

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

FIRST APPEAL NO. 929 OF 2004

1. The Spl. Land Acquisition Officer (III) Uper Tapi Project, (Hatnur) Jalgaon,
2. The Executive Engineer, Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Vijausing Khushalsing Pardeshi,
Age-35 years, Occu. Agri.,
R/o. Raipur Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 1292 OF 2004**

1. The Spl. Land Acquisition Officer, (III) Upper Tapi Project, (Hatnur) Jalgaon,
2. The Executive Engineer, Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Supade Dagdu Sonwane,
Age:50 years, Occu.:Agri.,
R/o. Raipur, Tal. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 1293 OF 2004**

1. The Spl. Land Acquisition Officer, (III) Upper Tapi Project,

(Hatnur) Jalgaon,

2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Kadu Hema Pardeshi,
Age 40 Years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 931 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Kashinath Mansaram Chaudhari,
Age:51 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 933 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Raju Madhav Pardeshi,
Age:35 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 930 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Sahebrao Gulabrao Patil,
Age:50 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 932 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Bhaiyyasaheb Baburao Patil,
Age:45 years, Occ.Agri.,
R/o. Raipur Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

WITH

FIRST APPEAL NO. 934 OF 2004

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Arun Shamrao Pardeshi,
Age:45 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 935 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Ramsing Sukhram Pardeshi,
Age:52 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon,

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 936 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,

2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Digambar Vedu Sonwane,
Age:60 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Aurangabad.

**...RESPONDENT
(Ori. Petitioner)**

**WITH
FIRST APPEAL NO. 1294 OF 2004**

1. The Spl. Land Acquisition Officer,
(III) Upper Tapi Project,
(Hatnur) Jalgaon,
2. The Executive Engineer,
Waghur Project, Jalgaon

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Narayan Ramdas Pardeshi,
Age:45 years, Occu.:Agri.,
R/o. Raipur, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Petitioner)**

...
Mr. S.P. Deshmukh, A.G.P. for State
Mr. A.B. Kale, Advocate for the Respondent.

...
CORAM: P.R.BORA, J.

...
Date of reserving the Judgment: 29.11.2016
Date of pronouncing the Judgment: 23.12.2016
...

JUDGMENT:

1. Since all these appeals are arising out of the common judgment and award passed by the 2-Additional

District Judge at Jalgaon on 12.03.2003 in Land Acquisition Reference No. 24 of 2002 with the connected land acquisition references. I have heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. When the present appeals were taken up for hearing, Shri A.B. Kale, the learned counsel appearing for the respondents in all these appeals who are the original claimants in the respective land acquisition references tendered across the bar the copy of the judgment delivered by the division bench of this Court (Coram: Naresh H. Patil and K.K. Tated, JJ.) on 12.10.2010 in first appeal no. 628 of 2005 with the connected appeals. Shri A.B. Kale, also placed on record the copy of the judgment delivered by the division bench of this court (Coram: Naresh H. Patil and K.K. Tated, JJ.) on 30.07.2010 in first appeal no. 1205 of 2005 with the connected appeals. The learned counsel also placed on record the reported judgment of the division bench of this court in the case of **Special Land Acquisition Officer (III), Jalgaon and another V/s. Bhagwat Vithal Sonwane** reported in **2009(4) Mh.L.J. 308**.

3. The learned counsel submitted that, all the

aforesaid judgments pertain to acquisition of lands for Waghur project. The learned counsel further submitted that, the present appeals are covered by the aforesaid previous judgments of this court and, therefore, can be disposed of on terms of the said decided appeals. The learned counsel further submitted that, the lands which are the subject matter of the present appeals were acquired for the same Waghur project. Notification under Section 4 of the Land Acquisition Act pertaining to the lands involved in the present appeals was also issued during the same period. The learned counsel further submitted that, the reference court in the impugned judgment has relied upon the same sale instances. The learned counsel, therefore, prayed for confirming the impugned award by dismissing the present appeals preferred by the state.

4. Shri S.P. Deshmukh, the learned A.G.P. appearing on behalf of the appellant state submitted that, the facts as are narrated by the learned counsel for the respondents are matters of record and are not disputed by the state. The learned A.G.P., further submitted that the tribunal while delivering the impugned judgment has however erred in awarding the compensation for pot kharab lands @ Rs. 2,00,000/- per hectare in L.A.R. No. 29 of 2002, L.A.R. No. 378 of 2001 and L.A.R. No. 647 of 2001. The learned A.G.P.,

therefore, prayed for setting aside the order passed in the aforesaid L.A.R. to the aforesaid extent and to modify the award by awarding the market value to the pot kharab lands at half of the rate which may be determined by this court for non-irrigated lands (jirayat lands).

5. I have considered the submissions made on behalf of the learned A.G.P. appearing for the appellant state and Shri A.B. Kale, the learned counsel appearing for the respondents. I have also perused the impugned judgment and award and the judgments referred to and relied upon by the learned counsel appearing for the parties. Admittedly, the lands which are the subject matter of the present appeals were acquired for Waghur project. Notification under section 4 of the Land Acquisition Act in that regard was published on 21.08.1997 and the award under section 11 of the Act came to be passed on 18.08.2000. The S.L.A.O. had fixed the market value of the acquired lands @ Rs. 48,875/- per R to Rs. 85,100/- per R for the non-irrigated lands and accordingly has assessed the amount compensation to be offered to the respective claimants. Dis-satisfied with the amount of compensation so offered the claimants had filed the reference applications under Section 18 of the Act. Before the tribunal the claimants had claimed the compensation @ Rs. 2,50,000/- to Rs. 3,00,000/- per hectare

for jirayat lands and double of the same for irrigated lands. The reference court after having considered the sale instances brought on record before it has determined the market value @ Rs. 4,00,000/- per hectare for irrigated lands, @ Rs. 2,00,000/- per hectare for jirayat lands and half of the same for the pot kharab lands and accordingly has enhanced the amount of compensation. Aggrieved by, the state has filed the present appeals.

6. The lands which were the subject matter in the case of **Special Land Acquisition Officer (III), Jalgaon and another V/s. Bhagwat Vithal Sonwane** (cited supra) were acquired for Waghur project vide notification dated 21.08.1997 issued under section 4 of the Land Acquisition Act and the award under section 11 of the Act pertaining to the said land was declared on 18.08.2000. As noted herein-above, the lands which are the subject matter of the present appeals were also acquired for Waghur project vide notification under section 4 of the Act published on 21.08.1997 and award under section 11 of the act was passed on 18.08.2000. It is not in disputed that the division bench of this court in the case of **Special Land Acquisition Officer (III), Jalgaon and another V/s. Bhagwat Vithal Sonwane** has confirmed the award passed by the reference court, wherein, the compensation was awarded in

respect of bagayat land @ Rs. 4,00,000/- per hectare, in respect of jirayat land @ Rs. 2,00,000/- per hectare and in respect of pot kharab land @ Rs. 1,00,000/- per hectare. It has come on record in the evidence adduced in the present matters that the lands for Waghur project were acquired from different villages namely Shingayat, Khatgaon, Raipur etc. It has also come on record that village Shingayat and village Raipur are adjacent to each other and their boundaries touch each other.

7. The Apex Court in the matter of **Union of India Vs. Bal Ram and another** reported in **AIR 2004 SC 3981**, has held that if the lands are acquired for same project then the court should see that the claimants get some rate of compensation unless some contrary evidence is brought on record. Following observations made by the Hon'ble Apex Court in the aforesaid judgment are material in the present case which are thus:

"The High Court taking into consideration that certain other lands coming under different villages which had been acquired for the same purpose, namely Plan Development Area around Palam Airport in the vicinity of Delhi, found that compensation under market value of Rs. 47.224 per bigha would be reasonable and appropriate. In doing so, the High Court followed a decision of this Court in *Satpal Vs. Union of India*, 1997(11) SCC

423. the ground urged before us is that in view of the decision in Kunwar Singh v. Union of India 1998 (8) SCC 136 contiguity of villages could not by itself be sufficient to draw an inference of similarity in character of the lands in awarding the compensation and, therefore, the reasoning of the High Court is not correct. The High Court indeed did not rely upon the contiguity of the lands alone but it found that the nature/quality of the lands is by and large similar to those lands considered in Satpal's case. If that is the finding of the High Court, we do not think there would be any justification to make any distinction between lands which had been lying in Palam and Shahabad Mohamadpur. Therefore, the view taken by the High Court cannot be faulted with. The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is same and lands are identical and similar, though lying in different villages, we find the judgment of the High Court to be fair and reasonable and no interference is called for."

8. Considering the facts involved in the present appeals in light of the law laid down by the Hon'ble Apex Court in the aforesaid judgment, it does not appear to me that, the learned reference court has committed any error in determining the market value of the acquired lands @ Rs. 4,00,000/- per

hectare for irrigated lands, Rs. 2,00,000/- per hectare for non-irrigated lands and Rs. 1,00,000/- per hectare for pot kharab lands. In view of the law laid down by the Hon'ble Apex court in the aforesaid judgment since the lands involved in the present appeals are acquired for the same purpose i.e. Waghur project and were acquired vide the same notification, though, the lands involved in the present appeals are from different village, in absence of any contrary evidence as regards to the nature and quality of the said lands, deserve to be valued at the same rate as was granted to the lands involved in the decided appeals. No interference is therefore warranted in the market value of the acquired lands as determined by the reference court.

9. However, there is substance in the submission made by the learned A.G.P. that in some of the matters the reference court has erred in awarding compensation for pot kharab lands at the rate of jirayat lands and to that extent the awards in the said reference applications need to be modified and the appeals filed against the awards passed in the said land acquisition references need to be modified to the said extent. In the result the following order is passed.

ORDER

i) First Appeal nos. 929 of 2004, 1292 of 2004,

930 of 2004, 932 of 2004, 934 of 2004, 935 of 2004, 936 of 2004 and 1294 of 2004 stands dismissed, however, without any order as to the costs.

- ii) First Appeal nos. 1293 of 2004, 931 of 2004 and 933 of 2004 are partly allowed. The judgments impugned in the aforesaid appeals so far as they relate to grant of compensation for the pot kharab land @ Rs. 2,00,000/- per hectare stands quashed and set aside and it is ordered that the compensation for pot kharab lands involved in the said matters be awarded @Rs.1,00,000/- per hectare and the impugned awards be modified to the aforesaid extent.

(P.R.BORA)
JUDGE