

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

FIRST APPEAL NO.1620 OF 2018

Babu Ambaji Yamgar
Dead Through LR's

- A) Haribai w/o Baburao Yamgar
Age : 82 years, Occu : Household,
- B) Eknath s/o Baburao Yamgar
Age : 46 years, Occu : Labour
- C) Vyankat s/o Baburao Yamgar
Age : 49 years, Occu : Labour
- D) Vilas s/o Baburao Yamgar
Age : 40 years, Occu : Labour
- E) Subhadra D/o Baburao Yamgar
Age : 53 yrs, Occu : Household
- F) Radhabai d/o Baburao Yamgar
Age : 59 yrs, Occu : Household,
- G) Shantabai D/o. Baburao Yamgar
Age : Major, Occu : Household,

All R/o. Hanmantwadi, Tal. Udgir,
Dist. Latur

**..Appellants /
Orig. Claimants**

Versus

- 1. The State of Maharashtra,
Through Collector Latur.
- 2. Special Land Acquisition Officer PP. Latur
- 3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

WITH**FIRST APPEAL NO.1621 OF 2018**

Giridhar Bhagwan Yamgar
 Age : 30 yrs, Occu : Agri,
 R/o. Hanmantwadi, Tq. Udgir,
 Dist. Latur

**.. Appellant/
 Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur
2. Special Land Acquisition Officer P.P. Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

.....

WITH**FIRST APPEAL NO.1622 OF 2018**

1. Yadav Ambaji Yamgar
Age : 55 yrs, Occu : Agri,
2. Manik Ambaji Yamgar
Age : 52 yrs, Occu : Agri
Both R/o. Hanmantwadi, Tq. Udgir,
Dist. Latur

**..Appellants/
 Orig. Claimants**

Versus

1. The State of Maharashtra,
Through Collector Latur
2. Special Land Acquisition Officer P.P. Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

WITH

FIRST APPEAL NO.1623 OF 2018

Dayneshwar Venkati Surnar

Age : 30 yrs, Occu : Agri

R/o. Hanmantwadi, Tq. Udgir, Dist. Latur

**..Appellant/
Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur.
2. Special Land Acquisition Officer P.P. Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

....

WITH

FIRST APPEAL NO.1624 OF 2018

Udhav Govindrao Surnar

Age : 55 yrs, Occu : Agri

R/o. Hanmantwadi, Tq. Udgir,

Dist. Latur

**..Appellant/
Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur
2. Special Land Acquisition Officer P.P. Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

....

WITH

FIRST APPEAL NO.1625 OF 2018

Waghambhar Ambaji Yamgar
 Age : 30 yrs, Occu : Agri
 R/o. Hanmantwadi, Tq. Udgir, Dist. Latur

**..Appellant/
 Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur
2. Special Land Acquisition Officer PP Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

....

WITH

FIRST APPEAL NO.1626 OF 2018

Chandrakant Udhav Surnar
 Age : 40 yrs, Occu : Agri
 R/o. Hanmantwadi, Tq. Udgir,
 Dist. Latur

**..Appellant/
 Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur
2. Special Land Acquisition Officer PP Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

....

WITH

FIRST APPEAL NO.1627 OF 2018

Raosaheb Ambaji Yamgar

Age : 50 yrs, Occu : Agri
R/o. Hanmantwadi, Tq. Udgir, Dist. Latur

**..Appellant/
Orig. Claimant**

Versus

1. The State of Maharashtra,
Through Collector Latur.
2. Special Land Acquisition Officer P.P. Latur
3. The Executive Engineer Minor Irrigation,
(Local Sector) Latur

.. Respondents

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Dr S.D. Tawshikar, Advocate for the appellants;
Shri A.M. Phule, AGP for respondents.

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CORAM : P.R. BORA, J.

Dated: October 31, 2018

ORAL JUDGMENT :

1. All these appeals are arising out of the common Judgment and Award passed by the Court of Civil Judge Senior Division, Udgir on 24.11.2011 in LAR New No.1009/2010 (Old No.272/2006) with connected Land Acquisition References i.e. LAR New No.1007/2010 (Old No.270/2006), LAR New No.965/2010 (Old No.218/2006), LAR New No.1072/2010 (Old No.348/2006), LAR New No.964/2010 (Old No.217/2006), LAR New No.1008/2010 (Old No.271/2006), LAR New No.975/2010 (Old No.228/2006), LAR New No.

966/2010 (Old No.219/2006). I have, therefore, heard the common arguments in all these matters and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are subject matter of the present appeals, were acquired for the purpose of the construction of Karlewadi Percolation Tank No.4 situated at Karlewadi. The Notification under Section-4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in that regard was published in the Official Gazette on 11.07.2003 and the Award under Section 11 came to be passed on 20.11.2004. The SLAO had offered the compensation at the rate of Rs.800/- per *Are* for the acquired lands. Dissatisfied with the value of the acquired lands so determined by the reference Court and the compensation accordingly offered by the Land Acquisition Officer, the claimants preferred the applications under Section-18 of the Act to Collector, Latur, who, in turn forwarded the said applications for adjudication to the District Court at Latur. The separate land acquisition references were registered and numbered. Total eight applications were commonly heard by the reference Court and

were decided by the common Judgment and Award, which is impugned in the present appeals.

3. In the reference Court, the claimants had claimed the compensation at the rate of Rs.5,000/- per *Are* and had, accordingly, sought the enhancement in the amount of compensation. In addition to the oral testimonies of the respective claimants, the claimants had relied upon total three sale instances in order to substantiate the claim so raised by them. No oral or documentary evidence was adduced by any of the respondents.

4. The learned Reference Court, after having assessed the oral and the documentary evidence brought before it, determined the market value of the acquired lands at the rate of Rs.2,200/- per *Are* and enhanced the amount of compensation accordingly. According to the appellants, who are hereinafter referred to as the claimants, the compensation so awarded by the reference Court was also inadequate and hence the claimants have preferred the present appeals seeking

enhancement in the amount of compensation awarded by the reference Court.

5. Dr Tawshikar, learned Counsel appearing for the claimants in all these appeals submitted that, the reference Court has failed in properly appreciating the evidence adduced by the claimants and more particularly the sale instances brought on record by the claimants. The learned Counsel submitted that, the Reference Court has wrongly held that the sale instance at Exh.19 could not have been as it is applied for determining the market value of the acquired lands and as such, though for the land which was the subject matter of Exh.19 the market value was received at the rate of Rs.4244/- per *Are*, without assigning any just and sufficient reason the reference Court has determined the market value of the acquired lands at the rate of Rs.2200/- per *Are*.

6. The learned Counsel submitted that, though another two sale instances were also placed on record, the reference Court, for wrong reasons has not relied upon the said sale instances. The learned Counsel submitted that, in several

judgments it has been held by the Hon'ble Apex Court that, the sale instance relied upon by the claimant cannot be kept out of consideration only for the reason that it pertains to a small piece of land. The learned Counsel submitted that, in such cases, the Reference Court is cast with the burden to assess or determine the market value of the acquired land considering the plus and minus factors in context with the sale instance relied upon by the claimants and to decide the market value of the acquired land.

7. The learned Counsel submitted that, on perusal of the impugned Judgment, it is difficult to gather as to what was transpired in the mind of the reference Court while determining the market value of the acquired land at the rate of Rs.2200/- per *Are*. The learned Counsel submitted that, there is no rational in determination of the market value by the reference Court as about the acquired lands. The learned Counsel submitted that, on the contrary, ample evidence has been brought on record by the claimants evidencing that, the acquired lands are in the proximity of the Taluka place, which is at the distance of half to one kilometer from the acquired lands. The

learned Counsel further submitted that, it has also been brought on record that, all facilities are available around the area which was acquired. It was also brought on record that, the acquired lands are abutting to the State highway. In the circumstances, according to the learned Counsel, the reference Court must have determined the market value as was claimed by the claimants and should have accordingly enhanced the amount of compensation.

8. The learned Counsel relied upon the Judgment of the Hon'ble Apex Court in the case of **Shaji Kuriakose and Ors Vs Indian Oil Corpn Ltd and Ors, AIR 2001 SC 3341** and also relied upon the another judgment of the Hon'ble Apex Court in the case of **Thakarsibhai Devjibhai and Ors Vs. Executive Engineer, Gujarat and Ors, AIR 2001 SC 2424**. Then learned Counsel further submitted that, the claimants have also filed Civil Application seeking leave of this Court for bringing on record the additional evidence in the form of documents i.e. the certified copies of the sale deeds executed in the similar period of the nearby lands. The learned Counsel referring to the sale-

deeds intended to be brought on record submitted that, in all those sale instances the market value received is on much higher side and since the acquired lands stand at par with the lands which were the subject matter of the said sale instances, the similar market rate deserves to be granted for the subject lands also.

9. The learned Counsel also submitted that, evidence on record demonstrates that, one *nala* goes from the acquired land. The learned Counsel submitted that, the same *nala* also passes from the land, which was the subject matter of Exh.19. The learned Counsel submitted that, from the water of *nala*, the applicants were taking two crops in a year and in the circumstances, the acquired lands were liable to be treated as semi irrigated lands, whereas the reference Court has held the said lands to be dry lands. For all these reasons, the learned Counsel prayed for allowing the appeals and to enhance the amount of compensation adequately with all statutory benefits and interest etc.

10. Learned AGP Shri Phule resisted the submissions

made on behalf of the learned Counsel appearing for the appellants – claimants. The learned AGP supported the impugned Judgment and Award. He submitted that, the learned reference Court has rightly preferred not to rely upon the sale instances brought on record by the claimants. The learned AGP submitted that, two of the sale instances which are kept out of consideration by the reference Court were pertaining to 11 R and 1 R land respectively. The learned AGP submitted that, there are Judgments by the Hon'ble Apex Court as well as by this Court that there are different consideration for the price being paid for the small pieces of land. The learned AGP submitted that, the reference Court has, therefore, rightly not relied upon the said sale instances.

11. The learned AGP further submitted that, the sale instance at Exh.19 has also not been considered by the reference Court for valid reasons. The learned AGP pointed out that, the averments in the sale deed at Exh.19 and the cross-examination of the witnesses clearly show that, the person who had purchased the land at Exh.19 was having his own land on the northern side of the said land and as such, he was bound to pay

some higher price for said land. The learned AGP submitted that, the sale deed at Exh.19 also demonstrates that, the purchaser of the said land had also purchased 1/5th of the right to receive water from the well in the adjacent field. The sale deed also reflects that, the share in the mango tree and tamarind tree was also purchased by the said purchaser. The learned AGP submitted that, considering the aforesaid facts, the price which was received to the said land at the rate of Rs.4244/- per Are in no case can be applied for determining the market value of the subject lands. The learned AGP submitted that, the price received to the land which was the subject matter of Exh.19 was having some special features and the same have been appropriately taken into account by the reference Court.

12. The learned AGP submitted that, Exh.19 also cannot be relied upon for one more reason that, the land which was the subject matter of the said sale instance was having the facility of the irrigation whereas except bringing on record that the *nala* was flowing from the acquired land there is no other evidence on record so as to hold the acquired lands to be irrigated or semi

irrigated lands.

13. The learned AGP submitted that, in fact the reference Court has very liberally enhanced the market value of the acquired lands. The learned AGP submitted that in fact the SLAO had considered the overall circumstances and after having taking into account the several sale instances of the similar period has determined the market value of the acquired lands at the rate of Rs.800/- per *Are*.

14. The learned AGP also pointed out that, as has been discussed by the reference Court the crop pattern shows that the lands were dry lands and no two crops were being taken from the said land. In the circumstances, according to the learned AGP, no interference is required in the Judgment and the award passed by the reference Court. The learned AGP, in all the circumstances, prayed for dismissal of the appeal.

15. I have given due consideration to the submissions made on behalf of the learned Counsel appearing for the

respective parties. I have perused the impugned Judgment as well as the evidence on record. It is not in dispute that, only claimants have adduced the oral and documentary evidence. Respondents did not adduce any evidence. As has come on record, in addition to their own testimony the claimants had relied upon three sale instances to support their claim for determination of the market value at the rate of Rs.5000/- per *Are*. The learned Reference Court has considered the said sale instances in para nos.21 and 22 of the impugned Judgment. Out of three sale instances, two sale instances were pertaining to the small pieces of land one admeasuring 11 R and another admeasuring 1 R, whereas the third sale instance was pertaining to the land determined 33 R. From the record, it is evident that, only one sale instance was placed on record which is at Exh.19. Contents of Exh.19 show that, the land admeasuring 33 R situated at village Tondar was sold by registered sale deed executed on 15.02.2000 for the consideration of Rs.1,40,000/- i.e. at the rate of Rs.4,242/- per *Are*.

16. It was the contention of the claimants that, the said sale instance brought on record by them was of a comparable

land and based on the price received to the land which was the subject matter of the said sale instance the market value of the acquired land must have been determined by the reference Court. Perusal of the impugned Judgment, however, reveals that the reference Court has not fully accepted the contention of the claimants and though from the discussion made in the Judgment, it appears that, based on the said sale instance the reference Court has attempted to determine the market value of the acquired lands, the entire contentions are not accepted by it.

17. Three reasons are assigned by the reference Court for not fully relying upon the said sale instance for determining the market value of the acquired lands. First that, the said land was purchased by adjacent land holder and as such he was bound to pay some extra cost for the said land. The second reason as has been mentioned is that, in the sale-deed at Exh.19 itself it is mentioned that, by paying the consideration of Rs.1,40,000/- as shown in the said sale deed, the purchaser had also purchased the right to the extent of $1/5^{\text{th}}$ for using the well water. Third reason which has been given by the reference Court is that, by paying the consideration to the aforesaid extent, the

purchaser of the said land has also purchased the 1/5 right of receiving fruit from a mango tree and tamarind tree. The learned Reference Court, therefore, did not determine the market value as equal to the said land i.e. at the rate of Rs.4,244/- or around the said rate.

18. After having discussed all the aforesaid aspects, the learned Reference Court seems to have reached to the conclusion and appears to have determined the market value at the rate of Rs.2200/- per *Are*. To some extent, I agree with the objection raised by the appellants – claimants that, there is no rational, at least it is not seen from the discussion made by the Judgment in arriving at the said conclusion. In para no.24 of the impugned Judgment, some calculations are made by the reference Court and some additions and subtractions seem to have been made. However, the market rate as has been determined by the reference Court is not matching with the calculations so made.

19. The question arises, on the basis of the evidence on record what could have been the market value of the acquired

lands on the date of acquisition. It is not in dispute that, the land which was the subject matter of Exh.19 was from the same village. It has also come on record that, the acquired lands are at the shorter distance from the said land. Though it was contended by the learned AGP that it was the small piece of land, the said contention cannot be accepted having regard to the fact that, the said land was admeasuring 33 R. It cannot be said that, it was too small piece of land and it could not have been used as the comparable sale instance for determining the market value of the acquired lands. If the measurements of the acquired lands are seen, they are as similar to the said acquisition. Some lands are admeasuring 30 R, some are 50 R, only three pieces of land are there, which are having more land than one acre. In the circumstances, for determining the market value of the said lands, the said sale instance could have been very well used by the reference Court.

20. Though it was contended by the learned AGP that, the land which was the subject matter of Exh.19 was irrigated land, the sale deed clearly shows that, the land was non-irrigated land. At the top of the sale deed itself, it has been

mentioned that, the sale deed pertains to a non-irrigated land. In the circumstances that also cannot be a reason for not considering the said sale instance.

21. The only factor, which could have been considered by the reference Court was that the said land was purchased by adjacent land holder with the right of well and right to receive fruits from two trees existing in the said land. While considering these facts, it also cannot be ignored that, the said sale instance was of the year-2000, whereas the lands which are the subject matter of the present appeals were acquired in the year 2003. It is thus evident that there was a difference of clear three years in execution of the sale deed at Exh.19 and in acquisition of the acquired lands. In the circumstances, the reference Court was bound to consider the increase in the price of the land according to the settled norms. Applying the said norms, the prospective increase could have been given by the reference Court at the rate of 10% per year and the prospective value of the said land could have been fixed by adding 30% of it while determining the market value of the acquired lands and then the minus factors could have been considered by the reference Court. If applying

the said criteria, 30% increase is given, the rate of the said land would come around Rs.5,500/- per *Are*. Considering all minus factors, first that acquired lands were larger in area, second that, the land was purchased by the adjacent land holder and it was having right to receive well etc., and the third that, the acquired lands though are claimed to be semi-irrigated lands, the applicants have failed in bringing on record any cogent and sufficient evidence to show that they were either irrigated or semi-irrigated lands, in accordance with the evidence which has come on record, it appears to me that, the reference Court could not have determined the market value of the acquired lands at the rate less than Rs.3,200/- per *Are*. I accordingly hold the applicants entitled for the enhanced amount of compensation by applying the said rate with all statutory benefits and the interest under the provisions of the Act.

22. For the reasons stated herein above, the following order is passed.

ORDER

(i) The market value of the lands, which are the subject matter of the present appeals, shall be determined at the rate of Rs.3200/- per *Are* and the amount of compensation be

accordingly enhanced.

(ii) The appellants are also held entitled for the statutory benefits under Section 23 (1A) and 23 (2) of the Land Acquisition Act on the enhanced amount of compensation.

(iii) The appellants are also held entitled for the interest under Section 28 and 34 of the Land Acquisition Act on the enhanced amount of compensation from the date of declaration of the Award under Section 11 of the Land Acquisition Act.

(iv) Award be drawn accordingly.

(v) Pending Civil Application, if any, stands disposed of.

. The appeals stand allowed in the aforesaid terms.

(**PR. BORA, J.**)

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