IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.654 OF 2014

Sow. Prema Pramodkumar Laddha,
Age : 42 years, Occu. Agri.,
R/o Shiradhon, Tq. Kallamb,
District Osmanabad **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
through the Collector,
Osmanabad

2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

3. The Special Land Acquisition
Officer No.2,
Osmanabad` **RESPONDENTS**

WITH

FIRST APPEAL NO.655 OF 2014

Shri Bhagwandas Ramkishan Mundada
Since deceased, through his
legal representatives

1. Smt. Subhadrabai Bhagwandas Mundada,
Age : 82 years, Occu. Household

2. Shri Badrinath Bhagwandas Mundada,
Age : 63 years, Occu. Agri.

3. Shri Satyanarayan Bhagwandas Mundada,
Age : 55 years, Occu. Agri.

4. Shri Ganesh Bhagwandas Mundada,

Age : 48 years, Occu. Agri.

5. Sou. Ramkunwar Prakashchandra Nawandar,
Age : 50 years, Occu. Agri.

6. Sou. Prema Pramodkumar Ladha,
Age : 42 years, Occu. Agri.

All r/o Shiradhon, Tq. Kallamb,
District Osmanabad **APPELLANTS**
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
through the Collector,
Osmanabad

2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

3. The Special Land Acquisition
Officer No.2,
Osmanabad` **RESPONDENTS**

AND

FIRST APPEAL NO.656 OF 2014

Shri Ganesh s/o Bhagwandas Mundada,
Age :   years, Occu. Agri.,
R/o Shiradhon, Tq. Kallamb,
District Osmanabad **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
through the Collector,
Osmanabad

2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

3. The Special Land Acquisition

Officer No.2,
Osmanabad` **RESPONDENTS**

AND

FIRST APPEAL NO.657 OF 2014

Sow. Ramkunwar Prakashchandraji Nawandar,
Age : 50 years, Occu. Agri.,
R/o Shiradhon, Tq. Kallamb,
District Osmanabad **APPELLANT (Orig. Claimant)**

VERSUS

1. The State of Maharashtra, through the Collector, Osmanabad

2. The Executive Engineer, Minor Irrigation Division, Osmanabad

3. The Special Land Acquisition Officer No.2, Osmanabad` **RESPONDENTS**

Mr. Ashok B. Tele, Advocate for the appellants in all First Appeals
Mr. A.M. Phule, A.G.P. for the respondents in all First Appeals

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CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 18^{th} MARCH, 2019
JUDGMENT PRONOUNCED ON : 2^{nd} APRIL, 2019

COMMON JUDGMENT :

These four appeals are filed by original claimants in Land Acquisition Reference (“LAR”, for short) Nos.143/2001, 146/2001, 168/2001 and 543/2001, against the judgment and award passed by the Joint Civil Judge, Senior Division, Osmanabad. Respondent No.1 is the State of Maharashtra, respondent No.2 is the Acquiring Body and respondent No.3 is the Special Land Acquisition Officer.

2. Undisputedly, the appellants are the owners of the acquired land. The First Appeal number, LAR number, corresponding owner, block number, acquired area of the land and other particulars are given in the following chart.

Sr. No.	First Appeal Number	LAR No.	Name of the Claimant	Block No.	Acquired area of the land	Rate of compensation awarded by SLAO (Rs.)	Rate of compensation awarded by the Reference Court (Rs.)
1	654/ 2014	146/ 2001	Prema Laddha	402	81 R	30,500 Per Hectare	1,75,000/- Per Hectare
2	655/ 2014	168/ 2001	Bhagwandas Mundada	402	82 R	30,500 Per Hectare	1,75,000/- Per Hectare
3	656/ 2014	543/ 2001	Ganesh Mundada	402	1H.91R	30,500 Per Hectare	1,75,000/- Per Hectare

				420	1 H.	22,500 Per Hectare	1,75,000/- Per Hectare
4	657/ 2014	143/ 2001	Ramkunwar Nawander	403	1H.77R	24,500/- Per Hectare	1,75,000/- Per Hectare

3. For the sake of convenience, hereinafter the parties are referred in accordance with their status in the original proceeding as claimant/s, State Government, Acquiring Body and SLAO. As the four LARs were disposed of by the Reference Court by common judgment, these four appeals are also disposed of by this common judgment.

4. Undisputed facts in between the parties are as under :-

. The land of the claimants was acquired for the purpose of Shiradhon Minor Irrigation tank. The claimants are the owners of the land situated at Shiradhon. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (“Act”, for short) was published in official Gazette on 1st June, 1995. Notice under Section 6 of the Act was published on 7th March, 1996. The award was passed on 16th June, 1999. Possession of the acquired land was taken by the Acquiring Body on 1st

December, 1995.

5. The SLAO awarded compensation to the claimants for the acquired land as specified above. Being dissatisfied with the award passed by the Collector, the claimants have filed the aforesaid LARs. The learned Reference Court, after considering the common evidence recorded in LAR No.543/2001, enhanced the compensation as specified in above chart. Being dissatisfied with the enhancement awarded by the Reference Court, for the acquired land, the trees standing over the acquired land and structure, the claimants have preferred these appeals.

6. Heard Shri Ashok B. Tele, learned counsel for the appellants/claimants and the learned A.G.P. for the respondents.

7. After hearing learned counsel for both the parties, following point arises for my consideration. I have recorded my findings thereon for the reasons stated hereinbelow :-

Point	Findings
Whether the Reference Court has awarded just and reasonable compensation for the acquired land, trees and structure ?	The compensation awarded for the acquired land is inadequate and therefore enhanced. However, the compensation awarded for the trees and structure is appropriate.

R E A S O N S

8. Learned counsel for the claimants submits that the acquired land was perennially irrigated land with well water and with the help of pipeline. According to learned counsel, the acquired land being black cotton soil land of excellent quality, the Reference Court ought to have awarded more compensation than Rs.1,75,000/- per hectare. He submits that though claimants filed four sale instances, the Reference Court considered sale-deed dated 25th January, 1994 (Exh-53) of the land situated at village Nipani as comparable sale instance. Learned counsel submits that even in these appeals, the claimants rely on comparable sale instance (Exh-53). His contention is that the acquired land being perennially irrigated land and the land under sale instance (Exh-53) being dry crop land, there should have been double escalation in the market price of the

acquired land than the market price of the land under sale instance (Exh-53). To substantiate his contention, he placed reliance on ***Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon,*** reported in ***(2012 AIR (SC) 481)***.

9. Learned A.G.P. for the State of Maharashtra and Acquiring Body supported the judgment passed by the Reference Court, on the ground that the sale-deed (Exh-53) cannot be considered as comparable sale instance, as it is of small piece of land, admeasuring 9 acres, when the acquired land is more than one Hectare. His next objection is that the land under sale instance is not adjoining to the acquired land and it is situated in another village Nipani. Therefore, the sale-deed (Exh-53) cannot be considered as comparable sale instance.

10. Next contention of learned A.G.P. is that the acquired land cannot be considered as perennially irrigated land, only because one well is shown in the Record of Rights of the acquired land. He has drawn my attention towards crop pattern to show that in some portion of the acquired land, yield of dry crop like Bajri, Hybrid, Toor was taken by the claimants. The

learned A.G.P. prays for dismissal of the appeal.

11. At the outset, I must make it clear that in view of guidelines issued by the Apex Court in ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Pune,*** reported in ***1988(3) SCC 751***, while determining the fair market price of the acquired land on the date of publication of notification under Section 4(1) of the Act, the Reference Court cannot consider the observations and material considered by the SLAO made in the award. The Land Reference is to be decided as original proceeding and every document relied on by the claimant or Acquiring Body must be proved by it, by leading appropriate evidence. It is also settled position of law that use of the comparable sale instance is most appropriate method to determine the just and reasonable market price of the acquired land on the date of notification under Section 4(1) of the Act. The Apex Court has also made it clear that the comparable sale instance is to be selected on the basis of proximity in between the date of publication of notification under Section 4(1) of the Act and the date of execution of sale-deed (sale instance) and on the basis of the proximity in between situation of the acquired land and

land under sale instance as well as their quality. Even post-notification sale instance can be considered provided it is most proximate with the date of publication of notification under Section 4 (1) of the Act.

12. In the case at hand, the acquired land is situated at Shiradhon and the land under sale instance dated 25th January, 1994 (Exh-53) is situated at village Nipani. However, learned counsel for the appellants has rightly pointed out that as shown in the village map of Shiradhon (Exh-55), the village Shiradhon is just adjoining to village Nipani. So also, on behalf of the claimants, Ganesh Bhagwandas Mundada (CW1) categorically deposed in his examination-in-chief that the land under sale instance is at a distance of 1/5th km. from acquired land and it is dry crop land. It is to be noted that in the cross-examination of Ganesh (CW1), the learned A.G.P. and learned counsel for the Acquiring Body have not at all disputed the version of CW1 Ganesh that the acquired land is at a distance of 1/5th km. from the land under the sale instance. Thus, if the unchallenged version of Ganesh Mundada (CW1) and village map (Exh-55) are considered together, conclusion can be drawn that

the land under the sale instance is merely at a distance of 1/5th km. from the acquired land though these two lands are situated in different villages i.e. Nipani and Shiradhon.

13. The Apex Court in the case of ***Lal Chand Vs. Union of India and another, [(2009)15 SCC 769]***, ruled that, "if the acquisition is in regard to a large area of agricultural lands in a village and the exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of the prevailing market value, even if such land is at the other end of the village at a distance of one or two kilometres". In view of this legal position, the distance of 1/5th km. between the acquired land and land under sale instance (Exh-53) makes no difference.

14. The notification under Section 4(1) of the Act is published on 1st June, 1995 and the sale-deed (Exh-53) was executed on 25th January, 1994. Thus, there is proximity in between execution of the sale-deed (Exh-53) and the date of publication of notification under Section 4(1) of the Act. No doubt, the sale instance

(Exh-53) is of only 9 Ares area and it is comparably small piece of the land than the area of the acquired land. However, the evidence of CW1 Ganesh has made it clear that at the time of issuance of notification, there was no sale transaction in village Shiradhon. Therefore, sale instance (Exh-53) of small piece of land can be considered as comparable sale instance, subject to deduction of 25% value from the market value of land under the sale instance. After going through the sale instance (Exh-53), it emerges that under this sale-deed, on 25th January, 1994, dry crop land of area 0 are, situated at village Nipani was sold out for total consideration of Rs.21,000/-. Thus, the market price of this land on 25th January, 1994 comes to Rs.2333/- per Are. For the small size of this land, if 25% value is deducted, the rate of this land comes to Rs.1750/- per Are.

15. It is to be noted that the sale-deed (Exh-53) was executed on 25th January, 1994 i.e. more than one year preceding the date of publication of the notification under Section 4(1) of the Act. Therefore, in view of law settled in ***State of Maharashtra Vs. Shantaram Govind Tandel and others [2011 (7) ALL MR***

273], for one year, 10% escalation in market value of the acquired land is to be granted. After giving escalation of 10% to the market rate of the acquired land, the true and fair price of the acquired land comes to Rs.1925/- per Are.

16. Now question arises whether the acquired land is dry crop land or perennially irrigated land or seasonally irrigated land.

17. The Record of Rights of acquired land Gut Nos.402, 403 and 420 (Exh-22, Exh-23 and Exh-24) show that well is situated in the acquired land. Even the "E" statements of Exh-23 and Exh-24 show that well and pipeline are shown in existence in the acquired land and irrigated crop like sugarcane and dry crops like Bajri, Til (Sesame), Cotton, Hybrid were taken from the acquired land. In view of the observations of the Supreme Court in ***Chindha Fakira Patil (D) through L.Rs.*** (supra), when wells are situated in the acquired land, mere fact that the appellants had not cultivated sugarcane or wheat, cannot lead to an inference that the acquired land was not irrigated. Thus, though crop statement of land Gut No.420 does not show cultivation

of irrigated crops, in view of situation of well in the acquired land, it can be said that the acquired land though not perennially irrigated land, it is seasonally irrigated land.

18. Thus, I hold that the acquired lands Gut Nos.402, 420 and 403 are seasonally irrigated lands. On the other hand, the land under sale instance (Exh-53), as per the recitals of the sale-deed, is dry crop land. Though learned counsel for the appellants claimed market price of the acquired land double than the price of dry crop land, the legal position is otherwise. Full Bench of this Court in the case of ***State of Maharashtra Vs. Prashram Jagannath Aute and another (AIR 2007 Bombay 167)***, has made it clear that it is not permissible nor proper for the court to lead any straight-jacket formula that market value of irrigated land is always double than the market value of jirayat land. The market value of irrigated land is to be determined after considering the quality of that land, its location and advantageous factors annexed with that land.

19. As observed above, the acquired land is seasonally irrigated land. In view of crop statement

showing yield of dry crop from the acquired land from some area, it can be inferred that the acquired land is not of excellent quality. No other advantageous factors, such as adjoining highway, are annexed with the acquired land. Therefore, considering the nature of the acquired land, its situation and quality of the soil, I hold that the fair market price of the acquired land shall be 1½ times more than the rate of dry crop land. Thus, fair and just market price of the acquired land comes to Rs.2888/- per Are. In other words, the claimants are entitled to compensation for acquired land at the rate of Rs.2888/- i.e. round figure Rs.2890/- per Are.

20. At the stage of arguments, learned counsel for the appellants has not claimed enhanced compensation for the trees and structure than awarded by the Reference Court. Otherwise also, after going through the cross-examination of Ghogre (PW2), the valuer of trees and Rameshchandra Bhaskar (PW3), the valuer of structure, it emerges that on the date of inspection of the acquired land by them, they were not recognized as approved valuers. So also from their cross-examination, it also emerges that they had not fixed the identity of the land

visited by them with the help of Talathi or any other officer. Therefore, over much importance cannot be given to the valuation report prepared by two private valuers. The Reference Court deducted 30% value from the value determined by these private valuers and has given reasonable compensation for trees and structure standing over the acquired land. I do not find any reason to enhance the rate of compensation awarded by the Reference Court for trees and structure in the acquired land.

21. It follows that these appeals deserve to be partly allowed only to enhance the compensation awarded by the Reference Court for acquired land. The award passed by the Reference Court regarding compensation for trees and structure needs to be confirmed as it is. The claimants are also entitled to statutory benefits under Sections 23(1A) and 23 (2) of the Land Acquisition Act as well as for interest on enhanced compensation under Section 28 of the Land Acquisition Act.

22. In the result, First Appeal Nos.654/2014, 655/2014, 656/2014 and 657/2014 are partly allowed. The awards passed by the Joint Civil Judge, Senior Division,

Osmanabad in LAR Nos.143/2001, 146/2001, 168/2001 and 543/2001 are modified as follows :-

"(i) The claimants are entitled to enhanced compensation at the rate of Rs.2890/- per Are for acquired land i.e. Gut No.402, admeasuring 1 Hectare 91 Ares, Gut No.420, admeasuring 1 Hectare and Gut No.403, admeasuring 1 Hectare 77 Ares, Gut No.402, admeasuring 81 Are and Gut No.402, admeasuring 82 Are, situated at Shiradhon.

(ii) The claimants are also entitled to component under Section 23(1A) of the Land Acquisition Act i.e. the amount calculated at the rate of 12% per annum on market value of the acquired land for the period commencing on and from the date of notification under Section 4(1) of the Land Acquisition Act i.e. 1st June, 1995 to date of taking possession of the acquired land i.e. 1st December, 1995.

(iii) The claimants are entitled to solatium of 30% on market value of the acquired land, under Section 23(2) of the Land Acquisition Act.

(iv) On enhanced compensation i.e. excess than awarded by the Collector, solatium and component,the claimants are entitled to interest, under Section 28 of the Land Acquisition Act, at the rate of 9% per annum from the date of possession i.e. 1st December, 1995 for one year and thereafter at the rate of 15% per annum to the date of deposit of enhanced compensation, component and solatium, in the Court.

(v) The claimants are also entitled to interest under Section 34 of the Land Acquisition Act at the rate of 9% per annum from 1st December, 1995 on the compensation amount awarded by the Collector until the date of payment or deposit of that compensation, for the period of one year and after one year, they are entitled to interest at the rate of 15% per annum on this compensation amount till 7th March, 2000 i.e. the date of payment of compensation awarded by the Collector.

(vi) The compensation for trees and structure awarded by the Reference Court is confirmed as it is.”

23. The parties to bear their respective costs of the appeals.

24. The First Appeals are disposed of in above terms.

[SUNIL K. KOTWAL]
JUDGE

npj/fa654-655-656-657-2014