

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

**FIRST APPEAL NO. 732 OF 2015
WITH
CROSS OBJECTION NO.1032 OF 2015**

City and Industrial Corporation
Through its Administrator,
CIDCO, Aurangabad.

Appellant.

Versus

1. Kasturchand s/o Ramlal Badjate
Age : major, occu.: business/agri.,
R/o Plot No.7, Chintamani Colony,
Aurangabad.
2. Pushpabai w/o Kasturchand Badjate
Age : major, occu.: business/agri.,
R/o As above.
3. Bipinkumar s/o Kasturchand Badjate
Age : major, occu.: business/agri.,
R/o as above.
4. Vishalkumar Kasturchand Badjate
Age : major, occu.: business/agri.,
R/o as above.
5. Special Land Acquisition Officer
(Spl. Unit) Railway Station
Road, Aurangabad.

Respondents.

Mr. A.S. Bajaj, Advocate for the appellant.
Mr. A.P. Bhandari, Advocate for respondent Nos.1 to 4.
Mr. R.B. Bagul, A.G.P. for respondent No.5.

**WITH
CIVIL APPLICATION NO.8608 OF 2016
IN
FIRST APPEAL NO. 732 OF 2015
WITH
CIVIL APPLICATION NO.8609 OF 2016
IN
X-OBJST NO. 1032 OF 2015
IN
FIRST APPEAL NO. 732 OF 2015**

Kasturchand Ramlal Badjate & ors.	<u>Applicants.</u>
Versus	
CIDCO, Aurangabad.	<u>Respondent.</u>

Mr. A.P. Bhandari, Advocate for the applicants.
Mr. A.S. Bajaj, Advocate for respondent No.1.
Mr. R.B. Bagul, A.G.P. for respondent No.2.

**WITH
CIVIL APPLICATION NO. 11743 OF 2014
AND
CIVIL APPLICATION NO. 3128 OF 2015
IN
FIRST APPEAL (ST.) NO. 27714 OF 2014**

City & Industrial Corporation..	<u>Applicant.</u>
Versus	
Kasturchand Ramlal Badjate & ors.	<u>Respondents.</u>

Mr. A.S. Bajaj, Advocate for the applicant.
Mr. A.P. Bhandari, Advocate for respondent Nos.1 to 4.
Mr. R.B. Bagul, A.G.P. for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 16th October 2018.

Judgment pronounced on : 28th November 2018.

JUDGMENT.

1. This appeal is directed by the City and Industrial Development Corporation (CIDCO), Aurangabad against the judgment and award passed by the Civil Judge, Senior Division, Aurangabad in L.A.R. No. 622/2005.

2. Appellant is original original respondent No.2. Respondent Nos.1 to 4 are the original claimants and respondent No.5 is Special Land Acquisition Officer, Aurangabad. Hereinafter the parties are referred to as per their status in the original proceeding.

3. The facts leading to institution of this appeal are that, the claimants are owners and possessors of land Gut No.47 admeasuring 9 Hectare 37 Aar situated at Golwadi, Taluka and District Aurangabad. Out of this land, 3 Hectare 16 Aar area was acquired by respondent Nos.1 and 2 for development of CIDCO-Waluj Mahanagar, Phase-IV. Notification under Section 126 (4) of the Maharashtra Regional Town Planning Act

(hereinafter referred to as the “M.R.T.P. Act”) was published in Maharashtra State Gazette on 10.12.1998. The award was declared on 19.03.2005. Possession of the acquired land was taken by respondent No.2 – Acquiring Body on 15.04.1997. Under the award the Land Acquisition Officer offered compensation at the rate of Rs. 2,500/- per Aar for the acquired land and compensation of Rs. 3,115/- per Sweet Lime tree, for total 538 trees. The offered compensation amount was accepted by the claimants under protest on 20.05.2005. Being dis-satisfied with the offered compensation, the claimants made application to the Collector. In the result, Land Reference was referred to the Civil Judge, Senior Division, Aurangabad.

4. While deciding L.A.R. No.622/2005, the Reference Court awarded compensation for the acquired land at the rate of Rs. 21,700/- per Aar and for 794 Sweet Lime trees the Reference Court awarded compensation at the rate of Rs. 4,424/- per tree. In addition to this, compensation of Rs. 1,02,565/- was awarded towards damages to the pipeline and drip irrigation system. That award is challenged by respondent No.2 – Acquiring Body by filing the present appeal. In the same appeal, even the

claimants have filed cross objection for enhancement of compensation for the acquired land and Sweet Lime trees. In the cross-objection the claimants claimed interest on compensation amount from the date of taking possession of the acquired land. In the alternate, the claimants prayed compensation for the entire acquired land excluding the trees, if that is more beneficial.

5. Heard Mr. A.S. Bajaj, learned Counsel for the appellant (original respondent No.2), Mr. A.P. Bhandari, learned Counsel for the respondent Nos.1 to 4 (original claimants) and learned Additional Government Pleader for respondent No. 5 – Special Land Acquisition Officer.

6. At the outset I must make it clear that in this appeal, the appellant, who is original respondent No. 2, has filed Civil Application No.13408 of 2017 and Civil Application (Stamp) No.32001 of 2018 for permission to file additional documentary evidence, under Order XXXXI Rule 27 of the Code of Civil Procedure. Those applications are disposed of by passing separate common order. Civil Application No.13408 of 2017 is rejected and Civil Application (Stamp) No.32001 of 2018 is partly

allowed and production of only 7/12 extract (Exhibit C-2) of Gut No.40 situation at village Golwadi is allowed.

7. In the case at hand, undisputedly the claimants are owners of land Gut No.47 admeasuring 9 Hectare 37 Aar, situated at village Golwadi, Taluka and District Aurangabad and out of this land, respondent Nos.1 and 2 acquired 3 Hectare 16 Aar land for development of CIDCO – Waluj Mahanagar, Phase-IV. Even the date of publication of notification under Section 126 (4) of the M.R.T.P. Act 10.12.1998 and declaration of award on 19.03.2005 is not disputed fact in between the parties. Even the acceptance of offered compensation amount under protest by the claimants on 20.05.2005 is not disputed at the stage of this appeal. Learned Counsel for the appellant has also fairly conceded that the Land Reference was filed by claimants well within limitation. Therefore, the point whether the Land Reference was filed within limitation, needs no more consideration. I hold that the Land Reference was filed within limitation.

8. Learned Counsel for the appellant (original respondent No.2) assailed judgment and award on the ground

that the Reference Court relying on panchnamas (Exhs.22 and 23) held that total 794 Sweet Lime trees were standing over the acquired land and relying on valuation report submitted by Taluka Agricultural Officer, Reference Court awarded compensation at the rate of Rs.4,424/- per Sweet Lime tree to the claimants. Learned Counsel for the appellant submits that neither panchnamas (Exhs.22 and 23) were proved by examining the panchas nor valuation report of Taluka Agricultural Officer was proved by examining the Valuer. Therefore, the number of Sweet Lime trees standing over the acquired land and compensation for each Sweet Lime tree determined by the Reference Court is incorrect.

9. In reply, learned Counsel for the claimants submits that respondent No.1, in para 2 (b) of his written statement (Exh.9), has admitted the existence of 794 Sweet Lime trees in the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act. He also submits that the copies of panchnamas (Exhs.22 and 23) were issued by respondent No.2 CIDCO Office and those copies being certified copies of the public document, are admissible in evidence without its formal proof.

According to the learned Counsel for claimants, examination of panchas or Valuer of Sweet Lime trees is not at all necessary. He has also drawn my attention towards joint measurement report (Exh.29).

10. It is to be noted that joint measurement report (Exh.29) is the certified copy of joint measurement carried out by Taluka Inspector of Land Records Office and the Land Acquisition Officer. Certified copy was issued by Special Land Acquisition Officer, Aurangabad. This document being record of the act of Public Officer, it is a public document within the meaning of Section 74 of Indian Evidence Act and its certified copy is admissible in evidence under Section 77 read with Section 79 of Indian Evidence Act without its formal proof. However, panchnama dated 29.08.1994 (Exh.22) and panchnama dated 15.04.1997 (Exh.23) though prepared in presence of Land Acquisition Officer and Land Surveyor, CIDCO Aurangabad, these documents are not issued as certified copies by the CIDCO as prescribed under Section 76 of Indian Evidence Act. Even the stamp visible on these two panchnamas, as “issued under Right to Information Act”, does not bear the signature of the officer

who issued those copies. Therefore, these both documents cannot be read in evidence as certified copies of the public document within the meaning of Section 76 of Indian Evidence Act. However, considering the admission given by respondent No.1 in his written statement (Exh.9) and schedule of joint measurement (Exh.29), which shows existence of 730 standing Sweet Lime trees and 64 cut Sweet Lime trees in the acquired land, is certainly sufficient to hold that total 794 Sweet Lime trees were standing in the acquired land.

11. However, unless valuation of these 794 Sweet Lime trees is proved by the claimants by examining the concerned Valuer from the agriculture office, Aurangabad, mere filing of true copy of valuation report is not sufficient to determine the valuation of each Sweet Lime tree standing over the acquired land. Otherwise also, out of 794 Sweet Lime trees, 64 trees were cut in the year 1994 i.e. before preparation of valuation report of those Sweet Lime trees by Taluka Agricultural Officer. Therefore, in any case the claimants cannot prove valuation of 794 Sweet Lime trees which were standing over the acquired land. In the circumstances, the compensation awarded by

Reference Court for 794 trees at the rate of Rs. 4,424/- per Sweet Lime tree is without any base and deserves to be set aside. However, in such case even if valuation of these 794 Sweet Lime trees is excluded, the compensation of 3 Hectare 16 Aar acquired land can be determined on the basis of comparable sale instances. Even in the cross-objection the claimants have prayed for compensation excluding 794 Sweet Lime trees, only on the basis of market price of 3 Hectare 16 Aar acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act.

12. In the case of **“Ambya Kalya Mhatre Vs. State of Maharashtra” [2012 (1) MAH. L.J. (S.C.) 9]**, the Apex Court held that if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, then there is no question of again adding the value of trees. In view of this position of law, if in this appeal the compensation is awarded after determining the value of the land on the basis of comparable sale instances, as well as after considering quality of the land in view of Sweet Lime trees standing over the acquired land, proper compensation can be

awarded to the claimants, even without consideration of compensation for Sweet Lime trees. Therefore, I proceed to determine the compensation for the entire 3 Hectare 16 Aar acquired land.

13. For determining the market price of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act, initially I must consider what is the quality of the acquired land and whether it is perennially irrigated or seasonally irrigated or it is a dry crop land. After going through the judgment passed by Reference Court, it emerges that only because in the cross-examination of claimant Kasturchand Badjate (PW-1) it has been brought on record that there are two wells in Gut No.7 and third well was sunk because the water from existing two wells was not sufficient to irrigate the land and because in 16 Acres land drip irrigation was provided and because Sweet Lime trees were planted in the said land, the Reference Court jumped to the conclusion that it is an irrigated land. Even the Reference Court has considered that the acquired land is irrigated land, because the Land Acquisition Officer awarded compensation for Sweet Lime trees.

14. It is to be noted that in para 26 of the judgment though the Reference Court held that the acquired land is irrigated land, it has not given finding whether it is 'perennially irrigated' land or 'seasonally irrigated' land. Undisputedly except the well water, no other source of irrigation is available to Gut No.47 admeasuring 9 Hectare 37 Aar i.e. more than 23 Acres. Out of this 23 Acres, drip irrigation facility is provided only in 16 Acres as per the admission of Kasturchand Badjate (PW-1). Thus, the entire 23 Acres land is not irrigated with the help of drip irrigation facility. Undisputedly, out of 3 Hectare 16 Aar acquired land, the Sweet Lime trees were planted only in some portion of the acquired land. Claimant Kasturchand Badjate (PW-1) has claimed compensation at the rate of Rs.25,000/- per Aar for 1 Hectare 22 Aar land and he claimed compensation for 794 Sweet Lime trees at the rate of Rs.4,424/- per Sweet Lime tree. Thus, it can be gathered that drip irrigation facility was not provided to the entire acquired land.

15. It is important to note that even Kasturchand Badjate (PW-1) in his examination-in-chief nowhere deposed that the acquired land is 'perennially irrigated' land or sufficient

water is available in his three wells to irrigate the entire 23 Acres land owned by him, throughout the year. Only in his cross-examination it has been brought on record that he used to irrigate his entire land with the help of three wells. Such vague statement is not sufficient to jump to the conclusion that the acquired land is 'perennially irrigated' land.

16. Heavy reliance has been placed by learned Counsel for the claimants on the crop statement of the acquired land. According to the claimants, Sweet Lime trees were planted in the year 1988 onwards. The crop statement shows that in the year 1987-88 Sweet Lime trees were planted only in 2 Hectare land and remaining portion was utilized for getting yield of dry crops like Bajra, Jowar and Sesame. In the year 1988-89, 4 Hectare area was utilized for Sweet Lime trees, in 2 Hectare area, sugarcane crop was taken and in remaining portion dry crops like Bajra, Jowar, Wheat and Grass was taken. In the year 1989-90, Jowar crop was taken from 2 Hectare 63 Aar and other portion was utilized for Sweet Lime plantation. In the year 1990-91 perennially irrigated crop like sugarcane was taken only from 1 Hectare 20 Aar area and remaining portion was utilized for

Sweet Lime trees and dry crops like Bajra, Maize and Toor. In the year 1991-92 sugarcane was taken only from 1 Hectare 20 Aar. In the year 1992-93 sugarcane was taken only from 1 Hectare. The entries in crop statement after 1994 till 1998 indicate that perennially irrigated crop like sugarcane is taken in meager area of the total Gut No.47. Most of the area of Gut No.47 admeasuring 9 Hectare 37 R was utilized for Sweet Lime trees and dry crops. Thus, this crop pattern reflected from record of right of Gut No.47 does not indicate that entire land of the claimants is perennially irrigated land.

17. It is to be noted that even Sweet Lime trees yield is taken in particular season in the year. For Sweet Lime trees well water irrigation is not necessary for entire year, but such irrigation is necessary only in flowering and fruit bearing season. Thus, only because major portion of Gut No.47 is utilized for Sweet Lime trees, inference cannot be drawn that the entire Gut No.47 is perennially irrigated land. On the other hand, as discussed above, crop pattern of Gut No.47 indicates that it is seasonally irrigated land, and therefore, from some portion of Gut No.47, yield of dry crop was taken.

18. Another important aspect is that, as discussed above, by examining panchas the claimants have not proved panchnama dated 29.08.1994 (Exh.22) and panchnama dated 15.04.1997 (Exh.23) when possession of acquired land was taken by Acquiring Body. Thus, the claimants cannot prove that on the date when possession of the acquired land was taken, perennially irrigated crops like sugarcane was taken from the acquired land. Even joint measurement report dated 17.01.1997 (Exh.29) is of no use to show that the acquired land is perennially irrigated land. In the circumstances, oral evidence of Kasturchand Badjate (PW-1) and documentary evidence placed on record by the claimants is not sufficient to prove that the acquired land is perennially irrigated land. On the other hand, crop statement (Exh.24) shows that the acquired land is seasonally irrigated land with the help of well water.

19. Another important aspect is that the acquired land is situated in village Golwadi i.e. in Marathwada Region. It cannot be ignored that in this region there is always water scarcity due to less rainfall. Therefore, usually after winter season, ground water level in this area is substantially reduced. Considering

this climate condition in this particular area, it is hard to digest that with the help of three wells the claimants can irrigate their entire more than 23 Acres agricultural land throughout the year. In the circumstances, I have no hesitation to hold that though the acquired land is cotton soil land, it is not perennially irrigated land, but it is seasonally irrigated land with the help of well water.

20. For determining market value of the acquired land, the Reference Court has followed comparable sale instance method. 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 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.

(10) 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

1. smallness of size.
2. proximity to a road. `

Minus factors

1. largeness of area.
2. situation in the interior at a distances from the Road.

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| 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. “ | |

21. As rightly pointed out by the learned Counsel for Acquiring Body, in the case of **“Printers House Pvt. Ltd. Vs MST Saiyadan”** [(1994) 2 SCC 133], while considering the method of assessing the market value of the acquired land by comparable sale instance method, the Apex Court held that,

“Where certain factors appreciating to the land in a comparable sale have to be adjusted, it is done by varying the price of the land covered by the sale, i.e. by adding certain amount to the price fetched for the land sold or by deducting a certain amount in such

price, depending on the nature of the factor concerned being a plus factor or a minus factor. Whatever it be, genuineness or authenticity of the sale is a factor which permits no adjustment in price. If the sale is found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary Notification under the Act in respect of the acquired land, the market value of which has to be determined, the Court, has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale of the market value determined for the land in the award could be taken by the Court as the 'price basis' for determining the market value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason that such 'price basis' may very largely depend even on no comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind,

cannot be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their acquired land, which are five in numbers, are not similar, in that, their location, size, shape greatly vary. One plot of land of one claimant and another plot of another claimant appear to be one type. Another plot of land of one of them appear to be of a different type. Yet another plot of the second of them appears to be different. If so far as third claimant's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their land. The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land of market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration”.

22. Even learned Counsel for the claimants does not dispute the above-referred legal principles. He has placed reliance on three sale instances i.e. Exh.26 – executed on 09.03.1994, Exh.27 – executed on 06.05.1994 and Exh.28 – dated 11.08.1997. He submits that when there are more than one comparable sale instances, the sale instance which fetches higher market value for the acquired land, shall be considered. He

placed reliance on the cases of **“Mehrawal Khewaji Trust, Faridkot Vs. State of Punjab and others” (AIR 2012 SC 2721)** and **“State of Maharashtra Vs. Mishrilal Bansilal Jain” [2009 (3) ALL MR 509]**.

23. His next submission is that from the village map (Exh.25), it can be gathered that Aurangabad to Paithan road is abutting the acquired land. According to learned Counsel for the claimants, 18 Metre wide road also passes through Gut No.47. Therefore, though Aurangabad to Paithan road is abutting the land under above three sale instances, the acquired land has also identical locational advantage, and therefore, the above sale instances can be considered as comparable sale instances.

24. On the other hand, learned Counsel for the Acquiring Body submits that from the plain reading of above-said village map, it can be gathered that no road is abutting the acquired land Gut No.47. He has pointed out that from the sale instances it emerges that Aurangabad to Paithan Highway is abutting the land which is subject of the above three sale instances. According to learned Counsel for the Acquiring Body, as the land under sale

instances is abutting National Highway, certainly it fetches higher market value than the acquired land, and therefore, considering the higher N.A. potential of land under sale instances and its distance from the acquired land, the sale instances (Exhs. 26 to 28) cannot be considered as comparable sale instances.

25. Learned Counsel for the Acquiring Body further submits that the land under comparable sale instances are at long distance from the acquired land, and therefore, it cannot be considered as comparable sale instance. However, I do not find any substance in this objection, because in the case of **“Lal Chand Vs Union of India and another”** [(2009) 15 SCC 769], while considering this aspect the Apex Court held that if the acquisition is in regard to large area of agricultural land in a village and exemplar sale deed is also in respect of the agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of prevailing market value, even if such land is at the other end of village at a distance of one or two kilometers.

26. In the case at hand, from the village map, it emerges

that the acquired land is not at the long distance from Gut No.40 which is the subject-matter of comparable sale instances. Only two gut numbers are in between these two lands. The acquired land and the land under sale instances are situated in village Golwadi and these both pieces of land are larger in size and thus are not small plots. Therefore, in view of verdict of the Apex Court in the above-cited case, the distance in between the acquired land and land under comparable sale instance (Exh.28) does not carry any importance. The objection raised by learned Counsel for the Acquiring Body is not acceptable.

27. Learned Counsel for the Acquiring Body also points out that initially the compensation was claimed at the rate of Rs.10,00,000/- per Hectare, but subsequently by amending the Reference Petition, the compensation is claimed at enhanced rate of Rs. 25,00,000/- per Hectare.

28. However, the claim of compensation at higher rate by subsequent amendment does not adversely affect the claim of compensation amount by the claimants, because in the case of **“Ambya Kalya Mhatre Vs. State of Maharashtra”** (supra) the Apex Court has pointed out that the Act does not require the

land owner to specify the amount of compensation and by subsequent amendment, the claimant may claim compensation at higher rate.

29. In view of the guidelines issued by Apex Court in the case of **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona”**, to determine the market value of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act, I have to choose one sale instance out of the above-said three sale instances, as comparable sale instance. Only genuine sale instance can be taken into consideration. As per the verdict of the Apex Court, the most comparable sale instance out of genuine instances has to be identified on the consideration of (1) proximity from time angle and (2) proximity from situation angle. So far as the proximity from situation angle is concerned, all these sale instances (Exhs.26 to 28) have identical advantageous factor i.e. land under all these three sale instances is abutting Aurangabad to Paithan Highway. However, so far as proximity from time angle is concerned, the sale instance (Exh.26) is dated 09.03.1994, sale

instance (Exh.27) is dated 06.05.1994 and the sale instance (Exh.28) is dated 11.08.1997. So also under sale instance (Exh.26) Gut No. 40, 41 Aar was sold out. Under sale instance (Exh.27) out of same Gut Number 32 Aar area was sold out and under sale instance (Exh.28) out of the same Gut No.40, 90 Aar land was sold out. Thus, sale instance (Exh.28) being in respect of the larger piece of land and more proximate with the date of publication of notification under Section 126 (4) of M.R.T.P. Act, can be considered as genuine and appropriate comparable sale instance to determine the market value of the acquired on the date of publication of notification. Otherwise also, genuineness of this sale instance (Exh.28) cannot be doubted, because some part of the consideration was paid by post-dated cheques. On the other hand, this sale instance (Exh.28), being reasonably prior to the date of publication of notification under Section 126 (4) of M.R.T.P. Act, is certainly genuine sale instance. Only because the vendor of this land sold out it within short period from the date of purchase, genuineness of this document cannot be doubted. Therefore, I hold that sale instance dated 11.08.1997 (Exh.28) is to be considered as comparable sale instance to determine the market value of the acquired land on the date of

notification.

30. After going through sale deed dated 11.08.1997 (Exh.28), it becomes clear that under this sale instance, 90 Aar agricultural land was sold out for consideration of Rs. 8,00,000/- i.e. at the rate of Rs. 8,888/-. This sale instance is executed prior to about one year and four months from the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Therefore, in view of State of **“Maharashtra Vs. Mishrilal”** (supra) and State of **“Maharashtra Vs. Shantaram Govind Tandel and others [2011 (7) ALLMR 273]**, for determining proper market value of the acquired land, there shall be escalation of 13% in the market value. Thus, the market value of the acquired land is assessed as Rs. 10,043/- per Aar. As observed above, the acquired land is seasonally irrigated land. On the other hand, sale instance (Exh.28) does not show that the land under sale instance is perennially irrigated land or seasonally irrigated land. No doubt, 7/12 extract of Gut No.40 (Exh. C-2) shows that three wells are situated in the said gut number. However, crop pattern clearly indicates that only dry crops are taken from the said land. Therefore, land under sale instance can be considered only as dry

crop land and not as seasonally irrigated land.

31. After going through the judgment passed by the Reference Court, it emerges that the market value of irrigated land was considered double than the dry crop land. However, as rightly pointed out by learned Counsel for the Acquiring Body, the Full Bench of this Court in the case of **“State of Maharashtra Vs. Prashram Jagannath Aute and another” (AIR 2007 Bombay 167)**, has considered this aspect and held that no straight jacket formula can be provided to resolve all controversies uniformly. The decision of Division Bench reported in 1993 LAC 233 that irrigated land would fetch double price than dry crop land is given in facts and circumstances of the case. It cannot be applied as binding precedent de hors facts of the case. In view of this position of law, the grant of compensation for acquired land, double than the market rate of the land under sale instance (Exh.28) was absolutely erroneous.

32. Considering the good quality of acquired land i.e. cotton soil land and seasonal irrigation facility available to the acquired land, I hold that the market price of the acquired land shall be 1 ½ times than the market price of the land under sale

instance (Exh.28). Thus, the market price of the acquired land is determined as Rs. 15,064/-.

33. Now I have to consider the advantageous factor annexed to the land under sale instance (Exh.28) i.e. the said land is abutting Aurangabad to Paithan Highway, as mentioned in the sale deed. No doubt, the claimants claim that the acquired land is also abutting the same Highway. However, after going the map (Exh.25), even a layman can gather that Gut No.47 is not abutting Aurangabad to Paithan Highway, because there are two gut numbers in between Gut No.47 and Gut No.40 which is abutting Aurangabad to Paithan Highway. No doubt, on the eastern side of Gut No.47, one road is shown in the map. However, that road is not abutting Gut No.47, but a reasonable broad stream passes in between that road and Gut No.47. Thus, by no stretch of imagination it can be said that Gut No.47 is abutting any road or highway as claimed by claimants. In the circumstances, in view of the guiding principles laid down by the Apex Court in the case of **“Printers House Pvt. Ltd. Vs MST Saiyadan”** (supra), to adjust the advantageous factor annexed to the land under sale instance (Exh.28), there shall be certain

deduction from the market value of the acquired land. According to me, deduction of 10% value from the market value of the acquired land is sufficient to adjust the advantageous factor annexed with the land under sale instance (Exh.28). Therefore, after deducting 10% from the market value of the acquired land, the true and fair market price of the acquired land is determined as Rs. 13,558/- per Aar. Thus, the claimants are entitled to compensation for the acquired land admeasuring 3 Hectare 16 Aar at the rate of Rs.13,558/- (in round figure, Rs. 13,560/-) per Aar.

34. Claimants have also claimed compensation towards damages of pipelines and drip irrigation articles, which were fixed in the acquired land. The Land Reference Court awarded compensation of Rs. 1,02,565/- towards damages to the pipelines and drip irrigation material, on the basis of copies of receipts issued by shopkeepers (Exhs.34 to 38).

35. Learned Counsel for the Acquiring Body assailed this part of the judgment on the ground that these all receipts regarding purchase of articles for pipeline and drip irrigation system, are not proved by claimants by examining the shopkeeper

from where these articles were purchased and who issued those receipts regarding payment made for purchase of these articles. On the other hand, learned Counsel for the claimants submitted that these receipts being certified copies received from Acquiring Body Office, can be admitted in evidence without formal proof.

36. After going through the record and proceeding, it emerges that after receipt of notice under Section 9 (2) and (4) of the Land Acquisition Act the claimants submitted reply (Exh.19) claiming compensation at enhanced rate. With that reply to Land Acquisition Officer, Aurangabad the claimants annexed bills of purchase of pipelines and drip irrigation articles. Copies of the same bills were issued by Land Acquisition Officer under the Right to Information Act. Obviously these receipts are not the record of any act of Public Officer. Therefore, under Section 74 of the Indian Evidence Act, these receipts cannot be treated as public document, and therefore, its true copies issued by Land Acquisition Officer cannot be admitted in evidence as certified copies of public document. Thus, the learned Counsel for Acquiring Body was absolutely right that without examining the concerned shopkeeper, who issued those receipts, the same

cannot be proved to prove the purchase of articles for laying pipelines and drip irrigation system in the acquired land. So also, by taking the risk of repetition, I must clarify that the area of Gut No.47 is more than 23 Acres and according to the claimants, drip irrigation system was fixed in 16 Acres area of Gut No.47. Thus, in any case the receipts (Exhs.34 to 38) cannot be regarding the pipelines and drip irrigation system fixed in the acquired land only. So also, it cannot be ignored that the Acquiring Body and Land Acquisition Officer have specifically denied the existence of this pipeline and drip irrigation system in the acquired land at the time of taking possession on 15.04.1997. Even joint measurement report (Exh.29) is of no help to prove existence of these articles in the acquired land on 15.04.1997, because the report was prepared on 17.01.1997 i.e. prior to the date of taking possession of acquired land.

37. In the circumstances, oral and documentary evidence placed on record by the claimants falls short to prove that the claimants sustained damages to the pipeline and drip irrigation system articles laid in the acquired land. In fact, these articles are of such nature that before delivery of possession of acquired

land, the claimants could have easily removed those articles from the acquired land and utilized the same for the remaining portion of Gut No.47 which is in possession of the claimants. Considering these all circumstances before this Court, I hold that the claimants are not entitled to any compensation towards damages to the pipeline and drip irrigation articles as claimed by claimants as well as awarded by Reference Court. The award passed by Reference Court granting the damages of Rs. 1,02,565/- towards damages to the pipeline and drip irrigation system, deserves to be set aside.

38. Appellant / Acquiring Body has also challenged grant of interest under Section 34 of the Land Acquisition Act from the date of publication of notification under Section 126 (4) of M.R.T.P. Act (Reference Court has wrongly mentioned notification “under Section 4”) as well as compound interest at the rate of 12% on enhanced compensation amount from the date of notification and interest under Section 28 of the said Act on enhanced compensation amount from the date of notification under Section 4 of the Act. Learned Counsel for Acquiring Body submits that interest under Section 34 of the Act can be awarded

from the date of award till the date of payment of compensation awarded by Collector to the claimants, as possession is taken before publication of notification under Section 126 (4) of M.R.T.P. Act. He also submits that 12% compound interest on the enhanced compensation amount cannot be awarded, as awarded by Reference Court. He has also pointed out that even under Section 28 of Land Acquisition Act, interest cannot be awarded from the date of notification under Section 126 (4) of M.R.T.P. Act, but it should be from the date of passing of award, as the possession is taken before the date of publication of notification.

39. Learned Counsel for the claimants fairly concedes that the interest under Section 34 of the Land Acquisition Act may be awarded from the date of award. Learned Counsel for the claimants also submits that interest under Section 28 of the said Act may be awarded from the date of publication of notification under Section 126 (4) of M.R.T.P. Act.

40. Regarding award of interest under Section 34 of the Land Acquisition Act, the law is settled by the Full Bench of this Court in the case of **“State of Maharashtra Vs. Kailas Rangari”** reported in [AIR 2016 (BOM) 141] that if the

possession of acquired land is taken before the notification under Section 4 (1) of the Land Acquisition Act and before the award is passed, the land owner would be entitled for interest as per Section 34 of the said Act necessarily from the date of passing of award under Section 11 of the Act, except in cases where possession is taken in accordance with Section 17 of the said Act.

41. In the case at hand, possession of acquired land is taken by Acquiring Body before the date of publication of notification under Section 126 (4) of M.R.T.P. Act and before passing of award. Possession is not taken under Section 17 of the Land Acquisition Act, under emergency clause. Therefore, interest under Section 34 of the Land Acquisition Act can be awarded to the claimants on compensation awarded by the Collector from the date of award i.e. from 19.03.2005 till the date of payment of compensation to the claimants. In the case at hand, undisputedly the claimants have accepted the compensation amount awarded by Collector on 20.05.2005, under protest. Therefore, interest under Section 34 of the Land Acquisition Act is payable only up to 20.05.2005.

42. So also, the claimants are entitled to statutory

benefits under Section 23 (1A) of the Land Acquisition Act i.e. the amount calculated at the rate of Rs.12 % per annum on market value of the acquired land for the period commencing on and from the date of publication of notification under Section 4 (1) of the Land Acquisition Act (notification under Section 126 (4) of M.R.T.P. Act) to the date of award of Collector, or the date of taking possession of land, whichever is earlier.

43. In the case at hand, possession of acquired land is taken by Acquiring Body even before the date of publication of notification under Section 126 (4) of the M.R.T.P. Act. Therefore, the claimants are entitled to component at the rate of 12% per annum on the market value of the acquired land from 10.12.1998 i.e. the date of publication of notification under Section 126 (4) of M.R.T.P. Act till the date of passing of award i.e. 19.03.2005. Claimant are entitled to solatium of 30% of market value of acquired land under Section 23 (2) of Land Acquisition Act. Under Section 28 of Land Acquisition Act, the claimants are entitled to interest on enhanced compensation amount at the rate of 9% per annum from the date of award i.e. from 19.03.2005 till the date of deposit of compensation. If the enhanced

compensation amount is not deposited within one year from 19.03.2005, then from 20.03.2006 the claimants would be entitled to interest at the rate of 15% per annum on enhanced compensation amount till deposit of compensation in the Court by the Collector or Acquiring Body.

44. The award passed by Reference Court shows that Reference Court has erroneously awarded compound interest at the rate of Rs. 12% per annum and even compensation under Section 28 of Land Acquisition Act from the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Reference Court erroneously awarded interest under Section 34 of the Land Acquisition Act from the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Thus, the award passed by Reference Court in L.A.R. No.622/2005 deserves to be modified as under by allowing First Appeal No.732 of 2015. Cross-objection filed by claimants deserves to be dismissed.

45. Accordingly, First Appeal No.732 of 2015 is partly allowed. Cross-objection filed by claimants stands dismissed. The award passed by Civil Judge, Senior Division, Aurangabad in L.A.R. No.622/2005 is modified as under :-

- “(i) L.A.R. No.622/2005 is partly allowed with proportionate costs.
- (ii) Claimants are entitled for enhanced compensation for the acquired land Gut No.47, admeasuring 3 Hectare 16 Aar situated at Golwadi at the rate of Rs. 13,560/- per Aar.
- (iii) Claimants are entitled to statutory benefit under Section 23 (1A) of Land Acquisition Act i.e. interest on market value of acquired land at the rate of Rs.12% per annum from the date of publication of notification under Section 126 (4) of M.R.T.P. Act to the date of passing of award i.e. from 10.12.1998 to 19.03.2005 and solatium of 30% of the market value of acquired land under Section 23 (2) of the Land Acquisition Act.
- (iv) Claimants are entitled to interest under Section 28 of Land Acquisition Act on the enhanced compensation, solatium and component amounts at the rate of 9% per annum from the date of award i.e. from 19.03.2005 till deposit of enhanced compensation, solatium and component amounts in the Court. If this enhanced compensation and solatium amount with interest thereon is not deposited till 19.03.2006, the claimants are entitled to interest at the rate of 15% per annum from 20.03.2006 till the date of deposit of entire compensation

amount and solatium amount in the Court.

- (v) Claimants are entitled for interest under Section 34 of Land Acquisition Act on compensation amount awarded by Collector at the rate of Rs.9% per annum from the date of award i.e. 19.03.2005 till acceptance of compensation amount by claimants i.e. 20.05.2005”.

46. Parties to bear their respective costs of the appeal and cross-objection.

47. The appeal is disposed of in above-said terms.

48. Civil Application No.8609 of 2016 for condonation of delay in filing cross-objection is allowed and disposed of accordingly.

49. Civil Application No.8608 is disposed of in terms of award passed in this appeal.

50. Civil Application No.3128 of 2015 for granting time for compliance of order dated 01.12.2014 and Civil Application No. 11743 of 2014 for stay are disposed of.

(SUNIL K. KOTWAL)
JUDGE

vdd/