IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1664 OF 2014

1. Dhudku Abhiman Patil
Age : 68 years, occu.: agri.,

2. Nilabai Dhudku Patil
Age : 60 years, occu.: agri.,

3. Praveen Dhudku Patil
(Deceased) through LRs
(a). Alkabai Praveen Patil
Age : 40 years, occu.: agri.,
(b). Deepak Praveen Patil
Age : 18 years, occu.: agri.,

4. Sunil Dhudku Patil
Age : 40 years, occu.: agri.,

All r/o Danger, Tal. Amalner,
District Jalgaon. **Appellants**

Versus

1. Special Land Acquisition Officer,
Jalgaon.

2. The Executive Engineer (Z.P.)
Water Supply Office,
Division -2, Jalgaon. **Respondents**

WITH
FIRST APPEAL NO. 1440 OF 2014

Sunandabai Sanjay Patil
Age : 40 years, occu.: agri.,
R/o Dangar (Bk.), Tal. Amalner,
District Jalgaon. **Applicant**

Versus

1. Special Land Acquisition Officer,
Jalgaon.

2. The Executive Engineer (Z.P.)
Water Supply Office,
Division -2, Jalgaon. **Respondents**

WITH
FIRST APPEAL NO. 590 OF 2016

1. Kishore Bhikanrao Wagh
Age : 50 years, occu.: agri.,

2. Uday Bhikanrao Wagh
Age : 50 years, occu.: agri.,

3. Sumanbai Bhikanrao Wagh
Age : 70 years, occu.: agri.,

All r/o Dangar, Tal. Amalner,
District Jalgaon. **Appellants**

Versus

1. Special Land Acquisition Officer,
Jalgaon.

2. The Executive Engineer (Z.P.)
Water Supply Office,
Division -2, Jalgaon. **Respondents**

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Mr. S.V. Deshmukh, Advocate for the appellants.

Mr. B.V. Virdhe, A.G.P. for respondent No.1.

Mr. M.K. Goyanka, Advocate for respondent No.2.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 13 June 2019
Judgment pronounced on : 18 June 2019

J U D G M E N T :

1. These three appeals have been filed by the original claimants in Land Acquisition Reference (L.A.R.) No.210 of 2002, L.A.R. No. 212 of 2002 and L.A.R. No. 213 of 2002 respectively, for enhancement of compensation awarded by the Reference Court. Respondent No.1 is the Special Land Acquisition Officer and respondent No.2 is the Executive Engineer (Z.P.), Water Supply Office, Jalgaon. These three appeals are disposed of by this common judgment as the acquired land is situated in village Dangar and it was acquired for one and the same purpose i.e. water percolation tank at village Dangar.

2. Notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as the "Act") was published in Official Gazette of the State Government on 27.07.1995. Award was passed on 12.06.1996. Possession of the acquired land was obtained on 19.11.1996 and compensation awarded by the Collector is also received by the claimants on

19.11.1996.

3. To bring clear picture on record, following charge is given indicating respective appeal numbers, L.A.R. numbers, name of the claimants, land acquired, compensation offered by Special Land Acquisition Officer and compensation awarded by the Reference Court.

F.A. No.	L.A.R. No.	G.No./Area	Name of owners	Compensation offered by S.L.A.O.	Compensation awarded by Ref'ence Court
1664/14	210/2002	Gut.No.76, 3 H 42 R, village Dangar	1. Dhundku Patil 2. Nilabai Patil 3. Praveen Patil 4. Sunil Patil	Rs.220/- per Aar	Rs.500/- Per Aar
1440/14	212/2002	Gut No.83, 60 Aar village Dangar	Sunandabai Sanjay Patil	Rs.220/- per Aar	Rs.400/- Per Aar
590/16	213/2016	Gut.No.75, 4 H 34 R, village Dangar	1. Kishor Wagh 2. Uday Wagh 3. Sumanbai Wagh	Rs.220/- per Aar	Rs.400/- Per Aar

4. Mr. S.V. Deshmukh, learned Counsel for the appellants / claimants, Mr. B.V. Virdhe, learned A.G.P. for respondent No.1 and Mr. M.K. Goyanka, learned Counsel for

respondent No.2 / Acquiring Body.

5. Learned Counsel for the claimants submits that in L.A.R. No. 210 of 2002 though the acquired land Gut No.76 was well irrigated land, the Reference Court awarded compensation at meager rate of Rs. 500/- per Aar. He has pointed out that even in L.A.R. No. 212 of 2002 and L.A.R. No. 213 of 2002, for dry crop land the Reference Court awarded compensation at inadequate rate i.e. Rs. 400/- per Aar. He submits that though the claimants placed on record two sale instances dated 26.12.1991 and 07.04.1993, the Reference Court relied on the sale instance dated 26.12.1991, wherein dry crop land was sold out at the rate of Rs.412/- per Aar. On the other hand, under sale instance dated 07.04.1993 seasonally irrigated land was sold out at the rate of Rs. 706/- per Aar. He submits that the sale instance which fetches higher value, should have been considered while determining the rate of compensation of the acquired land.

6. Next contention of learned Counsel for the appellants is that though sale instance dated 07.04.1993 was two years preceding the date of publication of notification under Section 4 (1) of the Act, the Reference Court did not escalate the rate of

compensation by 20%. He submits that for every one year there should be escalation of 10% in the market rate of the land on the ground of increasing land value in every year. He placed reliance on the case of **"Krishi Utpadan Mandi Samiti Vs. Bipin Kumar" [(2004) 2 SCC 283]**, wherein the Apex Court approved the increase of 15% per year in the market rate of the acquired land.

7. In reply, learned Counsel for the acquiring body and learned A.G.P. for the State submit that the Reference Court rightly relied on the sale instance dated 26.12.1991 as it was in respect of dry crop land. The next contention of learned Counsel for the Acquiring Body is that the Reference Court rightly determined market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act, without giving any escalation. He placed reliance on the case of **"Valliyammal Vs. Special Tahasildar (Land Acquisition) and another" (AIR 2011 SC 2937)**, wherein the Apex Court approved escalation in market value of the acquired land by 10% to 15% per annum in urban area and 5 to 5.7 % per annum in rural area, considering the chance of development and the rise in

market value of the land.

8. I have given sufficient consideration to the submissions of rival parties and I have gone through common documentary evidence placed on record in L.A.R. No. 210 of 2002 and oral evidence led by parties in respective Land References.

9. The purpose of acquisition of land in these three Land References is for percolation tank in village Dangar. Even the date of publication of notification under Section 4 (1) of the Act is one and the same i.e. 27.07.1995. Award was declared on 12.06.1996 and possession of the acquired land is admittedly taken by the Acquiring Body on 19.11.1996 as mentioned by the claimants in the respective Land References.

10. Thus, I have to determine fair and true market value of the acquired land in all three Land References on the date of publication of notification under Section 4 (1) of the Act i.e. on 27.07.1995.

11. A landmark judgment on this point is 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 535 it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of

notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (some times instances are rigged up in anticipation of acquisition of land).

(9) Even post notification instances can be taken into account.(1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(l0) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,
ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a

prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors	**Minus factors**
1. smallness of size.	1. largeness of area.
2. proximity to a road. `	2. situation in the interior at a distances from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to death.
4. nearness to developed area	4. lower level requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition.	6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage. “	

12. Thus, while selecting appropriate sale instance to determine true and fair market value of the acquired land on the date of publication notification under Section 4 (1) of the Act, this Court has to consider the proximity in between the date of publication of notification and date of execution of sale deed, locational advantages and similarity in between quality of the acquired land.

13. In the case at hand, claimants have placed on record two sale instances of which particulars are given as under:-

Sr. No.	Date of sale deed	Gut Number / area / location.	Sale Price	Remarks
1	26.12.1991	Gut No. 178, area 40 Aar, village Janave.	Rs. 16,500/- i.e. Rs. 412/- Per Aar	Dry Crop land.
2	07.04.1993'	Gut No.114, area 39 Aar, village Janave	Rs. 27,500/- i.e. Rs. 706/- per Aar.	Seasonally irrigated land.

14. Though the certified copies of the sale instances are filed in L.A.R. No.210 of 2002, the Reference Court inadvertently did not exhibit both the sale instances. Therefore, sale instance dated 26.12.1991 is marked as Exhibit-X1 and sale instance dated 07.04.1993 is marked as Exhibit-X2.

15. A bare glance of these two sale instances makes it clear that the sale instance dated 07.04.1993 (Exhibit-X2) is more proximate with the date of publication of notification under Section 4 (1) of the Act than the sale instance dated 26.12.1991. No doubt, under sale instance dated 07.04.1993 the land sold is seasonally irrigated land. However, the record of right of the acquired land in L.A.R. No. 210/2002 shows that the acquired land is also well irrigated land which can be considered as seasonally irrigated land, though in the crop statement mix crops are recorded. Even in the column of 'source of water', 'well water' is mentioned and even existence of well is recorded in other rights column of the record of right. As Gut No. 76, which is the subject matter of L.A.R. No. 210 of 2002, is seasonally irrigated land, its market value can be properly determined on the basis of sale instance dated 07.04.1993 (Exhibit-X2) and not on the basis of sale instance dated 26.12.1991 (Exhibit-X1).

16. Even on the basis of this sale instance the market value of the dry crop land, which is the subject-matter of L.A.R. No.212 of 2002 and L.A.R. No. 213 of 2002 can be determined after deducting 25% value from the market value of seasonally

irrigated land. In the circumstances, I hold that in all these three Land References true market value of the acquired land can be determined only on the basis of sale instance dated 07.04.1993 (Exhibit-X2).

17. Next reason for selecting the sale instance dated 07.04.1993 (Exhibit-X2) is that in comparison with the rate fetched under sale instance dated 26.12.1991 (Exhibit-X1), the rate of the land sold under sale instance dated 07.04.1993 (Exhibit-X2) is much higher. In the case of **"Mehrawal Khewaji Trust, Faridkot Vs. State of Punjab and others" (AIR 2012 SC 2721)**, the Apex Court has made it clear that when there are several sale instances, the sale instance which fetches higher value, can be selected to determine the proper market value of the acquired land.

18. Though learned Counsel for the Acquiring Body has pointed out that the distance between acquired land and the land under sale instance from village Janave, is about one kilometer, in view of the law settled by the Apex Court in the case of **"Lal Chand Vs Union of India and another" [(2009) 15 SCC 769]**, the distance of one or two kilometers in between the

acquired land and the land under sale instance, does not matter. Thus, I hold that the Reference Court committed error while selecting sale instance dated 26.12.1991 (Exhibit-X1) to determine the fair market price of the acquired land. I hold that the market price of the acquired land can be properly determined only on the basis of sale instance dated 07.04.1993 (Exhibit-X2).

19. After going through the sale instance dated 07.04.1993 (Exhibit-X2), it emerges that on that date Gut No.113 admeasuring 39 Aar seasonally irrigated land was sold out for the total consideration of Rs. 27,500/-. Thus, the market rate of that land comes to Rs. 706/- per Aar.

20. Sale instance dated 07.04.1993 (Exhibit-X2) was executed two years preceding the date of publication of notification under Section 4 (1) of the Act. Therefore, there should he proper escalation in the rate of the land sold out under sale instance dated 07.04.1993 (Exhibit-X2). It cannot be ignored that from the oral evidence of claimant Dhudku Patil (PW-1) it emerges that the acquired land is adjoining to Amalner to Dhule State Highway. This contention remained unchallenged in his cross-examination. Thus, it can be gathered that the acquired

land being abutting the State Highway, carries high potentiality. Therefore, in view of the law settled by the Apex Court in the case of **"Krishi Utpadan Mandi Samiti Vs. Bipin Kumar"**, there can be escalation, of at least 10% per year, in the value of the land under sale instance, to determine fair and true market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act. For these distinguishing facts, the ratio of the case of **"Valliyammal Vs. Special Tahasildar (Land Acquisition)"**, can be distinguished.

21. Thus, after giving escalation of 20% to the value of the land under sale instance dated 07.04.1993 (Exhibit-X2), the appropriate market value of the acquired land Gut No.76 in L.A.R. No.210 of 2002 comes to Rs. 847/- per Aar.

22. While determining the market value of land bearing Gut No.83 and Gut No.75 which is the subject-matter of L.A.R. No.212 of 2002 and L.A.R. No.213 of 2002 respectively, it cannot be ignored that the acquired land in these Land References is dry crop land. Therefore, it fetches less value than the seasonally irrigated land. Considering this factor, there shall be 25%

deduction in the value of the land sold out under the sale instance dated 07.04.1993 (Exhibit-X2). Thus, after deducting 25% value from Rs. 706/-, the approximate value of the acquired land comes to Rs. 530/- per Aar. So also, after giving escalation of 20%, the fair and true market value of the acquired land in L.A.R. No.212 of 2002 and L.A.R. No.213 of 2002 comes to Rs. 636/- per Aar.

23. Accordingly, my conclusion is that the fair and true market value of the acquired land Gut No.76 in L.A.R. No. 210 of 2002 can be determined as Rs. 847/- per Aar (rounded to Rs.850/- per Aar). So also, true and fair market value of the acquired land Gut No. 83 and Gut No. 75 in L.A.R. No. 212 of 2002 and L.A.R. No.213 of 2002 respectively, is determined as Rs. 636/- (rounded to Rs. 640/- per Aar). In other words, claimants in L.A.R. No.210 of 2002 are entitled to enhanced compensation at the rate of Rs.850/- per Aar and claimants in L.A.R. No.212 of 2002 and L.A.R. No.213 of 2002 are entitled to enhanced compensation at the rate of Rs. 640/- per Aar.

24. In addition to this, claimants in all three Land References are entitled to component under Section 23 (1A) of the

Act at the rate of Rs. 12% per annum on the market value of the acquired land for the period commencing from the date of publication of notification under Section 4 (1) of the Act i.e. 27.07.1995 to the date of award i.e. 12.06.1996. Claimants are also entitled to solatium i.e. a sum of 30% on market value of the acquired land under Section 23 (2) of the Act. Claimants are further entitled to interest under Section 28 of the Act on enhanced compensation (excess than awarded by Collector) at the rate of Rs. 9% per annum from the date of possession i.e. from 19.11.1996 for the first year and then at the rate of Rs.15% per annum for subsequent years till the date of deposit of entire compensation together with component and soletium by the Acquiring Body in the Court.

25. It follows that First Appeal No.1664 of 2014, First Appeal No.1440 of 2014 and First Appeal No.590 of 2016 deserve to be partly allowed.

26. In the result, First Appeal No.1664 of 2014, First Appeal No.1440 of 2014 and First Appeal No.590 of 2016 are partly allowed. The award passed by Reference Court in L.A.R. No.210 of 2002, L.A.R. No.212 of 2002 and L.A.R. No.213 of 2002

is modified as under :-

"(i) L.A.R. No. 210 of 2002, L.A.R. No.212 of 2002 and L.A.R. No.213 of 2002 partly allowed with proportionate costs.

(ii) In L.A.R. No. 210 of 2002 claimants are entitled for enhanced compensation for the acquired land Gut No.76, admeasuring 3 Hectare 42 Aar situated at village Dangar at the rate of Rs.850/- per Aar.

(iii) In L.A.R. No. 212 of 2002 and L.A.R. No.213 of 2002 claimants are entitled for enhanced compensation for the acquired land Gut No.83, admeasuring 60 Aar and Gut No.75 admeasuring 4 Hectare 34 Aar respectively, situated at village Dangar at the rate of Rs.640/- per Aar.

(iv) Claimants in all three Land References are entitled to component under Section 23 (1A) of Land Acquisition Act calculated at the rate of Rs. 12% per annum on market value of the respective acquired land for the period commencing from the 27.07.1995 to th date of award i.e. 12.06.1996 and and solatium of 30% of the market value of acquired land under Section 23 (2) of the Land Acquisition Act.

(v) Claimants in all Land References are entitled to interest under Section 28 of Land Acquisition Act on enhanced compensation (excess than awarded by the Collector) at the rate of Rs. 9% per annum from the date of possession i.e. from 19.11.1996 for the first year and then at the rate of Rs.15% per annum for subsequent years till the date of deposit of entire compensation together with component and soletium by the Acquiring Body in the Court.

(vi) Award be drawn up accordingly".

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

28. Pending Civil Application, if any, is disposed of accordingly.

(SUNIL K. KOTWAL, J.)

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