

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

FIRST APPEAL NO.268 OF 2004

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

**...APPELLANTS
(Ori. Opponents)**

VERSUS

Shri. Pralhad Totaram Deshmukh,
Age:61 years, Occu.: Agri.,
R/o. Hivarkhede, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Claimant)**

...

WITH

FIRST APPAL 269 OF 2004

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

**...APPELLANTS
(Ori.Opponents)**

VERSUS

Shivaji Shenfadu Patil,
Age:35 years, Occu.:Agri.,
R/o. Kekatnimbhora, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori.Claimant)**

...

WITH

FIRST APPEAL NO.270 OF 2004

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

**...APPELLANTS
(Ori.Opponents)**

VERSUS

Gopal Sitaram Mahajan,
Age:31 years, Occu.: Agri.,
R/o. Hivarkheda, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Claimant)**

**...
WITH**

FIRST APPEAL NO.279 OF 2004

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

**...APPELLANTS
(Ori.Opponents)**

VERSUS

Fakira Lotu Patil,
Age:45 years, Occu.:Agri.,
R/o. Kekatnimbhora, Tq. Jamner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Claimant)**

**...
WITH**

FIRST APPEAL NO.280 OF 2004

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

**...APPELLANTS
(Ori.Opponents)**

VERSUS

Shri. Rajaram Chindhu Shinde,
Age: Adult, Occu. Agri.,
R/o. Kekatnimbhora, Tq. Jalner,
Dist. Jalgaon.

**...RESPONDENT
(Ori. Claimant)**

...

**WITH
FIRST APPEAL NO.281 OF 2004**

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

**...APPELLANTS
(Ori.Opponents)**

VERSUS

1. Nadarbai w/o. Shenfadu Patil,
Age:60 years,
2. Ashok Shenfadu Patil,
Age:45 years,
3. Suresh Shenfadu Patil,
Age:40 years,
4. Shivaji Shenfadu Patil,
Age:35 years,
All R/o. Kekatnimbhora.

**...Respondents
(Ori.Claimants)**

Mr.A.M.Phule, Advocate for the appellant State.
Mr. Mr.P.A.Bhosale, Advocate h/f Mr. A.B.Kale,
Adv., for respondents.

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CORAM: P.R.BORA, J.

DATE : September 21st, 2016

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ORAL JUDGMENT:

1. Since all these appeals are arising out of the common judgment and award passed by the Additional District Judge, Jalgaon, on 5th May, 2001, in Land Acquisition Reference No.3/2001, with the connected Land Acquisition References, I deem it appropriate to decide these appeals by common reasoning.

2. When the present appeals were taken up for hearing, Shri A.M.Phule, learned A.G.P. appearing for the State, was fair enough in submitting that in view of the judgment delivered by the Division Bench of this Court in the case of Special Land Acquisition Officer (III), Jalgaon and another Vs. Bhagwat Vithal Sonwane (2009 (4) Mh.L.J. 308), the State is not disputing the rate at which the market value of the acquired lands is determined by

the Reference Court. Learned Counsel submitted that in the present matters, the Reference Court has determined the market value of the acquired land i.e. at the rate of Rs.3,50,000/- per hectare for irrigated land; Rs.1,75,000/- per hectare for Jirayat land, and half of the same for Potkharab land. Learned Counsel submitted that now the appellants are objecting to only that part of the impugned awards whereby Reference Court has awarded the compensation to the Potkharab land at the rate of Rs.1,75,000/- per hectare. Learned A.G.P. submitted that to that extent, the awards need to be modified.

2. Learned Counsel Shri P.A.Bhosale, holding for Shri A.B.Kale, learned Counsel for respective respondents, sought to canvass that no mistake has been committed by the Reference Court in awarding that much of compensation for the Potkharab land, and no interference is required in the impugned awards.

3. On perusal of the impugned judgment, it is revealed that the Reference Court has reached to a conclusion and has accordingly recorded a finding that, for the Potkharab land, the compensation payable would be

half of the price which would be determined for the Jirayat land. It further appears to me that the Reference Court has rightly recorded such conclusion since the said issue stands settled vide the judgment passed by this Court in the case of State of Maharashtra Vs. Pralhad Bajrang Magar (1996 (2) B.C.J. 247), wherein it is held that the Potkharab land cannot be equated with the jirayat land, it may be valued at fifty percent of the market value given to jirayat land. The ratio laid down in the aforesaid judgment has been consistently followed in all subsequent judgments by this Court.

4. It is, thus, evident that the compensation was payable to the Potkharab land at half of the rate which was awarded for the Jirayat lands. The Reference Court has also recorded such finding, however, while passing the order, in the operative part, it appears that some mistake has occurred and it has been ordered that the compensation is awarded for Potkharab land at the rate of Rs.1,75,000/- per Hectare. Having regard to the discussion made in the body of the impugned judgment and having regard to the law laid down in the judgment referred to hereinabove, the said part of the order cannot

be sustained. It is unconscionable that compensation can be awarded at the same rate to the Potkharab land alike the Jirayat land. To that extent, I am convinced that, the order cannot be sustained, and deserves to be modified. The present appeals need to be allowed to that extent. Hence, the following order:

ORDER

1. The First Appeals are partly allowed.
2. The impugned order, so far as it relates to the award of compensation to the Potkharab land at the rate of Rs.1,75,000/- (Rs. one lac, seventy five thousand) is quashed and set aside, and it is ordered that the compensation at the rate of Rs.87,500/- per hectare i.e. half of the rate that has been awarded to the Jirayat land i.e. Rs.1,75,000/- per hectare, be awarded to the respective claimants. The awards be accordingly modified.
3. If the amount would have been already paid to the respective claimants, it will be open for the State to recover the same by initiating necessary proceedings therefor.
4. The First Appeals are partly allowed as above. No order as to costs. Civil Applications, if any stand disposed of.

(P.R.BORA)
JUDGE

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