

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

FIRST APPEAL NO. 2035 OF 2014

Prakash Chintaman Peharkar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

Shri A. B. Kale, Advocate h/f Shri C. K. Sonwane and Shri N. R. Thorat, Advocate for Appellants.

Shri S. M. Jadhav, A.G.P. for Respondent No. 1.

WITH

FIRST APPEAL NO. 229 OF 2014

The State of Maharashtra and another .. Appellants

Versus

Sahebrao Baban Maparui and others .. Respondents

WITH

FIRST APPEAL NO. 230 OF 2014

The State of Maharashtra and another .. Appellants

Versus

Suhas Prabhakar Sonde and another .. Respondents

WITH

FIRST APPEAL NO. 231 OF 2014

The State of Maharashtra and another .. Appellants

Versus

Karbhari Deorao Ingale .. Respondent

WITH

FIRST APPEAL NO. 232 OF 2014

The State of Maharashtra and another .. Appellants

Versus

Rajendra Punjaji Gaikwad .. Respondent

**WITH
FIRST APPEAL NO. 233 OF 2014**

The State of Maharashtra and another .. Appellants

Versus

Kishor Prabhakar Sonde .. Respondent

**WITH
FIRST APPEAL NO. 234 OF 2014**

The State of Maharashtra and another .. Appellants

Versus

Suresh Rakhmaji Ingale .. Respondent

Shri S. M. Jadhav, A.G.P. for Appellants/State in all matters.
Shri A. B. Kale, Advocate h/f Shri C. K. Sonwane and Shri N. R.
Thorat, Advocate for Respondents in all matters.

**WITH
FIRST APPEAL NO. 1261 OF 2014**

Arefkhan Mohsin Ali Died through

L.Rs. Reias Ullah Khan and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 1262 OF 2014**

Vishnu Ambadas Chafekar and another .. Appellants

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 1263 OF 2014**

Uttam Kishanrao Gaikwad .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL NO. 1264 OF 2014**

Shaikh Ismail Jainuddin .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL NO. 1265 OF 2014**

Shankar Namdeo Mandalkar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL NO. 1266 OF 2014**

Mukhtar Ahmad Faruq Ahmed
and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL NO. 1267 OF 2014**

Rambhabai Parasram Bankar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL NO. 1268 OF 2014**

Gorakhnath S/o Kisan Gaikwad died
through L.Rs Zumbarbai Gorakhnath
Gaikwad and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 1269 OF 2014**

Thakubai Namdeo Deokar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 1270 OF 2014**

Shaikhlal Jainuddin .. Appellant

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 1271 OF 2014**

Rahibai Shankar Mandalkar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 2036 OF 2014**

Suresh Rukhmaji Ingle .. Appellant

Versus

The State of Maharashtra and another .. Respondents

**WITH
FIRST APPEAL NO. 2037 OF 2014**

Kishor Prabhakar Sonde .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL NO. 2038 OF 2014

Suhas Prabhakar Sonde and another .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL NO. 2039 OF 2014

Sahebrao Baban Mapari and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL NO. 2040 OF 2014

Babasaheb Baban Gaikwad and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL STAMP NO. 28348 OF 2013

Hamjabin Babib Bubkar and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL STAMP NO. 23451 OF 2013

Rajendra Punjaji Gaikwad .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH

FIRST APPEAL STAMP NO. 23441 OF 2013

Ashok Bhaulal Gaikwad and others .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL STAMP NO. 23444 OF 2013**

Karbhari Deorao Ingale .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL STAMP NO. 23448 OF 2013**

Rukhmanbai W/o Prakash Gaikwad .. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL STAMP NO. 23469 OF 2013**

Baban Shahadu Gaikwad Died through

L.Rs. Parvatabai Baban Gaikwad

and another

.. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL STAMP NO. 23456 OF 2013**

Kishabai Gorakhnath Gaikwad

.. Appellant

Versus

The State of Maharashtra and another .. Respondents

WITH**FIRST APPEAL STAMP NO. 23461 OF 2013**

Mangalbai Raosaheb Gaikwad

.. Appellant

Versus

The State of Maharashtra and another .. Respondents

Shri A. B. Kale, Advocate h/f Shri C. K. Sonwane and Shri N. R. Thorat, Advocate for Appellants in all matters.
Shri S. M. Jadhav, A.G.P. for Respondent No. 1.

**WITH
FIRST APPEAL NO. 1685 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Gorakhnath Kisan Gaikwad deceased
Through L.Rs. Zumberbai and others .. Respondents

**WITH
FIRST APPEAL NO. 1686 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Rambhabai Parasram Bankar .. Respondent

**WITH
FIRST APPEAL NO. 1687 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Shaikhulal Jainuddin .. Respondent

**WITH
FIRST APPEAL NO. 1688 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Shaikh Ismail Jainuddin .. Respondent

**WITH
FIRST APPEAL NO. 1689 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Mukhtar Ahmad Faruq Ahemad

and others .. Respondents

**WITH
FIRST APPEAL NO. 1690 OF 2015**

The State of Maharashtra and another .. Appellants

Versus

Hamjabin Habib Bubkar and others .. Respondents

**WITH
FIRST APPEAL NO. 1691 OF 2015**

The State of Maharashtra and another .. Appellants

Versus

Rahibai Shankar Mandalkar .. Respondent

**WITH
FIRST APPEAL NO. 1692 OF 2015**

The State of Maharashtra and another .. Appellants

Versus

Shankar Namdeo Mandalkar .. Respondent

Shri D. R. Korde, A.G.P. for Appellants/State in all matters.
Shri A. B. Kale, Advocate h/f Shri C. K. Sonwane and Shri N. R.
Thorat, Advocate for Respondents in all matters.

**WITH
FIRST APPEAL NO. 1060 OF 2015**

The State of Maharashtra and another .. Appellants

Versus

Jaywant Bhausahab Gaikwad .. Respondent

**WITH
FIRST APPEAL NO. 265 OF 2014
WITH
CROSS OBJECTION STAMP NO. 32881 OF 2014**

The State of Maharashtra and another .. Appellants
Versus
Dnyaneshwar Vaijinath Teke
and another .. Respondents

WITH
FIRST APPEAL NO. 266 OF 2014
WITH
CROSS OBJECTION STAMP NO. 32886 OF 2014

The State of Maharashtra and another .. Appellants
Versus
Madhukar Jaywant Chafekar .. Respondent

WITH
FIRST APPEAL NO. 267 OF 2014
WITH
CROSS OBJECTION STAMP NO. 32890 OF 2014

The State of Maharashtra and another .. Appellants
Versus
Sandesh Tejmal Mugdiya .. Respondent

WITH
FIRST APPEAL NO. 1061 OF 2015

The State of Maharashtra and another .. Appellants
Versus
Rangnath Ramrao Salunke Died
through L.Rs. Kailas Rangnath Salunke
and others .. Respondents

WITH
FIRST APPEAL NO. 1653 OF 2015

The State of Maharashtra and another .. Appellants
Versus
Rukhmanbai Prakash Gaikwad .. Respondent

**WITH
FIRST APPEAL NO. 1654 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Mangalabai Raosaheb Gaikwad .. Respondent

**WITH
FIRST APPEAL NO. 1655 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Arefkhan Mohsin Ali Died through
L.Rs. Reias Ullahkhan and others .. Respondents

**WITH
FIRST APPEAL NO. 1656 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Kashabai Gorakhnath Gaikwad .. Respondent

**WITH
FIRST APPEAL NO. 1657 OF 2015**

The State of Maharashtra and another .. Appellants
Versus
Baban Shahadu Gaikwad Died through
L.Rs. Pravatabai Gaikwad and others .. Respondents

**WITH
FIRST APPEAL STAMP NO. 17723 OF 2013**

The State of Maharashtra and another .. Appellants
Versus
Uttam Kishanrao Gaikwad .. Respondents

WITH

FIRST APPEAL STAMP NO. 17774 OF 2013

The State of Maharashtra and another .. Appellants

Versus

Prakash Chintaman Peherekar .. Respondents

WITH

FIRST APPEAL STAMP NO. 17768 OF 2013

The State of Maharashtra and another .. Appellants

Versus

Babasaheb Baban Gaikwad and others .. Respondents

WITH

FIRST APPEAL STAMP NO. 17762 OF 2013

The State of Maharashtra and another .. Appellants

Versus

Vishnu Ambadas Chafekar and another .. Respondents

Shri D. V. Tele, A.G.P. for Appellants/State in all matters.

Shri A. B. Kale, Advocate h/f Shri C. K. Sonwane and Shri N. R.

Thorat, Advocate for Respondents in all matters.

CORAM : S. V. GANGAPURWALA, J.

DATE : 15TH SEPTEMBER, 2015.

PER COURT :-

. All these appeals arise out of the judgment delivered by the Reference Court in respect of references filed by the claimants whose lands are acquired for Nagpur - Mumbai highway. All these appeals are based on same set of facts. The lands are acquired vide same notification under Section 4 of the Land Acquisition Act (for short "L.A. Act"), dated 14.11.2002 for the same project. As such, to avoid rigmarole, the same are decided

together. Some of the appeals are filed by the State challenging the award of the Reference Court enhancing the compensation to Rs. 7,500/- per R for Jirayat land and Rs. 11,000/- per R for seasonal Bagayat land, whereas some appeals are filed by the claimants seeking further enhancement in compensation.

2. Mr. Kale, the learned counsel for the claimants submits that, in all these matters the lands are acquired for Nagpur – Mumbai highway project. The notification under Section 4 of the L. A. Act, is issued on 14.11.2002. The award is passed on 27.05.2005. The possession of the acquired land has been taken on 24.03.2003. The Special Land Acquisition Officer (for short "S. L. A. O.") had divided the lands into four groups and has awarded compensation at the rate of Rs. 1,290/- to Rs. 2,000/- per R. The Reference Court has enhanced the compensation to Rs. 7,500/- per R for the dry land and Rs. 11,000/- per R for seasonally irrigated land. The learned counsel submits that, the claimants had claimed compensation at the rate of Rs. 22,500/- per R. The learned counsel further submits that, some of the acquired lands are situated in the Municipal limits and other lands are situated just adjacent to the lands situated in the Municipal limits. The Reference Court awarded compensation on the basis of valuation made by the Town Planner and referred to in the award at the rate of Rs. 7,500/- per R. The said valuation was made by the Town Planner for dry land and the Reference Court relying on the same awarded compensation for the dry land at the rate of Rs. 7,500/- per R and at the rate of Rs.

11,000/- per R for seasonally irrigated land. The learned counsel submits that, the sale deeds Exh. 16 and 17 which were in respect of lands situated in the same vicinity of the acquired land have been ignored. Exh. 16 is dated 17.05.2001 and Exh. 17 is dated 05.02.2001. Vide Exh. 16, 23 R land is sold for consideration of Rs. 2,86,000/- and vide Exh. 17, the land admeasuring 20 R is sold for Rs. 2,85,000/- . The market price as per the sale deeds comes to Rs. 12,435/- per R and Rs. 14,250/- per R. The learned counsel submits that, said lands under the sale deeds are Jirayat lands. There was no impediment for the Court to consider the said price for awarding the compensation. Even 10% addition ought to have been made considering that the sale deeds are prior to one year of the notification U/Sec. 4 of the L. A. Act. The possession is also taken subsequent to the notification U/Sec. 4 of the L. A. Act. As such, there was no impediment to consider the sale instances in its entirety. Even the lands under acquisition are small pieces of lands. The said aspect is also required to be considered. Mr. Kale, the learned counsel relies on the judgment of the Apex Court in the case of **Meharwal Khewaji Trust (Regd.) Faridkot and others v/s. State of Punjab and others** reported in (2012) 5 SCC 432, to submit that, the highest exemplar has to be considered while determining the market value. The learned counsel submits that, the lands involved in L. A. R. Nos. 1290 of 2010, L.A.R. No. 681 of 2010 and L.A.R. No. 1289 of 2010 are situated within the municipal limits. The learned counsel submits that, even the award states that, the acquired lands are

from 0 to 5 Kms. of the headquarters of the Municipal Council Vaijapur.

3. Mr. Jadhav, Shri Korde and Mr. Tele, the learned Assistant Government Pleaders submit that, the lands under the sale deeds Exhibit 16 and Exhibit 17 are small pieces of lands which can not be considered as a comparable sale instance. The learned A. G. P. further submit that, the lands under the sale deeds Exh. 16 and Exh. 17 are situated in the Municipal limits of Municipal Council, Vaijapur, whereas majority of the lands under acquisition are situated outside the limits of Vaijapur town. The sale deeds are rightly discarded. The learned A. G. P. further submit that, even the valuation of the Town Planner could not have been accepted. The same is not proved as is required under the law. According to the learned A. G. P., unless the valuation as made by the Town Planner is proved before the Court the said valuation can not be accepted as it is. The S. L. A. O. had considered all the relevant aspects of the matter such as the land revenue, the situation of the properties, various sale instances and had awarded compensation by making four groups of the said lands. No illegality has been committed. The learned A. G. P. further submit that, there is no evidence on record to show that, the lands under the sale deeds and lands acquired are adjacent lands. There is no map produced by the claimants on record. The enhancement granted by the Reference Court is too exorbitant and without any rational basis. The learned A. G. P. state that, the S. L. A. O. has considered various sale instances

as is clear from the award passed by the S. L. A. O. The learned A. G. P. state that, the Reference Court has rightly rejected Exh. 16 and 17 as those are in respect of small area of lands and the same are in respect of lands situated within the municipal area.

4. I have considered the submissions canvassed by the learned counsel for the claimants and the learned Assistant Government Pleaders for respondents/State. So also considered the documents and evidence placed on record.

5. Perusal of the award passed by the S. L. A. O. it is manifest that, the lands are acquired for construction of highway. The lands acquired are also small pieces of lands as is clear from the award passed by the S. L. A. O. The lands acquired are from 02 R. to 01 Acre. In majority of the matters the acquired lands are admeasuring 10 R to 30 R.

6. It is also manifest from the award passed by the S. L. A. O. that, all the acquired lands are situated from 0 to 5 Kms. from the Municipal Headquarters. Even the Reference Court has observed that, all the lands acquired are situated near the Vaijapur town. The Reference Court has not considered the sale instances on the ground that, they are of small pieces of lands i. e. 20R to 23R and it is in respect of the lands situated in the town. Some of the lands are acquired from town also in the present acquisition proceedings and even the other lands acquired are not beyond 5 Kms. of the headquarters of the

Municipal town. The lands acquired are also small pieces of lands of various claimants. The Reference Court has discarded the sale deeds on the ground that, the lands acquired are large junk of lands, whereas the sale deeds are in respect of small area of lands. If individual lands of claimants are considered the acquired lands of individual claimants can be said to be small pieces of lands in majority of the cases. The lands under sale deeds Exh. 16 and Exh. 17 are almost one and half years prior to the notification U/Section 4 of the L. A. Act. The said sale deeds are in respect of jirayat lands i. e. non irrigated lands. The State has not led any evidence to suggest that, the sale transactions are not genuine sale transactions. As such, there was no impediment to consider the said sale transactions while arriving at the market value of the acquired lands. Some of the acquired lands are seasonally bagayat and some are jirayat lands. The lands under the sale deed can not be said to be developed lands as the same were also meant for agriculture and are sold as agricultural lands. The Apex Court in the case of **Meharwal Khewaji Trust (Regd.) Faridkot and others V/s. State of Punjab and others** referred to supra has held that, the Court is required to take note of the highest exemplar. In para 17 of the said judgment the Apex Court has observed as under :

"17. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has

to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

7. In the said case the Reference Court and High Court had taken the average of various sale transactions. The said reasoning was set aside by the Apex Court and the Apex Court has observed that, if the Court is satisfied that, the sale exemplars are bonafide transaction then highest exemplar is to be considered.

8. Considering the same out of Exh. 16 and Exh. 17, one exemplar is regarding sell of the land at Rs. 14,250/- per R. Considering the fact that, though the acquired lands are near the said lands in the sale deed but they are situated outside the Municipal limits, I would deduct 20% from the said

consideration. As such, the market value would come to Rs. 11,400/- per R. The request was made to add 10% to the market value on account of the fact that, the sale transaction is one and half year prior to the notification U/Sec. 4 of the L. A. Act. However, considering the fact that, the sale deeds are in respect of the property situated in Municipal area, I am not accepting the said request of claimants.

9. As far as the valuation of the Town Planner is concerned the same could not have been relied without proof and more particularly when sale transactions are on record and it is nobody's case that said sale transactions are not bonafide sale transactions.

10. In the light of the above, there would be no impediment to consider the sale transaction while considering the market value and more particularly considering the proximity of the acquired lands with the lands under the sale instances. Even the Reference Court in the judgment has specifically observed about the proximity of the lands under sale deeds with the acquired lands. I accept the categorization made by the Reference Court as jirayat and bagayat lands in respective references.

11. In view of the above, the market value as on date of notification U/Sec. 4 of the L. A. Act of jirayat lands is determined at Rs. 11,400/- per R and those of seasonally irrigated as would be one and half times of the Jirayat land i. e. Rs.

17,100/- per R.

12. In light of the above, I pass the following order -

ORDER

I] The appeals and cross objections filed by the claimants are partly allowed. The appeals filed by the State are dismissed.

II] The claimants in L. A. R. No. 1292 of 2010, L. A. R. No. 1279 of 2010, L. A. R. No. 1278 of 2010, L. A. R. No. 871 of 2010, L. A. R. No. 1463 of 2010, L. A. R. No. 1273 of 2010, L. A. R. No. 461 of 2010, L. A. R. No. 863 of 2010, L. A. R. No 510 of 2010, L.A.R. No. 615 of 2010, L.A.R. No. 618 of 2010 and L.A.R. No. 680 of 2010 would be entitled for compensation amount at the rate of Rs. 17,100/- per R.

III] In L. A. R. No. 681 of 2010 the claimant would be entitled for compensation at the rate of Rs. 14,250/-per R.

IV] In L. A. R. No. 1289 of 2010 and L.A.R. No. 1290 of 2010 the claimants would be entitled for amount at the rate of Rs. 17,100/- per R.

V] In all other references i. e. L.A.R. No. 638 of 2010, L.A.R. No. 508 of 2010, L.A.R. No. 647 of 2010, L.A.R. No. 509 of 2010, L.A.R. No. 526 of 2010, L.A.R. No. 471 of

2010, L.A.R. No. 580 of 2010, L.A.R. No. 616 of 2010, L.A.R. No. 452 of 2010, L.A.R. No. 472 of 2010, L.A.R. No. 461 of 2010, L.A.R. No. 1291 of 2010, L.A.R. No. 624 of 2010 and L.A.R. No. 637 of 2010 claimants would be entitled at the rate of Rs. 11,400/- per R.

VI] The interest under Section 34 and 28 of the L. A. Act, shall be awarded from the date of possession i. e. at the rate of 9% per annum from the date of possession for a period of one year and after lapse of one year, at the rate of 15% per annum.

VII] The claimants will also be entitled for the benefit of solatium as per Rules.

VIII] The first appeals and cross objections are accordingly disposed of.

[S. V. GANGAPURWALA, J.]