

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.491 OF 2002

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| 1. The State of Maharashtra,
through Collector, Jalgaon | |
| 2. Special Land Acquisition Officer,
III, Upper Tapi Project, Hatnur,
Jalgaon | .. Appellants |

Versus

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| . Harakchand Bidichand Sanghavi,
since deceased through his legal
heirs | |
| 1. Sau. Sayarabai w/o Harkchand
Sanghvi, Age 55 years,
Occu. Agri., | |
| 2. Premchand Harkchand Sanghvi,
Age 39 years, Occu. Agri., | |
| 3. Brijal Harkchand Sanghvi,
Age 37 years, Occu. Agri., | |
| 4. Vinod Harkchand Sanghvi,
Age 33 years, Occu. Agri., | |
| 5. Ashok Harkchand Sanghvi,
Age 35 years, Occu. Agri., | |
| 6. Anil Harkchand Sanghvi,
Age 28 years, Occu. Agri.,

All Resident of Taluka Pachora,
District Jalgaon | |
| 7. Sau. Sushma Dilipkumar Nahar,
Age 28 years, Occu. Agri.,
R/o Pune | .. Respondents |

- WITH -

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| 1. The State of Maharashtra,
through Collector, Jalgaon | |
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2. Special Land Acquisition Officer,
III, Upper Tapi Project, Hatnur,
Jalgaon .. Appellants

Versus

- . Sau. Sayarabai w/o Harkchand
Sangvi, Age 58 years, Occu.Agri.,
Resident of Khedgaon (Nandi),
Taluka Pachora, Dist. Jalgaon ..Respondent

Mr D.R. Korde, A.G.P. for appellants
Mr P.V. Mandlik, Senior Counsel for respondents No.1 to 7

CORAM : N.W. SAMBRE, J.

DATE : 6th August 2015

ORAL JUDGMENT

1. Since both these appeals are arising out of the same Section 4 Notification under the Land Acquisition Act and the acquisition proceedings, are taken up together for final disposal.
2. The appeals are by the State Government and the acquiring body questioning the judgment and order passed by the learned Civil Judge, Senior Division, Jalgaon in exercise of powers under Section 18 of the Land Acquisition Act in Land Acquisition Reference No.356 of 1990 and 357 of 1990, whereby the reference Court has enhanced the compensation by fixing the market value of the acquired lands at the rate of Rs.80/- per square meter considering the non-agricultural potentiality of the lands in question.
3. Few facts, as are necessary for deciding the present appeals are as under :

4. The lands bearing Survey No.135 and 136 admeasuring 90-R and 80-R respectively in respective appeals are located at village Veruli (Bk.), Taluka Pachora, District Jalgaon, which was acquired by the Special Land Acquisition Officer (hereinafter referred to as 'SLAO' for brevity) for the construction of Khedgaon-Veruli road.

5. Section 4 Notification under the Land Acquisition Act came to be issued on 20th October 1983 and was gazetted on 17th November 1983. The award came to be passed on 22nd August 1986. The SLAO awarded compensation after consideration of the sale instances. SLAO classified the acquired lands based on the revenue assessment and as such, since delivered the compensation contrary to the provisions of Section 23 of the Land Acquisition Act, the claim for enhancement came to be lodged with the reference Court by the land owners.

6. It is required to be noted that so as to establish the case for enhancement before the learned reference Court, the claimant Ashok Harkchand Sanghvi was examined at Exh.19 being owner of the land and also a power of attorney holder which is at Exh.20 for the other owner i.e. his mother. Having entered the witness box, he claimed that at the time of acquisition, the market value of Jirayat land was Rs.40,000/- per acre whereas their land was irrigated land. So as to substantiate the same, he has placed reliance upon the sale instance in relation to land Gut No.147 of village Khedgaon, which was executed on 22nd December 1977 and sale instance of land Gut No.91 admeasuring three acres at Pachora, sold on 19th November 1984 for

a consideration of Rs.2,25,000/-. The sale deed for the plot admeasuring 12.5' x 10' total 125 square feet of village Khedgaon sold for a consideration of Rs.1,000/- on 24nd February 1983 out of G.P.No.120. The sale instances were placed on record at Exhs.21, 44 and 46 respectively, which were also proved. He then stated in his evidence that the land admeasuring 19-R out of Gut No.135 and admeasuring 80-R out of Gut No.136 were acquired by the government for construction of Verul-Khedgaon road which were irrigated lands and were having water source from the well. Those lands were located adjacent to the residential quarters of Bahula Dam employees colony, bordering the village Khedgaon and Veruli. It is further stated by him that the lands acquired have non-agricultural potentiality. He has also placed on record the map Exh.29 so as to demonstrate the distance between the acquired lands and gaathan between village Verul and Khedgaon. The map also depicts the construction of colony of employees who are working on Bahula dam. He has relied upon the sale deed of plot out of G.P.No.120 as referred supra and examined its purchaser Madhukar Patil at Exh.45 to prove the sale deed. Madhukar Patil, on oath has stated that he has purchased the plot referred supra for Rs.1,000/- on 24th February 1983 from one Waman Patil and as such, the sale deed was proved by the purchaser by identifying the signature of vendor, which is produced at Exh.46.

7. In his cross-examination, it is brought on record through this witness that the distance between Khedgaon and Verul is 2 Kms.

Having school up to 7th standard at Khedgaon and up to 4th standard at village Verul. He has also placed on record the mutation entry Nos.180, 378, at Exhs.35 and 36 which are pertaining to lands bearing Gut No.218/2 and 217/2 of village Khedgaon, which were converted to non-agricultural use. He has also relied upon the certificates issued by the Talathi of village Verul at Exh.37 demonstrating non-agricultural lands Gut No.217/2 and 218/2 referred supra of village Khedgaon and location of the acquired land bearing Gut Nos.135 and 136 adjacent to the said lands and relied upon the certificates Exh.38 and 39 to that effect. It is also brought on record that the Pachora Tahsil office is located about 15 Kms. from Veruli.

8. After considering the above referred evidence, it is noted by the reference Court that the sale instances of land Gut No.91 at Exh.44 in relation to agricultural land and the sale instance of land bearing Gut No.147 dated 22nd December 1977 at Exh.21, are not required to be taken into account since they are pertaining to the agricultural use and not of land with non-agricultural potential. The lands under acquisition of which the enhancement is sought are held to be having non-agricultural potentiality. It is then held that the sale deed of Gut No.147 Exh.21 is about six years prior to the date of issuance of Section 4 Notification.

9. Learned reference Court thereafter while relying upon the sale deed Exh.46 which is pertaining to the non-agricultural plot, having area of 125 square feet bearing G.P.No.120 at Khedgaon sold for a

consideration of Rs.1,000/- on 24th February 1983 and considering the appreciation, fixed the market value of acquired lands at the rate of Rs.80/- per square meter. The sale instance was proved by the witness, Madhukar Patil who was examined at Exh.45.

10. The reference Court then in Land Acquisition Reference No.356 of 1990 awarded compensation for 60-R land out of Gut No.135 i.e. 6000 square meters at the rate of Rs.80/- per square meter and 5300 square meters at the rate of Rs.80/- per square meter.

11. Learned Assistant Government Pleader, while questioning the legality would urge that the reference Court has committed an error by not deducting the amount as would have been required to be spent for the development of the area in question and has proceeded to award the compensation for the lands acquired. He has invited attention of this Court to the fact that minimum 25% and maximum 50% of the amount would have been required to be spent on the lands in question for the purpose of converting it from agricultural use to non-agricultural use.

12. He has relied upon the judgment of Apex Court so as to substantiate his contention.

13. Mr Mandlik, learned Senior Counsel for the respondents – land owners, submits that the deductions are properly appreciated by the reference Court and submits that the enhancement as granted is

based on the evidence that is brought on record by the land owners. According to him, the acquiring body or the State Government have not examined a single witness so as to counter the case of claim of Rs.80/- per square meter.

14. Having considered the rival submissions, it is required to be noted that the enhancement as ordered is after taking into account the non-agricultural potentiality of the acquired lands. The learned reference Court based upon the evidence, which the SLAO has also accepted the acquired lands as irrigated one and acquisition of the lands for the purpose of construction of road, has proceeded to enhance the compensation. The learned reference Court has placed reliance on the fact of location of lands on the boundary of village Khedgaon and Veruli and has relied upon the sale deed of plot G.P.No.120, having area of 125 square feet which was sold for Rs.1,000/- on 24th February 1983 which was proved through the evidence of owner of the said plot namely Madhukar Patil at Exh.45, has awarded compensation at the rate of Rs.80/- per square meter. The learned A.G.P. has strenuously urged that the reference Court ought to have taken into account the area that would have gone in development or the cost of development of such area, was not taken into account by the reference Court while awarding the compensation at enhanced rate. Upon careful perusal of paragraph 14 of the judgment, it is required to be noted that in L.A.R.No.356 of 1990 and L.A.R.No.357 of 1990, 90-R and 80-R land respectively was acquired out of Gut Nos.135 and 136. Of the total acquired land, the reference

Court has deducted 30-R land and 26.6-R land which would have covered in development of the acquired land had it been put to non-agricultural use and has not awarded any compensation for the said deducted area. Learned reference Court has awarded the compensation only for the balance area of lands i.e. 80-R out of Gut No.135 and 53.30-R out of Gut No.136.

15. In the above background, in my opinion, no case for interference is made out by the appellants. Both the appeals as such fail, stand rejected.

(N.W. SAMBRE, J.)

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