IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 256 OF 2011
WITH
CIVIL APPLICATION NO. 3285 OF 2017

1] Gangadhar s/o Devidas Mane,
age 52 years, occ. Agriculture,

2] Suryakant s/o Devidas Mane,
age 45 years, occ. Agriculture,

Both resident of 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]

FIRST APPEAL NO. 257 OF 2011
WITH
CIVIL APPLICATION NO. 3286 OF 2017

1] Faruq s/o Chandpasha Deshmukh,
age Major, occ. Agriculture,

2] Reshma Faruq Deshmukh,

3] Choti Faruq Deshmukh,

4] Kesar Faruq Deshmukh,

5] Altaf s/o Faruq Deshmukh,
Claimant Nos. 2 to 5 minor,

U/g of their father Faruq
S/o Chandapasha Deshmukh,

6] Ekbal s/o Khajasaheb Patel,
age Major, occ. Agriculture,

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]

FIRST APPEAL NO. 258 OF 2011
WITH
CIVIL APPLICATION NO. 3287 OF 2017

1] Haribai s/o Harishchandra Khalangre,
age Major, occ. Agril. & H.H.,

2] Angad s/o Harishchandra Khalangre,
age Major, occ. Agriculture,

Both resident of 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]

FIRST APPEAL NO. 259 OF 2011
WITH
CIVIL APPLICATION NO. 3288 OF 2017

1] Sangita s/o Balbhim Mane,
age 40 years, occ. Agriculture,
and household,
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. 260 OF 2011

Abdul Khayyum Ibrahim Deshmukh,
died through L.Rs.

1-A] Bijani w/o Abdul Khayyum Deshmukh,
age 65 years, occ. Agricultural,

1-B] Hakim s/o Abdul Khayyum Deshmukh,
age 40 years, occ. Agricultural,

1-C] Salim s/o Abdul Khayyum Deshmukh,
age 40 years, occ. Agricultural,

1-D] Kalim s/o Abdul Khayyum Deshmukh,
age 30 years, occ. Agricultural,

All resident of 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. 189, 193, 191, 190 and 192 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	Sy. No.	Area acqui-red H. Are	No. of trees	Rate claimed by the claimant	Compensation offered by the Land Acquisition Officer
189	Gangadhar and Suryakant	162	2.13	2 Ber, 5 Limboni	Rs.15000 per Are	Rs.1529/- per Are
190	Sangita	162	1.11	1 Mango, 2 Sandal, 15 cutard apple, 1 Ber		
191	Haribai and Angad	213	1.11	14 Graft Mango, 8 Jambul,130 Sandal, 175 Custard apple, 60 Ber		
192	Bijani Hakim Salim Kalim	214 215 171	Portion acquired from Sy.Nos. 214,215 & 171	9 Tamrind, 185 Sandal, 60 Ber, 285 cutard apple, 2 Mango.		
193	Faruq, Reshma, Choti, Kesar Altaf, Ekbal	213 215	Portion acquired from Sy.Nos. 213 and 215	9 Tamrind, 110 Custard Apple, 25 Ber, 335 Pomegranate (Dalimb), 30 Sandal		

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 before the date of publication of notification on

26.12.2003. 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. 189 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 12 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 12 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 18 (2)(b) 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 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 3.11.2005, 4.11.2005, 8.11.2005 and 10.11.2005 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. 60, 60A, 61, 62, 63, 64, 65 and 65A.

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 3.11.2005 to 10.11.2005 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 and reports were prepared 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. Otherwise also, after going through the record of rights of the acquired lands, Exhs. 20 to 27, it emerges that in Gut No.213, which is subject matter of Land Acquisition References Nos. 191 of 2009 and 193 of 2009, existence of well or bore well is not recorded. In other rights column, only cart road is recorded. Even the crop pattern of the year 2002-2003 shows cultivation of dry crop Tur in only 60 Are land. Remaining land is shown as fallow land. As possession of the acquired land

is obtained in the month of December, 2003, subsequent entries in the crop statement showing other crops cannot be considered, as after December, 2003 this land was not in possession of the claimants. Record of right of Gut No. 215, which was subject matter of Land Acquisition Reference No. 193 of 2009 and Land Acquisition Reference No. 192 of 2009 shows entry of even one unused well and one bore well in the land of Angad Harishchandra Khalangre. Even in the crop statement in the year 2002-2003, cultivation of pomegranate trees in 1 Hectare 20 Are, Tur in 1 Hectare and Sugarcane in 80 Are, is shown. The total area of Gut No.215 is 6 Hectare 11 Are. It is very hard to accept that with the help of one bore well, which is recorded in the name of Angad Khalangre, near about 7 co-owners of this land can irrigate their respective lands. Therefore, on the basis of this entry of one bore well, claimants cannot prove that this land is perennially irrigated land.

23. From the record of rights of Gut No.162 (Exh.22), which is subject matter of Land

Acquisition Reference No. 189 of 2009 and 190 of 2009, it emerges that one common well is shown in the said land and the area of this land is 12 Hectare 94 Are. In the year 2002-2003, sugarcane crop is shown only in 60 Are and in remaining part, dry crops like Tur, Soyabin were taken. Thus, this land also cannot be considered as perennially irrigated land, only on the basis of entry of well in crop statement. On the other hand, in other rights column, it is shown that it is also used as crematorium. Even from 7/12 extract (Ex.23) recorded in the name of Sangita Mane of Gut No. 162, which is subject matter of Land Acquisition Reference No. 190 of 2009, it emerges that in the year 2002-2003 only dry crop like Udid, Tur was taken from 70 Are area. In other rights column, there is entry of only one common well. Thus, this land also cannot be considered as perennially irrigated land. The land recorded in the name of Haribai and Angad (Exh.24) i.e. Gut No. 213, which is subject matter of Land Acquisition Reference No. 191 of 2009 shows only cart way and crop statement shows only dry crop in the year 2002-2003.

24. Record of right of Gut Nos.214 (Exh.25), 215 (Exh.26) and 171 (Exh.27), which is subject matter of Land Acquisition Reference No. 192 of 2009 does not show well in Gut No. 171. The crop pattern of Gut Nos. 214 and 215 of the year 2002-2003 shows only dry crop. In other rights column, of Gut No. 214, there is entry of river. In Gut No. 215 there is entry of river and well. However, the crop pattern shows that this land is not irrigated from the river or well. Thus, this land also cannot be considered as perennially irrigated land. Thus, after going through the entries in the record of rights of the respective lands, it emerges that the acquired land is not perennially irrigated land. The crop pattern of the acquired land shows that only small portion of this land is irrigated with the help of well water. Thus, the quality of this land is not excellent, but it is medium quality, and at the most it is semi-irrigated land. Thus, conclusion is drawn that Gut No. 213 and 171 are dry crop land and Gut Nos. 162, 214, 215 are seasonally irrigated land.

25. Now, for determining the true market value, I have to consider the two comparable sale instances and choose any one of them for determining the market price of the acquired land on the date of notification. Out of these two sale instances, first sale instance is Exh.17, dated 11.9.2001 of Gut No.12, situated at village Belgaon and under this sale deed, only 15 Are land was sold out for consideration of Rs.1,50,000/-. Obviously, this sale instance cannot be accepted as comparable sale instance, as it is of very small piece, in comparison with the area of the acquired land. Therefore, this sale instance is out rightly rejected.

26. The second sale instance is Exh.18, dated 11.9.2001. Under this sale deed, out of Gut No.74, which is dry crop land, 40 Are area was sold out for consideration of Rs.3,00,000/- (i.e. Rs.7500/- per Are). This land is also situated in village Belgaon. No doubt, the claimants have not placed on record village map to show that village Belgaon is adjoining to village Khalangri or that this land

is adjoining to acquired land. However, in the cross-examination of Farooq (PW 1), the respondents have brought on record that village Belgaon is adjacent to village Khalangri. Therefore, second sale instance Exh.18 can be considered for the purpose of determining the market price of the land on the date of notification under Section 4 of the Act.

27. Notification under Section 4(1) of the Act was published in official Gazette on 2.6.2005 and sale deed Exh.18 was executed on 11.9.2001. Thus, the sale instance is 3 years and 9 months preceding the date of publication of notification. Thus, there shall be escalation of 30.75 per cent in the market value of the land up to the date of notification, which comes to Rs.7781/- per Are.

28. Out of the acquired land, Gut No. 213 and Gut No. 171 are dry crop land and Gut Nos. 162, 215 and 214 are seasonally irrigated land. The land under the sale instance (Exh.18) is dry crop land. Therefore, market value of Gut Nos. 213 and 171

comes to Rs.7781/- per Are. However, Gut Nos, 162, 215 and 214 being seasonally irrigated and medium quality land, their market value shall be 1.25 times higher than market value of dry crop land. Thus, market value of Gut Nos. 162, 215 and 214 comes to Rs.7781+1945=9726/-.

29. The award passed by the Reference Court in Land Acquisition Reference No. 189 of 2009 to 193 of 2009 be modified to hold that the Land References are well within limitation and partly allowed. The claimants are entitled for compensation at the rate of Rs.7181/- per Are for the dry crop acquired land i.e. Gut No. 213 and 171. Claimants are entitled to compensation at the rate of 9726/- per Are for seasonally irrigated land i.e. Gut Nos. 162, 215 and 214. In addition to this, the claimants are entitled to statutory benefit under Section 23(1A) of the Act from the date of notification under 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.

30. Accordingly, First Appeal Nos. 256, 257, 258, 259 and 260 of 2011 are partly allowed and disposed of in above terms.

31. Pending Civil Applications are disposed of in terms of common order, dated 3.12.2018, passed in Civil Application No. 3285 of 2017.

32. Parties to bear their respective costs of appeals.

[**SUNIL K.KOTWAL, J.**]

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