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

FIRST APPEAL NO. 2114 OF 2015

1. Madhav Pandhari Suryawanshi
Age : 45 yrs, occu.: agri.,

2. Pralhad Madhav Suryawanshi
Age : 22 yrs, occu.: agri.,

3. Ganesh Dnyanoba Mane
Age : 32 yrs, occu.: agri.,

All r/o Mulki, Tal.Ahmedpur,
District Latur. **Appellants.**

Versus

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

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

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Mr. G.L. Deshpande, Advocate for appellants.
Mr. S.N. Morampalle, A.G.P. for the respondents/State.

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**WITH
FIRST APPEAL NO.103 OF 2012**

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

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

Versus

1. Madhav Pandhari Suryawanshi
   Age : major, occu.: agri.,

2. Pralhad Madhav Suryawanshi
   Age : major, occu.: agri.,

3. Ganesh Dnyanoba Mane
   Age : major, occu.: agri.,

   All r/o Mulki, Tal.Ahmedpur,
   District Latur. **Respondents**.

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Mr. S.N. Morampalle, A.G.P. for appellant/State.
Mr. H.B. Nandagavale, Advocate holding for
Mr. G.L. Deshpande, Advocate for the respondents.
Mr. V.G. Sakolkar, Advocate for respondent Nos.1 and 2.

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WITH
FIRST APPEAL NO.3235 OF 2017

Shripati Ramrao Suryawanshi (Died)

1. Venkat Shripati Suryawanshi
   Age : 23 yrs, occu.: agri.,

2. Janabai w/o Shripati Suryawanshi
   Age : 45 yrs, oucc.: agri.,

   Both r/o Mulki, Tal. Ahmedpur,
   District Latur. **Appellants.**

   Versus

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

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

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Mr. G.L. Deshpande, Advocate for appellants.
Mr. S.N. Morampalle, A.G.P. for original respondents/State.

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WITH
FIRST APPEAL NO.105 OF 2012

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

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

Versus

1. Venkat Shripati Suryawanshi
Age : 23 yrs, occu.: agri.,

2. Janabai w/o Shripati Suryawanshi
Age : 45 yrs, oucc.: agri.,

Both r/o Mulki, Tal. Ahmedpur,
District Latur. **Respondents**.

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Mr. S.N. Morampalle, A.G.P. for appellant/State.
Mr. H.B. Nandagavale, Advocate holding for
Mr. G.L. Deshpande, Advocate for the respondents.
Mr. V.G. Sakolkar, Advocate for respondent Nos.1 and 2.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 30th November 2018.

Judgment pronounced on : 7th December 2018.

JUDGMENT.

1. These appeals are filed by original claimants as well as by original respondents against judgment and award passed by Joint Civil Judge, Senior Division, Ahmedpur in L.A.R. No.606/2006 and L.A.R. No.607/2006. These appeals being filed against common judgment and award passed by Reference Court on the basis of one and the same comparable sale instance, are being disposed of by this common judgment.

2. The facts leading to institution of these appeals are that the following land of original claimants situated at village Mulki are acquired by respondents under the award declared on 31.03.2005 :-

Sr. No.	LAR No.	Name of owners	Village	Survey No.	Area acquired in Hec. & Aar.
1	606/2006	Madhav Pandhari Suryawanshi	Mulki	194	0.61
2	-”-	Pralhad Madhav Suryawanshi	-”-	-”-	0.69
3	-”-	Ganesh Dnyanoba Suryawanshi	-”-	-”-	'0.20
4	607/2006	Shripati Ramrao Suryawanshi	-”-	193	0.53

Notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the “Land Acquisition Act”) was published in Official Gazette on

24.04.2003. Award was passed on 31.03.2005. Possession was taken on 22.04.2001 i.e. before the date publication of notification under Section 4 (1) of the Land Acquisition Act. However, being dis-satisfied with the compensation offered by Land Acquisition Officer the claimants filed Land Reference before the Collector which were referred to the Reference Court. The Reference Court awarded compensation in both Land References at the rate of Rs.1,25,000/- per Hectare (i.e. at the rate of Rs. 1250/- per Aar) with statutory benefits and interest under Section 28 of the Land Acquisition Act. Being dis-satisfied with that award, the claimants and respondents have preferred these appeals.

3. Hereinafter the parties are referred to by their status in the Land Reference Proceeding.

4. Heard Mr. Deshpande, learned Counsel for the original claimants and learned A.G.P. for the original respondents.

5. Learned Counsel for the claimants submits that though the land of claimants was irrigated and cotton soil land, Reference Court awarded meager compensation. He has pointed out that only one sale instance (Exh.14) dated 10.06.2002 was

relied on by the claimants in both Land References. According to the learned Counsel, though the land which was subject-matter of sale instance (Exh.14), is situated at village Chapoli, the said village is just adjoining to village Mulki and acquired land as well as land under sale instance are also adjoining to each other. He submits that the land under sale instance was sold out at the market price of Rs. 1,50,000/- for 20 Aar area i.e. at the rate of Rs. 7,500/- per Aar. However, learned Reference Court made unreasonable reductions from the said market price and without considering the escalation in market price, awarded less compensation. He submits that sale instance was executed one year preceding the date of notification under Section 4 (1) of Land Acquisition Act. He placed reliance on the case of **"Nirmal Sing Vs. State of Haryana" [2015 (4) Mh.L.J. 484]**.

6. Learned A.G.P. for the respondents also assailed the judgment and award passed by Reference Court on the ground that the sale instance (Exh.14) of small piece of land from different village was considered by Reference Court. Learned A.G.P. submits that village Mulki is at the distance of 5 kms. From the village Chapoli where the land under sale instance is

situated. He has also pointed out that one public highway is abutting the land under sale instance, and therefore, it fetches more price than normal market price of the said land. According to learned A.G.P. sale instance (Exh.14) cannot be considered as comparable sale instance. Learned A.G.P. submits that the Land Acquisition Officer offered compensation at appropriate rate.

7. At the outset, I must point out that the Apex Court, in the case of **"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona" [1988 (3) SCC 751]**, has laid down the following guidelines while determining just and proper compensation for the acquired land :-

> " (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. "	

Similar principles have been followed by the Apex Court in the case of "**Nirmal Singh Vs. State of Haryana"** (supra) while determining the fair and reasonable compensation for the acquired land.

8. In the instant case, the claimants have placed reliance on only single sale instance dated 10.06.2002 (Exh.14) of Gut No.582, area 20 Aar situated at village Chapoli. Under this sale deed 20 Aar land is sold out for the consideration of Rs.

1,50,000/-. Therefore, under this sale instance market price of the land situated at village Chapoli comes to Rs.7,500/- per Aar. The land under the sale instance is not irrigated land as per the recitals of sale deed (Exh.14). Therefore, that land is to be treated as dry crop land.

9. However, it cannot be ignored that the acquired land is situated at village Mulki and the land under sale instance is situated at village Chapoli. Though the claimants claim that these both villages are adjacent to each other and the acquired land and the land under sale instance are adjoining to each other, to substantiate this contention the claimants have not filed village map of both villages. On the other hand, on behalf of claimants only Madhav Pandhari Suryawanshi (PW-1) is examined and this witness has admitted in his cross-examination that village Mulki is at the distance of 7 kms. From village Chapoli. He has also admitted that on the western side of the land under sale instance, there is road. Otherwise also, copy of registered sale deed dated 10.06.2002 (Exh.14) shows that on the western side of the land under sale instance, Nanded to Latur road is situated. Thus, obviously as the land under sale instance

is abutting Nanded to Latur road, it fetches higher market price than the acquired land which is not abutting any road. However, on that count alone this sale instance cannot be discarded. This advantageous factor annexed with the sale instance (Exh.14) can be adjusted by deducting 10% market price while determining the fair and reasonable market price of the acquired land.

10. No doubt, land under sale instance and the acquired land are obviously at the distance of 7 kms. from each other. Though learned Counsel for the appellants placed reliance on internet particulars showing the distance in between these two lands as 3 kms., the said internet particulars cannot be considered as authenticate information. However, only on the ground of distance in between acquired land and the land under sale instance, it will be unjust to reject the sale instance and remand the matter for reconsideration, for the reason that in case of remand of the matters for re-determination of market price on the basis of sale instance from village Mulki, the claimants may be put to great hardship, as the award is passed prior to 13 years from today. Therefore, to adjust dis-advantageous factor of distance annexed with the acquired land,

deduction of 30% market price would be the appropriate solution.

11. Though the claimants claim that the acquired land is irrigated and black cotton soil land, from the crop statement of the acquired land (Exhs.15 and 16) it emerges that dry crops like Jowar, Toor, Moog and Soyabean are taken from the acquired land. So also, no source of water is shown as available to the acquired land. Therefore, the acquired land is considered as dry crop land.

12. No doubt, land under sale instance fetches market price at the rate of Rs. 7,500/- per Aar on 10.06.2002. Land under sale instance is only 20 Aar land. Therefore, for small size of this land 25% value is to be deducted from the market price of the land under sale instance. In addition to this, as observed above, for above-discussed dis-advantageous factors annexed to the acquired land, 10% value is to be deducted for abutting road to the land under sale instance and 30% value is to be deducted towards distance in between the acquired land and the land under sale instance. Thus, if total 65% value is deducted from the market price of the land under sale instance, the approximate market price of the acquired land comes to Rs. 2,625/- per Aar.

13. However, it cannot be ignored that the sale instance (Exh.14) is executed on 10.06.2002 and notification under Section 4 (1) of the Land Acquisition Act was published in Official Gazette on 24.04.2003. Thus, there is gap of more than 10 months in between the date of execution of sale instance and date of publication of notification under Section 4 (1) of the Land Acquisition Act. Therefore, there shall be escalation of 8% on the market price of the acquired land. Thus, fair and reasonable price of the acquired land would be Rs.2,835/- per Aar.

14. Thus, the claimants are entitled to compensation for the acquired land in both Land References at the rate of Rs.2,835/- per Aar. The claimants are also entitled to component under Section 23 (1A) of Land Acquisition Act at the rate of 12% per annum on market value of the acquired land, from the date of notification under Section 4 (1) of Land Acquisition Act i.e. 24.04.2003 to the date of award i.e. 31.03.2005. In addition to this, the claimants are also entitled to solatium of 30% on market value of the acquired land, under Section 23 (2) of Land Acquisition Act. The claimants are further entitled to interest under Section 28 of Land Acquisition Act at the rate of 9 % per

annum from the date of passing award i.e. 31.03.2005 for the first year and after one year at the rate of 15% per annum with on enhanced compensation, solatium and component amount, till the date of deposit of the said amount by the Collector. The compensation already received by the claimants shall be deducted from the compensation amount payable to the claimants.

15. Accordingly, First Appeal No.2114 of 2015 and First Appeal No.3235 of 2017 filed by claimants are partly allowed. First Appeal No.103 of 2012 and First Appeal No.105 of 2012 filed by original respondents stand dismissed.

16. The award passed by Reference Court in L.A.R. No.606/2006 and L.A.R. No.607/2006 is modified as under :-

> "(I) L.A.R. No.606/2006 and L.A.R. No.607/2006 are partly allowed with proportionate costs.
>
> (II) The claimants in L.A.R. No.606/2006 are entitled to enhanced compensation at the rate of Rs.2,835/- (Two Thousand Eight Hundred Thirty Five only) per Aar for the acquired land admeasuring 61 Aar, 69 Aar and 20 Aar out of Survey No.194, situated at village Mulki, Taluka Ahmedpur, District Latur.

(III) The claimants in L.A.R. No.607/2006 are entitled to enhanced compensation at the rate of Rs.2,835/- (Two Thousand Eight Hundred Thirty Five only) per Aar for the acquired land admeasuring 53 Aar out of Survey No.193, situated at village Mulki, Taluka Ahmedpur, District Latur.

(IV) The claimants are entitled to statutory benefit under Section 23 (1A) of the Land Acquisition Act i.e. additional component at the rate of 12% per annum on the market price of the acquired land from the date of publication of notification under Section 4 (1) of Land Acquisition Act i.e. from 24.04.2003 till the date of award i.e. 31.03.2005.

(V) Claimants are also entitled to solatium of 30% on market value of the acquired land, under Section 23 (2) of the Land Acquisition Act.

(VI) Claimants are entitled to interest under Section 28 of Land Acquisition Act on the enhanced compensation, solatium and component amount at the rate of Rs.9% per annum from the date of award i.e. 31.03.2005 to 31.03.2006 and from 01.04.2006 at the rate of 15% till deposit of the said amount by Collector in the Court.

(VII) Deficit Court fees, if any, shall be recovered from the claimants .

(VIII) 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".

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

18. The claimants are permitted to withdraw the compensation amount and proportionate accrued interest thereon, in accordance with modified award, if the respondents have deposited the compensation amount with accrued interest thereon in this Court.

(SUNIL K. KOTWAL)
JUDGE

vdd/