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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1231/2003

Kalyansing s/o Bharatsingh Patil,
age 52 yrs., occu.Agriculture
Labourer r/o Kunjar Tq.Chalisgaon
Dist.Jalgaon.

...Appellant..
(Org.claimant)

Versus

Special Land Acquisition Officer,
(Government of Maharashtra)
Jalgaon Dist.Jalgaon.

...Respondent...

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FIRST APPEAL NO.1488/2012

Babulal s/o Ambarsing Patil,
deceased through L.Rs.

1] Meerabai w/o Babulal Patil,
age 62 yrs., occu.Agricultural
Labourer r/o Kunzar Tq.Chalisgaon
Dist.Jalgaon.

2] Navalsing s/o Babulal Patil,
age 33 yrs., occu.Agricultural
Labourer r/o Kunzar Tq.Chalisgaon
Dist.Jalgaon.

3] Indrasing s/o Babulal Patil,
age 31 yrs., occu.Agricultural
Labourer r/o Kunzar Tq.Chalisgaon
Dist.Jalgaon.

4] Vakrasing s/o Babulal Patil,
age 28 yrs., occu.Agricultural
Labourer r/o Kunzar Tq.Chalisgaon
Dist.Jalgaon.

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5] Sumitra Bapusing Mahale,
age 42 yrs., occu.Agricultural
Labourer r/o Kunzar Tq.Chalisgaon
Dist.Jalgaon.

...Appellants..
(L.Rs.of org.claimant)

Versus

The Special Land Acquisition Officer,
Jalgaon Dist.Jalgaon.

...Respondent...
(Org.opponent)

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Shri P.R. Patil, Advocate for appellants.
Shri A.M. Phule, AGP for respondent.

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CORAM: M.S. SONAK, J.

DATE: 30.01.2018

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] In both these appeals, the challenge is to the common judgment and award dated 27.7.1998 in Land Acquisition Reference Nos.448/1991 and 449/1991. Therefore, it is only appropriate that these two appeals are disposed of by common judgment and order.

3] Learned counsel for the appellants submits that the compensation in the present case should have been atleast Rs.8,00,000/- per Hectare in respect of Bagayat

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land and Rs.4,00,000/- per Hectare in respect of Jirayat land. Besides, he submits that the valuation report submitted by the Horticulture Expert examined by the claimants has been unnecessary rejected. He submits that on acceptance of the testimony of this expert, greater compensation was required to be awarded in respect of the trees in the acquired lands. He submits that in respect of the land bearing Gut No.409, the same has been unnecessarily treated as Jirayat land when in fact the evidence on record suggests that it was Bagayat land. On these grounds, he submits that these two appeals are liable to be allowed and the compensation awarded is liable to be enhanced.

4] Learned AGP for the respondent submits that the only evidence produced on record by the appellants is the sale instance dated 25.3.1985, which indicates the rate of Rs.31,250/- per Hectare in respect of Jirayat land. Taking the same into consideration, the Reference Court has quite rightly awarded compensation of Rs.38,000/- in respect of Jirayat land and Rs.76,000/- in respect of Bagayat land. The learned AGP submits that the Government Valuer was also examined in the Reference

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Court. After evaluating the evidence, the Reference Court has rightly determined the compensation in respect of the fruit trees and there is no case made out to warrant interference. The learned AGP submits that there is no clear evidence that the lands, which formed the subject matter of these two appeals, were Bagayat lands and, therefore, there is no case made out to interfere with the impugned judgment and award.

5] Upon due consideration of the rival submissions and upon perusal of the evidence on record, there is a case made out to interfere with the impugned award.

6] Although there is no evidence to sustain the award, the claim of Rs.8,00,000/- per Hectare or Rs.4,00,000/- per Hectare, the sale deed, which has been accepted by the Reference Court, itself suggests that the rate in respect of Jirayat land in the year 1985 was Rs.31,250/- per Hectare. In this case, since the Section 4 notification is dated 1.4.1988, escalation of 10% is due and in fact such escalation is held as admissible by the Reference Court itself. On this basis, the rate in the year 1988 would come to Rs.41,593/-, which can be safely rounded up to Rs.42,000/- per Hectare in respect

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of Jirayat lands. The Reference Court has reduced the compensation to Rs.38,000/- per Hectare by observing that the sale deeds are in respect of adjacent lands. The fact that the sale instances are in respect of adjacent lands is no ground to order any reduction. Therefore, the rate in respect of Jirayat lands is on the date of Section 4 notification will have to be taken at Rs.42,000/- per Hectare.

7] There is no case made out for disturbing the compensation awarded in respect of the trees. The Reference Court has, in details, considered and discussed the evidence not only of the expert examined on behalf of the appellants, but also the expert on behalf of the Government. Upon due evaluation, the Reference Court has made an award in respect of the trees and there is really no case made out to take any different view on this aspect.

8] However, in First Appeal No.1231/2003, which arises out of LAR No.448/1991, the Reference Court was concerned with land bearing Gut No.409 admeasuring 63 Ares, which came to be acquired. The Reference Court has treated this entire land as Jirayat land. At the same

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time, the Reference Court has awarded compensation of Rs.2,57,300/- towards various fruit bearing trees that were found in the acquired land. The circumstance that there were so many fruit bearing trees in the acquired land coupled with the evidence of the appellants to the effect that this was indeed a Bagayat land having water facility appears to have been ignored by the Reference Court. In *Chindha Fakira Patil (dead) through L.Rs. v. Special Land Acquisition Officer, Jalgaon (2011) 10 SCC 787*), the fact that part of the acquired land had wells and fruit bearing trees was held to be proved. Horticulture expert had also been examined in the matter. On this basis, the Supreme Court held that the land was required to be treated as Bagayat land. Applying this principle, the land bearing Gut No.409 will have to be treated as Bagayat land.

9] There is a thumb rule, which has in fact been adopted by the Reference Court as well that the rate of Bagayat land is usually twice as that of Jirayat land. On this basis, the compensation for Bagayat land will have to be determined at Rs.84,000/- per Hectare.

10] The First Appeal No.1231/2003, which arises out

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of LAR No.448/1991 is, therefore, partly allowed. The compensation is directed to be determined at the market rate of Rs.42,000/- per Hectare in respect of Jirayat land and Rs.48,000/- per Hectare in respect of Bagayat land. The land bearing Gut No.409 admeasuring 63 Ares is directed to be treated as Bagayat land and in respect of the same the compensation is determined at Rs.84,000/- per Hectare. The land bearing Gut No.452 admeasuring 01 Hectare 49 Ares is to be treated as Jirayat land itself, however, the compensation shall be computed at the rate of Rs.42,000/- per Hectare instead of Rs.38,000/- per Hectare. Similarly, the land bearing Gut No.407 admeasuring 64 Ares is to be treated as Jirayat land itself, but to be paid compensation at the rate of Rs.42,000/- per Hectare instead of Rs.38,000/- per Hectare. The First Appeal No.1231/2003 stands allowed in these terms. On the enhanced compensation, the appellant is entitled to proportionate statutory benefits as well as interest. The respondent to compute the compensation amount in the aforesaid terms and deposit the same in this Court within a period of eight weeks from today. The respondent is obviously entitled to credit for the

compensation amount already paid to the appellant.

11] The First Appeal No.1488/2012, which arises out of LAR No.449/1991 is also partly allowed. The compensation amount is enhanced from Rs.76,000/- per Hectare in respect of Bagayat land to Rs.84,000/- per Hectare. The appellants are entitled to proportionate statutory benefits and interest. The respondent is directed to compute the compensation amount on the said basis and to deposit such compensation in this Court within a period of eight weeks from today. The respondent is obviously entitled to credit for the compensation amount already paid to the appellants.

12] The aforesaid two First Appeals are partly allowed in the aforesaid terms and disposed of. There shall be no order as to costs.

(M.S. SONAK, J.)