

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.413 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No. 17, Pune ...Appellant

Versus

Sudam Gangaram Dangat ...Respondent

**WITH  
FIRST APPEAL NO. 414 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No. 17, Pune ...Appellant

Versus

Pandharinath Yashwant Dangat & Ors. ...Respondents

**WITH  
FIRST APPEAL NO. 416 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No.17, Pune. ...Appellant

Versus

Shri.Babasaheb Y. Dangat ...Respondent

**WITH  
FIRST APPEAL NO. 417 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No. 17, Pune ...Appellant

Versus

Pandharinath Yashwant Dangat ...Respondent

**WITH  
FIRST APPEAL NO. 418 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No. 17, Pune ...Appellant

Versus

Sudam Gangaram Dangat & Ors. ...Respondents

**WITH  
FIRST APPEAL NO. 420 OF 1993**

The State of Maharashtra  
Through the Special Land Acquisition  
Officer No. 17, Pune ...Appellant

Versus

Pandharinath Balasaheb Dangat & Ors. ...Respondents

.....

Mr. A.R.Patil, AGP for the Appellant/State in all the First Appeals.  
Mr. Kaustubh Thipsay for the Respondents.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.**  
**DATE : 21<sup>ST</sup> DECEMBER, 2017.**

**ORAL JUDGMENT:**

1. These First Appeals are taken together, as in all these appeals, the judgment and order dated 30<sup>th</sup> June, 1992 passed by the learned Extra Joint District Judge, Pune in Land Reference Nos.110 of 1987, 107 of 1987, 109 of 1987, 111 of 1987, 112 of 1987 and 114 of 1987 respectively are under challenge. However, all the lands in these Appeals are situated at village Vadgaon Budruk, Taluka Haveli, District Pune and they were acquired for the purpose of Bombay Pune National Highway No. 4. The notification dated 27<sup>th</sup> December, 1982 issued under Section 4 of the Land Acquisition Act (hereinafter referred to as "the said Act") by the Special Land Acquisition Officer No. 17, Pune was published on 17<sup>th</sup> February, 1983. The notification under Section 6 of the said Act was issued on 7<sup>th</sup> January, 1986 and the Award under Section 11 of the said Act was passed on 18<sup>th</sup> June, 1986 by the Special Land Acquisition Officer No. 17, Pune. The Special Land Acquisition Officer had classified the lands as Jirayat and Bagayat and fixed the amount of compensation of Rs. 460/- per acre and Rs. 540/- per acre respectively. Being aggrieved by the said Award, the original claimants approached the District Collector

and thereafter, land references were filed before the District Court, Pune for enhancement of the amount of compensation. These land references were made under Section 18 of the said Act. The original claimants have asked for fixing the rate of compensation upto Rs. 5000/- per Acre mainly on the ground that the lands are fertile and having all potentiality of development. The amount of compensation awarded by the Reference Court is too meager compared to market value and is to be increased. The Appellant/State had filed Written Statement in land references and denied the claim of the original claimants. It was contended that the amount of compensation was adequate and proper and the claim of the claimants is very excessive. The ground of limitation was also raised. The Reference Court framed the point of determination. The original claimants have tendered evidence of four witnesses. The Appellant/State did not lead evidence before the Reference Court. After considering the oral as well as documentary evidence, the learned Judge of the Reference Court partly allowed the claim of the claimants and enhanced the amount of compensation to Rs.1,000/- per acre for Bagayat land and Rs. 800/- per acre for Jirayat land.

2. Being aggrieved by the said Judgment and Award, the Appellant/State has filed these Appeals. In the said Appeals, the original claimants have filed Cross Objections and demanded enhancement of the amount of compensation. On the point of determination, only two factors are to be considered –

1. Whether the Appellant / State proves that the rates fixed by the Reference Court are excessive and are to be reduced?

2. Whether the original claimants are entitled to increase the rates of compensation, which are fixed by the Reference Court?

3. Learned AGP for the Appellate/State while arguing these Appeals, has submitted that the Reference Court has erred in fixing the amount at a higher rate than the amount of compensation fixed by the Special Land Acquisition Officer. He has further submitted that the claimants have not tendered sufficient evidence to support the findings of the Reference Court of increasing the amount of compensation. The Reference Court should have properly considered that the lands under acquisition do not have a very good

non-agricultural potential and the claimants did not produce any documentary evidence to support their pleadings for enhancement. He has further submitted that the certified copies of three sale instances, which are now produced before the Court, are not sale instances which can be accepted as they are, for fixing the amount of compensation in these Appeals. He has further submitted that from the sale instances, it is not clear whether the lands under the sale deeds are of Jirayat or Bagayat lands. He has argued that mere pleadings of potentiality of non-agricultural lands are not sufficient. The claimants have failed to tender necessary evidence specifying what type of potentiality the lands have, so that enhancing the amount of compensation can be justified.

4. Per contra, learned counsel for the respondents has fully relied on the certified copies of three sale instances. He has submitted that by virtue of Section 51 (A) of the said Act, the certified copies of the sale instances are to be submitted. All the lands of the sale instances took place in the year 1982. One was prior to the notification issued under Section 4 of the said Act. He has argued that all sale instances are of 8<sup>th</sup> October, 1982. In second sale instance, the land of 22 R was purchased for Rs. 3,500/- per acre

and in third sale instance, the amount of 17R land was fixed for Rs.4,500/- per acre. He has further submitted that all these lands are also from same village i.e. Vadgaon Budruk and, therefore, the market value is to be given to the claimants. He has also relied on the evidence tendered by the claimants before the Reference Court and pointed out that the witnesses have deposed about the potentiality of non-agricultural land. He has further relied on the judgments of Hon'ble Supreme Court in the case of ***Digambar and others versus State of Maharashtra and Others***<sup>1</sup> and in the case of ***Atma Singh (Dead) Through LRS. And others Versus State of Haryana and Anr.***<sup>2</sup> He has further submitted that the amount of compensation is to be increased/enhanced from Rs.1,000/- per acre to Rs.4,000/- per acre.

5. At the outset, it is necessary to mention that the learned Judge of the Reference Court has increased the rate of compensation in respect of Bagayat land and Jirayat land, mainly on the basis of potentiality and profitability of the agricultural output. No certified copy of sale instance of the adjacent land was produced in evidence. However, the mutation entries in the revenue record were produced.

---

<sup>1</sup> (2013) 14 SCC 406

<sup>2</sup> (2008) 2 SCC 568

In view of the ratio laid down in the case of **State of Punjab vs. Pohnu & anr.**<sup>3</sup>, mutation entries are not admissible to prove terms and conditions of sale and mutation is neither primary nor secondary evidence of the terms or conditions of sale or a contract. The claimants in their reference claims have demanded compensation of the land to be fixed @ Rs.4,000/- to Rs.5,000/- per guntha. Accordingly, they led oral evidence to support their claim. At the time of hearing of the submissions of the learned Counsel for both the parties, it was found necessary to get the certified copies of the sale instances on record and therefore, the applications filed by the original claimants in their respective Cross Objections seeking permission to lead additional evidence under Order 1 Rule 27 of the Civil Procedure Code were allowed. The applications were allowed mainly by invoking the power under Order 41 Rule 27B of the Code.

6. Accordingly, the three sale instances of adjacent lands dated 8.10.1982 disclosing the market value of Rs.3,500/- per are and Rs.4,500/- per are were produced. Though the certified copies of the sale instances were not produced before the Reference Court and therefore, the Reference Court could not rely on those sale

---

<sup>3</sup> AIR 1986 Punjab & Haryana 143 (FB) 143

instances, this being a First Appeal, considered as a continuation of the suit. The certified copies are considered as admissible evidence before this Court under section 51A of the Land Acquisition Act, allows the admission of certified copies as evidence of transaction recorded in such document. The learned Counsel for the respondent/original claimants has rightly pointed out that the section 51A was inserted in the Act w.e.f. 24.9.1984 and in the present case, award was passed in 1986 and so, the section is applicable in the present proceedings and therefore, the original certified copies of the sale instance of 1982 are relied upon.

7. Perused the evidence of the original claimants. All the claimants tendered and relied on the common evidence. The evidence of 4 witnesses, namely, Sudam Gangaram Dhangat; Pandharinath Yashwant Dhangat; Shantaram Sadashiv Wanjale and Vitthal Sopana Dhangat were seen. They all have stated that the lands were acquired in 1983. All acquired lands are Bagayat lands with well. The distance of the land is 4 kms away from Pune Municipal Corporation. The witnesses have deposed that the lands are accessible by two roads. The residential houses are built near the acquired land. The electricity and water pipelines are provided in

the land. They have also stated that they used to get Rs.800/- profit out of the sale of tamarind and Rs.600/- to Rs.700/- profit from each mango tree. They also stated that the mango trees were more than 10 years old. The Reference Court has accepted that some lands were Bagayat and some were Jirayat and, therefore, increased the amount of compensation from Rs.600/- to Rs.800/- for Jirayat and Rs.1,000/- for Bagayat.

8. The trial Court has assessed the evidence of each witnesses at length. However, at that time, the trial Court was not having the benefit of referring to the sale deeds for comparison. The sale instances which are produced here disclose that the said lands are from village Vadgaon Budruk and in the year 1982 had fetched the consideration @ Rs.3,500/- to Rs.4,500/- per are. The area of the lands in the sale instance is 17 ares to 22 ares. However, the lands which are the subject matters in these appeals are of different areas. In two appeals like Appeal Nos.413 and 414 of 1993, the lands are more than 1 hectare and the lands in other 4 appeals are less than 1 hectare. In appeal No.416 of 1993, the area of the acquired land is smallest i.e., 5 ares. Thus, for fixing the compensation, the area of the land is a relevant factor and it is a settled position of law that

bigger the area acquired, lesser the rate of compensation, as there are always more substantial deductions for the purpose of development of a bigger land. Hence, I am inclined to award Rs.1,200/- per are for the lands, where the area is more than 1 hectare.

4. The main contention of the learned Counsel for the claimants was that the lands acquired have greater N.A. potential for the development and that is not taken into account by the Reference Court. If the rate of compensation in the comparable sale instances is considered, undoubtedly, the rate of compensation fixed by the Reference Court appears to be on a lower side. However, the rate fixed in the comparable sale instances cannot be adopted as it is, in view of the objections raised by the learned Assistant Government Pleader that these comparable sale instances were not available for cross-examination before the Reference Court. The trial Court has erroneously in last portion of para 21, has held that the claimants do not say that the their lands have potentiality for non-agricltural use and they have restricted their claim only in respect of their potentiality for agricultural output. This observation of the learned Judge is not correct in view of the evidence tendered by the witnesses. The

Reference Court has also overlooked the pleadings in the application and the evidence of Sudam Dhangat on the point of non-agricultural potentials of the acquired land. The Reference Court ought to have also taken into account that these lands were acquired for the purpose of Pune-Mumbai National Highway 4. The said witness i.e., PW1 has stated that the lands were only 4 kms. away from the Pune Municipal Corporation. The residential houses were near the lands and they were connected with roads. This shows that though the lands were very fertile lands, also carry the potentiality of developments. In the main application, it was pleaded that because of proximity of Pune Municipal Corporation, the Central Government offices and the defence department offices were near the acquired land. The Reference Court ought to have taken this evidence and the pleadings into account.

5. In the case of **Digamber and others vs. State of Maharashtra (supra)**, the Supreme Court while explaining the term potentiality, has referred to the case of **Sabhia Mohd. Yusuf Abdul Hamid Mulla vs. Land Acquisition Officer**<sup>4</sup> and has held thus:

---

<sup>4</sup> (2000) 7 SCC 595

16.4. Further, it would be worthwhile to refer to the portion which is extracted from *Atma Singh Vs. State of Haryana* which para is referred to at para 18 in *Sabhia Mohammed Yusuf Abdul Hamid Mulla's case (supra)* which reads thus: (*Atma Singh case, SCC p.572 para 5*):

“5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether nearabout town is developing or has prospect of development have to be taken into consideration.”

6. The learned Counsel has also relied on **Atma Singh through his legal representatives and others vs. State of Haryana**<sup>5</sup> on the point of market value of the land.

7. In the case of **Atma Singh through his legal representatives and others vs. State of Haryana (supra)**, the Supreme Court has referred to the case of **Bhagwathula Samanna vs. Special**

---

<sup>5</sup> (2008) 2 SCC 568

**Tehsildar and Land Acquisition Officer**<sup>6</sup>, where it is held that if the market value of a large property is fixed on the basis of sale transaction of a smaller property, then, generally, the deduction is given in view of developmental charges and expenses.

8. In the circumstances, I am of the view that some rise in fixing the rate of market value is required for the lands. Accordingly, in Appeal Nos.413 of 1993 and 414 of 1993, the lands are given an increase from Rs.1,000/- to Rs.1,200/- per are alongwith interest accrued thereon since the date of filing of the application. The remaining order of the Reference Court in respect of interest and solatium is not disturbed. In appeal 417 of 1993, 418 of 1993 and 420 of 1993, the rate is raised from Rs.1,000/- to Rs.1,500/- per are and in Appeal No.416 of 1993, there being a smallest area, the rate is fixed at Rs.1800/- per are alongwith interest accrued thereon since the date of filing of the application as mentioned in the order of the Reference Court. The order with regard to all other benefits as mentioned in the order of the Reference Court is maintained.

9. Appeals are disposed of in the above terms.

**(MRIDULA BHATKAR, J.)**

---

<sup>6</sup> (1991) 4 SCC 506