.

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Finding On Apportionment Of Compensation Between The Owners And M/s. Sadanand Garage:

72. The next issue which requires consideration is how the compensation awarded for Final Plot No. 901, admeasuring 642.98 square metres, is to be divided between the owners and M/s. Sadanand Garage. According to the owners, they are the owners of the land and, therefore, the entire compensation should be paid to them. M/s. Sadanand Garage, on the other hand, claims that it was occupying the entire plot as a tenant. It has, therefore, claimed 75 per cent of the compensation, leaving only 25 per cent for the owners. Both sides have relied upon the documents, their earlier transactions and the conduct of the parties for supporting their respective claims.

73. After considering the material on record, I am unable to accept the claim of either side in its entirety. It is not disputed that the owners had ownership rights in the land. At the same time, the documents show that M/s. Sadanand Garage was carrying on its garage business from the property for a long period. It was using the shed as well as the open space around it. Therefore, the rights and interest of the Garage cannot be ignored while deciding the compensation. The entire amount cannot be given to the owners by ignoring the occupation of the Garage. But, merely because the Garage was occupying and using the property, it cannot be treated as the owner of the entire land. Its occupation alone does not give it a right to claim the entire compensation or even 75 per cent of the same. It is necessary to understand that determining the market value of the property and deciding the share of each person

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in the compensation are two separate questions. The market value of the property is first required to be determined. After that, the respective rights of the owners and the tenant are required to be examined. The compensation awarded on acquisition is for the rights which have been taken away by the acquisition. The owners do not lose their interest in the land merely because they were not physically occupying it. Similarly, the tenant cannot be denied any interest in the compensation merely because the land stood in the name of the owners.

74. The Supreme Court has considered this issue in *Kiran Tandon v. Allahabad Development Authority*, (2004) 10 SCC 745. In paragraph 23, the Supreme Court has observed as follows:

> "Leasehold rights being limited in nature and entirely different from ownership right, a lessee is not entitled to the entire amount of compensation for the acquired land."

75. The Supreme Court has stated in paragraph 24 that the amount payable to a lessee will depend upon the conditions of the lease and the period during which the lessee could have continued in possession. The Court has referred to a case of perpetual lease where 75 per cent of the compensation was given to the lessee and 25 per cent to the Government. That division was made having regard to the special nature of the perpetual lease and the rights given to that lessee. It cannot be understood to mean that every tenant is entitled to 75 per cent of the compensation. Paragraph 25 of *Kiran Tandon* is required to be noticed. In that case, the lease was to come to an end on 8 June 1987, whereas possession was taken on 16 June 1987. Even according to the claimant, possession

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was taken only 21 days before the lease was going to expire. In these circumstances, the Supreme Court held:

> "In such circumstances, we are of the opinion that the claimant should get 20 per cent of the compensation amount and the balance 80 per cent is payable to the State Government."

76. This Court, in *Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha*, 1958 SCC OnLine Bom 90 : (1958) 60 Bom LR 1208, has explained how the compensation is required to be divided between different persons. In paragraph 20, the Court observed:

> "In apportioning the compensation the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition."

77. The Court has explained that the compensation is for the different interests which have been taken away because of acquisition. Therefore, it has to be divided fairly between all those persons who were having some interest in the property. The Court has explained three methods for doing this. Firstly, the Court may separately find out the value of the owner's interest and the tenant's interest and then divide the compensation accordingly. Secondly, the value of both the interests may be separately worked out, and the total compensation may be divided in that same proportion. Thirdly, where it is not possible to find out the exact value of each interest separately, the Court may divide the total compensation into proper shares by considering the material which is available before it. The main thing which is stated in this judgment is that the Court cannot decide the share of the parties by taking some figure without any proper basis or by following a

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fixed proportion in every case. The actual rights and interests of the parties in the acquired property have to be seen. In paragraph 20, the Court has made it clear that:

> "The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto."

78. The same principle has been followed by this Court in *Kachrulal Hiralal Dhoot*. In paragraph 4, the Court has held that the interest of a person claiming compensation is not limited only to ownership or any other legal right in the land. Even a person who has a right to remain in occupation or possession of the property, or has some claim relating to the land, may be entitled to compensation when such right or claim comes to an end because of acquisition. The Court has recognised that even a person having an irrevocable licence may be considered as a person interested, though such licence does not make him the owner of the land. Therefore, what is required to be considered is whether such person was having some right or interest in the property which has been taken away because of acquisition. Merely because such person is not the owner of the land, he cannot be denied compensation on that ground alone.

79. The Delhi High Court in *Harkishan v. Delhi Simla Catholic Archdiocese*, 1980 SCC OnLine Del 321, has explained how compensation can be divided between the landlord and the tenant. In paragraph 37, the Court has considered the difficulty which may arise in finding out the separate value of the landlord's rights and

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the tenant's rights. Paragraph 38 explains that where the separate interests of both parties can be valued, the compensation should be divided according to such values. Paragraph 39 explains that where only one interest can be valued, that amount can be given to the person whose interest has been valued and the remaining amount can be paid to the other person. For the present case, paragraph 40 of *Harkishan* is of particular importance. It considers a situation where it is not possible to calculate the separate value of the landlord's interest and the tenant's interest. The Court has observed:

> "Thirdly, it may be that neither the interest of the landlord nor that of the tenant can be accurately valued in terms of money. What is to be done then? The only possible answer is that the court should do the best it can to arrive at a ratio and divide the compensation accordingly. In finding the ratio, regard must naturally be had to the evidence. But, what if there is no evidence or it is unsatisfactory? In that situation, how should the court proceed in the matter? Well, it can lay down some 'rough and ready' rule based on a 'fair estimate'"

80. The Court has made it clear that this rough and ready method is not a fixed rule which must be followed in every case. It can be adopted where the facts and circumstances make it necessary. The present matter requires such consideration. Neither the owners nor M/s. Sadanand Garage has produced any valuation report which separately gives the value of the ownership rights and the value of the tenancy rights as on the relevant date. In paragraph 68 of *Harkishan*, the Court has considered how the compensation should be divided when the land gets additional

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value because of its development potential. In this connection, the Court has referred to the following observation in *F.G. Natesa Aiyar* v. *Kaja Maruf Sahib*, AIR 1927 Mad 489:

> 'This enhanced value is not due to the exertion either of the landlord or the tenant, it is a sort of windfall which has come to both the parties. There is no reason why one alone should have the whole of it and not the other.'

81. The Court observed:

> "Even a layman would agree that the only fair way of dealing with the 'windfall' is to divide it 'half and half'."

82. This observation has some relevance to the present dispute. However, the matter cannot be decided only by relying upon this observation. The acquired land is situated in an important locality and had development potential. Its value was not restricted to the old garage structure or the rent which was being paid. The owners had ownership rights in the property, though such rights were subject to the rights of the Garage. On the other hand, the Garage had been occupying and using the property for its business for a long period. The acquisition has affected the rights of both sides. Therefore, the additional value arising from the land cannot be given wholly to either the owners or the Garage. Paragraph 74 of *Harkishan* makes it clear that no one fixed ratio can be applied to all cases. The Court observed:

> "No general rule can be extracted from these or the other cases to which I have referred. Indeed, most of them themselves contain observations that there is no general rule."

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83. The Court has explained that the division will depend upon the facts of the particular case, the nature of the tenancy and the law governing that tenancy. Therefore, equal division in the ratio of 50:50 is not required to be made in every case. Such a division can be made only when the evidence and the nature of the rights make such division fair and proper. Paragraph 81 of *Harkishan* is required to be considered while examining the submission of the owners that they were not in physical possession of the property. The Court has explained that the owner's interest has to be considered after taking into account the rights of the tenant. It observed:

> "The relevant interest of the society is ownership minus possession, not plus possession."

84. The meaning of this observation is that the owner cannot claim the value of the property as though the land was vacant and was available in his own possession when a tenant was occupying it. The owner continues to have an interest in the land, but that interest is subject to the rights of the tenant. The interest of the tenant must be considered. At the same time, the owner's rights do not disappear only because the tenant was in possession of the property. In paragraphs 85 and 86 of *Harkishan*, the Court considered certain transactions in which the ownership rights and occupancy rights were separately sold to the same purchaser. Those transactions showed a division of 46:54 in favour of the tenants. The Court noticed that there was very little difference between the two shares. It observed that if both agreements had been entered into on the same day, the division would have been

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50:50. On that basis, the Court found that an equal division was supported by those transactions. This shows that equal division may be proper where the facts support such a division. But it cannot be done without considering the evidence in the particular case.

85. Keeping the above principles in mind, it is now necessary to examine the evidence regarding the rights claimed by M/s. Sadanand Garage. Its case is that it was a tenant of the entire Final Plot No. 901 from the year 1971. According to the Garage, the original tenancy was taken by Sadanand R. Shetty from the then owners, namely, the Kowlis. Thereafter, the garage business continued in the same name. It claims that the original proprietary concern was later converted into a partnership firm and that Deepak Shetty and other partners became connected with the business. In support of this case, the Garage has relied upon rent receipts, electricity bills, municipal records, licences, correspondence with the Trust and agreements entered into with M/s. Century Developers. The rent receipt dated 10 April 1977 is an important document in this regard. It is issued in the name of M/s. Sadanand Garage, Proprietor Sadanand R. Shetty. It records payment of Rs.140/- for the month of April 1977 towards rent of the workshop shed at Kakasaheb Gadgil Marg. This receipt shows that the Garage was not a stranger or a person who had entered the property without any connection with the original owners. It had a tenancy connection with them. But the description given in the receipt is important. The rent was paid for the workshop shed. The receipt does not state that the entire land admeasuring 642.98

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square metres was given on rent to the Garage. Therefore, this document supports the tenancy in respect of the garage structure. , however, it does not prove that the entire open plot was given on rent to the Garage. The owners have submitted that the receipt was issued only in the name of the proprietary concern of Sadanand R. Shetty. According to them, there is no document to show that the tenancy was transferred to the partnership firm. They have pointed out that in the claim filed by M/s. Sadanand Garage, it has been described as a proprietary concern, whereas in the affidavit of evidence it has been described as a partnership firm. The owners submit that no partnership deed has been produced. They have pointed out that the person who was originally the proprietor has not entered the witness box to explain how the tenancy was transferred to the partnership firm.

86. The objection raised by the owners in this regard requires consideration. The documents contain different descriptions regarding the constitution of M/s. Sadanand Garage. The original rent receipt is in the name of the proprietary concern of Sadanand R. Shetty, whereas the later claim is made by the partnership firm. Deepak Shetty has stated in his evidence that the firm was constituted in 1971 and that his father and uncle were its partners. There is a submission that the partnership came into existence in or about 1985 or 1986. However, the complete partnership records showing the actual date and the manner in which the proprietary concern was converted into a partnership firm have not been produced before me. At the same time, the above objection regarding the constitution of the firm does not remove the earlier

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tenancy or the later occupation of the garage premises. The business continued under the name of Sadanand Garage. The owners themselves referred to Sadanand Garage in the proceedings filed before the Court of Small Causes. The agreement with M/s. Century Developers and the later correspondence with the Trust refer to the Garage and its occupation. The municipal and other records relied upon by the Garage show that garage business was being carried on at the property. I, therefore, find that the material establishes a continuing tenancy and occupation interest connected with the Garage. However, the persons claiming compensation on behalf of the firm must establish their legal connection with the continuing business. No individual can receive compensation merely by describing himself as a proprietor or partner unless his entitlement is established.

87. The owners have relied upon the proceedings filed before the Court of Small Causes at Bombay in R.A.E. Suit No. 1014/3093 of 1988. The copy placed on record contains a summons with the heading “Summons To A Tenant Holding Over”. The plaintiffs are shown as Ambekar and the defendants include Sadanand Garage. The plaint and other papers are found in the annexed pages 180 to 186. These documents show that the owners had filed proceedings against the Garage for recovery of possession. The description of the proceedings as one against a tenant holding over supports the case that the Garage was occupying the property under a tenancy arrangement. It does not support the submission that the Garage was a stranger or a trespasser.

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88. The Garage has submitted that the suit was dismissed for default on 16 November 1988 and was not restored thereafter. The available copy of pages 180 to 186 contains the summons, index and pleadings. However, the order by which the suit was dismissed is not found in those papers. Therefore, I cannot treat the alleged dismissal for default as a finding of the Small Causes Court that the Garage was a tenant of the entire plot. Even if dismissal for default is established, it would not mean that the rights of the parties were decided on merits. However, the filing of the suit is relevant. It shows that the owners were aware of the occupation of the Garage and had approached the Court for seeking its removal. This supports the existence of a dispute regarding possession and tenancy. But it does not establish the exact area which was covered by the tenancy.

89. The Garage has relied upon the agreement dated 18 July 1992 entered into between the owners and M/s. Century Developers. According to the Garage, this agreement was an agreement for sale of the property for Rs.51,00,000/- and was not merely a development agreement. It has pointed out that the agreement refers to the occupation of the Garage and that the property was agreed to be dealt with on an "as is where is" basis, subject to the occupants of the structures standing thereon. The owners, however, submit that the agreement with Century Developers was never completed and was subsequently terminated. The contents of the agreement of 1992 are relevant for deciding the present dispute. They show that when the owners entered into the arrangement with Century Developers, they were

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aware that the Garage was occupying the property. The Garage has relied upon this agreement to show that it was carrying on its business in the open land in addition to the structure. This material supports the case of the Garage that its use was not confined only to the inside portion of the shed. However, the fact that the Garage was carrying on its business in the open land does not mean that the entire plot admeasuring 642.98 square metres had been given to it under an exclusive tenancy.

90. The Garage has relied upon the Power of Attorney dated 20 July 1992. According to it, Century Developers was authorised under this Power of Attorney to negotiate with the tenants and occupants and to make suitable arrangements for carrying out the development. The Garage says that the owners had permitted Century Developers to deal with its rights and had not objected when agreements were entered into. The owners, on the other hand, submit that the authority given to Century Developers was only to negotiate with the occupants. According to them, it did not give Century Developers any authority to create a fresh tenancy over the entire open land.

91. The Power of Attorney and the agreement with Century Developers are required to be considered together. These documents show that the owners knew that the property was occupied and that some arrangements with the occupants were necessary before the development could be carried out. But the authority to negotiate with the occupants cannot be treated as authority to create permanent tenancy rights over the entire land. The Garage has relied upon the tenancy agreement dated 3 July

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1995 executed by Century Developers. This agreement is a relevant circumstance showing the arrangement made by Century Developers with the Garage. However, from the material placed before me, it is not established that Century Developers had authority to bind the owners by creating tenancy rights over the entire open plot.

92. The Garage has relied upon the agreement dated 2 January 1996. According to the Garage, under this agreement it had agreed to surrender its rights at the time of redevelopment. In return, it was to receive six flats. Three flats were to be of about 900 square feet each and three flats were to be of about 950 square feet each, along with parking spaces, after payment of the agreed construction cost. This arrangement is important because it shows that the parties were treating the occupation and surrender of the Garage as having substantial value. Normally, a person who has no recognised interest in the property would not enter into an arrangement for surrendering such rights in return for flats. However, this agreement is required to be considered along with the events which took place thereafter. The owners say that they had terminated the arrangement with Century Developers and had revoked the Power of Attorney. They rely upon the fact that Century Developers had filed Suit No. 2132 of 1999 for specific performance of the agreement dated 18 July 1992 and that the suit was dismissed on 5 May 1999. The Garage, on the other hand, submits that the owners did not take any steps to cancel the arrangements made with it and that the agreement dated 2 January 1996 continued to remain binding. In my view, the

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agreement dated 2 January 1996 is evidence regarding the nature and value of the Garage's occupation and the negotiations for surrender of its rights. But this agreement alone does not establish that the Garage became the owner of the land or acquired a permanent right over every part of the open plot. The proposed allotment of flats was connected with redevelopment and construction. The flats were not allotted under the agreement and the development did not take place., the dispute between the owners and Century Developers regarding their agreement resulted in dismissal of the suit for specific performance. In these circumstances, the proposed allotment of six flats cannot be treated as giving the Garage a direct right to receive 75 per cent of the acquisition compensation. Still, the agreement is an important circumstance. It shows that the rights and occupation of the Garage were not of little or negligible value.

93. The Garage has relied upon the agreement dated 10 March 1998 between the Trust and M/s. Sadanand Garage. According to the Garage, the Trust had agreed to pay Rs.2,73,50,000/- for acquiring its rights in the property and for making arrangements for its alternative accommodation. The Garage submits that the agreement was signed by the Trustees and was not merely an informal offer. It has relied upon the minutes of the Trust meeting dated 16 April 2001 and the subsequent correspondence to show that the Trust wanted to purchase the rights of the Garage before proceeding with the acquisition. This agreement is an relevant circumstance to be considered. It shows that the acquiring body was treating the Garage as a person whose occupation and rights

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were required to be settled before the property could be obtained. The amount discussed between the Trust and the Garage was substantial. Therefore, it cannot be said that the Garage had no interest or value in the property. The fact that the Trust was prepared to enter into such an arrangement supports the claim of the Garage that its interest was required to be taken into account. However, the amount of Rs.2,73,50,000/- cannot straightaway be treated as the market value of the tenancy interest of the Garage for dividing the compensation. The agreement was not a completed sale of the entire land by the owners to the Garage. It was concerned with surrender of the Garage's rights and with providing alternative accommodation. The Trust had its own special requirement of obtaining the property for expansion of the temple and for providing facilities to the devotees. Therefore, the amount offered may have included the special need of the Trust and the amount required for obtaining vacant possession. It cannot be assumed that this amount represents only the ordinary market value of the tenancy interest of the Garage.

94. There is some difficulty in the figures relied upon by the Garage. At one place, it is stated that the Trust had agreed to pay Rs.2,73,50,000/- to the Garage. At another place, the Garage refers to the Trust agreeing to pay Rs.95,00,000/- to the owners and Rs.1,31,50,000/- to Century Developers. These two amounts together come to Rs.2,26,50,000/-. The remaining amount of Rs.47,00,000/- is not explained when compared with the figure of Rs.2,73,50,000/-. The different figures have not been placed before the Court in a manner which would show that the Trust had

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finally divided the total value of the property between the Garage and the owners in the ratio of 75:25.

95. The Garage has relied upon the valuation report prepared by M/s. Joshi and Parulekar on 19 July 1999, at the instance of the Trust. The report has valued the property at Rs.4,60,10,000/-. According to the Garage, even on the basis of this valuation, it should receive 75 per cent of the amount because it was in exclusive possession of the entire plot. The owners have disputed this claim. It is necessary to see what the valuation report records. The valuer has stated that the old structure standing on the plot was being used as a motor repairing garage. The report states that "A major portion of the plot area is vacant." It records that, according to the documents available with the valuer, the plot area was sub-leased to the garage owner for repair work and parking. Thus, the report accepts that the Garage was occupying and using the property. But it does not support the claim that the Garage was in exclusive possession of every part of the property. On the contrary, the valuer has mentioned that a major portion of the land was vacant. The manner in which the amount of Rs.4,60,10,000/- was worked out is required to be noticed. The report has taken the available FSI as 1.33 and calculated the FSI area at 9,202 square feet. Thereafter, the rate of Rs.5,000/- per square foot of FSI area has been applied. The report mentions that the Trust was ready to pay some additional amount because the land was absolutely required by it. More importantly, the valuation was made on the assumption that the property would be available "free of any encumbrances". This means that the amount of Rs.4,60,10,000/-

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was calculated on the basis that the property would be made available after clearing the legal difficulties and without any existing rights or claims affecting it. Therefore, this report is not a separate valuation of the tenancy interest of the Garage.

96. I, therefore, accept the submission of the Garage that the valuation report prepared for the Trust is relevant and that it shows that the Garage had a valuable occupation interest in the property. But the submission that 75 per cent of the amount mentioned in that report belongs to the Garage cannot be accepted. The report has not divided the value between the owners and the tenant. It has not separately calculated the value of their respective rights. It does not state that the Garage was in exclusive possession of the entire plot. On the contrary, it records that a major portion of the land was vacant. Therefore, the report cannot be directly relied upon for deciding the respective shares of the owners and the Garage.

97. The Garage has relied upon the letters written by the Trust seeking its permission to use a portion of the property during Angaraki Chaturdashi and on other occasions. According to the Garage, these letters were addressed to it and not to the owners. It submits that this shows that it was in control of the entire plot. These letters are certainly relevant. They show that the Trust was dealing with the Garage as a person having occupation and control over at least some portion of the property. However, merely because the Trust asked for permission to use a portion of the property on particular occasions, it cannot be held that the entire plot was given to the Garage under an exclusive tenancy. The

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letters support the occupation of the Garage. But they do not show the exact area covered by its tenancy. The Garage has relied upon municipal tax receipts, electricity bills, licences and other documents. It says that it was paying municipal taxes and was carrying on its garage business under the necessary licence at the property. These documents support the fact that the Garage was carrying on its business and using the premises for a long period. They support the rent receipt and are in line with the earlier suit filed by the owners. However, payment of municipal charges or holding a licence for carrying on business does not establish ownership or tenancy over the entire land. These documents have to be considered along with the agreements and the other material. When all these documents are considered together, they establish that the Garage was occupying the premises and carrying on its business there. But they do not prove that it had exclusive tenancy over the entire area of 642.98 square metres.

98. The owners have submitted that the Garage had not paid rent after 1978 and was, therefore, occupying the land without any authority. The Garage, on the other hand, says that the original owners had issued rent receipts from 1977 to 1984 and that after the present owners acquired the property, they stopped accepting rent. The material placed before me contains different statements about the last date on which rent was paid. The rent receipt which has been identified is dated 10 April 1977. The Garage has relied upon other receipts. However, there is no complete and clear account showing the rent paid or offered after the original owners transferred the property. In these

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circumstances, I am unable to hold that the Garage had regularly paid rent continuously till the date of acquisition. However, this weakness in the case of the Garage does not mean that its occupation became unauthorised immediately after the rent receipts stopped. The agreement entered into by the owners with Century Developers refers to the Garage and its occupation. The proceedings filed before the Small Causes Court describe the Garage as a tenant holding over. The arrangement with Century Developers and the later dealings with the Trust, including the correspondence, show that the Garage continued to be treated as an occupant whose rights were required to be settled. Therefore, the absence of regular rent receipts for the later period is certainly a circumstance which goes against the Garage. But it does not completely remove the tenancy and occupation interest which is otherwise supported by the documents.

99. The owners have submitted that the Garage was a tenant only of the shed. According to them, the use of the open land for parking or repair work did not create any tenancy rights over the open plot. This submission can be accepted to some extent. The original rent receipt refers to the workshop shed. The valuation report prepared for the Trust refers to sub-letting for garage activities and parking. The agreement of 1992 refers to the Garage carrying on its business on the open land. These documents show that the use of the Garage was not limited only to the inside portion of the shed. However, there is no clear and reliable document executed by the owners which gives the Garage exclusive tenancy over the entire area of 642.98 square metres.

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100. The claim of the Garage that it was the only person in possession of the entire property from 1978 till 2005 is not fully supported by the evidence. Its own evidence refers to different measurements of the structure, mezzanine floor and open space. The valuer appointed by the Trust, who had inspected the property, has recorded that a major portion of the plot was vacant. The joint survey and other material refer to more than one structure standing on the property. Therefore, I am unable to accept the claim that the Garage was in exclusive possession of the entire plot in the manner stated by it. At the same time, the evidence does show that the Garage was occupying the garage structure and using the surrounding open space for its business and parking. Its interest in the property was substantial and cannot be ignored.

101. The owners have submitted that they were never in physical possession of the property and that the Garage was using the land without paying rent. Even if the owners were not occupying the property, their ownership rights continued to exist. They had rights over the land, though those rights were subject to the tenancy and occupation rights of the Garage. The acquisition took away the ownership interest of the owners. The observation made in paragraph 81 of *Harkishan* that the landlord's interest is "ownership minus possession, not plus possession" is important in this regard. It means that the owners cannot claim the entire value as if the property was vacant and was in their actual possession. But the Garage cannot claim the entire value as if the owners had no title or any remaining interest in the property.

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102. The Garage has submitted that the SLAO had accepted the division of compensation in the ratio of 75:25 and, therefore, the same division should be followed by this Court. In support of this submission, it has referred to the amount of Rs.43,30,360/- awarded to Kappu A. Shetty and the calculation of Rs.57,72,480/- for an area of 184.32 square metres. According to the Garage, 75 per cent of this amount was given to the tenant and the remaining 25 per cent was given to the owners. The award does show that the SLAO calculated Rs.43,30,360/- as 75 per cent of Rs.57,72,480/- in respect of an area of 184.32 square metres. However, the Garage has questioned why the value of Rs.57,72,480/- was taken and why the amount was divided in the ratio of 75:25 without giving reasons. The award does not explain why the interest of the Garage was taken as 75 per cent in respect of that particular area. It does not explain why the same ratio should be applied to the entire property. The total award contains a separate amount for the owners and an amount of Rs.20,00,000/- for Century Developers. Therefore, the Garage cannot rely upon only one part of the award and submit that the SLAO had finally decided that it was entitled to 75 per cent of the entire compensation. The earlier division is under challenge in these references. It is, therefore, necessary to decide the issue on the basis of the evidence placed before this Court.

103. The Garage has relied upon *Mangat Ram* and other decisions to submit that a tenant who is in exclusive possession should receive three-fourths of the compensation and the landlord should receive only one-fourth. I have considered this submission. The

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difficulty in accepting it is that the present case is not one where the evidence proves that the Garage was the exclusive tenant of the entire land under a perpetual lease. The evidence shows that the Garage had a long-standing tenancy of the garage structure and had an associated right to occupy and use the open space. But the exact area and the conditions of its tenancy over the open land have not been proved with the same clarity. The observations made in paragraph 74 of *Harkishan* show that no fixed ratio can be applied in every case. The ratio adopted in another case cannot be followed without examining the nature and extent of the rights proved in the present matter.

104. The owners have challenged the amount of Rs.20,00,000/- awarded by the SLAO to Century Developers. They submit that the agreement with Century Developers was terminated, the Power of Attorney was revoked and the suit for specific performance was dismissed. According to the owners, Century Developers had no right to receive any part of the compensation. The Garage, on the other hand, relies upon the arrangements made by Century Developers with it. It submits that the owners cannot now deny those arrangements after having permitted Century Developers to deal with the property.

105. The claim of Century Developers is a separate claim arising out of its agreement with the owners and the subsequent dealings between them. The dismissal of its suit for specific performance is certainly a relevant circumstance. However, the finding being recorded here is limited to the division of the land compensation between the owners and M/s. Sadanand Garage. No additional

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share can be created in favour of either of these two parties merely because Century Developers had entered into a development or other contractual arrangement. The separate claim of Century Developers, along with the claims of the flat purchasers, will have to be considered in the appropriate reference on the basis of the evidence relating to their respective rights. The division made between the owners and the Garage in this judgment shall not result in the same amount of compensation being paid twice.

106. M/s. Sadanand Garage has claimed that when the Trust took possession of the property, its garage structure was demolished, its vehicles were damaged and its tools, spare parts, furniture and other materials were removed. It says that it was not given an opportunity to remove those articles. It has submitted that its evidence regarding the damage was not challenged during cross-examination. These are serious allegations. However, the value of the land and the division of compensation for the acquired immovable property are separate from the claim regarding damage to movable articles, vehicles or business materials. Such a claim cannot be added to the share of the tenant in the land compensation unless the ownership of the articles, the actual loss and the amount of damage are separately proved. The claim regarding such damage will have to be considered on the basis of the evidence and in accordance with the liberty, if any, granted by the earlier orders of this Court. No amount towards such damage is included in the division made below.

107. I have considered whether the separate interests of the owners and the Garage can be valued on the basis of the material

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available before me. The owners have not produced any valuation which determines the value of their ownership interest after taking into account the occupation of the Garage. The Garage has not produced any expert valuation which separately determines the market value of its tenancy interest. The valuation report prepared for the Trust is for the entire property and proceeds on the assumption that the property would be available free of encumbrances. The amount mentioned in the agreement with the Trust is not the result of any completed sale. It includes matters concerning surrender of rights and alternative accommodation. The earlier agreements with Century Developers do not give any final and accepted valuation of the separate interests. The division made by the SLAO does not give sufficient reasons for adopting the ratio of 75:25 in respect of the area of 184.32 square metres. In these circumstances, it is not possible to determine the exact money value of the ownership interest and the tenancy interest by making a separate calculation. The Court has to make the best possible estimate on the basis of the evidence available. The Garage had a tenancy connection with the property for a long period. Its occupation of the garage structure is supported by the rent receipt. The suit filed by the owners and the description of the Garage as a tenant holding over support this position. The later agreement with Century Developers and the dealings with the Trust show that the occupation and surrender of the Garage had substantial value. The Garage had its business establishment at the property and was using the open space for its business activities and parking. On the other hand, the Garage has not proved that it

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had exclusive tenancy over the entire plot. The original rent receipt refers to the workshop shed. The agreement of 1992 refers to the Garage carrying on business on the open land, but it does not prove exclusive tenancy over the whole plot. The valuation report prepared for the Trust records that a major portion of the land was vacant. The exact area of the open land covered by the tenancy has not been established. The Garage has not proved that it had a perpetual lease or ownership rights over the land. The owners continued to hold title over the entire plot and their ownership interest was taken away by the acquisition.

108. Therefore, the claim of the owners that the entire compensation should be paid to them cannot be accepted. In the same manner, the claim of the Garage that it should receive 75 per cent of the entire compensation cannot be accepted. The interest of the Garage was more than a temporary occupation for carrying on business. However, it was less than ownership or a proved perpetual lease over the entire plot. The owners had substantial ownership rights, though those rights were subject to the established tenancy and occupation rights of the Garage. After considering the entire evidence, I find that an equal division of the land compensation between the owners and M/s. Sadanand Garage would be a fair and reasonable estimate of their respective interests. This conclusion is not being reached on the basis of any general rule that the landlord and tenant must always receive equal shares. It is based upon the facts of the present case. The Garage had been occupying and using the property for carrying on its business for a long period. Its rights were recognised in the

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dealings with the owners, the developer and the Trust. The owners continued to have ownership and reversionary rights in the land. There is no reliable evidence on the basis of which the separate value of these two interests can be calculated more accurately. Therefore, equal division is being adopted as a fair estimate having regard to the facts of this case. This approach is consistent with the method explained in paragraphs 40, 68, 74 and 85 to 86 of *Harkishan*.

109. I now proceed to consider the value of the existing structure and trees. In the earlier part of this judgment, the value of the land has been determined at Rs.10,94,35,196/-. The value of the existing structure and trees has been assessed at Rs.3,85,300/-. Out of this amount, Rs.3,33,634/- is towards the value of the structure or shed, Rs.46,666/- is towards the value of four coconut trees and Rs.5,000/- is towards the value of one other tree. The Garage was using the shed for carrying on its garage business. However, the rent receipt dated 10 April 1977 refers to the workshop shed. The valuation report prepared for the Trust describes the old structure as being used for motor repairing garage and refers to the garage owner using the area on a sub-lease basis. No clear document has been produced to show that M/s. Sadanand Garage had constructed the shed or that it was the owner of the physical structure. Its occupation as a tenant and its use of the property for business have been considered while deciding its share in the land compensation. I, therefore, find that the amount of Rs.3,33,634/- towards the value of the physical shed is payable to the owners according to their respective title

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shares. The amount of Rs.51,666/- towards the value of the trees is payable to the owners. There is no material to show that the trees belonged to the Garage.

110. The division of the principal compensation will, therefore, be as follows. The land compensation of Rs.10,94,35,196/- shall be divided equally between the owners and M/s. Sadanand Garage. The owners shall receive Rs.5,47,17,598/- and M/s. Sadanand Garage shall receive Rs.5,47,17,598/-. The amount of Rs.3,85,300/- towards the physical structure and trees shall be paid to the owners. Thus, the total amount payable to the owners will be Rs.5,51,02,898/- and the total amount payable to M/s. Sadanand Garage will be Rs.5,47,17,598/-. The total of both amounts comes to Rs.10,98,20,496/-. The statutory additions, including solatium, additional amount and interest, shall be payable according to the principal compensation found payable to each party and in the same proportion. This will, however, remain subject to the applicable provisions of the Land Acquisition Act and the findings recorded regarding entitlement to such statutory benefits. Any amount which has been paid or withdrawn by any party shall be adjusted against the amount found payable to that party. No party shall be entitled to receive the same component of compensation twice.

111. For the reasons stated above, I hold that M/s. Sadanand Garage has proved a substantial tenancy and occupation interest in the acquired property. However, it has not proved that it had exclusive tenancy or ownership rights over the entire plot. Its claim for 75 per cent of the entire compensation is, therefore, rejected.

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The owners have proved their ownership interest. But their claim to receive the entire compensation is rejected because the land was subject to the established tenancy and occupation rights of the Garage. The land compensation shall be divided equally. That is, 50 per cent shall be paid to the owners collectively and the remaining 50 per cent shall be paid to M/s. Sadanand Garage. The value of the existing shed and trees shall be paid to the owners for the reasons stated above.

Claim of M/s. Century Developers:

112. The claim of M/s. Century Developers is arising out of the agreement dated 18 July 1992 executed by the owners and the Power of Attorney dated 20 July 1992. The owners say that M/s. Century Developers did not comply with the conditions of the agreement. Therefore, they terminated the agreement. In support of this, they rely upon the notice dated 27 March 1996 and the revocation of the Power of Attorney. They point out that M/s. Century Developers had filed Suit No.2132 of 1999 for specific performance of the agreement. However, the said suit was dismissed on 5 May 1999. In spite of these facts, the Special Land Acquisition Officer granted an amount of Rs.20,00,000/- to M/s. Century Developers. The relevant reasons recorded in the Award are reproduced below:

> "Shri Ambekar, landlord had entered into an Agreement with M/s. Century Developers Pvt. Ltd., on 18.7.1992 for developing this property and on 20.7.1992 executed a Power of Attorney. However, as the terms and conditions in the agreement were not complied with, Shri Ambekar has cancelled and revoked the Agreement and Power of Attorney

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executed with Shri Century Developers, on 21 February 19[year unclear in original. During the aforesaid period of Agreement, Century Developers have paid a sum of Rs. 20 Lakhs to Shri Ambekar towards development. Since Century Developers Pvt. Ltd. is entitled to receive this amount from the consideration amount payable to the Developer, it shall be paid."

113. The reasons given in the Award do not appear to be satisfactory. The Award records that the agreement was cancelled because M/s. Century Developers had not complied with its terms and conditions. But, thereafter, it holds that M/s. Century Developers is entitled to receive Rs.20,00,000/- from the compensation amount. The terms of the agreement have not been examined. There is no consideration of the purpose for which the amount was paid, whether the agreement contained any condition for forfeiture, and what was the effect of termination of the agreement. Merely because M/s. Century Developers had paid the amount to the owners earlier, it cannot claim that the same amount must be returned to it from the compensation payable for acquisition of the land. The owners rely upon Clause 23 of the agreement. According to them, M/s. Century Developers did not comply with the terms of the agreement and, therefore, the amount paid by it stood forfeited. This submission will have to be examined by considering the agreement as a whole. If the agreement provides that the amount can be forfeited in case of a particular breach, it is necessary to find out whether that breach had taken place and whether the conditions for forfeiture were satisfied. The amount cannot be directed to be returned to the developer only on the ground that it had paid the amount to the

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owners at an earlier point of time.

114. The dismissal of Suit No.2132 of 1999 is an important circumstance. The owners submit that M/s. Century Developers had filed that suit seeking specific performance of the agreement dated 18 July 1992, but it could not succeed. According to the owners, after dismissal of the suit, M/s. Century Developers cannot now claim any share in the compensation by proceeding on the footing that the agreement was still in force and had continued. The dismissal of the suit is certainly a relevant circumstance and cannot be ignored. However, the effect of such dismissal will depend upon the decree and the reasons given by the Court. If the suit was dismissed after examining the rights of the parties under the agreement and deciding the dispute on merits, its effect would be different. The position would be different if the suit was dismissed on a technical ground or for default. The material placed before this Court only shows that the suit was dismissed on 5 May 1999. The complete judgment and the exact reason for dismissal have not been placed before this Court. Therefore, I cannot hold that the suit had finally decided every monetary claim which may arise out of the agreement. At the same time, M/s. Century Developers must establish its own legal right to claim any part of the compensation. The fact that it had entered into an agreement with the owners and paid Rs.20,00,000/- to them does not prove that it had become owner of the land or had acquired any enforceable right in the compensation payable for acquisition of the land. The agreement was terminated. The Power of Attorney was revoked. The suit for specific performance was dismissed. In

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these circumstances, M/s. Century Developers was required to show what right, if any, continued to remain with it even after termination of the agreement and dismissal of the suit.

115. The material placed before this Court does not show that M/s. Century Developers produced any independent evidence to prove its right to recover Rs.20,00,000/- or to claim any share in the land compensation. The Award does not decide this issue. It only records that M/s. Century Developers had paid the amount to the owners and, on that basis, directs that the amount should be returned to it from the compensation. Such a direction cannot be accepted unless it is first decided whether, under the agreement, the amount was refundable or whether it had become liable to be forfeited. M/s. Sadanand Garage relies upon the agreement dated 3 July 1995 and the agreement dated 2 January 1996 executed by M/s. Century Developers. According to M/s. Sadanand Garage, these documents were executed when the development arrangement was still continuing. It submits that the owners did not raise any objection to these documents at that time. These documents may have relevance while considering the rights claimed by M/s. Sadanand Garage. However, merely because these agreements were executed, it cannot be said that M/s. Century Developers continued to have an independent right to claim the land compensation even after termination of its agreement with the owners. In view of the above circumstances, the claim of M/s. Century Developers for Rs.20,00,000/- is rejected in these references. This finding is only with regard to its claim for a share in the land acquisition compensation. The amount cannot be

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awarded to M/s. Century Developers merely because the Award records that it had earlier paid Rs.20,00,000/- to the owners. It is not necessary for this Court to decide whether M/s. Century Developers may have any separate remedy under the agreement for recovery of this amount.

Claims of the persons claiming as flat purchasers:

116. M/s. Century Developers had entered into agreements with different persons for purchase of flats. The material placed before this Court refers to agreements in favour of Nethra Sanjeeva Shetty, Sanjeev Babu Shetty, Balkrishna Narayan Shetty, Nagveni Balkrishna Shetty, Madhusudan Reddy and Minal Finance Pvt. Ltd. The dates of these agreements and the amounts mentioned in them are different. For example, the agreement in favour of Nethra Sanjeeva Shetty is dated 29 June 1993, along with a supplementary agreement dated 26 June 1996. The agreement in favour of Minal Finance Pvt. Ltd. is dated 28 April 1995. There are agreements in favour of other purchasers, mentioning different areas of flats and different amounts of consideration. These agreements show that M/s. Century Developers had entered into transactions with persons who were expecting to get flats in the building proposed to be constructed on the property. Their claims cannot be rejected only because they were not the owners of the land. A person having a valid agreement for purchase of a flat may have a contractual right which can be considered. However, what was the exact nature of that right and how far it extended will have to be seen from the agreement and the other evidence placed on record.

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117. The first difficulty is that the material before this Court does not show that the proposed building was completed or that these purchasers had become owners of any constructed flats on the acquired land. The agreements were in respect of flats which were proposed to be constructed in future. However, the land came to be acquired. Therefore, the purchasers have to establish that their agreements had created some existing legal right connected with the acquired property and that such right was lost because of the acquisition. They must show that the loss of such right gives them an entitlement to claim any amount from the compensation. The second difficulty is that these agreements were executed by M/s. Century Developers. Its authority to enter into such agreements and to bind the owners is disputed. The owners submit that the Power of Attorney given to the developer was limited and did not authorise it to sell flats. The development agreement was terminated. The suit filed by the developer for specific performance was dismissed. In these circumstances, the flat purchasers have to establish under what authority M/s. Century Developers had entered into these agreements and to what extent those agreements were binding upon the owners. The third difficulty is that the material placed before this Court does not give complete details of the claim of each purchaser. In respect of every purchaser, it is necessary to know how much amount was paid, how much amount was still payable, what were the exact conditions of allotment, whether possession of the flat was given and whether the agreement was still in force on the date of acquisition of the land. These facts have not been established.

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Merely producing an agreement mentioning a particular flat and its consideration amount is not enough to decide what amount of compensation, if any, is payable to that purchaser.

118. These agreements may give rise to contractual claims against M/s. Century Developers. However, a claim under an agreement against the developer cannot become a share in the compensation payable for acquisition of the land. The purchasers have to establish that they had some right in the acquired property or some legally enforceable interest in that property which came to an end because of the acquisition. The material presently available before this Court does not establish such a right with sufficient certainty. I find that the flat purchasers have not established, in these references, any independent share in the compensation payable for the acquired land. Their claims for apportionment of the land compensation are rejected. This finding does not mean that the agreements are declared void for all purposes. The finding is confined only to the question of apportionment which is required to be decided in these references. On the evidence placed before this Court, the flat purchasers have not established that they are entitled to any particular part of the statutory compensation.

119. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The references are partly allowed in the above terms;

(ii) The total land acquisition compensation of Rs.10,94,35,196/- shall be apportioned in the following manner:

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(a) The owners shall be entitled to 50% of the land compensation, amounting to Rs.5,47,17,598/-.

(b) M/s. Sadanand Garage shall be entitled to the remaining 50% of the land compensation, amounting to Rs.5,47,17,598/-.

(iii) The amount of Rs.3,85,300/- awarded towards the acquired structure and trees shall be payable to the owners in accordance with their respective shares and title;

(iv) The claim of M/s. Century Developers for payment of Rs.20,00,000/- from the land acquisition compensation is rejected;

(v) The claims of the persons claiming as flat purchasers for apportionment of the land acquisition compensation are rejected;

(vi) It is clarified that the rejection of the claims of M/s. Century Developers and the flat purchasers is confined to their claim for apportionment of the statutory land acquisition compensation. Their separate contractual rights and remedies, if any, are not decided by this order;

(vii) The statutory benefits and additional amounts payable under the Land Acquisition Act shall follow the apportionment of the principal land compensation in the same proportion, subject to the applicable provisions of law and the findings recorded in this judgment;

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(viii) Any amount paid or withdrawn by any claimant shall be duly adjusted against the amount payable to that claimant. No claimant shall receive payment twice in respect of the same compensation;

(ix) The concerned authority shall calculate and release the respective amounts to the claimants in accordance with this judgment with in 8 weeks from today;

(x) The references are disposed of in the above terms. In the circumstances, there shall be no order as to costs.

(AMIT BORKAR, J.)

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