

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

FIRST APPEAL NO.12 OF 2014

1. Dada s/o. Amruta Borade
died, through his L.Rs.
- 1-A Smt. Gayabai w/o. Dadarao Borade
Age : Major, Occu :- Household,
Resident of Dudhad, Tq. & Dist.
Aurangabad;
- 1-B Janardhan s/o. Dadarao Borade
Age : Major, Occu :- Agriculture,
Resident of as above;
- 1-C Nivrutti s/o. Dadarao Borade
Age : Major, Occu :- Agriculture
Resident of as above;
2. Janardhan s/o. Dada Borade,
Age : 56 years, Occu. Service
Resident as above ;
3. Kaushalyabai w/o. Nivrutti Boarde
Age : 43 years, Occu. Agri.
Resident of as above. ... **APPELLANTS**
Ori.Claimants

VERSUS

1. The State of Maharashtra
through Sp. Land Acquisition Officer, JP-
1, Aurangabad.
2. The Executive Engineer, Minor Irrigation
(EGS) Division No.2, Aurangabad ... **Respondents**

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Mr. D. A. Bide h/f. Mr. C. K. Sonawane for Appellants.

Mr. G. O. Wattamwar, for Respondent No.1.

...

CORAM : **SUNIL K. KOTWAL, J.**
Date : **25th April, 2019**

ORAL JUDGMENT:

1. This appeal is directed by claimant in L.A.R.No.139/1997 against the judgment and award passed by Ad-hoc District Judge, Aurangabad, wherein, compensation of the acquired land was enhanced @ Rs.470 per R. Respondent No.1 is the State of Maharashtra and Respondent No.2 is the Executive Engineer, Minor Irrigation (EGS) Division No.2, Aurangabad which is an acquiring body.
2. Facts leading to institution of this appeal are that out of Gut No.364, total area 8 hectare 80 R, situated at village Dudhad, only 4 hectare and 49 R land was acquired by the respondent No.1 for the purpose of percolation tank at same village. Notification under Section 4(1) of the Land Acquisition Act (herein after referred as Act) was published in Government Gazette on 18.02.1988 and award was passed on 01.08.1989, wherein, compensation was offered @ Rs.235/- per R.
3. Being aggrieved with that award, the claimants filed Land Reference which was decided by the reference court and the compensation was enhanced @ Rs.470/- per R.
4. Through out this litigation, only State of Maharashtra has contested the claim by filing written statement Ex.30, denying the

claim of the claimants.

5. Heard Mr. Bide holding for Mr. Sonawane learned counsel for appellants and learned A.G.P for respondent No.1.

6. Learned counsel for the appellants submits that the 7x12 extract (Ex. 25) of the acquired land shows that one well is situated in the acquired land. Relying on entries in crops statement of the acquired land, he submits that the acquired land is perennially irrigated land.

7. Next contention of the learned counsel for the appellant is that under sale instance, Ex. 26 dated 06.05.1986, 24 R area of Gut No.397, situated in the same village was sold out for the consideration of Rs.10,000/- i.e. @ Rs.416/- per R. He submits that after giving escalation of 15% to this market value the acquired land can be assessed as Rs.472/- per R. He submits that as the land under sale instance was dry crop land, the claimant is entitled to double value than the market value of the land under sale instance. To substantiate his contention he placed reliance on **Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon** reported in (AIR 2012 Supreme Court 481) and **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun Vs. Bipin Kumar and Anr.** reported in [(2004) 2 SCC, 283].

8. In reply, the learned AGP for the State submits that in the

evidence, witness of claimant PW-1 admits that the land under sale instance is seasonal irrigated land and no evidence is available to prove that sufficient water is available in the well situated in the acquired land. Learned AGP submits that even the crops statement of the acquired land shows that the yield of dry crop was taken prior to the date of notification under Section 41 and therefore acquired land cannot be considered as irrigated land.

9. Next contention of learned AGP is that the learned reference Court has awarded proper compensation @ Rs.470/- per R and this Court need not interfere that award. To substantiate his contention learned AGP placed reliance on **State of Maharashtra and Anr. Vs. Chandrashekhhar Tanaji Deshmukh** reported in (2009 (3) Bom. C.R. 785) and **State of Maharashtra Vs. Bhaskar Namdeo Wagh** reported in (2009 (1) Mh.L.J. 299).

10. Following points arise for my consideration. I have recorded my finding against each point for the reasons stated below:-

Sr. No.	Points	Finding
1	What would be the just and reasonable compensation of the acquired land ?	Rs.540/- per R.
2	Whether the judgment and award passed by reference Court is correct and proper ?	No

11. The date of publication of notification under Section 4 (1) of the Act is relevant date to determine the just and reasonable market value of the acquired land. The approved method for determining the market value of the acquired land is on the basis of comparable sale instance of the land having proximity regarding situation and date of publication of notification under Section 4 (1) of the Act.

12. In the case at hand, the claimants have placed reliance on only one sale instance (Ex. 26) dated 06.05.1986, which shows that Gut No.397 admeasuring 24 R situated at village Dudhad was sold out for the consideration of Rs.10,000/- i.e. @ Rs.416 per R. The date of execution of this sale deed is reasonably proximate with date of publication of notification under Section 4 (1) of the Act. So far as location of the land under sale instance, certainly there is proximity as the land under sale instance is situated in same village. After going through sale instance (Ex. 26), it emerges that Gut No. 397, is small piece of land admeasuring only 24 guntha. This land was sold out with the share in the well water situated in adjacent land of one Devrao Kundhi. However, the recital of this sale instance does not make it clear whether the land under sale instance is dry crop land or it is an irrigated land. Considering the purchase of share in the well water situated in adjacent land, it can be gathered that the land under the sale instance has source of irrigation from the well situated in

adjoining land. Thus, the land under sale instance can be considered as seasonal irrigated land.

13. To substantiate his contention regarding nature of the acquired land the claimant has placed on record, record of right of the acquired land (Ex.25). The entries in the record of right show that one well is situated in the acquired land and since 1985 till 1988 the crops like Bajri, Tur, Sunflower, Chilly, Sugarcane, wheat was taken from the acquired land. No doubt, in *Chindha Fakira Patil Vs The Special Land Acquisition Officer (supra)*, Apex Court held that when well is situated in the acquired land, mere fact that sugarcane or wheat was not cultivated on acquired land could not be lead on inference that the land was not irrigated. In *State of Maharashtra Vs. Chandrashekhar (supra)*, this Court held that where it is not proved by claimant that irrigated crops were taken by them through out the year, the land cannot be treated as perennially irrigated land. Even in *State of Maharashtra Vs. Bhaskar (supra)* the Division Bench of this Court observed that the agricultural land, wherein, Jawar, Bajra etc. are shown to have been cultivated such land can be treated as Jirayat land and the land, wherein, sugarcane, onion, groundnut etc. are cultivated by irrigation such land are stated as Bagayat land.

14. In the case at hand, certainly, the crops statement of the acquired land shows that the source of irrigation was only well and the

irrigated crops like sunflower, chilly and specially sugarcane was raised in the acquired land in addition to Tur, Bajri and Mung. It cannot be ignored that crop like sugarcane needs irrigation throughout the year. Therefore, inference is to be drawn that sufficient water was available in the well situated in the acquired land by which crop like sugarcane can be irrigated by the claimant. Apart from this, the evidence of Nirutti Borade PW-1 regarding nature of the acquired land as perennially irrigated land with well water source is not at all disputed by the State in the cross-examination of this witness. Therefore, considering the unchallenged testimony of Nirutti Borade PW-1 which is also corroborated by entries in crops statement of the acquired land, inference is to be drawn that acquired land is perennially irrigated land. No doubt, the land under sale instance (Ex.26) is to be treated as seasonally irrigated land as some share in the well water was purchased by the purchaser of that land. However, certainly the price of perennially irrigated land is more than price of the seasonal irrigated land.

15. For determining the just and fair market value of the acquired land, I have to consider market value of land under sale instance, as a base. Land under the sale instance was sold out @ Rs.416/- per R on 06.05.1986 i.e. about 1 year and 9 month prior to the date of notification under Section 4 which was published on

18.02.1988. Therefore, there shall be escalation of 15% in the market value of the land under sale instance to determine the market value of the acquired land on the date of notification. Thus, on the date of notification under Section 4 (1) of the Act, the market value of the acquired land comes to Rs.478/- per R.

16. As the sale instance is of small piece of land there shall be certain deduction from the market value of the acquired land. After deduction of 25% value from the market rate of acquired land, it comes to Rs.359/- per R. However, as acquired land is perennially irrigated land, there shall be escalation of 50% value of the acquired land, therefore, the market value of the acquired land comes to Rs.538/- per R. Accordingly, I hold that the claimants are entitled to compensation @ Rs.538/- rounding of Rs.540/- per R with other statutory benefits as awarded by the reference Court. I answer question No.1 accordingly and point No. 2 in negative.

17. In view of this finding, this appeal deserves to be allowed to enhance the rate of compensation to the tune of Rs.540/- per R. Accordingly, First Appeal No.12/2014 is partly allowed. The award passed by Ad-hoc District Judge, Aurangabad in L.A.R.No.139/1997 is partially modified to enhance the rate of compensation of Gut No.364 area 4 H 49 R situated at Dhuhad @ Rs.540/- per R. Other statutory benefits awarded by the reference court and interest under Section 28

of the Act are confirmed as it is.

18. Award be modified in above said terms.

19. Parties to bear respective costs of the appeal.

(SUNIL K. KOTWAL, J.)

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