

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

FIRST APPEAL NO.: 184 OF 2004

The State of Maharashtra.
Through Spl. L.A.O., M.I.W.,
Jalgaon.

... **APPELLANT**
[ORIG.RESPONDENT]

VERSUS

Rupchand Ratanchand Jain,
Deceased heirs:-

1. Madanbai Rupchand Jain, Age: 65,
2. Ramesh Rupchand Jain, Age: 40.
3. Vijay Rupchand Jain, Age: 39.
4. Chayabai Ramesh Jain, Age: 38.
5. Surekhabai Rajendra Jain, Age: 36.
6. Alkabai Nandkishor Jain, Age: 34.
7. Sadhanabai Tilakchand Jain, Age: 32.

R/o. Shivare, Tq. Parola,
Dist. Jalgaon.

... **RESPONDENTS**
[ORIG.CLAIMANTS]

Mr. D. V. Tele, A.G.P. for the Appellant.
Mr. H. B. Nandgavale, Advocate h/f Mr. V. G. Sakolkar, Advocate
for Respondent Nos.1 to 7.

WITH

FIRST APPEAL NO.: 185 OF 2004

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The State of Maharashtra.
Through The Special Land Acquisition
Officer, M.I.W., Jalgaon.

... **APPELLANT.**
[ORIG.RESPONDENT]

VERSUS

Sukadeo Barku D/H Kausabai

Sukadeo, Age 42 yrs., Occu. Farmer,
R/o Shivare, Tq. Parole, Dist.
Jalgaon.

... **RESPONDENT**
[ORIG.CLAIMANT]

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Mr. D. V. Tele, A.G.P. for the Appellant.

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CORAM:- T. V. NALAWADE, J.
DATED:- 14th DECEMBER, 2015.

JUDGMENT:

1. In appeal No.184 of 2004 the judgment and Award of the Reference Court given in LAR No.197 of 1991 which was pending in the Court of Civil Judge, Senior Division, Ahmednagar is challenged by the original Respondent, Government. In First Appeal No.185 of 2004 the judgment and Award of the same Reference Court given in LAR No.191 of 1991 is challenged by the Government in Appeal. Both the sides are head.

2. Nobody turned up for Respondent in other Appeal and so only learned A.G.P. was heard.

3. This Court has carefully gone through the record of Reference Court from both the matters. The lands of the Respondents were acquired for Minor Irrigation Project of village Savarkheda and it was compulsory acquisition. The

lands were from village Shivare. The notification under section 4 of the Land Acquisition Act (hereinafter referred as the Act) was published on 14th November, 1985. The Land Acquisition Officer awarded the compensation at the rate of Rs.15,000/- per hectare for *Jirayat* land and at the rate of Rs.22,500/- for *Bagayat* land. Some compensation was given in respect of mango trees also. The owner challenged the Award by contending that the market value was much higher and the Land Acquisition Officer did not consider the market value of the lands. Before the Reference Court they placed reliance on two sale instances and copies of the sale deeds were produced at Exhibit-54 and Exhibit-57. The sale instances are proved.

4. The sale instance at Exhibit-57 is in respect of 40 Ares portion of land situated at village Tamaswadi. Substantive evidence is that the distance between these two villages is hardly 2 to 3 kilometers and Tamaswadi is adjacent to the village where the lands of the owners are situated. The sale instance was of 4th October, 1983 and aforesaid *Bagayat* portion was sold for consideration of Rs.25,000/- i.e. Rs.62,500/- per hectare. The Reference Court deducted the value of standing crop, Jowar from this

value and held that the value was around Rs.60,000/- per hectare as on 4th October, 1983. Though the Reference Court has held that it is comparative sale instance, the increase of 10% per annum is not given and it is presumed that on the date of notification under section 4 of the Act the value was Rs.60,000/- per hectare for *Bagayat* land. On the basis of this valuation, the Reference Court has held that the market rate for *Jirayat* land per hectare can be Rs.30,000/-. In the written statement filed by the present Appellant it was contended that no sale instances were available and so that method was not used by the Land Acquisition Officer. It cannot be disputed that when the sale instances of the same village are not available, comparative sale instances of lands situated in vicinity can be used. Thus, there is nothing wrong in the method used by the Reference Court for ascertaining the market value on the relevant date.

5. The record of LAR No.197 of 1991 shows that the land of this owner was *Bagayat* land and there was a well in the land. He had planted 100 Sweet Lemon trees and those trees were there in the year 1981-82 also. In view of these circumstances, the Reference Court has presumed that it is

Bagayat land and so accordingly the compensation is awarded by the Reference Court. In view of these circumstances, and as there is nothing in rebuttal it is not possible to interfere in the decision given in LAR No.197 of 1991.

6. In LAR No.191 of 1991, 7/12 extract was produced by the owner in respect of the land acquired and it shows that the owner was taking crops like *Jowar* and *Bajara*. There was no well in the land. Thus, there was nothing on record to show that it was irrigated land or cash crops were being taken. Though evidence on oath is given that the value of the *Jirayat* land in that area was around Rs.30,000/- per Acre, there is nothing produced to show that the land was *Bagayat* land or there was a facility of irrigation for this land. In spite of these circumstances the Reference Court has held that this land was also *Bagayat* land. Then, the Reference Court has increased the value of one mango tree to make it Rs.10,000/-. Considering the age of the tree this Court holds that there is no need to disturb that finding. However, the decision of the Reference Court by which it is held that the land was *Bagayat* land and the compensation of Rs.60,000/- per hectare needs to be

given, needs to be set aside and the rate needs to be given as Rs.30,000/- per Hectare which is the rate for *Jirayat* land.

7. In the result, following order is made:

First Appeal No. 184 of 2004 is dismissed. First Appeal No. 185 of 2004 is partly allowed, to make the compensation for the land as Rs.30,000/- per hectare as it was *Jirayat* land. The Respondent, original claimant is entitled to get the interest and all statutory benefits on this amount. Accordingly, the judgment and Award in LAR No.191 of 1991 is modified.

[T. V. NALAWADE, J.]

Dated:14/12/2015.
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