



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3301 OF 2022

Mahasing s/o Asaram Gusinge
Age 54 years, Occu. Agril.,
R/o Rajewadi, [Selgaon],
Tq. Badnapur,
Dist. Jalna.

... Appellant
[Orig. Claimant]

versus

1. The State of Maharashtra
Through Collector, Jalna.
2. The Special Land Acquisition
Officer (Gaothan), Jalna
3. The Executive Engineer
Minor Irrigation Division Jalna,
Near Motibagh, Jalna,
Tq. & Dist. Jalna.

... Respondent

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Mr. D. M. Pingale, Advocate for the Appellant
Mr. S. P. Joshi, AGP for the Respondent Nos. 1 and 2-State
Mr. S. G. Bhalerao, Advocate for Respondent No.3

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.10.2025

Pronounced on : 04.11.2025

JUDGMENT :

1. Dissatisfied by the judgment and award dated 18.07.2013 passed by learned Reference Court under Section 18 of the Land Acquisition Act, 1894 [for short, "the Act"] in LAR 894/2010 (Old No. 145/2008), original land owner-claimant has preferred instant

appeal, primarily getting dissatisfied by amount of compensation for acquisition of his land for construction of Rajewadi Storage Tank, Bharadkheda, Taluka Badnapur, District Jalna.

FACTS IN BRIEF, GIVING RISE TO APPEAL

2. State Government on behalf of Executive Engineer, Minor Project, initiated proceedings of acquisition of land for Rajewadi Storage Tank. Firstly, the Special Land Acquisition Officer [SLAO] awarded rate of Rs.1,410/- per R for the land of Appellant. Aggrieved by such amount, present appellant moved before Reference Court under Section 18, which Court was pleased to observe that claimant is entitled for compensation @ Rs.2,500/- per R. Again dissatisfied by the said quantum, instant appeal has been preferred seeking further enhancement i.e. to the tune of Rs.8,250/- per R.

3. Heard. The principle grounds put forth are that, both, SLAO as well as learned Reference Court failed to consider and appreciate the actual market value of the land, its location, proximity to area having higher potential and moreover, land was *bagayat* and not *jirayat*, which is held by both, SLAO as well as learned Reference Court. Learned counsel emphasized that 7/12 Extract clearly demonstrates existence of well in acquired land gat no.893 i.e. 7/12 extract at

Exhibit 22. That, learned Reference Court erred in holding that there was well but there was no evidence about sufficient water to the well for cultivating wet crops. Such findings of Reference Court are precisely questioned before this Court.

4. Another point that is pressed into service is non-consideration of highest sale instance, and on such count, reliance is sought on judgments of the Hon'ble Apex Court in *Chindha Fakira Patil (D) through L.RS v. The Special Land Acquisition Officer, Jalgaon* AIR 2012 SC 481/2012 AIR SCW 270 and recent judgment of Hon'ble Apex Court in *Manohar v. State of Maharashtra* AIR OnLine 2025 SC 661 as well as judgment of this Court in the case of *Raghunath Baba Pathare & Others v. State of Maharashtra* 2009 (5) AIR Bom. R 798.

5. Learned counsel for the respondent acquiring body resisted on the ground that though 7/12 extract was placed on record, there is clear finding on perusal of actual record by both, SLAO as well as Reference Court, that there was no water to the well. Even the crop pattern demonstrated land to be *jirayat* and not *bagayat*. He further submitted that there is correct appreciation of available record for ascertaining the rate of compensation and ultimately he urged to dismiss the appeal for want of merits.

6. Heard. Perused the record. Undisputedly, land of present appellant has been acquired by Government for storage tank. The SLAO seems to have awarded rate of Rs.1,410/- per R, whereas the Reference Court enhanced it to Rs.2,500/- per R. Now claimant urged rate of Rs.8,250/- per R and primarily, the grounds which are pressed into service are, existence of well showing land to be *bagayat* one and secondly, non-consideration of sale instance Exhibit 26 which, according to claimant, reflects the exact market value of the non-irrigated land at relevant time.

7. Perused the evidence of claimant as well as said sale instance. The 7/12 extract (Exhibit 22) undisputedly does show availability of well in the land gat no. 893 which is undisputedly owned by the appellant and which came to be acquired. Observations of Reference Court that though there is well, but there is no sufficient water, in the considered opinion of this Court, such view is incorrect. Merely because there is no sufficient source of water in the well at that particular time, is not an indicator to rule out land to be irrigated one. It is common knowledge that in natural course and by course of regular monsoons and rainfall, well water rises and it is not static. Therefore, mere existence of well, as held by the Hon'ble Apex Court

in the case of ***Chindha Fakira*** (supra) is itself sufficient to declare land as irrigated one.

8. Similarly law is fairly settled that mere crop pattern is not decisive of quality of land i.e. whether it is *jirayat* or *Bagayat*, as it is entire choice of the land owner to reap the harvest of his own liking and choice depending upon the pattern of consumption in the vicinity and the quality of yield that would fetch price on its sale. With this view of the matter, in the considered opinion of this Court, both the forums below erred in not considering the land falling in gat no. 893 to be *bagayat* one.

9. The documentary evidence which is placed on record, i.e Exhibit 26 dated 05.05.2003 shows that the vendor and purchaser agreed to transact the seasonally irrigated land @ Rs.3,750/- per R. On perusal of said sale deed at Exhibit 26, it seems that total 20 R land was sold along with share in the water of well available in the gat. On carefully going through Exhibit 26, the opening text of the sale instance itself shows that said land was seasonally irrigated even when there was well in the said land. Here, facts are peculiar. There is well, but as stated above, land is held to be *jirayat* and such reasoning has no foundation and is contrary to the facts. This Court

has time and again adopted the thumb rule that when land is shown to be *jirayat* and when evidence suggests it to be *bagayat*, then double the rate granted for *jirayat* land is granted by holding the land to be irrigated one. By applying the same rule, the land owned by the appellant in gat no. 893 being shown to be *bagayat*, appellants are entitled for double rate than the one awarded for the *jirayat* land. The order of Reference Court is required to be modified to that extent by interfering in the same. The calculations shown by learned counsel for the appellants seeking rate of Rs.8,250/- per R has no sound and strong foundation so as to accept the same.

10. In view of the above discussion, the rate of Rs.2,500/- per R, as awarded by the learned Reference Court for dry land, needs to be doubled for the irrigated land which comes to Rs.5,000/- per R. Compensation for the land acquired from gat no. 893 needs to be awarded at such rate by enhancing the compensation.

11. Accordingly, the claimant is entitled for compensation @ Rs.5,000/- per R (inclusive of the enhanced compensation of Rs.2,500/- per R) for land acquired from gat no. 893. Hence the following order is passed :

ORDER

- I. The First Appeal is partly allowed with proportionate costs.
- II. The judgment and award dated 18.07.2013 passed by the Reference Court in LAR No. 894 of 2010 (Old LAR No. 145/2008) is modified to the effect that the claimant shall be paid enhanced compensation @ Rs.2,500/- per R for the area of land acquired from gat no. 893.
- III. So far as the area of land acquired from the land gat no. 915 is concerned, there shall be no change in rate awarded by the Reference Court.
- IV. Rest of the order of the Reference Court granting rate of interest and statutory benefits not being touched upon or challenged, there is no change in the same.
- V. The First Appeal is disposed off in the above terms.

[ABHAY S. WAGHWASE, J.]