IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 948 OF 2017

1. Manohar Shrigan Barure
Age : 45 yrs, occu.: agri.,
R/o Sumthana, Taluka Udgir,
District Latur.

2. Babu Dharmaji Ambegave
Age : 30 yrs, occu.: agri.,
Through Power of Attorney
Holder Manohar Shrigan Barure
R/o Sumthana, Taluka Udgir,
District Latur. **Appellants.**

Versus

1. The State of Maharashtra
Through District Collector,
District Latur.

2. The Executive Engineer,
Local Sector, Latur. **Respondents**.

WITH
FIRST APPEAL NO.949 OF 2017

Namdeo Dadarao Patil
Age : 37 yrs, occu.: agri.,
R/o Sumthana, Taluka Udgir,
District Latur. **Appellant.**

Versus

1. The State of Maharashtra
Through District Collector,
District Latur.

2. The Executive Engineer,
Local Sector, Latur. **Respondents**.

WITH
FIRST APPEAL NO.3790 OF 2017

1. The State of Maharashtra
Through District Collector,
District Latur.

2. The Executive Engineer,
Local Sector, Latur. **Appellants.**

Versus

1. Manohar Shrigan Barure
Age : 45 yrs, occu.: agri.,
R/o Sumthana, Taluka Udgir,
District Latur.

2. Babu Dharmaji Ambegave
Age : 30 yrs, occu.: agri.,
Through Power of Attorney
Holder Manohar Shrigan Barure
R/o Sumthana, Taluka Udgir,
District Latur. **Respondents.**

WITH
FIRST APPEAL NO.3791 OF 2017

1. The State of Maharashtra
Through District Collector,
District Latur.

2. The Executive Engineer,
Local Sector, Latur. **Appellants.**

Versus

Namdeo Dadarao Patil
Age : major, occu.: agri.,
R/o Sumthana, Taluka Udgir,
District Latur. **Respondent**.

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Mr. S.S. Halkude, Advocate for the original claimants.
Mr. S.P. Deshmukh, A.G.P. for original respondents/State.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 24th October 2018.
Judgment pronounced on : 31st October 2018.

JUDGMENT.

1. Original claimants and the State of Maharashtra have filed these appeals against common judgment and award passed by Joint Civil Judge, Senior Division, Udgir. First Appeal No.948 of 2017 filed by the claimants and First Appeal No. 3790 of 2017 filed by the State are against judgment and award passed in L.A.R. No.935/2010. First Appeal No.949 of 2017 is filed by the original claimant and First Appeal No. 3791 of 2017 is filed by State against judgment and award passed in L.A.R. No.936/2017. As these four appeals arise out of common judgment and award passed by one and the same Reference Court, these four appeals are disposed of by this common judgment.

2. The facts leading to institution of these appeals are that in L.A.R. No.935/2010 and L.A.R. No.936/2010, the land of the claimants situated at village Sumthana, Taluka Udgir,

District Latur were acquired for the purpose of percolation tank No.2 situated at Sumthana. In L.A.R. No.936/2010 the land out of Survey No.6 admeasuring 18 Aar owned by claimant No.1 Manohar Shrigan Barure is acquired and the land out of Survey No.51 admeasuring 77 Aar and 21 Aar owned by claimant No.1 Manohar and claimant No. 2 Babu respectively were acquired for the same project. In L.A.R. No.936/2010, the claimant Namdeo Dadarao Patil was the owner of land admearuign 42 Aar out of Survey No.11 and this land was also acquired for the same purpose.

3. Notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as the "Act") was published in Official Gazette on 11.06.2003 and the award was passed on 21.03.2005. The Special Land Acquisition Officer offered compensation for the acquired land at the rate of Rs. 495/- per Aar. Possession of the acquired land was taken before publication of notification under Section 4 (1) of the Act. Being dis-satisfied with the offer made by the Special Land Acquisition Officer, the claimants submitted applications to the Collector and in the result, L.A.R. Nos. 935/2010 and 936/2010 were referred to

the Reference Court.

4. Common evidence was recorded with the consent of parties in L.A.R. No.935/2010 and both the Land References are disposed of by passing common judgment. The Reference Court awarded compensation at the rate of Rs. 1600/- per Aar i.e. at the rate of Rs. 64,000/- per Acre and Rs. 1,60,000/- per Hectare. Being dis-satisfied with the said award the original claimants and the State of Maharashtra have filed these appeals and counter appeals.

5. Heard Mr. Halkude, learned Counsel for the appellants / claimants and learned A.G.P. for the State.

6. Learned Counsel for the claimants submits that in both Land References the claimants have relied on single sale instance (Exh.15) of Survey Nos. 28/1 and 31 admeasuring 81 Aar situated at village Wagdari, Taluka Udgir dated 20.06.2002. The land under the sale instance was sold out for the total consideration of Rs. 2,05,000/- i.e. at the rate of Rs. 2500/- per Aar and at the rate of Rs. 1,00,000/- per Acre or Rs. 2,50,000/- per Hectare.

7. He submits that the land under sale instance though situated at village Wagdari, the distance between acquired land and the land under sale instance is not inordinately long and only 5 to 6 gut numbers are situated in between these two lands.

8. The next submission of learned Counsel for the claimants is that, though the date of execution of sale instance (Exh.15) is one year preceding to the date of publication of notification under Section 4 (1) of the Act, the Reference Court did not grant 10 % escalation of market value of the acquired land. He submits that the Reference Court deducted 30% market value of the acquired land only on the ground that on one side of the land under sale instance there is water streamlet and on the other side there is a river. He has drawn my attention to the village map of Sumthana and submits that the village map shows that water streamlet also passes through the acquired land of the claimants i.e. through Survey No. 51 which is shown in the village map. He also submits that one road is abutting to Survey No.6. Therefore, the quality of the acquired land and quality of the land under sale instance (Exh.15) is identical so far advantageous factors are concerned. He submits that the sale

instance shows that the land under sale instance is dry crop land. So also the acquired land is also dry crop land. Therefore, the market value of both lands shall be identical. However, the Reference Court, without assigning any reason, made 30% deductions in the market value and in addition to these deductions, reduced the market value of acquired land from Rs.70,000/- per Acre to Rs. 64,000/- per Acre. He prays for enhancement of compensation.

9. Learned A.G.P. for the State submits that the sale instance (Exh.15) is not comparable sale instance as it is at far distance from the acquired land.

10. The next submission of the learned A.G.P. is that the land under sale instance is an irrigated land as river is situated on one side and water streamlet on other side of the land under sale instance. He submits that as the acquired land is dry crop land, 50% market value determined on the basis of sale instance shall be deducted. His last submission is that the total area of acquired land is 140 Aar and the area of the land under sale instance is 82 Aar which is comparatively small than the area of the acquired land. Therefore, it is not comparable sale instance.

He prays for modification of award to reduce the rate of compensation which is awarded by the Reference Court.

11. What would be ideal method for determining the market value of the acquired land on the date of notification under Section 4 (1) of the Act and how the genuine sale instance can be identified, is considered by the Apex Court in the case of **"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona" [1988 (3) SCC 751]**, wherein the Apex Court laid down the following guidelines :-

> " (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 535 it. It is not the function of the Court to suit 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) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (some times instances are rigged up in anticipation of acquisition of land).

(9) Even post notification instances can be taken into account.(1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(l0) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,
ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors	**Minus factors**
1. smallness of size.	1. largeness of area.
2. proximity to a road. `	2. situation in the interior at a distances from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to death.

4. nearness to developed area	4. lower level requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition.	6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage. "	

12. In view of the above dictum of the Apex Court, the proceeding before the Reference Court is to be treated as original proceeding and only that much oral and documentary evidence can be considered which is placed before the Reference Court and proved by the parties. The material considered by Land Acquisition Officer mentioned in the award cannot be considered while determining the market value of the acquired land on the date of notification under Section 4 (1) of the Act.

13. Comparable sale instance is to be identified on the basis of proximity in between locational advantages and quality

of acquired land and quality of land under sale instance. So also the proximity in between the date of execution of sale instance and date of publication of notification under Section 4 (1) of the Act is to be considered. While determining the compensation, advantageous factors and dis-advantageous facts annexed to the land under sale instance and acquired land are to be considered and accordingly additions and deductions are to be made from the market value of the acquired land.

14. In the case at hand, the notification under Section 4 (1) of the Act is published on 11.06.2003. The award under Section 11 of the Act is declared on 21.03.2005. The sale instance (Exh.15) is executed on 20.06.2002. Thus, the sale instance is one year preceding the date of notification under Section 4 (1) of the Act. Thus, there is reasonable proximity in between date of notification and date of execution of sale instance. After going through the sale instance (Exh.15), it emerges that under that sale deed 82 Aar dry crop land was sold out for a consideration of Rs. 2,05,000/- i.e. at the rate of Rs. 2,500/- per Aar and Rs. 1,00,000/- per Acre. Though the claimants claim that their land is irrigated land and they used to take two crops from the

acquired land, the record of right of the acquired land (Exhs.20 to 22) do not show that the acquired land is irrigated land . Even the crop pattern of the year 2011 and 2012 of the acquired land shows that only Kharip crop was taken and it was Jowar, Toor and Soyabean, which are not irrigated crops. In other words, crop pattern emerged from the crop statement of the acquired land does not show that it was an irrigated land. Even the learned Counsel for appellants / claimants fairly concedes that the acquired land is dry crop land.

15. Though learned A.G.P. has pointed out that the boundaries of the land under sale instance show water streamlet on western side and river on northern side, the recitals of the sale deed do not indicate that the said land was irrigated with water source from river or the said streamlet. On the other hand, in the said sale instance the quality of the land under sale instance is shown as "Jirayat" means dry crop land. Was the land under sale instance irrigated land, definitely the vendor Shivaji Tulshiram Biradar would have mentioned in the sale deed that the land under sale deed was "irrigated land". No vendor would describe his land as low quality land. Even in the

sale deed there is no reference of existence of pipeline from the river up to the land under sale instance. No facility of well water irrigation is mentioned in the said sale instance. Therefore only on the basis of reference of water streamlet and river in the four-boundaries of the land under sale instance , conclusion cannot be drawn that it is irrigated land. Thus, as described in the sale instance (Exh.15) the said land is to be treated as dry crop land.

16. Thus, quality-wise the land under sale instance and the acquired land are identical.

17. Regarding locational advantage also the acquired land has equal advantageous factors annexed with it, for the reason that in the village map, which is filed in this appeal under Order XXXXI Rule 27 of the Code of Civil Procedure (marked as 'A'), indicates that water streamlet passes through Survey No.11 and Survey No.51. This map also indicates that Survey No.6 is abutting to the road. Therefore, considering the advantageous locational factors, the acquired land and the land under sale instance (Exh.15) are identical. Even for advantageous factor of location of river on one side of the land under sale instance, 10% value is deducted from the market value of the acquired land on

the date of publication of notification under Section 4 (1) of the Act, 10% escalation in the market value is to be added in the market value of the acquired land, as the sale instance is one year prior to the date of publication of notification. Therefore, by deducting 10% market value for locational advantage of river annexed to the land under sale instance, there will not be any change in the market value of the acquired land on the date of notification under Section 4 (1) of the Act. Therefore, the market value of the acquired land on the date of notification is equal to the market value of the land under sale instance. In other words, on the date of publication of notification under Section 4(1) of the Act the market value of the acquired land is to be determined as Rs.2,500/- per Aar or Rs. 1,00,000/- per Acre. From this market value no amount can be deducted on the ground of distance in between acquired land and the land under sale instance, because the version of sole witness Manohar (PW-1) examined by the claimants that in between the acquired land and the land under sale instance only 5 to 6 gut numbers are situated, remained unchallenged in his cross-examination. Thus, the acquired land and the land under sale instance are not at long distance from each other, though those lands are situated in boundaries of different villages.

18. So also, in comparison with the area of acquired land, the area of the land under sale instance is not much less to say that the land under sale instance is small piece of the land in comparison with the acquired land. The State has not filed and proved other available sale instance from village Sumthana as comparable sale instance. Therefore, contention of learned A.G.P. that the sale instance is not comparable, is not acceptable. On the other hand, I find that the sale instance (Exh.15) is "genuine and comparable sale instance" to determine the market value of the acquired land.

19. Accordingly, I hold that fair market price of the acquired land, on the date of publication of notification under Section 4 (1) of the Act, is Rs. 2,500/- per Aar i.e. Rs. 1,00,000/- per Acre.

20. The Reference Court has awarded enhanced rate of Rs.1,600/- per Aar i.e. Rs. 64,000/- per Acre, which is certainly inadequate than the fair market price of the acquired land. Therefore, by partly allowing the appeals preferred by claimants, the rate of compensation of acquired land is to be enhanced to the

extent of Rs. 2,500/- per Aar i.e. Rs. 1,00,000/- per Acre. However, at the same time the award regarding rate of interest under Section 28 of the Act is to be modified, because the learned Reference Court erroneously awarded interest at the rate of Rs.9% per annum for the first year from 11.06.2003 i.e. the date of notification under Section 4 (1)of the Act. When possession of the acquired land is taken prior to publication of notification under Section 4 (1) of the Act, in view of the verdict of the Full Bench of this Court in the case of **"State of Maharashtra Vs. Kailas Rangani" (AIR 2016 Bom. 141)**, even under Section 28 of the Act, interest at the rate of Rs. 9 % per annum on enhanced compensation amount is to be awarded from the date of declarations of award i.e. from 21.03.2005 till 21.03.2006 and thereafter at the rate of Rs. 15 % per annum from 22.03.2006 till the date of deposit of compensation by Collector. By partly allowing the appeals filed by State, Clause IV of the Award is to be modified to make the above changes regarding payment of interest under Section 28 (1) of the Act.

21. Accordingly, First Appeal No.948 of 2017 and First Appeal No.949 of 2017 filed by the claimants are allowed. First

Appeal No.3790 of 2017 and First Appeal No. 3791 of 2017 filed by the State are partly allowed.

22. The award passed by learned Joint Civil Judge, Senior Division, Udgir in L.A.R. No.935/2010 and L.A.R. No.936/2010 is modified as under :-

"(I) L.A.R. No.935/2010 and L.A.R. No.936/2010 are partly allowed with proportionate costs.

(II) The claimants in L.A.R. No.935/2010 and L.A.R. No.936/2010 are entitled to enhanced compensation, for their acquired land Survey No.6 admeasuring 18 Aar, Survey No.51 admeasuring 77 Aar and 21 Aar (total 98 Aar) and Survey No. 11 admeasuring 42 Aar situated at village Sumthana, Taluka Udgir, District Latur, at the rate of Rs. 2,500/- (Rupees Two Thousand Five Hundred) per Aar i.e. Rs. 1,00,000/- (Rupees One Lakh) per Acre.

(III) The claimants are also entitled to statutory benefit under Section 23 (1A) f the Act i.e. additional component at the rate of 12% per annum on market value of the acquired land from 11.06.2003 to 21.03.2005 and 30% of market value of the acquired land as soletium under Section 23 (2) of the Act.

(IV) Claimants are entitled to interest under Section 28 of the Land Acquisition Act on enhanced compensation amount and solatium amount at the rate of Rs. 9% per annum from 21.03.2005 to 21.03.2006 and thereafter at the rate of Rs. 15% per annum from 22.03.2006 till the date of deposit of compensation by the Collector.

(V) Deficit Court fees, if any, shall be recovered from the claimants before the execution of award.

(VI) The amount of compensation already received by the claimants shall be deducted from the compensation amount payable to the claimants.

(VII) The award be drawn up accordingly".

41. Claimants are permitted to withdraw the amount, if deposited in this Court, in accordance with modified award,

42. Parties to bear their respective costs of the appeals. Appeals are disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

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