

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

FIRST APPEAL NO.3714 OF 2016

- 1 The State of Maharashtra,
 Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
 (M.I.W.), Latur.
- 3 The Executive Engineer,
 Minor Irrigation Division,
 (Local Sector) Latur.

... **Appellants.**

... **Versus** ...

Vitthal Bapurao Admane,
Age 63 yrs., Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... **Respondent.**

...

Mr. A.M. Phule, AGP for the appellants
Mr. G.K. Sontakke, Advocate for the respondents

...

WITH

FIRST APPEAL NO.3715 OF 2016

- 1 The State of Maharashtra,
 Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,

(M.I.W.), Latur.

- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Balaji Sopan Admane,
Age 35 yrs., Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

WITH

FIRST APPEAL NO.3716 OF 2016

- 1 The State of Maharashtra,
Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
(M.I.W.), Latur.
- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Pandurang Martand Kshirsagar,
Age 40 yrs., Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

WITH

FIRST APPEAL NO.3717 OF 2016

- 1 The State of Maharashtra,
Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
(M.I.W.), Latur.
- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Bhimrao Laxman Gaikwad,
Age : major, Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

WITH

FIRST APPEAL NO.3718 OF 2016

- 1 The State of Maharashtra,
Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
(M.I.W.), Latur.

- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Subrao Gena Admane,
Age : major, Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

WITH

FIRST APPEAL NO.3719 OF 2016

- 1 The State of Maharashtra,
Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
(M.I.W.), Latur.
- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Balasaheb Mohanrao Deshmukh,
Age : major, yrs., Occ. Agri.,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

WITH

FIRST APPEAL NO.3720 OF 2016

- 1 The State of Maharashtra,
Through The Collector, Latur.
- 2 The Special Land Acquisition Officer,
(M.I.W.), Latur.
- 3 The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur.

... Appellants.

... **Versus** ...

Shalubai w/o Chandrasen Admane,
Age : major, Occ. Household,
R/o Borgaon (K), Tq. Latur,
Dist. Latur.

... Respondent.

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th SEPTEMBER, 2019

PRONOUNCED ON : 18th NOVEMBER, 2019

COMMON JUDGMENT :

1 All these appeals have been filed by the State, acquiring body challenging the enhancement in the compensation granted by the learned reference Court in respect of land references filed by the present respondents under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”).

2 The lands belonging to the present respondents were acquired for the purpose of Borgaon Percolation Tank No.7 at village Borgaon (K), Tq. Latur, Dist. Latur by the Governemnt. Notification under Section 4 of the Act was published on 09.04.1999. The Special Land Acquisition Officer had passed an Award under Section 11 of the Act on 29.01.2001. Possession of the lands was taken prior to the date of Notification by private negotiation. The Special Land Acquisition Officer has granted compensation @ Rs.425/- per R and Rs.470/- per R for group Nos.1 and 2 lands respectively. The enhancement sought by the claimants was @ Rs.4,00,000/- per R for irrigated land and Rs.2,00,000/- per R for dry land.

3 Following is the chart of the land acquired under these matters.

Sr.No.	First Appeal No.	Name of the land owner	Sy.No.	Area H=R	Name of village
01	3714/2016	Vitthal Bapurao Admane	271	00=81	Borgaon (K), Tq. & Dist. Latur
02	3715/2016	Balaji Sopan Admane	271	01-85	Borgaon (K), Tq. & Dist. Latur

03	3716/2016	Pandurang Martand Kshirsagar	273	00=65	Borgaon (K), Tq. & Dist. Latur
04	3717/2016	Bhimrao Laxman Gaikwad	273	00=16	Borgaon (K), Tq. & Dist. Latur
05	3718/2016	Subrao Gena Admane	338	00=86	Borgaon (K), Tq. & Dist. Latur
06	3719/2016	Balasaheb Mohanrao Deshmukh	272	00=26	Borgaon (K), Tq. & Dist. Latur
07	3720/2016	Shalubai Chandrasen Admane	271	00=81	Borgaon (K), Tq. & Dist. Latur

4 The claimants had contended that the Special Land Acquisition Officer had fixed the compensation arbitrarily and without taking into consideration the prevailing market value of those lands. They contended that their lands, which were acquired, were fertile, black cotton soil and irrigated. The crops were raised on the well as well as rain water. It was contended that Grampanchayat, High School, Electricity facilities, Primary Health Centre, Milk Deary are the facilities, which were near from the acquired lands and therefore, the compensation awarded by the Special LAO was inadequate. They had also contended that the valuation of trees has not been made.

5 The respondents-present appellants had filed their written statement and took objection for enhancing the compensation. It was stated that the lands, which have been acquired, are medium type quality. The

claimants were taking only Kharip crop and therefore, whatever compensation has been awarded is just and proper.

6 On the rival contentions in all the references, issues were framed. Only one claimant examined himself and the said evidence is considered in all other matters. Respondents have not led any evidence. The learned reference Court, after taking into consideration the evidence on record and after hearing both sides, enhanced the compensation @ Rs.2,500/- per R, proportionate to their shares. Rental compensation has been given. 30% solatium and 12% additional component on enhanced amount has also been awarded. So also, interest has been awarded under Section 28 of the Act. The said Judgment and Award is under challenge under all these appeals.

7 Heard learned AGP Mr. A.M. Phule for the appellants and learned Advocate Mr. G.K. Sontakke for the respondents.

8 It has been vehemently submitted on behalf of the appellants that the learned reference Court had not considered the sale deed, which was produced at Exh.29 by the claimants. The said sale deed was in respect of a land, which was admeasuring only 30 R, situated at village Niwli dated 06.07.1995, for a consideration of Rs.30,000/- i.e. Rs.1,000/- per R and the

said village is at a distance of about 28 k.ms.. It cannot be said to be a comparable sale instance. There were no sale deeds of the land from the same village, so that the rate can be compared. When the sale deed Exh.29 was not considered by the learned reference Court, there was in fact nothing before the reference Court, which could have entitled the claimants to have enhancement in the compensation. He, therefore, prayed for setting aside the order in respect of enhancement.

9 Per contra, the learned Advocate appearing for the respondents submitted that learned reference Court has taken note of the decision in **Raghunath Baba Pathare and others vs. State of Maharashtra, 2009(6) Bom. C.R. 473**, wherein factor like 'existence of well' was taken to consider the land as irrigated land, which was on the basis of contents of 7/12 extract. Similarly, in this case the 7/12 extracts show existence of the well.

Further reliance has been placed on the decision in **Chindha Fakira Patil (D) through L.Rs. vs. Special Land acquisition Officer, Jalgaon, AIR 2012 SC 481**, wherein also it was considered, that there was no dispute that there were wells in the acquired land and merely on the fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the lands are not irrigated, and therefore, those lands were considered as bagayat i.e. irrigated and therefore, the compensation has been fixed.

10 At the outset, it is to be noted that as regards the sale instance Exh.29 is concerned, the learned reference Court itself had discarded the said piece of evidence, on the ground that it is in respect of a small portion of the land and i.e. from a village, which is away from the land acquired. There was no other sale instance of nearby village or from the same village. Therefore, the reference Court for determining the market value of the acquired lands on the date of the Notification under Section 4 of the Act was required to consider other points. It has been rightly held, that the 7/12 extracts produced by claimants of the acquired land of the year 1996-97, 1997-98 showed hybrid and tur crops and in fact, the land was acquired in the year 1999. But the same 7/12 extracts clearly showed existence of well. In some lands there were irrigation facility, whereas in some lands it is stated that Rabbi crops are taken. In Gat No.271, there was well and therefore, the compensation as per the ratio laid down in both the authorities, relied by the learned Advocate for the respondents, would be for irrigated land. However, it can be seen that as regards the other lands are concerned, there is no such entry of well. The claimants of other lands i.e. Gat Nos.272, 273, 338 have not come with a case, that they were taking water from the owner of the well in Gat No.271, therefore, the learned reference Court ought to have bifurcated the land, which can be said to be irrigated and which can be said to be non irrigated, and then fixed the compensation, but no such bifurcation

has been made by the reference Court. For all the lands the rate has been fixed @ Rs.2,500/- per R.

11 Now, as regards the irrigated land is concerned, though the 7/12 extracts may not be showing that those claimants were taking irrigated crops, yet, as aforesaid, in view of **Chindha Fakira's** case (supra) the computation of compensation should be on the basis of irrigated land. Special LAO has granted compensation @ Rs.470/- per R, however, it appears that no proper bifurcation was made by Special LAO also. Taking into consideration the fact that the land was fertile and the other factors like - distance of the land from the village, the facilities available at the village, whatever enhancement in the compensation has been made by the reference Court, appears to be excessive. There cannot be so many folds than the amount fixed by Special LAO. Reliance from the following paragraph in **The State of Maharashtra and another vs. Dhondiba Dagadu Pawagi and another in First Appeal No.1464 of 2005** decided at the Principal Seat on 29.03.2017, in which the Supreme Court's observations have been taken note of, would be relevant -

58] In **Trishala Jain Vs. State of Uttarakhand – 2011 (6) SCC 47**, the Hon'ble Supreme Court has accepted that recourse to some guess work while determining the fair market value of the land and consequential amount of compensation that is required to be paid to the persons interested in the acquired land, is inevitable. In paragraphs 27

and 28, the Hon'ble Supreme Court, after adverting to its earlier decision in *Charandas vs. Himachal Pradesh Housing and Urban Development Authority* – (2010) 13 SCC 398, has made the following relevant observations in the context of 'Guesstimates' in such matters:

“57. “Guess” as understood in its common parlance is an estimate without any specific information while “calculations” are always made with reference to specific data. “Guesstimate” is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time “guess” cannot be treated synonymous to “conjecture”. “Guess” by itself may be a statement or result based on unknown factors while “conjecture” is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. “Guesstimate” is with higher certainty than mere “guess” or a “conjecture” per se.

58. The concept of “guesswork” is not unknown to various fields of law. It has been applied in cases relating to insurance, taxation, compensation under the Motor Vehicles Act as well as under the Labour Laws. All that is required from a court is that such guesswork has to be used with greater element of caution and within the determinants of law declared by the legislature or by the Courts from time to time.

59. In *Charan Dass* (supra), this Court on the use of guesswork for determining compensation, has held as under: (SCC pp. 40405, paras 19-22)

“19. Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act. Section 23 provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall, inter alia, take into consideration the market value of the land at the date of the publication of the notification under Section 4 of the Act. The section contains a list of positive factors and Section 24 has a list of negatives vis-a-vis the land under acquisition to be taken into consideration while determining the amount of compensation.

20. As already noted, the first step being the determination of the market value of the land on the date of publication of notification under sub-section (1) of Section 4 of the Act, one of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired.

21. One of the preferred and well-accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands which have similar advantages and disadvantages are considered as a good piece of evidence for determining the market value of the acquired land.

22. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guesswork is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."

Therefore, though it can be certainly said that the rate fixed by Special LAO was on the lower side, yet, the enhancement in the

compensation under the guess work cannot be out of proportion, taking into consideration the facilities available, especially with the background that the reference Court has discarded the sale instance Exh.29. Under the aforesaid circumstances, taking into consideration the note of the place of the village, the purpose for which the land was acquired and the facilities available, it would be appropriate that the enhancement in the compensation would be @ Rs.1,000/- per R for non irrigated land and Rs.1,500/- per R for irrigated land.

12 No fault can be found in respect of interest, additional component factor and rental compensation. Hence, to the extent of rate of enhancement in the compensation the decree does not require any modification. Hence, following order.

ORDER

1 First Appeal Nos. 3714 of 2016, 3715 of 2016, 3716 of 2016, 3717 of 2016, 3718 of 2016, 3719 of 2016 and 3720 of 2016 are hereby partly allowed.

2 The Judgment and Award passed in Land Acquisition Reference Nos.709/2002, 613/2002, 610/2002, 785/2002, 612/2002, 611/2002 and 710/2002 are hereby set aside and modified to the extent of rate of

enhancement in the compensation only, as follows -

“The claimants are entitled to receive the enhanced compensation @ Rs.1,000/- per R for non irrigated acquired land and Rs.1,500/- per R for irrigated acquired land.”

3 It is clarified that the rest of the Award is maintained as it is.

4 Deposit of the amount as per the Award, if any, be adjusted towards modified Award.

(Smt. Vibha Kankanwadi, J.)

agd