

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 412 OF 2002

Manik s/o Ganpati Jadhav,
Age: 39 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH
FIRST APPEAL NO. 514 OF 2002

Kashibai W/o Nivrutti Dudhbhate,
Age: 61 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 411 OF 2002

Kashinath s/o Bhagwan Kamble,
Age: 59 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH

FIRST APPEAL NO. 415 OF 2002

Dagdu s/o Kerba Kamble,
Age: 49 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH
FIRST APPEAL NO. 517 OF 2002

Keshav s/o Niloba Dudhbhate,
Age: 56 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 518 OF 2002

Manik S/o Veeru Dudhbhate,
Age: 60 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH

FIRST APPEAL NO. 640 OF 2002

Manohar S/o Sidappa Chille,
Age: 56 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 641 OF 2002

Pandit S/o Sidappa Chille,
Age: 51 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 642 OF 2002

Gopal s/o Kerba Kamble,
Age: 36 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH

FIRST APPEAL NO. 643 OF 2002

Shivhari S/o Sidappa Chille,
Age: 61 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 644 OF 2002

Ranga S/o Gangaram Jawale,
Age: 51 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 645 OF 2002

Yadav s/o Shankar Sarvade,
Age: 50 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH

FIRST APPEAL NO. 646 OF 2002

Chander s/o Ganpati Jadhav,
Age: 36 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

WITH
FIRST APPEAL NO. 647 OF 2002

Gundu s/o Kerba Kamble,
Age: 44 years, Occu: Nil,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector,
Dist. Latur

....RESPONDENT

Mr M. S. Patil, Advocate for appellants;
Mr P. P. More, Asstt. Govt. Pleader for respondent

WITH
FIRST APPEAL NO. 506 OF 2002

Trimbak s/o Gurunath Birajdar,
Age: 55 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 335 OF 2002

Kuberbai w/o Khalil Patel,
Age: 55 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 671 OF 2002

Sajjad s/o Ibrahim Bhoske,
Age: 37 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 674 OF 2002

Shabbir s/o Jainoddin Shaikh (Patel),
Died through L.Rs.

1. Faimuddabi w/o Shabbir Shaikh (Patel),
Age: 65 years, Occu: Household
2. Khadir s/o Shabbir Shaikh (Patel),
Age: 41 years, Occu: Agril.
3. Najema d/o Shabbir Shaikh (Patel),
Age: 38 years, Occu: Household

4. Zuber s/o Shabbir Shaikh (Patel),
Age: 32 years, Occu: Agril.

All R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANTS

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 696 OF 2002

Jilani s/o Abdul Shaikh,
Died through L.Rs.

1. Inayatbee s/o Jilani Shaikh,
Age: 71 years, Occu: Household
2. Rafiq s/o Jilani Shaikh,
Age: 46 years, Occu: Agril.
3. Salim s/o Jilani Shaikh,
Age: 42 years, Occu: Agril.
4. Raisa w/o Jilani Pirjade,
Age: 38 years, Occu: Household
5. Harun s/o Jilani Shaikh,
Age: 37 years, Occu: Agril.
6. Yaqub s/o Jilani Shaikh,
Age: 35 years, Occu: Agril.
7. Shamshad d/o Jilani Shaikh,
Age: 33 years, Occu: Household
8. Mohsin s/o Jilani Shaikh,
Age: 30 years, Occu: Agril.

All R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANTS

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 1028 OF 2002

Hannus s/o Mohammad Yasin,
Age: 47 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 665 OF 2002

Wajid s/o Raheman Shaikh,
Age: 36 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 666 OF 2002

Rais s/o Ibrahim Bhoske,
Age: 34 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 667 OF 2002

Anwar s/o Raheman Shaikh,
Age: 31 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 668 OF 2002

Ali Aminsahab Shaikh,
Age: 50 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 670 OF 2002

Irfan s/o Raheman Shaikh,
Age: 34 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 672 OF 2002

Khayum s/o Kasim Shaikh,
Age: 63 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 673 OF 2002

Jamshid s/o Ibrahim Bhoske,
Age: 40 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 675 OF 2002

Gani s/o Ibrahim Bhoske,
Age: 35 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 697 OF 2002

Shetiba s/o Shankar Sarwade,
Age: 65 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 698 OF 2002

Farooq s/o Aminsahab Shaikh,
Age: 48 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 430 OF 2008

Bashir s/o Mohammad Yasin,
Age: 50 years, Occu: Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur

....APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra,
Through The Collector, Latur,
Dist. Latur

....RESPONDENT
(Orig. Respondent)

Mr G. L. Awale, Advocate for appellants;
Mr G.R. Ingole, Asstt. Govt. Pleader for respondent

CORAM : N.W. SAMBRE, J.

DATE : 13th August, 2015

ORAL JUDGMENT :

All these appeals are by the claimants, seeking enhancement of compensation, in addition to awarded by the Joint District Judge, Latur (hereinafter referred to as "Reference Court", for the sake of brevity), in exercise of powers under section 18 of the Land Acquisition Act.

2. Facts, as are necessary for decision of the present appeals, are as under :-

The lands of the appellants/claimants which are claimed to have been located on Latur – Gulbarga State highway, were acquired for rehabilitation of village Lamjana, after the earthquake, for which possession of their lands was taken on 10th October, 1993.

3. The claimants had sought compensation of Rs.2,00,000/- per Hectare, however, the Court has awarded compensation of Rs.18,000/- per Hectare in Land Acquisition Reference Nos.286 of 1996, 301 of 1996, 302 of 1996 and 953 of 1997. In the remaining Land Acquisition References, the Land Acquisition Officer has awarded compensation of Rs.28,000/- per Hectare.

4. The appellants/claimants, feeling aggrieved thereby, have preferred the present appeals seeking compensation of Rs.2,00,000/- per Hectare.

5. With a view to establish their claim, the claimants have placed on record copy of the award delivered by the Land Acquisition Officer, 7/12 extracts of the concerned lands and the sale instance at Exh.32, dated 16th May, 1986; whereby 31 R and 29 R, total 60 R land was sold on 16th May, 1986, for a consideration of Rs.45,000/-. The another sale instance taken into account by the Reference Court is sale deed Exh.34, which is post section 4 notification, i. e. on 11th July, 1995, by which 1 Hectare 3 R land was sold for Rs.1,90,000/-. It is claimed in the claim petition, that the population of village Lamjana is about Rs.10,000/- and there are facilities like Land Development Bank, Nationalized Bank, 33 KV Sub-Station, Zilla Parishad High School, Primary Health Centre, Post Office, Revenue Headquarters, Grampanchayat, etc. It is further claimed that Killari sugar factory is located at about 5 Kms. away from the acquired lands. The

claimants alleged that amongst other considerations, the acquired land was a dry crop land and the cropping pattern was Jowar, Udid, Groundnut, Sunflower, etc. In some cases, the claimants claimed compensation at the rate of Rs.1,50,000/- per Hectare, whereas in some cases it is Rs.2,00,000/- per Hectare.

6. In reply to the claim petition, the dismissal of the claim petition was sought by the State and the acquiring body, on the ground that the award delivered by the Land Acquisition Officer was just and proper. The respondents had denied the availability of various facilities, so also the location of the lands.

7. Pursuant to the pleadings of the rival parties, the learned Reference Court framed issues at Exh.7 in relation to, whether the award of compensation was adequate or not. Amongst other, the issue of limitation was also framed.

8. In support of the claim petitions, the claimants have examined witnesses, namely, Ramprasad Dhondiram Bajaj at Exh.31; Yunus Patel at Exh.33; Ranga Gangaram Jawale at Exh.35 and closed the evidence. The respondents closed their evidence by purshis at Exh.38 and they did not adduce any oral or documentary evidence on record.

9. Upon appreciation of the evidence, particularly the sale instances at Exhs. 32 and 34, the Reference Court has proceeded to order enhancement of compensation by fixing the market value of the lands in question at the rate of Rs.50,000/- per Hectare in four Land Acquisition References and Rs.85,000/- per Hectare in remaining Land Acquisition References.

10. The appellants/claimants, feeling aggrieved thereby inadequacy of compensation, have preferred these appeals.

11. Learned Counsel appearing on behalf of the appellants/claimants would urge that in the present case, notification under section 4 of the Act was issued on 8th August, 1994. According to him, since the sale instance Exh.32, dated 16th May, 1986, is from the same village and about the land located in the same vicinity, in view of the law laid down by the Apex Court in the matter of **Omprakash vs. State of Haryana & ors.**, reported in **2010 AIR SCW 5655**, by granting enhancement of 15% for each year, the appellants will be entitled to claim compensation at the rate of Rs.77,809/- per Acre. He would further urge that if the sale instance Exh.34, which is post notification under section 4 is appreciated, then the appellants will be entitled for enhancement at the rate of Rs.66,408/- per Acre, after adjusting the amount already awarded by the Reference Court and the Land Acquisition Officer. Apart therefrom, he would urge that Land

Acquisition Reference No.156 of 1993, which was based on section 4 notification dated 5th January, 1989 and cited for seeking enhancement, was discarded by the Reference Court, on the ground that the land in the said notification was acquired for percolation tank, whereas in the present case, it is for rehabilitation purpose. He would urge that taking into consideration the non-agricultural potential of the lands of the appellants, the same was acquired for rehabilitation, and in any case, according to him, they are entitled for compensation after taking into account the enhancement ordered under Land Acquisition Reference No.156 of 1993. He would further urge that the State had preferred an appeal against the judgment and award rendered in L.A.R. No.156 of 1993, which was abated and disposed of and as such, according to him, the said judgment and award in L.A.R. No.156 of 1993, is required to be relied upon for the purpose of considering the claim for enhancement.

12. Per contra, learned Asstt. Govt. Pleaders appearing on behalf of the respondent – State have opposed the claim for enhancement. According to them, the enhancement as is ordered by the Reference Court, is upon considering the cropping pattern, location and also upon appreciation of the sale deeds at Exhs.32 and 34. According to them, the location of the lands on the State Highway was specifically denied by the Land Acquisition Officer in the written statement and in view thereof, the appellants were duty bound to establish the location of the lands in

question, so as to seek enhancement. Learned Asstt. Govt. Pleader, upon verification from the office record had not disputed the fact about dismissal of the appeal preferred challenging the judgment and award passed in L.A.R. No.156 of 1993, on 8th February, 2008, however, they would submit that in view of difference in date of issuance of section 4 notification, which in the present case is 8th August 1994 and in L.A.R. No.156 of 1993 was 5th January, 1989, according to him, same cannot be taken into account.

13. In view of rival submissions of the parties, following point arises for determination :-

Whether the learned Reference Court, while ordering enhancement of compensation under section 18 of the Land Acquisition Act, has adequately appreciated the evidence brought on record ?

14. In my opinion, the above point is required to be answered in affirmative.

15. It is required to be noted here that in support of the claim petition, the claimants have examined witness Ramprasad at Exh.31. He has deposed in support of the claim for enhancement, particularly in the matter of the sale transaction which was produced in between Papamiya and

Pasha Patel. The said sale instance is placed on record at Exh.32, which was proved by examining the said witness. It is deposed by the said witness that the land covered under the said sale instance is dry crop land and the certified copy of the sale instance is already produced on record.

16. In view of provisions of section 51-A of the Act, the certified copy of the sale deed produced on record is required to be accepted by this Court.

17. Apart from above, witness Ramprasad has also deposed as regards the population of Lamjana village, which is around 11,000 and availability of the facilities like High School up to 12th standard, Civil Hospital, Veterinary Hospital, Banks, etc. In cross-examination of this witness nothing could be elicited, particularly in regard to the price of the land as was fixed and paid. Rather, it is brought on record that the land that was acquired for percolation tank in L.A.R. No.156 of 1993 is located at about one kilometer from the land covered under sale instance Exh.32. It could only be elicited from the evidence of the said witness, that the purchaser of the said land was having adjoining property and, therefore, he might have purchased the said property at higher rate.

18. So far as witness no.2 Yusuf Patel, examined at Exh.33 is concerned, he was examined in support of the sale instance Exh.34. He has deposed in support of the said sale instance so as to establish that the

said land is also located in the same vicinity.

19. The claimants then had examined witness no.3 Ranga Gangaram Jawale, who is claimant in L.A.R. No.187 of 1996. He has, in clear terms, stated that he was adducing evidence for himself and on behalf of claimants in other Land Acquisition References, which were tagged together. He has stated that possession of the land was taken by the Land Acquisition Officer on 10th October, 1994 and they were also promised for payment of rental compensation. He has deposed about the quality of the land and availability of irrigation facility, cropping pattern, yearly income from the lands, availability of various civic and social amenities, such as school, junior college, post office, revenue office, etc. He has deposed that the lands acquired were having non-agricultural potential. According to him, they claimed compensation of Rs.75,000/- per Acre for dry crop land and Rs.1,25,000/- per Acre for irrigated land. He has also deposed that the sale instances Exhs.32 and 34 were in relation to the lands which were located adjacent to the lands acquired. In cross-examination of the said witness, the sale instance Exhs.32 and 34 were very much established.

20. From the above referred evidence, it is required to be considered, whether the sale instances Exhs.32 and 34 could be taken into account for the purpose of granting enhancement.

21. The sale instance Exh.34 is in relation to the land ad measuring 2 Acres 23 Gunthas, i.e. 1 Hectare 3 R, which was sold for Rs.1,90,000/- on 11th July, 1995. In the present case, notification under section 4 was issued on 8th August, 1994.

22. In view of above dates, i.e. the date of the sale deed (Exh.34) and the date of issuance of notification under section 4 of the Land Acquisition Act, it could be easily inferred that the sale instance Exh.34 is subsequent to the issuance of section 4 notification. Though there is no embargo on the right of claimants to cite a sale instance of the subsequent date after section 4 notification was issued, yet in view of the resistance shown by the learned Asstt. Govt. Pleaders, that the sale instance which is post section 4 notification be ignored, particularly when there are chances of sale instance being executed and registered for a higher value, taking into account the acquisition proceedings, hence this Court discards the sale instance Exh.34 and proceeds to analyze the claim for sale instance based on Exh.32.

23. The sale instance Exh.32 is dated 16th May, 1986, for total 60 R land for a consideration of Rs.45,000/-. Admittedly, the said sale instance is for jirayat land though at some places, it has been brought on record that the purchaser had purchased 50% share in the well, yet nothing could

be inferred from the revenue record, to that effect. This Court, of course, is entitled to consider the said sale instance, particularly in view of the provisions of section 23 of the Land Acquisition Act as a comparative sale and is further entitled to grant 10% enhancement in the cost price of the land till the date of section 4 notification. Appropriate support, to that effect, can be drawn from the judgment of the Apex Court, in the matter of Om Prakash vs. State of Haryana & ors. (cited supra). Paragraph 17 of the said judgment reads thus :-

“Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1993 awarding a sum of Rs.2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs.125 per square yard for the land of the road behind the ECE factory and Rs.150 per square yard for the land abutting the road which would come to Rs.6,05,000/- and Rs.7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the

Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs.135 and 160 respectively making it Rs.6,53,400/- and Rs.7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in dribblets. The 12% 18 per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of

compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.”

24. In view thereof, in my opinion, it will be appropriate to consider the enhancement based on the sale instance, which could be relied upon. It will not be out of place to observe that the said sale instance was neither objected nor any additional evidence was brought on record on behalf of the acquiring body. As such, the said sale instance, which pertains to the lands acquired in the same vicinity, is deemed to be the basis for enhancing the compensation as sought for by the claimants. The cost of Rs.45,000/- for 60 R land is required to be further considered and calculated for deciding the entitlement of the claimants towards the cost of 1 Acre of land. It is not in dispute that 40 R is equivalent to 1 Acre. In

view thereof, if the proportionate deductions and calculations are made, in my opinion, cost of 1 Acre of land, i.e. 40 R, on the date of issuance of notification under section 4 of the Act, i.e. 8th August, 1994, could easily be worked out at the rate of Rs.77,809/- per Acre.

25. The calculations for ordering enhanced compensation, based on the sale instance at Exh.32 could be made as under :-

1)	In the year 1984	Rs. 45,000/-
2)	In the year 1985	Rs. 49,500/-
3)	In the year 1986	Rs. 54,450/-
4)	In the year 1987	Rs. 59,895/-
5)	In the year 1988	Rs. 65,895/-
6)	In the year 1989	Rs. 72,472/-
7)	In the year 1990	Rs. 79,719/-
8)	In the year 1991	Rs. 87,690/-
9)	In the year 1992	Rs. 96,459/-
10)	In the year 1993	Rs.1,06,104/-
11)	In the year 1994	Rs.1,16,714/-

Therefore, considering the prevailing rate in the year 1994, the market price would come to Rs.1,16,714/- for 60 R land and the rate for 40 R i.e. 1 Acre would come to Rs.77,809/-.

26. It is not in dispute that potential of the land acquired could be considered in the background of the purpose for which the acquisition was sought, which in the present case is rehabilitation of *gavthan*. The situation of the acquired land, particularly location in nearby vicinity of commercial/industrial institutions, the facilities like education, religious institution is also required to be taken into account in the background of population of the village. The other amenities, such as, electric supply, water facility, educational institutions, health centre, etc. are also required to be considered. The judgment as is relied upon earlier, in the matter of Omprakash, particularly paragraph 14 is also is required to be adhered to.

27. Apart from above, following considerations will also be necessary to be met with so as to award appropriate compensation in accordance with the value of the land as reflected in the sale deed, which is formed to be the basis :-

(1) the sale must be a genuine transaction,

(2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,

(3) that the land covered by the sale must be in the vicinity of the acquired land,

(4) that the land covered by the sales must be similar to the acquired land, and

(5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

28. In the above background, in my opinion, the appellants are entitled for enhanced compensation as observed herein above.

29. There is one more aspect of which this Court is required to take note is that while considering the enhancement, the claimants have relied upon the judgment rendered by the Reference Court in L.A.R. No.153 of 1996, which was decided on 2nd May, 1998 and was produced at Exh.77. The said Land Acquisition Reference was in relation to the land which is located in the same village and by virtue of said acquisition proceedings, the land was acquired for percolation tank, which is located about one kilometer away from the lands involved in the present matters. For drawing the above referred inference, appropriate reliance can be placed on the evidence of witness no.1 Ramprasad, to that effect. It is further

noted that against the judgment and award rendered in L.A.R.No.153 of 1996, an appeal was carried to this Court, which had abated on 8th February, 2008. As such, Land Acquisition Reference decided by the Reference Court, awarding compensation in the said matter, has attained finality before this Court. In the said Land Acquisition Reference, the Reference Court had awarded compensation of Rs.1,25,000/- per Hectare for irrigated land, whereas Rs.1,00,000/- per Hectare for dry crop land.

30. In the light of foregoing discussion, the appeals succeed. I, therefore, pass the following order :-

It is declared that the appellants are entitled for enhanced compensation at the rate of Rs.77,809/- per Acre. The said amount shall carry an interest at the rate of 9% per annum from the date of taking over possession of the lands, for a period of one year and thereafter at the rate of 15% per annum till realization of the amount.

The appellants are also entitled to solatium and interest in proportion to the enhanced compensation in line with the observations by the Reference Court on the above referred enhanced compensation.

The appellants shall deposit proportionate court fees before this Court.

The amount already paid to the appellants be adjusted while paying the amount of enhanced compensation and the additional components, as observed herein above.

Appeals stand allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj