

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

FIRST APPEAL NO. 534 OF 2002

Sidhu S/o Jaiwanta Jare,
Aged: 50 years, Occu. Agri.,
R/o : Vaiju Babhulgaon, Tq.
Pathardi, Dist. Ahmednagar

...APPELLANT
(Ori. Claimant)

V E R S U S.

The State of Maharashtra

.... RESPONDENT
(Ori. Respondent)

WITH

FIRST APPEAL NO. 894 OF 2002

Tulshiram S/o Ananda Amble,
Aged: 71 years, Occu. Agri.,
R/o : Vaiju Babhulgaon,
Tq. Pathardi, Dist. Ahmednagar.

...APPELLANT
(Ori. Claimant)

V E R S U S.

The State of Maharashtra

.... RESPONDENT
(Ori. Respondent)

WITH

FIRST APPEAL NO. 331 OF 2004

Ajit S/o Vishwanath Zarad,
Aged: 30 years, Occu. Agri.,
R/o: Vaiju Babhulgaon,
Tq. Pathardi, Dist. Ahmednagar.

...APPELLANT
(Ori. Claimant)

V E R S U S.

The State of Maharashtra

.... RESPONDENT
(Ori. Respondent)

WITH

FIRST APPEAL NO. 1436 OF 2007

Namdeo S/o Yadav Gunjal,
Aged: 72 years, Occu. Agri.,
R/o : Vaiju Babhulgaon,
Tq. Pathardi, Dist. Ahmednagar.

...APPELLANT
(Ori. Claimant)

V E R S U S.

The State of Maharashtra

.... RESPONDENT
(Ori. Respondent)

WITH
FIRST APPEAL NO. 341 OF 2008

1. Chimaji Baburao Ghorpade,
Aged: 52 years, Occu. Agri.,
R/o : Vaiju Babhulgaon,
Tq. Pathardi, Dist. Ahmednagar.
2. Sonyabapu s/o Baburao Ghorpade,
Aged : 50 years, Occu. Agril.,
R/o: Vaiju Babhulgaon, Tq. Pathardi,
Dist. Ahmednagar.
3. Vithal s/o Baburao Ghorpade,
Aged : 42 years, Occu. Agril.,
R/o: Vaiju Babhulgaon, Tq. Pathardi,
Dist. Ahmednagar.
4. Pandurang s/o Baburao Ghorpade,
Aged : 40 years, Occu. Agril.,
R/o: Vaiju Babhulgaon, Tq. Pathardi,
Dist. Ahmednagar.

...APPELLANTS
(Ori. Claimant)

V E R S U S.

The State of Maharashtra

.... RESPONDENT
(Ori. Respondent)

...
Mr. S.S. Chaudhari, Advocate for appellants.
Mr. B.V. Virdhe, AGP for respondent

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....
CORAM : K.K. SONAWANE, J.

RESERVED ON : 11th JUNE, 2018.

PRONOUNCED ON : 26th JUNE 2018.

JUDGMENT :-

1. The point of controversy in all these appeals are centered on the question of valuation of the lands under acquisition. The appellants -original claimants cast allegations about inappropriate and improper assessment of market value of their acquired land. Therefore, all these allied appeals are dealt with together for its adjudication on merit by this common judgment.

2. The lands in question located within the vicinity of village Vaiju Babhalgaon Ta. Pathardi, District Ahmednagar were put under acquisition for construction of village percolation tank, pursuant to notification under section 4 of the Land Acquisition Act, 1894 (for short "Act of 1894") published on 26-12-1988. The Special Land Acquisition Officer (for short "SLAO") carried out the enquiry and determined the market value of acquired land at the rate of Rs.13,000/-per hectare. The award under section 11 of the Act of 1894 came to be made by SLAO Ahmednagar. The appellants-claimants did not satisfy with amount of compensation offered by the SLAO. Therefore, the appellants-claimants applied for enhancement of compensation and filed reference petitions under section 18 of the Act of 1894. The matters were referred to the Court of Civil Judge, Senior Division, Ahmednagar, for assessment of just and reasonable market value of the lands under acquisition. The trial Court after due hearing determined the market value @ Rs. 20,000/- per hectare for Jiryat (dry) land. However, the appellants-claimants were not in agreement with the price calculated by the Reference Court. Therefore, they rushed to this Court and preferred the appeals by resorting to legal remedy under section 54 of the Act of 1894 for redressal.

3. Mr. Chaudhari, learned counsel for appellants-claimants assailed that the impugned judgment and award of the Reference Court is erroneous, illegal and not within the purview of law. The Reference Court did not consider the evidence on record in its proper perspective and awarded meagre compensation amount for the lands of appellants under acquisition. There were Wells and fruit bearing trees etc. in the

acquired lands. The Reference Court did not appreciate these factual aspects and committed error in calculating the market value of the lands as Jiryat (dry) lands. The Reference Court did not enhance compensation amount for the Wells and fruit bearing trees etc. located in the acquired lands. The Reference Court ought to have determined the market value of the lands under acquisition as Bagayat - irrigated lands. The appellants-claimants made demand of compensation for fruit bearing trees, structures and *Tal* etc. The learned counsel Mr. Chaudhari explained the circumstances on record in detail and urged that the appeals be allowed and compensation awarded by the Reference Court be modified and enhanced appropriately.

4. The learned AGP for the respondent- State raised the objection and submits that the Reference Court considered all the aspects of the matter in proper manner. Therefore, there would not be any further enhancement of compensation in these appeals.

5. There is no doubt that the market value means the price which the purchaser is willing to pay for similar land to a willing seller. The price fetched by similar land with similar advantages and potentialities under *bonafide* transaction of sale at or about the time of preliminary notification under Section 4 of the Act, 1894 would be usually and indeed the best evidence of market value. There cannot be any hard and fast or rigid rule to calculate the just and reasonable price of acquired lands. Albeit, common sense would be the proper and most reliable guide for the same. It is not in dispute that the amount of compensation cannot be ascertained with mathematical accuracy.

The evaluation of surrounding circumstances and some guess work is permissible while calculating the market price of the lands under acquisition. But, the market value determined should not be of such nature that there would not neither unjust enrichment of acquiring agency nor undue deprivation on the part of owners/claimants.

6. In addition to aforesaid principles of law, it would also apposite to look into the general guidelines prescribed in regard to the mode and manner as well as methodology for dealing with the reference petition to determine the compensation amount for the land under acquisition. Their Lordships of Apex Court in the case of "**Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another and Vijay Singh Liladhar vs. Special Land Acquisition Officer and Nathumal Rajmal Baldota vs. Special Land Acquisition Officer** " reported in **AIR 1988 SC 1652**, observed in para.4 as below :-

4. *The following factors must be etched on the mental screen : -*

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by

the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) XXX XXX XXX XX

XXX XXX XXX XXX”

7. It is evident from the aforesaid judicial pronouncement that the Reference under Section 18 is not an appeal against the award passed by the Land Acquisition Officer. The reference cannot be treated as a judgment of the trial court open or exposed to agitate it before the court hearing the reference. The Reference Court has to deal with it as an independent and separate original proceeding filed before it. The position of the claimant before the Reference Court is alike plaintiff in the civil suit and he has to prove that price offered for his land by the Land Acquisition Officer in his award is inadequate. The claimant has to establish his case on the basis of material produced in the court.

8. In such backdrop, it would justifiable to proceed further for

exploring the evidence available on record in these appeals to ascertain the just and reasonable valuation of the lands under acquisition. In order to establish the claim, the appellants-claimants stepped into the witness box and adduced their evidence. The appellants also kept reliance on the evidence of P.Ws. 2 to 5 recorded by the learned Reference Court in connected proceedings bearing L.A.R. No. 84 of 1996.

9. It is to be noted that except the Well located in Gut No. 304 of the appellant – Ajit Jarad and others in first appeal No. 331 of 2004, no any Wells belonging to other appellants were under acquisition in the award. Moreover, there were no evidence available on record of these appellants to show that the lands of the appellants – claimants under acquisition were Bagayat - irrigated lands having source of water from the Well. The learned counsel Mr. Chaudhari for the appellants much more gave emphasis that the appellants/ claimants have deposed on oath before the Reference Court that their lands under acquisition were Bagayat - irrigated lands and same be accepted for consideration. It is strange to appreciate the arguments advanced on behalf of learned counsel Mr. Chaudhari for keeping sole reliance on the bare version of claimants to conclude that their acquired lands were Bagayat - Irrigated lands. It would unsafe to act upon the version of claimants without any corroboration or supporting evidence pointing out that the lands under acquisition were irrigated lands having water source. There were no revenue record produced on record on behalf of appellants - claimants to fortify that the lands under acquisition were irrigated with water source. The appellants relied upon the evidence of P.W.4

Dattatraya Dalal produced at (Exhibit-33) in connected proceeding bearing L.A.R. No. 84 of 1996. He was the Government approved valuer. He had visited the acquired lands of the appellants and prepared the valuation report of Wells, structures and *Ta/* etc.

10. It is worth to mention that P.W. 4-Dattatraya Dalal did not state that the lands acquired for submergence area of percolation tank were Bagayat – irrigated lands. His evidence was only pertains to valuation of the Well constructed in the area of lands in question. As referred supra, except the Well constructed in Gut No. 304, which is the subject-matter of first appeal No. 331 of 2004, no any other Wells of appellants-claimants came to be acquired in the present award. Therefore, no question arises to appreciate the valuation reports of Wells which were not placed under acquisition in this award. In such circumstances, the valuation report prepared by P.W.4-Mr.Dalal loses its significance for consideration. It would not fortify the contentions put-forth on behalf of appellant that their lands were Bagayat – irrigated.

11. In regard to valuation report of the Well located in Gut No. 304 belonging to appellant of First Appeal No. 331 of 2004, Mr. Ajit Zarad, the Reference Court has rightly discarded the evidence of P.W.4-Dattatraya Dalal, Government Valuer. It has been observed that the valuation report has prepared in the year 1988, when the possession of acquired lands were actually delivered in favour of respondent - State in the year 1972. The witness P.W.5 – Mr. Baban Lad (Exhibit-51) deposed that the appellants-claimants delivered the possession of

acquired lands in favour of respondent/acquiring body in the year 1972. The findings expressed by the learned Reference Court for discarding the report of Government Valuer appears to be reasonable and considerable one. There were no error in the conclusion drawn by the Reference Court while appreciating valuation report of the Well prepared by the Executive Engineer, Zilla Parishad, Minor Irrigation (South Division) Ahmednagar. The SLAO awarded compensation for the Well on the basis of valuation report of the Executive Engineer (Zilla Parishad). In the result, the Reference Court also found reluctant to allow enhancement of compensation for Well on the basis of private valuer - P.W.4 Mr. Dattatraya Dalal. In view of attending circumstances, there is no propriety to cause any interference in the findings of the trial Court in regard to valuation of Well acquired from Gut No. 304 of appellant Ajit Zarad and others. No question arises for making valuation of Wells of other appellants-claimants as these Wells were not the subject matter of acquisition.

12. As mentioned above, there were no cogent and reliable evidence on record to show that the lands of the appellants under acquisition were Bagayat – irrigated lands. The Wells from the acquired lands except Gut No. 304, as discussed above, were not under acquisition. Moreover, mere existence of Wells in rest of the portion not under acquisition of acquired lands, would not itself sufficient to conceive that the acquired lands were Bagayat - irrigated lands.

13. In view of aforesaid **Chimanlal's** case (supra), it was obligatory for the appellants-claimants to adduce some sort of positive evidence

to establish that the lands under acquisition were irrigated, fertile lands. Unfortunately, except bare version of the appellants-claimants on record no any other credible and dependable evidence available to prove that the lands under acquisition were Bagayat – irrigated lands. The conclusion drawn by the Reference Court that the acquired lands were Jirayat (dry) lands found justifiable, considerable and liable to be upheld.

14. Now, turning to the assessment of market price of the acquired lands during the period of notification under section 4 of the Act of 1894 published on 26-12-1988. The appellants - claimants relied upon in all three sale deeds as comparable sale instances for appreciation to calculate the market value of the acquired lands. The sale deeds of Gut No. 234 admeasuring 0. 49 R and Gut No. 17 admeasuring 1 hectare, 08 R came to be executed on 03-05-1989 for consideration of Rs. 41,000/- and on 13-05-1989 for consideration of Rs. 15,000/- respectively. These sale deeds were found executed after the notification under section 4 of the Act of 1894 published in the year 1988 in the instant case.

15. In the cross examination, the witness of the appellants-claimants i.e. P.W. 2 Mr. Raosaheb Fulsheti deposed that, after construction of percolation tank in the village there were escalation of prices of the lands within the vicinity. Obviously, the sale deeds of Gut Nos. 234 and 17 produced on record both would not be an comparable sale instances for guidance to determine the market value of acquired lands as same were executed post notification. The learned Reference Court

found reluctant to take into consideration these sale being comparable sale instances for assessment of market value of the acquired lands. The inference drawn by the learned Reference Court pertains to those sale instances found just, proper and reasonable one.

16. The another sale instance remained for consideration is in regard to Gut No. 194 admeasuring 00.86 R executed on 04-09-1986 for consideration of Rs.32,000/-. The learned Reference Court has properly appreciated the present sale deed being comparable sale instance for guide to calculate the market value of the lands in question in these appeals. The lands under sale was sold at the rate of Rs 14,900/- per acres approximately with right to avail water facility from the Well. No expert is required to draw the inference that the lands under sale having water facility would have fetch more value than the Jirayat (dry) lands.

17. It has already been concluded that the lands of the appellants-claimants under acquisition were Jirayat (dry) lands. The learned Reference Court proceeded to calculate the valuation of lands on the basis of sale instances of land Gut No. 194 having 0.6.0 share in well water. The trial Court determined that the valuation of the lands under acquisition would have fetch half of the value of the land Gut No. 194 which was under sale. The total land admeasuring 00.86 R was sold for consideration of Rs.32,000/- i.e. Rs.14,900/- per acre approximately. The valuation of dry land will have to be calculated half of the price of Rs. 14,900/- for the lands having water facility from the Well. The price for dry land, therefore, would be Rs. 7450/- per acre.

The learned Trial Court calculated the market value for acquired Jirayat Lands @ Rs. 8000/- per acre i.e. Rs. 20,000/- per hectare. Therefore, the market price determined by the learned trial Court is liable to be upheld and confirmed.

18. In view of aforesaid discussion, the lands under acquisition were rightly held as Jirayat (dry) lands and market price calculated at the rate of Rs. 8000/- per acre i.e. Rs. 20,000/- per hectare for acquired lands of the appellants found to be just, proper and reasonable one. The Reference Court has correctly appreciated the factual aspects in its proper perspective. Therefore, there were no error or infirmities in the findings expressed by the learned trial Court, while calculating the market value of the lands under acquisition. In contrast, the rate determined by the trial Court is liable to be made confirmed and absolute. The contentions propounded on behalf of the appellants are not sustainable and considerable one. Therefore, the appeals being devoid of merit deserve to be dismissed.

19. Accordingly, the appeals stand dismissed. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

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