

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 652 OF 2007

1. The Spl. Land Acquisition
Officer, Upper Tapi Project,
(Hatnur) No. 2, Jalgaon.
2. The Executive Magistrate,
Medium Project, Division Jalgaon.**Appellants.**

Versus

1. Laxmansing Ratansing Pardeshi,
Age 56 years,
 2. Badrising Ratansing Pardeshi,
Age 50 years,
- Both Agriculturist and R/o. Erandol,
Tal. Erandol, Dist. Jalgaon.**Respondents.**

WITH
FIRST APPEAL NO. 654 OF 2007

1. The Spl. Land Acquisition
Officer, Upper Tapi Project,
(Hatnur) No. 2, Jalgaon.
2. The Executive Magistrate,
Medium Project, Division Jalgaon.**Appellants.**

Versus

1. Namdeo Bhatu Chaudhari,
Age 43 years, Occu. Agriculturist,
R/o. Erandol, Tal. Erandol, Dist. Jalgaon. ...**Respondents.**

WITH
FIRST APPEAL NO. 744 OF 2007

1. The Spl. Land Acquisition
Officer, Upper Tapi Project,
(Hatnur) No. 2, Jalgaon.

2. The Executive Magistrate,
Medium Project, Division Jalgaon.**Appellants.**

Versus

Madhusing Kanchansing Pardeshi,
Age 66 years, Occu. Agriculturist,
R/o. Erandol, Tal. Erandol, Dist. Jalgaon. ...**Respondents.**

WITH
FIRST APPEAL NO. 753 OF 2007

1. The Spl. Land Acquisition
Officer, Upper Tapi Project,
(Hatnur) No. 2, Jalgaon.
2. The Executive Magistrate,
Medium Project, Division Jalgaon.**Appellants.**

Versus

1. Madhnsing Kanchansing Pardeshi,
2. Rajendra Jaising Pardeshi,
Both Agriculturist and R/o. Erandol,
Tal. Erandol, Dist. Jalgaon. ...**Respondents.**

WITH
FIRST APPEAL NO. 896 OF 2007

1. The Spl. Land Acquisition
Officer, Upper Tapi Project,
(Hatnur) No. 2, Jalgaon.
2. The Executive Magistrate,
Medium Project, Division Jalgaon.**Appellants.**

Versus

Bhatu Chindhu Chaudhari,
Age 63 years, Occu. Agriculturist,
R/o. Erandol, Tal. Erandol, Dist. Jalgaon. ...**Respondents.**

Mr. A.R. Borulkar, AGP for appellants.

CORAM : T.V. NALAWADE, J.

DATED : 11th January, 2016.

JUDGMENT :

1) All the appeals are filed against the judgment and award of Reference Court, Civil Judge, Senior Division, Jalgaon. The matters were decided by common judgment and as the compensation is enhanced by the Reference Court, the judgment and award is challenged by the State Government. The learned AGP is heard.

2) The lands of respondents are acquired for Anjani Medium Project. Notification under section 4 of the Land Acquisition Act was published in Government Gazette on 9.1.1997. The Land Acquisition Officer held that some portions were Jirayat lands and some portions were seasonal irrigated portions and accordingly, price per hector was fixed. There were trees of custard apple, Bor, gauva and Sag in the lands of respondents Badrisingh Pardeshi and Laxmansingh Pardeshi and on the basis of valuation done by one Government Officer, the Land Acquisition Officer gave compensation in respect of these trees. He gave the rate between 52,900/- and 78,775/- for four groups of lands which were prepared for Jirayat lands by him on the basis of land revenue. The valuation of the trees was done

by the Director of Horticulture Department. As the Director of Horticulture Department has not shown mango trees in Gat No. 32, belonging to Pardeshi, he did not give the compensation in respect of these trees. He did not give the value of some trees which were not found on the spot at the time of valuation to Pardeshi.

3) The Land Acquisition Officer had considered the possibility of seasonal irrigation in respect of some portion of land of Gat No. 32 due to existence of well and he gave the rate of Rs. 92,250/- per hector. He, however, did not give the value of well. Similarly, he did not give the value of well which was situated in land Gat No. 33/A and the value of pipeline was also not given by holding that after considering the depreciation, it was not possible to give such value.

4) The Special Land Acquisition Officer presumed that the land Gat No. 52 was Jirayat land, though there was pipeline laid in the land for taking water from other place.

5) In land Gat No. 53, there was a well, but he did not give separate value for the well. He presumed that some portion of the land was seasonally irrigated and gave rate accordingly in

respect of that portion.

6) The original claimants contended that the value of their lands was much more. The owners of the lands, in which there were wells and there were pipelines, contended that their lands were irrigated. They also contended that the proper procedure was not followed for ascertaining the market price by the Land Acquisition Officer. The Special Land Acquisition Officer had prepared nine groups of the lands acquired for the aforesaid project. He had called the price of land from Town Planning authority and he considered some transactions of year 1994 to 1997. When the highest sale instance for Jirayat land was of Rs.79,000/-, according to him (though the land is mentioned as Bagayat in the table) he calculated the average price of the three lands for that group. Then he considered the value given in the ready reckoner and as in ready reckoner, the value is given as Rs. 52,900/- he held that the market price for that group was Rs. 52,900/-. Thus, the Special Land Acquisition Officer has not followed proper procedure.

7) The Reference Court has considered the situation of the lands, their distance from Tahsil place and the facilities available in the village from where the lands are acquired. The

Reference Court has used the method of ascertaining market value on the basis of sale instance. He considered the sale instance which was 1.5 years old, pre-notification instance under section 4. It was sale instance from village Hanumankheda of 50 R. portion for consideration of Rs. 1,60,250/- and it was dated 25.9.1995. The notification under section 4 was issued on 8.3.1997. As the sale instance was old by 1.5 years, the Reference Court, first calculated 10% escalation and formed opinion that market price could have been Rs. 2,44,375/-. Then the Reference Court considered the distance between the land acquired and the land from sale instance and then reduced the price to make it Rs. 2,00,000/- per hector for Jirayat land. Then the Reference Court held that the value of Bagayat land and Potkharab land can be double of Jirayat land and accordingly, the rate is fixed by the Reference Court.

8) For ascertaining the price of the trees, the Reference Court has accepted the evidence given by the Government approved valuer, who was appointed by aforesaid Pardeshi. The Government did not examine any witness on this point. The Reference Court has considered the circumstance like record was created by the valuer of his visit to the place and he had obtained signature of authority like Talathi on the record. The

valuer had considered the price of the fruits fixed by Agricultural Produce Market Committee for the year 1996-97. The valuer of the owner had divided the trees in four different categories like excellent, very good, good and average. Accordingly, he fixed the market price after considering the other circumstances like the age of the trees etc. The comparison of the report of the valuer appointed by the owner and the number of trees mentioned in the award by Special Land Acquisition Officer show that there is no difference in number of trees so far as guava, custard apple, Bor and Sag trees are concerned. However, the valuer had found two mango trees in Gat No. 32 and he had fixed the value of the two trees. It is already observed that only because the Director of Horticulture had not given value of two mango trees, the Special Land Acquisition Officer has not given value of two mango trees. As there is nothing in rebuttal, the Reference Court accepted the evidence given by the valuer of the owner. However, the Reference Court has reduced the value by 10% and 90% value is given by the Reference Court in respect of the trees. Separate value of the well, pipeline etc. in aforesaid few instances is not given by the Reference Court also.

9) In view of the aforesaid discussion, it can be said that more amount could have been given as compensation by

the Reference Court. This Court sees no reason to interfere in the decision given by the Reference Court.

10) In the result, all the appeals are dismissed.

[T.V. NALAWADE, J.]

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