

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

**FIRST APPEAL NO. 186 OF 2007
WITH
CIVIL APPLICATION NO. 8532 OF 2018**

- 1] The State of Maharashtra,
through Collector, Latur,
- 2] The District Re-Resettlement
Officer, Collectorate, Latur ...Appellants
[Orig. Respondents]

VERSUS

Vasant s/o Ganpati Padole,
age 25 years, occ. Agril.,
R/o Dapegaon,
Taluka Ausa, Dist. Latur ...Respondent
[Orig. Claimant]

FIRST APPEAL NO. 187 OF 2007

- 1] The State of Maharashtra,
through Collector, Latur,
- 2] The District Re-Resettlement
Officer, Collectorate, Latur ...Appellants
[Orig. Respondents]

VERSUS

Shayamrao s/o Mahadu Pandule,
age 55 years, occ. Agril.,
R/o Dapegaon, Tq. Ausa,
District Latur ...Respondent
[Orig. Claimant]

FIRST APPEAL NO. 188 OF 2007

- 1] The State of Maharashtra,
through Collector, Latur,

- 2] The District Re-Resettlement
Officer, Collectorate, Latur ...Appellants
[Orig. Respondents]

VERSUS

Pilubai w/o Girrao Adsul,
age 40 years, occ. Agril,
R/o Dapegaon, Tq.Ausa,
Dist. Latur ...Respondent
[Orig. Claimant]

**FIRST APPEAL NO. 189 OF 2007
WITH
CIVIL APPLICATION NO. 8529 OF 2018**

- 1] The State of Maharashtra,
through Collector, Latur,
2] The District Re-Resettlement
Officer, Collectorate, Latur ...Appellants
[Orig. Respondents]

VERSUS

Babu s/o Gopala Magar,
age 55 years, occ. Agril,
R/o Dapegaon, Tq. AUSA,
District Latur ...Respondent
[Orig. Claimant]

**FIRST APPEAL NO. 190 OF 200
WITH
CIVIL APPLICATION NO. 8530 OF 2018**

- 1] The State of Maharashtra,
through Collector, Latur,
2] The District Re-Resettlement
Officer, Collectorate, Latur ...Appellants
[Orig. Respondents]

VERSUS

Vithoba s/o Bhivarao Sontakke,
age 60 years, occ. Agril.,

R/o Dapegaon, Tq. Ausa,
District Latur

...Respondent
[Orig. Claimant]

FIRST APPEAL NO. 191 OF 2007

- 1] The State of Maharashtra,
through Collector, Latur,
 - 2] The District Re-Resettlement
Officer, Collectorate, Latur
- ...Appellants
[Orig. Respondents]

VERSUS

Narayan s/o Ganpati Sontakke,
age 55 years, occ. Agril.,
R/o Dapegaon, Tq. Ausa,
District Latur

...Respondent
[Orig. Claimant]

FIRST APPEAL NO. 192 OF 2007

WITH

CIVIL APPLICATION NO. 8531 OF 2018

- 1] The State of Maharashtra,
through Collector, Latur,
 - 2] The District Re-Resettlement
Officer, Collectorate, Latur
- ...Appellants
[Orig. Respondents]

VERSUS

Kishan s/o Mahadu Padole
died through L.Rs.

- 1] Smt. Sughadabai w/o Kishan
Padole, age major,
occ. Household & agri.,
- 2] Venkati s/o Kishan Padole,
age major, occ. Agril.,

Both R/o Dapegaon, Tq. Ausa,
District Latur

...Respondent
[Orig. Claimants]

...

Mr. R.B.Bagul, AGP for Appellant-State

Mr. Chaitanya C.Deshpande, advocate for Respondent

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 11.12.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 07.01.2019

J U D G M E N T :

These 7 appeals are filed by the State of Maharashtra, against the award, passed by learned Ad hoc Additional District Judge, Latur, in Land Acquisition Reference Nos. 56 of 1995, 48 of 1995, 49 of 1995, 52 of 1995, 51 of 1995, 50 of 1995 and 54 of 1995, respectively.

2. Respondents are the original claimants.

3. To make the picture more clear, following chart is given to show, which appeal is filed against the award passed in each Land Acquisition Reference and Gut number, acquired area of the land.

F.A. NO.	LAR No. of year 1995	Name of the claimant	Land Gut No.	Area acquired H. Are
186	56	Vasant Padole	63	0.94
187	48	Shyamrao Padole	46	0.42
188	49	Pilubai Adsul	45	0.30
189	52	Babu Magar	12	0.50
190	51	Vithoba Sontakke	13	0.50
191	50	Narayan Sontakke	62	1.17
192	54	Kisan Padole	47	0.51

4. Facts leading to institution of these appeals are that the above described lands from village Dapegaon were acquired for rehabilitation of the villagers from the same village, after earthquake in the said area.

5. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as, "the Act") was published in official gazette on 30.6.1994 and compensation was offered at the rate of Rs.230/- per Are. By filing Land References, claimants claimed compensation at the rate of Rs.10/- per square feet, contending that the acquired land was having non-agricultural

potentiality. The Reference Court awarded compensation at the rate of Rs.75/- per square meter. Against that award, only State of Maharashtra along with District Re-settlement Officer, Collectorate, Latur have filed these appeals, on the ground that the compensation awarded by the Reference Court is exorbitant.

6. Heard Shri R.B.Bagul, learned AGP for the appellant-State and Shri Chaitanya C. Deshpande, learned counsel for all the respondents-claimants.

7. All the Land References were disposed of by the learned Ad hoc Additional District Judge, Latur by passing common judgment. Therefore, these appeals are disposed of by this common judgment.

8. Learned AGP for the appellant-State submits that the Reference Court awarded exorbitant compensation only relying on common judgment and award passed in Land Acquisition Reference Nos. 57 of 1995, 58 of 1995 and 303 of 1995, where for the land acquired from village Dapegaon, compensation

is awarded at the rate of Rs.75/- per square meter.

According to learned AGP, before the Reference Court, two comparable sale instances, Exhs. 23 and 25, were filed by the claimants. However, both the sale instances were not considered by the Reference Court and passed award only on the basis of award passed in another Land Reference.

Learned AGP submits that the appeals are preferred by the State against the award passed in Land Acquisition Reference Nos. 57, 58 and 303 of 1995. However, all these appeals were dismissed for default and those are yet to be restored. Therefore, at this stage, it cannot be certainly said that the award passed in those Land References has reached finality.

According to learned AGP, even the sale instance Exh.23 is of the land from village Tungi and not from village Dapegaon. That sale deed is in respect of small piece of land having 3 abutting roads and land of the purchaser adjoining to the land which was subject matter of this sale instance. Therefore, it cannot be considered as

comparable sale instance.

Learned AGP has pointed out that the second so called sale instance Exh. 25 is unregistered agreement of sale, which cannot be considered as genuine document, as the stamp on which this document is written is purchased in the name of third person, who is not party to the agreement. Otherwise also, though this agreement is executed in the year 1986, till the date of recording of evidence, registered sale deed was not executed on the basis of said agreement of sale. Learned AGP submits that this agreement of sale is nothing but back dated prepared document to claim enhancement of compensation. According to learned AGP, by allowing the appeal all the Land References need to be remanded to the Reference Court for reconsideration on the basis of genuine sale instance of the agricultural land.

9. Learned counsel for original claimants submits that two sugar factories are situated near the acquired land and even village Dapegaon is developed village, where number of Hospitals are

situated and all amenities are available. He submits that the Talathi (DW 1) examined by the State has admitted in his cross-examination that main road passes through the acquired land. According to learned counsel for the claimants, the acquired land is having non-agricultural potentiality for construction of houses, and therefore, sale instance for sale of plot can be considered. He has pointed out that village Tungi is adjoining to village Dapegaon, and therefore, sale instance (Exh.23) of the land from village Tungi can be considered to determine the market price of the acquired land on the date of publication of notification under Section 4 of the Act.

According to learned counsel for the claimants, the Reference Court has awarded proper compensation relying on award passed of the acquired land situated in the same village.

10. After going through the award passed by the Reference Court, it becomes clear that the award was passed and compensation at the rate of

Rs.75/- per square meter was awarded by the Reference Court only relying on the award passed in Land Acquisition Reference No. 57 of 1995 (Exh.28). However, after going through the award, passed in Land Acquisition Reference No. 57 of 1995 (Exh.28), it becomes clear that though as per that award the land was acquired at village Dapegaon for rehabilitation purpose, while determining the market price of the acquired land, the Reference Court has not considered any particular sale instance. Otherwise also, record shows that appeals were preferred against those awards and for non-compliance of certain directions, those appeals were dismissed for default. It is not certain whether those appeals are restored or not. Therefore, I do not find it proper to rely on the award passed in Land Acquisition Reference No. 57 of 1995 (Exh.28) to determine the fair and true market price of the acquired land on the date of publication of notification under Section 4 of the Act.

11. No doubt, the guidelines issued by the

Apex Court in "**Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr**" (AIR 1988 SC 1652) hold field even till today. In this case, the Apex Court has made it clear that for determining fair market price of the acquired land, on the date of notification under Section 4 of the Act, the Court has to consider comparable sale instance, which is proximate in time with the date of notification under Section 4 of the Act as well as in quality of the land under sale instance and the acquired land.

12. In the case at hand, two sale instances (Exhs. 23 and 25) are placed on record. To prove Exh.23, the claimants have examined attesting witness Sakharam Suryawanshi (PW 2) and to prove sale instance Exh.25, which is agreement of sale, scribe of that document PW 4 is examined.

13. After going through both these documents, it emerges that the agreement of sale (Exh.25) was executed in between Narayan Ganpati Sontakke and

Bhiwa Maroti Borphale on 18.12.1986. This document is unregistered agreement of sale of non-agricultural Plot No. 3, admeasuring 2000 square feet for consideration of Rs.16,000/-. As per the terms of the agreement, the sale deed was to be executed within one month from the date of execution of this agreement.

14. The important fact to be noted is that the executant Narayan Sontakke (PW 3) is one of the claimants in Land Acquisition Reference No. 50 of 1995. The stamp paper, on which this agreement (Exh.25) is written, was purchased on 17.12.1986 and it was purchased for one Mahadeo Narayan Sontakke. Even from the cross-examination of scribe of this agreement, Shridhar Deshmukh (PW 4), it emerges that the so called purchaser Bhiwa Maroti Borphale died after six months from the date of agreement. Thus, this agreement of sale could not be crystallized into registered sale deed till the date of recording evidence on 13.10.2005. Even, Narayan Sontakke (PW 3) has admitted in his cross-examination that till today, sale deed was not

executed in favour of the purchaser in pursuant to this agreement. Thus, possibility cannot be ruled out that the back dated agreement of sale (Exh.25) was prepared by claimant Narayan Sontakke to claim compensation at higher rate on the basis of this agreement. Thus, this document is not genuine document to determine the fair market price of the acquired land. Otherwise also, on the basis of such unregistered document, market price of the land cannot be determined. This document is rightly rejected by the Reference Court.

15. Claimants have also placed reliance on registered sale deed, dated 1.7.1991 (Exh.23), under which Shri Ananda Pawar purchased open land situated at Tungi (Bk), admeasuring 48x12½ square feet for consideration of Rs.10,000/-. On behalf of claimants Baburao Lohgaonkar (PW 1) stepped in witness box and deposed that village Tungi is adjoining to the acquired land. No doubt, Baburao Lohgaonkar (PW 1) has also admitted that in every year there are 5 to 10 sale transactions. However, this admission is absolutely vague and it does not

make clear that prior to date of publication of notification under Section 4 of the Act, some other sale transactions were executed at village Dapegaon.

16. As the registered sale deed can be read in evidence under Section 51A of the Act, the oral evidence of Sakharam Suryawanshi (PW 2), who is attesting witness of sale deed Exh.23 does not carry any importance. However, from the cross-examination of Sakharam (PW 2), it emerges that the house of the purchaser of the above plot is adjacent to the said open land, and therefore, the open space was purchased for higher price. This witness also admits that prices of the land in village Tungi are higher than the price of the land in village Dapegaon.

17. Even the State has examined Talathi Tanaji Yadav (DW 1) of village Dapegaon. From the cross-examination of this witness, it emerges that main road passed from the middle portion of the acquired land. This witness has also made it clear that

villages Tungi and Dapegaon are adjoining villages.

18. In view of these clear admissions, when village Tungi is adjoining village, the sale instance from village Tungi can be considered for determining the market price of the acquired land on the date of notification under Section 4 of the Act.

19. Another important aspect is that as the sale deed (Exh.23) is small piece of land, admeasuring 48 x 12½ square feet and this land is abutting to the Government road on eastern side and two lanes on the western and southern side of this plot, this sale instance cannot be rejected on this count alone. For these plus factors only certain deductions are to be made from the market price of the open plot. No doubt, this open plot has non-agricultural potentiality, however, as the acquired land from village Dapegaon was acquired for the purpose of rehabilitation of village, it means that the acquired land also carries non-

agricultural potentiality. The acquired land is also abutting to the main road as admitted by Talathi Tanaji (DW 1). Thus, quality of the acquired land and the land under sale deed (Exh.23) is similar so far as non-agricultural potentiality and abuttance to the road is concerned.

20. However, the area of the acquired land is in between 41 Are to 2 Hectare 34 Are. Thus, area of the acquired land is much larger than the area of land under sale instance. Therefore, for determining the proper market value of the acquired land from the market rate of this small piece of the land, at least 25 per cent value is to be deducted. So also, for abuttance to two lanes, additional ten per cent market value is to be deducted from the price of this small plot. Thus, after deducting 35 per cent value from the market price of this plot (Exh.23), the price comes to Rs.6,500/-. Thus, market price of this small piece of land is Rs.10.83 per square feet.

21. As this sale instance was executed three

years preceding the notification under Section 4 of the Act, there shall be 30 per cent escalation in this market price. Thus, true market price of the acquired land comes to Rs.14.07 per square feet. The Reference Court has adopted the rate given in Land Acquisition Reference No. 57 of 1995, which is Rs.7/- per square feet or Rs.75/- square meter. However, the market rate of acquired land on the date of notification under Section 4 of the Act comes to Rs.14.08 per square feet, which is certainly higher than the rate given by the Reference Court. Therefore, it cannot be said that the Reference Court has awarded compensation at exorbitant rate.

22. However, after going through the award, the mistake committed by the Reference Court is regarding grant of interest under Section 28 of the Act from the date of notification under Section 4 of the Act. Interest under Section 28 of the Act can be awarded only from the date of passing of the award, as possession of the acquired land was taken prior to date of publication of notification under

Section 4 of the Act. Therefore, the appeals preferred by the State deserve to be dismissed. The award, passed by the Reference Court is to be modified to correct the interest under Section 28 of the Act from the date of award instead of date of publication of notification under Section 4 of the Act.

23. Accordingly, First Appeal Nos. 186, 187, 188, 189, 190, 191 and 192 of 2007 are dismissed. However, the awards passed by the learned Ad hoc Additional District Judge, Latur in Land Acquisition Reference Nos. 56 of 1995, 58 of 1995, 49 of 1995, 52 of 1995, 51 of 1995, 50 of 1995 and 54 of 1995, are modified to grant interest under Section 28 of the Act from the date of award i.e. 10.10.1994 at the rate of nine per cent per annum on enhanced compensation, solatium and component for one year and from 11.10.1995 at the rate of 15 per cent per annum till the date of deposit of entire compensation amount in the Court. Award be modified in above terms.

24. Civil Application are allowed in terms of prayer clauses 'B' and 'C' and disposed of accordingly.

25. Parties to bear their respective costs of appeals.

[SUNIL K.KOTWAL, J.]

dbm