IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 17 OF 2005

1. Pandurang Khandrao Pawar,
   Age : 69 years, Occu. Agriculture,
   R/o. Kuslamb, Taluka - Patoda,
   District Beed.

2. Sou. Sakharabai
   w/o Pandurang Pawar,
   Age : 65 years, Occu. Agri.,
   R/o. As above. Appellants...

Versus

State of Maharashtra. Respondent...

....

Shri. S. V. Natu, Advocate h/f Shri. Dhananjay Deshpande, Advocate for the appellants
Shri. S. N. Morampalle, AGP for respondent/State.

....

CORAM : A. M. DHAVALE, J.

DATE OF RESERVING THE JUDGMENT : 08TH AUGUST, 2018.
DATE OF PRONOUNCING THE JUDGMENT : 16TH AUGUST, 2018

JUDGMENT :-

1. This is an appeal by the original claimants for enhancement of the compensation.

2. By notification u/s 4(1) dt. 16.10.1990, land of 3 hectares and 48R from Survey No. 283 and 5R from Survey No. 288A from village Kuslumb, Tq. Patoda, Dist. Beed, belonging to the

appellants was acquired for construction of percolation tank. Notice u/s 6 was issued on 20.07.1992. In the inquiry, special LAO considered the land revenue assessment of each land and also some sale instances and awarded compensation at the rate of Rs. 120/- per R. for Jirayat land and Rs. 2/- per R for potkharaba (fallow) with other statutory benefits. The aggrieved appellants filed land Reference No. 275/1995. The ld. 7th Ad-hoc Addl. Sessions Judge, Beed, by judgment dt. 15.09.2004, awarded compensation at the rate of Rs. 400/- per R for jirayat land and Rs. 200/- per R. for fallow land. Still aggrieved and dissatisfied, the appellant has preferred this appeal claiming compensation at the rate of Rs. 1250/- per R.

3. Shri. S. V. Natu, learned counsel for the appellants argued that, there should have been separate compensation for the trees, the well and bandh found in the acquired land. The land was irrigated having fruit bearing trees. He submitted that the claimants had produced four sale instances where the value of the land was Rs. 690/-, Rs. 1050/-, Rs. 1530/- and Rs. 3000/- per R. Even if the sale instance of Rs. 3000/- per R is ignored, still the market value of the land was around Rs. 1500/- per R. Reference Court did not allow compensation for well, bandh and fruit bearing trees. Hence the appeal be allowed and the compensation may be enhanced.

4. Per contra, learned Assistant Government Pleader supported the judgment of the trial Court. He argued that, there cannot be compensation both for irrigated land as well as for trees and well situated therein. The ld. Trial Judge has properly appreciated the facts and awarded the compensation. No interference is called for.

5. Both the learned advocates have relied on number of judgments.

6. The points for my consideration with my findings thereon are as follows.

Sr. No.	**Point**	**Finding**
1	Whether the ld. Trial Judge has awarded just and reasonable compensation for the lands acquired of the complainants?	....In the negative. Compensation enhanced to Rs. 2,69,741/-.
2	What order?	The appeal is partly allowed.

REASON

7. The record shows that, following lands were acquired by notification u/s 4, dt. 26.07.1990.

Sr. No.	**Survey No.**	**Jirayat**	**Potkharaba**
1	283	328	20
2	288	5	---
Total		333 + 20 = 353	

8. Though notification is shown to be dt. 26.07.1990, the award shows that the last publication was on 16.10.1990 and it should be treated as the date of notification. The award was passed on 28.02.1995 whereby the land of 333R was treated as dry land and price at the rate of Rs. 120/- per R was granted by Special LAO. As far as potkharaba land is concerned, he awarded Rs. 2/- per R. Thus, he awarded total Rs. 39,960/- for 333R and Rs. 40/- for 20R, total Rs. 40,000/-. He has paid following amounts.

333R x 120	=	Rs. 39,960/-
20R x 2	=	Rs. 40/-
		Rs. 40,000/-
		Rs. 58,634/-
Well/Bandh	-	Rs. 89,958/-
Total	=	Rs. 1,48,592/-
Solatium	=	Rs. 44,577/-
III[rd] component (44 months' 44%)	=	Rs. 56,465/-
		Rs. 2,49,634/-

9. Earlier 80% amount was paid as advance i.e. Rs. 48,800/-. The award shows that, there were 2 Java plum tree, 15 pomegranate trees, 3 mango trees valued at Rs. 42,582.86. Those were cut off before the notification u/s 4. The possession of the land was taken on 07.02.1989 by notification and the award was passed on 28.02.1995.

10. It is relevant here to note that, the Special LAO has besides

the gradation also considered 16 sale instances from village Kuslumb, Tq. Patoda, Dist. Beed. Since the date of notification is 26.07.1990, he held that, first 11 sale deeds from March-1986 to February-1988 were distant and not much relevant as they were for smaller prices. Those were for prices ranging between 29.41 per R to 71.82 R. He took into consideration last six sale instances from serial number 11 to 16. Those are as follows.

Sr. No.	Survey No.	Area (H=hector)	Price (in Rs.) & Rate	Date	Rate on the date of notification.
1	681/1/4	1H 70R	20,500/- 120.58/- per R	13.06.89	Rs. 169/- per R.
2	19/1M --------- 2	2H 25.5R	27,000/- 119.93/- per R	20.09.89	Rs. 132/- per R.
3	18/1 --------- 1	0.54 R	9,000/- Rs. 166.66/- per R.	24.5.89	Rs. 233.33 per R
4	52	3H 51R	42,000/- 119.65/- per R	20.01.90	Rs. 130/- per R
5	59/1	3H 28R	41,000/- 125/- per R	18.01.90	Rs. 134/- per R.
6	42/2C --------- 2	0.70 R	12000/- 171.42/- per R.	23.01.90	Rs. 184 per R.

11. The claimants examined CW2 and CW3 who have proved following sale deeds.

Sr.No.	Exh., Date & village	Area	Price (in Rs.) & Rate	Addition	Rate per R on date of notification
1	20, 27.06.90, Sautada	13R.	20,000/- 1538/- per R.	1.033	Rs. 1589/- per R.
2	21, 10.08.89, Pimpalwadi.	10R.	10,500/- 1050/- per R.	1.115	Rs. 1171/- per R.
3	22, 21.01.89, Pimpalwadi	5R.	15,000/- 3000/- per R.	1.18	Rs. 3541/- per R.
4	32, 12.11.1984, Pimpalwadi.	13R	9,000/- 692/- per R.	1.6	Rs. 1107/- per R.
5	Sale deed Exh.22 relates to land purchased for cattle sheds and the same is not relevant for determining market price for agricultural land.				

12. The 7/12 extract (Exh. 26) shows that, the claimants were cultivating Pearl millet, Sorghum & Black gram. It shows that, there was well. In fact, the same has been separately assessed.

13. The reference court considered the sale instance of Exh. 20 & 32 and observed that, these lands were from different villages and were of small pieces and, therefore, he reduced the price to Rs. 400/-. He held that, the existence of trees was not proved but the award itself shows that, there were trees and the valuation of the trees is also shown. The learned Judge has awarded value for Potkharaba land at 50% i.e. at the rate of Rs. 200/- per R and thus calculated the value of the land as follows:

333R x 400 = Rs. 1,33,200/-
20R x 200 = Rs. 4,000/-

Rs. 1,37,200/-

14. He calculated the difference of Rs. 97,200/- and further awarded 30% solatium i.e. Rs.29,160/- & Rs. 53,460/- as third component, total Rs. 1,79,120 & interest Rs. 2,18,329/-. Thus, the learned trial Judge has maintained compensation for well, and not awarded separate compensation for bandh + trees.

15. Learned advocate for the Respondent has relied on

judgment of the Apex Court in **State of Haryana Vs. Gurcharan Singh & Anr. [AIR 1996 SC 106],** whereas learned counsel for the Appellants has relied on judgments in **(i) Tejumal Bhojwani & Ors. Vs. State of U.P. [AIR 2003 SC 3791];** and **(ii) Ambya Kalya Mhatra & Ors. Vs. State of Maharashtra [2012(1) AIR Bom R 157]**. Relying on the case laws as above, it is argued that if the market price is determined by sale instances of land of similar nature i.e. land having well and fruit bearing trees, then there cannot be separate compensation for the land and trees and the well, but if the sale instances considered are of dry lands, there should be suitable increase/enhancement in the land having fruit bearing trees and well. The LAO has considered the sale instances but has not produced the sale deeds to show that the sale deeds showing the rate at Rs. 120/- per R. was for similar lands having well and orchard.

16. The claimants have produced convenient sale deeds showing higher prices. These sale instances are of small pieces of land. The lands are situated in different villages and one of the sale instances is separated from the date of notification by six years. The claimants are entitled for compensation as per market rate of similarly situated lands from similar area and for the similar period. The LAO has quoted 16 sale instances from the same village during

1986-90. In these circumstances, the sale instances quoted by the claimants of lands from different area and of different period and of different variety cannot be taken into consideration. In this regard, the learned Assistnat Government Pleader has rightly relied on the judgment in the case of ***Special Land Acquisition Officer versus Sidappa Omanna Tumari*** reported in *1994 DGLS (SC) 995*, wherein it is observed as follows:

> *13. Where the court has to determine the market value of large extents cf acquired agricultural lands, it may not be desirable to be guided on the price fetched by sale of small extents of agricultural lands as the possibility of genuine agriculturists buying such small extents for their cultivation purposes is, rather remote and it may not also be desirable to determine the market value of the acquired agricultural lands on the basis of value fetched by sales of small extents agricultural land even if they had been purchased for building purposes, for that would involve the consideration of too many imponderables. However, if sale deed or agreement to sell relating to the small extent of land on the basis of which the market value of the large extent of the agricultural land has to be determined is a portion of the acquired agricultural land itself or other land in its close proximity, it may be made the basis for determining the market value of the acquired large extent of agricultural land out has to be done when there is satisfactory evidence of the absence of sales or agreements to sell of bigger extents of land pertaining to the acquired land or other lands in the vicinity of the acquired land. Even then, the price fetched or to be fetched by such small extents of land has to be made the basis for determining the market value of the larger extents of acquired agricultural lands, all material factors which would reduce the value of the larger extents of acquired land as on the date it was notified for acquisition must necessarily be taken into account, for it is Well-known as. is held by this Court in the* Collector of Lakhimpur v. Bhuban Chandra Dutta*, [1972] 4 SCC 236. that when a large area of land under acquisition is the subject matter, it cannot fetch the price at the rate at*

which smaller plot of plots are sold. One aspect, which however, should weigh is that determination of the value of large extents of acquired lands on the basis of the prices fetched by smaller plots must be a matter of last resort and should be adopted when there is no possibility of determining the market value of acquired lands on the basis of comparable transactions of larger extents.

14. Therefore, where a sale deed or an agreement to sell relating to a small extent of land is produced by the claimant, in the enquiry held for determination of compensation payable for his large extent of land, the Court is not always bound to determine the market price of such large extent of acquired land on the basis of the price fetched or to be fetched by small extent of land covered by such sale deed or agreement to sell.

17. The determination of rate by the LAO is very much relevant while determining the rate by reference Court. It cannot be totally ignored by the parties or by the reference Court. The claimants' witnesses are totally silent with regard to the reasoning and sale instances considered by the SLAO. When there were 16 sale instances from the same village of huge chunk of lands, the sale instances produced by the claimants of different villages of smaller pieces of land cannot be taken into consideration. Those will not refer to the market value of the land acquired. If the sale instances considered by the LAO were of dry lands, the rate can be doubled for irrigated lands or if the lands can be considered as vacant land separate value can be given for well, orchard and bandh. Doing both is not permissible. I find that, the reference court erred in

considering the sale instances to certain extent and increasing the price to Rs. 400/- per R. However, the Acquiring Body or the State has not filed any appeal and, therefore, no interference is permissible in the value awarded by the reference Court.

18. The reference Court erred in holding that there was no evidence of trees. The claimants' contention that, there were 1 pomegranate tree, 3 mango trees and 2 Java plum trees is supported by the award itself, but the contention that there were 500 nilgiri (Eucalyptus) trees is not supported by 7/12 extract or the award. The claimants were served with notice and they have admitted that, they did not reply to the same. In the circumstances, contention that there were 500 Nilgiri trees cannot be accepted.

19. Since the possession was taken before the award and 80 % compensation was paid, it is clear that the provisions of emergency clause under section 17 were invoked. As held by the Full Bench of this Court in ***State of Maharashtra Vs. Kailash Shiva Rangari, [2016(3) Mh.L.J. 457],*** the interest would be payable from the date of possession if the possession of the land is taken under section 17 and 80 % amount price is paid before the notification. Hence, I hold that interest is payable on the entire sum from the date of possession on the entire compensation awarded under various sub heads of

section 23 i.e. market value + solatium + IIIrd component. Hence, I hold that the claimants are entitled on the whole sum.

20. The Reference Court erred in not considering the value of well, bandh and trees when the land was valued as dry land. When there is well and fruit bearing trees in the land, it is irrigated land. It could have been valued as irrigated land or it could have been valued as dry land with separate valuation for well and trees. The learned Reference Judge erred in not considering the factual and legal position. Hence, the appeal is allowed.

21. The claimant's contention about the price of trees is excessive and extravagant. No reliable evidence is given regarding the price of the trees. The LAO has observed that, the trees were valued at Rs. 42,583/-. Since the reference court has valued the land by comparing the sale instances of dry land, the claimants are entitled for separate compensation for trees i.e. Rs. 42,583/-. Besides, the claimants are also entitled for charges for well. The valuation by the claimants is excessive and exorbitant. The evidence of claimant's witness No. 4 about valuation cannot be believed as he had not issued any notice for the same before making valuation. He has made valuation at the time of acquisition. He has not reduced the price by depreciation. The claimant has given admission that, he constructed the well in 1972 by spending Rs.50,000/-, for which

there is no evidence. Considering the facts, I hold that the value of the well and Bandh together given by LAO at Rs.89,958/- is reasonable.

22. The award shows trees worth Rs. 42,583/-. The claimants have not led any reliable evidence to show that the valuation was much more than the value shown in the award. Learned reference court erred in not taking into consideration the admission in the award about existence of trees and held that the claimants have failed to prove about existence of trees.

23. I also find that, the learned trial Judge rightly awarded compensation at Rs. 200/- per R for potkharaba land for 20R. land. Thus, the compensation payable is as follows:

333R land x Rs. 400/- = Rs. 1,33,200/-
20R land x Rs. 200/- = Rs. 4000/-

= Rs. 1,37,200/-
Rs. 42,583/-

24. Compensation for well and stone bandh Rs. 89,958/- and value of the trees at Rs. 42,583/-. Thus, the basic compensation payable to the claimants would be Rs. 2,69,741/-. The judgment of the reference court granting compensation of Rs. 1,79,820/- is not sustainable and needs to be enhanced to Rs. 2,69,741/-. In addition, there shall be solatium of 30% on the above amount i.e. Rs. 80,922/-.

There shall be also 3rd component at the rate of 12% from the date of notification to the date of the award i.e. 16.10.1990 to 28.02.1995. Total Rs. 1,18,686/-. The amount shall carry interest from the date of the possession at the rate of 9% for the first year and at the rate of 15% for the subsequent period. The appeal deserves to be partly allowed and hence, I pass the following order.

ORDER

(i) The appeal is partly allowed.

(ii) The judgment and decree of the trial Court are set aside and modified as follows:

"Respondents shall pay to the claimants a sum of Rs. 2,69,741/- as price of the land, well and stone bandh. The respondents shall also pay to the claimants solatium of Rs. 80,922/- and third component of Rs. 1,18,686/-, total Rs. 4,69,349/-. This amount shall carry interest at the rate of 9% p.a. from the date of possession for the first year and at the rate of 15% p.a. for the further period till realization of the amount.

(iii) The amount already paid or received by the claimant shall be deducted from the above amounts.

(iv) The award amounting to decree shall be drawn accordingly.

Sd/-
[A. M. DHAVALE, J.]

Punde