

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

**FIRST APPEAL NO. 110 OF 2011
WITH
CIVIL APPLICATION NO. 3289 OF 2017**

- 1] Govind s/o Pandurang Karmude,
age 50 years, occ. Agriculture,
resident of Khalangri,
Tq. Renapur, Dist. Latur ...Appellant
[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through : Collector, Latur,
 - 2] The Executive Engineer,
Latur Minor Irrigation, Latur,
 - 3] The Special Land Acquisition
Officer (M.I.W.) Latur
- ...Respondents
[Orig. Respondents]

**FIRST APPEAL NO. 111 OF 2011
WITH
CIVIL APPLICATION NO. 3290 OF 2017**

- 1] Venkat s/o Narayan Khalangre,
age 35 years, occ. Agriculture,
- 2] Vishal s/o Vyankat Khalangre,
age minor, u/g of his father
Vyankat s/o Narayan Khalangre,
age 35 years, occ. Agricultural,
- Both R/o Khalangri,
Tq. Renapur, Dist. Latur
- ...Appellants
[Orig. Claimants]

VERSUS

- 1] Janimya s/o Gulammohammad
Deshmukh, age 65 years,
occ. Agriculture,
R/o Khalangri,
Tq. Renapur, Dist. Latur ...Appellant
[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through : Collector, Latur,
2] The Executive Engineer,
Latur Minor Irrigation, Latur,
3] The Special Land Acquisition
Officer (M.I.W.) Latur ...Respondents
[Orig. Respondents]

**FIRST APPEAL NO. 114 OF 2011
WITH
CIVIL APPLICATION NO. 3293 OF 2017**

- 1] Janimya s/o Gulammohammad
Deshmukh, age 65 years,
occ. Agriculture,
R/o Khalangri,
Tq. Renapur, Dist. Latur ...Appellant
[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through : Collector, Latur,
2] The Executive Engineer,
Latur Minor Irrigation, Latur,
3] The Special Land Acquisition
Officer (M.I.W.) Latur ...Respondents
[Orig. Respondents]

**FIRST APPEAL NO. 245 OF 2011
WITH
CIVIL APPLICATION NO. 7301 OF 2017**

- 1] Ajijmiya s/o Gulammohammad
Deshmukh, age 42 years,
occ. Agriculture,
R/o Khalangri,
Tq. Renapur, Dist. Latur ...Appellant
[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through : Collector, Latur,
2] The Executive Engineer,
Latur Minor Irrigation, Latur,
3] The Special Land Acquisition
Officer (M.I.W.) Latur ...Respondents
[Orig. Respondents]

FIRST APPEAL NO. 246 OF 2011

- 1] Faruq s/o Chandpasha Deshmukh,
age Major, occ. Agriculture,
2] Chandapasa s/o Alimohammad
Deshmukh, died thr. L.Rs.
2A] Faruk s/o Chandapasha Deshmukh,
age 48 years, occ. Agril.,
2B] Rashidabegam w/o Mahaub Karbari,
age 65 years, occ. Agril.,
2C] Jakerabegam w/o Ahmed Kadri,
age 60 years, occ. Agril.,
2D] Mumtajegam w/o Ekbal Shaikh,
age 40 years, occ. Agril.,
All R/o Khalangri, Tq. Renapur,
Dist. Latur. ...Appellants
[Orig. Claimants]

VERSUS

- 1] The State of Maharashtra,
through : Collector, Latur,
 - 2] The Executive Engineer,
Latur Minor Irrigation, Latur,
 - 3] The Special Land Acquisition
Officer (M.I.W.) Latur ...Respondents
 [Orig. Respondents]
- ...
- Mr. S.S.Halkude, advocate for Appellants
- Mr. S.G.Bhalerao, advocate for respondent no.2
- Mr. R.B.Bagul, AGP for Respondent nos. 1 and 3

CORAM : SUNIL K.KOTWAL, J.

**DATE OF RESERVING
THE JUDGMENT : 04.12.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 07.01.2019**

J U D G M E N T :

These appeals are filed against the judgment and award, passed by the Civil Judge, Senior Division, Latur in Land Acquisition Reference No. 194, 195, 198, 196, 197, 199 and 213 of 2009, respectively.

2. All these acquired lands are situated at village Khalangri, taluka Chakur. The number of Land Acquisition Reference, name of the claimant, Gut number, area of the acquired land, number of trees, rate claimed by the claimant and

compensation offered by the Land Acquisition Officer are as under :

LAR No. of year 2009	Name of the claimant	Gut No.	Area acquired H. Are	No. of trees	Rate claimed by the claimant	Compensation offered by the Land Acquisition Officer
194	Govind Karmude	206	2.86	Tamrind 129, Ber 100, Mango 7, Custard apple 800, Sandal 17, Common well Borewell 1	Rs.15000 per Are	Rs.1529/- per Are
195	Vyankat Khalangre	185 188	99 Are	Tamrind 8, Sandal 70, Custard apple 150, Jambul 5, Mango 7 Borewell 1 Well 1		
196 197	Janimiya	211	3.48	Tamrind 16, Ber 12, Custard apple 9, Mango 2, Sandal 180		
198	Ram Khalangre died LR. Prayagbai	180 186	3.57	Mango 3, Ber 3, Custard apple 175, Sandal 42, Well 1		
199	Ajimiya Deshmukh	210	3.18	Tamrind 7, Ber 4, Custard apple 100, Sandal 48, Mango 2 Well 1		
213	Faruk Deshmukh and Chandpasha died L.Rs.	212	2.53	Tamrind 15, Jambul 10, Mango 1, Limboni 1, Ber Graft 10, Custard apple 50, Sandal 60		
Land Gut Nos. 210 and 211 are Dry Crop land and Gut Nos. 206, 185, 188, 180, 186 and 212 are seasonally irrigated land						

3. The above referred land of the claimants was acquired for the purpose of storage tank, Khalangri. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to

as, 'the Act') was published on 2.6.2005. Possession of the land was taken by the State on 26.12.2003 before the date of publication of notification. Award was declared on 26.9.2007. According to the claimants, the market price of their land, on the date of acquisition, was Rs.6,00,000/- per acre, as acquired land was black cotton soil and perennially irrigated land. According to the claimants, village Khalangri is developed village having all amenities. However, the Land Acquisition Officer, offered meager compensation for the acquired land at the rate of Rs.1529/- per Are. Therefore, the claimants made Land References. However, the Reference Court rejected all these Land References as barred by limitation. The Reference Court also determined the compensation for acquired land at the rate of Rs.2,50,000/- per Hectare i.e. Rs.2,500/- per Are.

4. Being dissatisfied with the award passed by the Reference Court, these all appeals are filed by original claimants.

5. As common evidence was recorded in Land Acquisition Reference No. 110 of 2009 and common judgment was passed by the Reference Court in all the Land References, these all appeals are disposed of by this common judgment.

6. Heard Shri S.S.Halkude, learned counsel for the appellants and Shri R.B.Bagul, learned AGP for the State-respondent nos. 1 and 3 Shri S.G.Bhalerao, learned counsel for respondent no.2.

7. Learned counsel for the appellants submits that for determining the market value of the acquired land, on the date of publication of notification under Section 4 of the Act, the claimants have placed reliance on two sale instances, Exh. 17 dated 11.9.2001 and Exh. 18 dated 11.9.2001 of the land situated at village Belgaon, which is adjoining to village Khalangri and the acquired land.

According to learned counsel for appellants, on behalf of all the claimants, Farooq (PW 1) is examined. In addition to this evidence,

private valuer Shri Patil (PW 2) is examined to determine the market value of the trees standing over the acquired land.

He submits that, though the Reference Court dismissed all the Land References as barred by limitation. Notice under Section 12 (2) of the Act was received by claimants on 4.1.2008 and all Land References were filed on 4.2.2008 before the Land Acquisition Officer, and therefore, these References being filed within six weeks from the date of service of notice under Section 12 (2) of the Act, are well within limitation. He placed reliance on "**Premji Nathu vs State of Gujarat & Anr**" [(2012) 5 SCC 250], wherein while considering Section 18 proviso (a)(b), the Apex Court observed that along with notice issued under Section 12 (2) of the Act, the landowner, who is not present, and was not represented before the Collector at the time of making award should be supplied with a copy thereof, so that he will effectively exercise his right under Section 18 (1) to seek Reference to the Court.

8. Learned AGP for the State submits that the award was declared on 26.9.2007. The Land References were filed by claimants on 4.2.2008 i.e. beyond the period of limitation of six months, from the date of passing of the order. According to the learned AGP, the Land References are barred by limitation.

In the alternate, contention of the learned AGP is that witness Farooq (PW 1) examined by the claimants on behalf of all of them, has no written authority to depose on their behalf. Therefore, he cannot prove the claim of each claimant.

Next submission of learned AGP is that, no permanent source of irrigation is proved by the claimants. Therefore, on the basis of one common well in the acquired land, the claimants cannot prove that the acquired land is perennially irrigated land. He submits that even the claimants' witness has admitted that water was not obtained from the river by installing pipeline. According to the learned AGP only because in small area, sugarcane crop was taken by the claimants for few years, the acquired land cannot be considered

as perennially irrigated land.

9. Regarding valuation of the trees standing over the suit land, learned AGP submits that the valuer Shri Patil (PW 2) examined by the claimants is not Government approved valuer, and therefore, on the basis of his report, correct valuation of trees cannot be determined. He submits that even no notice to the acquiring body or to any Government Officer was served by this valuer. This valuer did not take assistance of the Talathi to fix the identity of the lands visited by him. According to the learned AGP, this private valuer has prepared valuation report, which is only suitable to the claimants, to claim higher rate of compensation for the trees.

10. The State Government and acquiring body have raised objection that the Land References are barred by limitation, as filed beyond the period of six weeks from the date of knowledge of the award. Learned AGP contended that the claimants were present when the award was declared, and therefore,

the period of limitation of six weeks starts from the date of award. However, after perusal of record, it emerges that there is no substance on record to show that the claimants were present at the time of declaration of award. Therefore, under Section 18 proviso (a) and (b), the period of limitation of six weeks starts running from the date of knowledge of passing of the award or service of notice to the claimants under Section 12 (2) of the Act.

In the case at hand, undisputedly along with notice under Section 12 (2) of the Act, copy of the award passed by the Collector was not served to the claimants. Therefore, mere service of notice under Section 12 (2) of the Act does not amount to knowledge of the award, as ruled by Apex Court in **"Premji Nathu vs State of Gujarat & Anr"** (supra). Otherwise also, in these appeals, production of notice served to the claimants under Section 12 (2) of the Act together with receipts of payment issued by the claimants are filed on record and it is marked as Exh. 'A' in the appeals. This copy of notice (Exh.'A') with receipts issued by the

claimants shows that it was received by claimant on 3.1.2008 and under this notice the claimants were directed to receive the compensation amount on 4.1.2008. Thus, at the most, it can be said that the claimants had knowledge about passing of the award and compensation awarded by the Collector since 3.1.2008. Thereafter, all the Land References were filed and received by the Land Acquisition Officer on 8.2.2008. Thus, obviously, the Land References were filed within maximum period of 42 days i.e. six weeks from the date of service of notice under Section 12 (2) of the Act. In the circumstances, I have no hesitation to hold that all the Land References are filed by claimants within the period of limitation as prescribed under Section 18(2)(b) of the Act.

11. Before touching the valuation of acquired land, initially I prefer to consider the evidence of private valuer examined by the claimants to substantiate their claim for higher compensation of trees standing over the suit land.

12. Shri Nandkumar Ganpatrao Patil (PW 2) is the valuer examined by the claimants. This witness deposes that his educational qualification is M.Sc. (Agri.) in 1975 from Marathwada Krishi Vidyapith, Parbhani and he is approved valuer. According to this witness, he is expert valuer to determine the value of the trees. From the evidence of this witness, it emerges that the owners of the acquired land from village Khalangri, approached him and as per their request, he visited the acquired land on 4.11.2005, 5.11.2005, 8.11.2005 and 15.11.2005 and in presence of panchas counted the trees standing in the acquired land and determined it's valuation, in accordance with the Government Resolution, dated 27.12.1990. However, from his evidence, it emerges that he is not the Government approved valuer, but he is private valuer. In examination-in-chief itself Shri Patil (PW 2) has made it clear that he did the valuation in private capacity, and therefore, he did not issue notice to the acquiring body or Government official. This witness has proved valuation reports Exhs. 67 to 78.

13. It is to be noted that from the cross-examination of Shri Patil (PW 2), it emerges that he did not give notice to the respondents before visiting the lands of claimants, as he did not feel it necessary as private valuer. He also admits that he did not issue notice to the panchas for calling them as panch. Thus, no record is available to prove his visit to the acquired land. Though this witness claims that he prepared the valuation report as per the Government Resolution of 1990, he has not annexed the said Government Resolution along with his valuation report. Though he claims that for valuation of trees, the market rate of fruits was obtained by him from wholesale market, he has not annexed with his report the rates of the fruits collected from the wholesale market or from the Agricultural Produce Marketing Committee.

14. It is to be noted that though as per norms issued by the Agricultural and Horticulture Department, the trees are to be planted at some particular distance to get the proper yield, the valuation report prepared by this private valuer,

does not show the distance between the planted trees.

15. The most important thing is that before visiting the land for preparation of valuation report of the trees standing therein, this valuer did not take assistance of local Talathi to fix the proper identity of the land visited by him. The most important thing is that in the entire Land References filed on 8.2.2008, the claimants nowhere pleaded regarding visit of private valuer Shri Patil (PW 2) to their land and obtaining such report of valuation from this witness. Had this witness really paid visit in between 4.11.2005 to 15.11.2005 and prepared valuation reports, definitely the claimants would have mentioned, this material fact in their application to the Land Acquisition Officer for reference.

16. Even the valuation report show that though acquired land was visited by Shri Patil (PW 2) in the year 2005, the valuer signed those reports on 10.9.2008. The panchanama annexed with the

report shows that it was prepared in the month of November, 2005. No explanation is coming forth from this private valuer Patil (PW 2) as to why the valuation reports were prepared after the delay of about three years from the date of visiting the acquired lands.

17. Another important damaging blow to the evidence of valuer Shri Patil (PW 2) is that if as per the claim of claimants, possession of the acquired land was handed over to the acquiring body on 26.12.2003, then question arises how the private valuer paid visit to the acquired land, without notice or without permission of acquiring body, in the month of November, 2005.

18. If, the above discussed circumstances are considered together, it becomes clear that the evidence of valuer Shri Patil (PW 2) and valuation reports prepared by him, are not reliable and genuine. On the other hand, possibility cannot be ruled out that this private valuer (PW 2), without actually visiting the land, has subsequently

prepared these valuation reports, as per wishes of the claimants, by making exorbitant valuation of the trees, alleged to be standing in the acquired land.

19. Thus, I am fully satisfied that learned Reference Court has rightly rejected the evidence of Shri Patil (PW 2), holding the valuation reports prepared by him as unreliable. I hold that on the basis of evidence of Shri Patil (PW 2) and his valuation reports, the claimants cannot prove the true valuation of the trees standing in the acquired land. Therefore, on the basis of such doubtful valuation reports, compensation for tress standing in the suit land, cannot be enhanced as claimed by the claimants.

20. For determining the fair market value of the acquired land on the date of notification under Section 4 of the Act, the only oral evidence of claimant Farooq (PW 1) is not sufficient to prove the quality of acquired land as excellent cotton soil having perennial irrigation facility.

21. As rightly pointed by the learned Reference Court, Farooq Deshmukh (PW 1), though is one of the claimants in Land Acquisition Reference No. 193 of 2009, he does not possess power of attorney from other claimants to depose on their behalf. Otherwise also, Farooq Deshmukh (PW 1), though claims that all acquired lands are irrigated lands, he has not made it clear whether those lands are seasonally irrigated lands or perennially irrigated lands. From his evidence, it appears that only on the basis of entry of the well in the record of rights of the acquired land and crop pattern recorded in crop statement of the acquired land, he claims that the acquired land is irrigated land.

22. After going through the record of rights Exhs. 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the acquired land, it reveals that in Gut No. 206, which is subject matter in Land Acquisition References Nos. 194 of 2009, one common well and one bore well is situated. Even the crop pattern of the year 2002 to 2003 shows irrigated crop like sugarcane, in meager area and

dry crop in major portion of the acquired land. Therefore, this land is to be considered as seasonally irrigated land. Similarly, Gut Nos. 185 and 188, which was subject matter of Land Acquisition Reference No. 195, Gut Nos. 180 and 186, which was subject matter of Land Acquisition Reference No. 198 of 2009, and Gut No. 212, which was subject matter of Land Acquisition Reference No. 213 of 2009, it emerges that well are situated in all these lands and even the crop pattern suggests that these all lands are seasonally irrigated land. Therefore, in Land Acquisition Reference Nos. 195 of 2009, 198 of 2009 and 213 of 2009, it is held that the acquired land is seasonally irrigated land. However, the record of rights of Gut No. 211 (Exh.26) and Gut No. 210 (Exh. 27), which are subject matters of Land Acquisition Reference Nos. 196 of 2009, 197 of 2009 and 199 of 2009 show that no well is situated in this land and even crop pattern does not show that these lands are seasonally or perennially irrigated lands. Therefore, the acquired lands in Land Acquisition Reference Nos. 196 of 2009, 197 of 2009

and 199 of 2009 are held as dry crop lands.

23. This Court has already decided in group of First Appeal Nos. 256 of 2011 and others in respect of acquired land for the same purpose. Even, the date of notification under Section 4 (1) of the Act, date of taking possession of land and date of passing of award in those matters are identical. In First Appeal No. 256 of 2011, this Court has accepted the sale instance Exh.18, dated 11.9.2001 of Gut No. 74, situated at village Belgaon, which is adjoining to village Khalangri. Relying on this sale instance Exh.18, this Court held that the claimants are entitled to compensation at the rate of Rs.7181/- per Are for dry crop land and compensation at the rate of Rs.9726/- per Are for seasonally irrigated land, situated at village Khalangri. The acquired land, which is subject matter of the present appeals, is also situated at village Khalangri. Therefore, in these appeals also compensation needs to be awarded at the same rate i.e. Rs.7181/- per Are for dry crop land and compensation at the rate of Rs.9726/- per Are for

seasonally irrigated land.

24. It follows that First Appeal Nos. 110 of 2011, 111 of 2011, 112 of 2011, 113 of 2011, 114 of 2011, 245 of 2011 and 246 of 2011 deserve to be partly allowed. Accordingly, these all appeals are partly allowed. The award passed by the Reference Court in Land Acquisition Reference No. 194, 195, 198, 196, 197, 199 and 213 of 2009 are modified to hold that these all Land References are well within limitation. These all Land References are partly allowed. The claimants are entitled to compensation at the same rate i.e. Rs.7181/- per Are for acquired land out of Gut Nos. 211 and 210, situated at village Khalangri. The claimants are entitled to compensation at the rate of Rs.9726/- per Are for acquired land out of Gut Nos. 206, 185, 188, 180, 186 and 212, situated at village Khalangri. In addition to this, the claimants are entitled for statutory benefit under Section 23(1A) of the Act from the date of notification under Section 4 of the Act to the date of passing of the award i.e. from 2.6.2005 to 26.9.2007. The claimants are also

entitled to solatium i.e. 30 per cent of the market value of the acquired land under Section 23 (2) of the Act. The claimants are also entitled to interest under Section 28 of the Act at the rate of nine per cent per annum on the enhanced compensation, solatium and component amount, from 26.9.2007 i.e. the date of award for first year and thereafter at the rate of 15 per cent per annum till the date of deposit of compensation, solatium and component amount. Award be modified accordingly.

25. Accordingly, First Appeal Nos. 110, 111, 112, 113, 114, 245 and 246 of 2011 are partly allowed and disposed of in above terms. Pending Civil Applications are disposed of in terms of common order, dated 3.12.2018, passed in Civil Application No. 3285 of 2017.

26. Parties to bear their respective costs of appeals.

[SUNIL K.KOTWAL, J.]

dbm