

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

**FIRST APPEAL NO. 5206 OF 2017
WITH
CIVIL APPLICATION NO. 2052 OF 2020
CIVIL APPLICATION NO. 2053 OF 2020
IN
FIRST APPEAL NO. 5206 OF 2017**

The Administrator,
City and Industrial Development
Corporation [CIDCO]
Aurangabad.

... APPELLANT
(Original Claimant)

VERSUS

1. Padmakar S/o Haribhau Muley,
Age : Major, Occupation Agriculture,
R/o: Shivneri, Bansilal Nagar,
Aurangabad.
2. Sharad S/o Haribhau Muley,
Age : Major, Occupation Agriculture and
Business, Resident of as above.
3. Madhukar S/o Haribhau Muley,
Age : Major, Occupation Agriculture
and Business, Resident of as above.
4. Ranjeet S/o Padmakar Muley,
Age: Major, Occupation agriculture
and business resident of as above.
5. Sameer s/o Padmakar Muley,
Age Major, Occupation agriculture
and business, Resident of as above.
6. The State of Maharashtra
Through
Special Land Acquisition Officer,
Old Guest House Compound,
Near Railway Station, Aurangabad

...RESPONDENTS
(Original Respondents)

...
Mr. Anil S. Bajaj, Advocate for Appellant.
Mr. A.P. Bhandari h/f Mr. V.B. Wayal Advocate for R. Nos. 1 to 5
Mr. Y.G. Gujrathi, AGP for Respondents No. 6
...

WITH

FIRST APPEAL NO. 489 OF 2020

1. Padmakar Haribhau Mule,
Age : Major, Occ. : Agri.,
R/o : Shivneri, Bansilalnagar,
Aurangabad.
2. Sharad Haribhau Mule,
Age: Major, Occup: Agriculture,
R/o : As above.
3. Madhukar Haribhau Mule,
Age: Major, Occup. Agriculture,
R/o: As above.
4. Ranjit Padmakar Mule,
Age: Major, Occup. Agriculture,
R/o: As above.
5. Samir Padmakar Mule,
Age : Major, Occup.: Agriculture,
R/o: As above.

Appellants No. 2 to 5 Through
GPA Holder i.e. Appellant No. 1

Padmakar Haribhau Mule,
Age :- Major, Occ. Agril.,
R/o: Shivneri, Bansilalnagar,
Aurangabad.

... APPELLANTS
(Original Claimants)

VERSUS

1. The State of Maharashtra,
Through Special Land Acquisition Officer,
Old Guest House Compound,
Near Railway Station, Aurangabad.
3. The Chief Administrator,
City and Industrial Development Corporation
Central Facility Building, Near Growth
Centre-1, Tisgaon, Ta. And
Dist. Aurangabad

...RESPONDENTS
(Original Respondents)

...
Mr. A.P. Bhandari h/f. Mr. Vitthal B. Wayal, Advocate for Appellants.
Mr. Y.G. Gujrathi, AGP for Respondent No.1.
Mr. Anil S. Bajaj, Advocate for respondent No. 2
...

CORAM : K.K. SONAWANE, J.

DATED : 26th FEBRUARY, 2020.

JUDGMENT :

The instant appeals call-in-question the validity and legality of the impugned Judgment and Award rendered by the learned Civil Judge, Senior Division, Aurangabad in LAR No. 691 of 2005 dated 21-07-2017 filed under Section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894").

2. The points of controversy in both these appeals are centered on the issue of valuation of the land under acquisition, therefore, these allied appeals are dealt with together for its adjudication on merit by this common Judgment.

3. The factual aspects relevant to the present appeals sans unnecessary details are that the land Gut No. 48 admeasuring 4H. 12 R located at village Golwadi, Taluka and District Aurangabad belonging to the appellants-claimants in the First Appeal No. 489 of 2020, was placed under acquisition for industrial, commercial and residential development of Waluj Mahanagar, a township Project as promulgated under development plan of CIDCO, Aurangabad. The requisite declaration under Section 126(4) of the Maharashtra Regional Town Planning Act, 1966 ("Act of 1966") came to be published in official Gazette on 10-12-1998. After compliance of procedural formalities, the Special Land Acquisition Officer ("SLAO") proceeded to make the award as contemplated under Section 11 of the Act of 1894. The SLAO offered the market price for acquired @ Rs. 2,75,000/- per hectare. The SLAO also calculated the value of trees under acquisition @ Rs.

1,12,995/- for both 35 Coconut trees and 51 Guava trees. The land owners – original claimants did not accept the market value of land and trees determined by the SLAO. Therefore, they accepted the compensation amount under protest and proceeded to file Reference Petition under Section 18 of the Act of 1894 for indulgence of the Court to fix the market value of their acquired land and trees.

4. The learned Reference Court dealt with the petition preferred by the claimants for enhancement of compensation amount. The claimants adduced oral and documentary evidence on record to prove their claim. The learned Reference Court, on appreciation of factual aspects of the matter in regard to quality, fertility, location, potentiality etc of the acquired land in the light of evidence adduced on record, allowed the enhancement of compensation to some extent in favour of claimants. The learned Reference Court calculated the market price @ Rs. 21,000/- per R for the land under acquisition. The Reference Court also calculated the valuation of trees @ Rs. 14,03,347/- on the basis of claimants valuer report. Accordingly, the learned Reference Court partly allowed the Reference Petition filed by the claimants' under Section 18 of the Act of 1894. But, the Acquiring Body - CIDCO did not satisfy with the market value assessed by the Reference Court for acquired land as well as trees of the claimants. In the aftermath, the Acquiring Body - CIDCO rushed to this Court and filed the present appeal by resorting to remedy under Section 54 of the Act of 1894, to redress its grievance. The appellant - CIDCO cast the allegation of exorbitant and excessive compensation amount awarded in favour of claimants by the learned Reference Court.

5. The claimants - land owners also simultaneously knocked the door of this Court and preferred the First Appeal No. 489 of 2020 to ventilate their dis-satisfaction about the market price of land calculated by the learned Reference Court. According to claimants, the learned Reference Court ought to have fixed the market price of their land @ Rs.25,000/- per R instead of Rs.21,000/- per R. Be that as it may, both these appeals are placed before this Court for its adjudication on merit.

6. The learned counsel Mr. Bajaj for appellant - CIDCO authority vehemently submits that the impugned Judgment and Award of learned Reference Court is erroneous, imperfect and not as per the provisions of law. The learned Reference Court did not appreciate the evidence on record in its proper perspective and committed error in awarding exorbitant and excessive compensation to the claimants-land owners. According to learned counsel Mr. Bajaj, the SLAO has correctly calculated the just and reasonable market value of the claimants' land. The conclusions drawn by the learned Reference Court are all based on figment of imagination, assumptions and surmises. The sale instances considered by learned Reference Court could not provide proper basis for determination of market value and could not serve as appropriate exemplars. He explained the geographical location of acquired land of the claimants as well as the lands under sale instances, its proximity to approach roads etc. The learned counsel Shri Bajaj harped on the circumstances that the learned Reference Court appreciated the sale instances of the year 1993, 1994 and 1997 and these transactions would not provide a better exemplar than the sale deeds considered by the SLAO. He relied upon the proposition of law laid down in the case

of *Chimanlal Hargovinddas Versus Special Land Acquisition Officer, Poona and another* reported in *1988 (3) SCC 751* as well as in the case of *Vitthalrao and another Vs. Special Land Acquisition Officer* reported in *(2017)8 SCC 558* and contends that while determining the true market value of the acquired land, it was incumbent for the Court to see that comparable sale instances are to be of land nearby or adjacent to acquired land and it should be proximate to the date of acquisition, having similar advantages, its potentiality etc. The learned counsel attempted to draw attention of this Court towards respective Civil Application Nos. 2052 and 2053 of 2020 filed on behalf of appellant - CIDCO for seeking permission to produce additional evidence under Order 41, Rule 27 read with Section 107 of Civil Procedure Code. According to learned counsel Mr. Bajaj, due to unavoidable circumstances and ignorance of provisions of law, the appellant - CIDCO authority could not produced the documents of sale instances of lands located within the vicinity of acquired land. These sale instances would provide the guidance to calculate the just and fair market value of the acquired land. He insisted to allow the appellant - CIDCO authority to produce the documents as an additional evidence in the matter-in-hand. The learned counsel Mr. Bajaj further asserted that the appellant - CIDCO authority also acquired land Gut No. 47 located within the vicinity of the land under acquisition in this matter. There was proceeding of First Appeal No. 732 of 2015 filed by the appellant - CIDCO against the impugned Judgment and Award passed by learned Reference Court in the LAR No. 622 of 2015. The land Gut No. 47 and land Gut No. 48 of the matter-in-hand, both were located nearby each

other having similar advantages and potential value. The appellant - CIDCO is intending to keep reliance on the findings expressed by this Court while adjudication of First Appeal No. 732 of 2015 on merit. Therefore, the appellant - CIDCO authority preferred the Civil Application No. 2053 of 2020 for production of copy of Judgment rendered by this Court in First Appeal No. 732 of 2015 as an additional evidence in this matter. The learned counsel Mr. Bajaj urged to allow the production of documents as additional evidence, which would provide the guidance to determine the appropriate market value of the acquired land. The reliance is placed on the exposition of law in the case of *North Eastern Railway Administration Gorakhpur Versus Bhagwan Das (dead) by L.Rs. Reported in (2008) 8 SCC, 511*. The Honourable Apex Court held that the High Court is bound to consider the application filed under Order 41, Rule 27 of C.P.C. before taking up the appeal on merit. According to learned counsel Mr. Bajaj, the documents sought to be produced being additional evidence, all are necessary for assessment of market value of acquired land in terms of parameters specified under Section 23 of the Act of 1894. The learned counsel also criticized about the mode and manner in which evidence of horticulturist Mr. Patil came to be appreciated by the learned Reference Court. He explained the circumstances on record and fervidly contends that in view of legal guidelines delineated by the Honourable Apex Court in the case of *Maria Margarida Sequeira Fernandes and others Versus Erasmo Jack De Sequeira (Dead) through L.Rs.* reported in *(2012) 5 SCC 370*, it is well settled principle that the Court has to discern and find out the real truth while discharging its statutory

functions. It is obligatory for the court not only to do the justice but also to ensure that justice is being done. Eventually, he prayed to allow the appeal in the interest of justice. He has also made reference about the observation of Honourable Apex Court in the case of *Executive Engineer, M.I. Works Jalgaon Versus Vithal Damodhar Patil and another* reported in *(2019) 7 SCC 225*.

7. Per contra, the learned counsel Shri A.P. Bhandari appearing for claimants vociferously opposed the contentions propounded on behalf of learned counsel Mr. Bajaj for appellant - CIDCO. He contended that the learned Reference Court has correctly appreciated the factual aspects of the matter in its proper perspective, but committed error in calculating the just and fair market value of the acquired land, which resulted in awarding inadequate compensation to the land owners-claimants. He submits that the acquired land of the claimants was rich, fertile perennially irrigated lands. There were wells having ample sources of water available for irrigation purpose. The acquired land was located in the neighbourhood of area of Aurangabad Municipal Corporation. It was surrounded by newly developing area of CIDCO, Aurangabad. The acquired land was at a distance of one k.m. from Aurangabad to Paithan State High way. The acquired land had a great potential value and it would fetch market price more than Rs.25,000/- per R during the relevant period of notification published on 10-12-1998. He has also raised objection to allow the appellant - CIDCO for adducing any sort of additional evidence in this case. The appellant cannot be permitted to fill up the lacuna by adducing additional evidence at this belated stage. The appellant - CIDCO was

represented by its counsel before learned Reference Court . Therefore, no question arises about ignorance of law. The learned counsel Mr. Bhandari also explained in detail the evidence adduced on record including evidence of horticulturist and prayed to allow more enhancement of compensation in favour of claimants-land owners. In support of his arguments he kept reliance on the judicial precedents in the case of *State of Maharashtra versus Sharnataram Govind Tandel and others* reported in *MANU/MH/0574/2011*, *Meharwal Khewaji Trust (Regd) Fakirdkot and others Versus State of Punjab and others* reported in *2012(4) All MR 470*, *the State of Maharashtra versus Mishrilal Bansilal Jain* reported in *(2009) 3 All MR 509*, *Chindha Fakira Patil (dead) through L.Rs. Versus Special Land Acquisition Officer, Jalgaon* reported in *2012(2) Mh.L.J. 530* and *Ambya Kalya Mhatra (D) by L.Rs. And others Versus State of Maharashtra* reported in *2011 AIR SCW 5749*

8. Having given anxious consideration to the arguments advanced on behalf of both sides in the light of oral and documentary evidence adduced on record, it appears that the learned Reference Court committed error in assessment of market price of acquired land to some extent excessive and in exorbitant manner in favour of claimants-land owners. Admittedly, the market value would mean the price which a willing vendor might reasonably expect to obtain from willing purchaser. The value to be ascertained is the value to the vendor and not to the purchaser as well as not affected by any special need of a particular purchase. The price fetched by similarly located land with similar advantage under *bonafide* sale transaction executed at or about

the time of notification under Section 4 of the Act of 1894 [In this case under section 126(4) of Act of 1966] would be usually and indeed the best evidence of market value of the lands in the vicinity. Moreover, it is to be borne in mind that there cannot be any hard and rigid rule for determination of the correct market value of acquired land. The common sense would be the most reliable guide to calculate the just and fair market price. It would also not possible to ascertain the market value with mathematical accuracy. Therefore, some guess work for evaluation of surrounding circumstance is permissible. The market price of the acquired land should be determined in such a manner that there would not be unjust enrichment of acquiring agency nor undue deprivation of claimants - land owners (Emphasis given on *Chimanlal's case* referred supra)

9. The claimants- land owners adduced the evidence and filed the affidavit (Exhibit-62) by way of examination in chief. He deposed that the acquired land was Bagayat land having three wells with ample source of water. There were electric motor and pump set installed on each well. The pipeline was available for irrigation purpose. The claimants produced the document of registered sale deed bearing No. 656 of 1972 dated 27-03-1972 (Exhibit-64) on record. It has been testified that the claimants purchased the acquired land in the year 1972 with the amenities of three wells and three electric pump set already installed on each well. There were fruit bearing trees in the acquired land at the time of its purchase in 1972. According to claimants, the acquired land was perennially irrigated land and the market value @ Rs. 22,000/- to Rs. 25,000/- per R is essential to be

paid to claimants. He kept reliance on the sale instances of adjoining land Gut No. 40 which were executed in the year 1993, 1994 and 1997 (Exhibits-42, 64/3, 44).

10. It is to be noted that the learned Reference Court while determining the market price of the acquired land identified these three sale instances referred above (Exhibits-42, 64/3 and 44) being most comparable sale instances to provide the appropriate index of market price of the lands during the relevant period in the vicinity of Golwadi village. The learned Reference Court appreciated these sale transactions on considerations of its proximity from time angle as well as situation angle. After requisite adjustment for the plus and minus factor in regard to proximity to the State High way, situation in the interior area etc, the learned Reference Court calculated the market value of acquired land @ Rs. 21,000/- per R.

11. At this juncture, the learned counsel Mr. Bajaj for appellant CIDCO insisted to allow the appellant – CIDCO to adduce additional evidence of sale transaction occurred in the year 1994, 1996, 1997, 1999 and 2001 within the vicinity of village Golwadi. The appellant CIDCO moved the civil application No. 2052 of 2020 under Order 41, Rule 27 of C.P.C. seeking permission to lead additional evidence in this matter. The learned counsel Mr. Bhandari for claimants- land owners assailed on the ground that the appellant – CIDCO cannot be permitted to fill up the lacuna, at this belated stage. I find force in the contentions propounded on behalf of learned counsel Mr. Bhandari.

12. As a general rule, the appellate Court would not travel outside the record of lower Court or allow additional evidence, whether oral or documentary. However, the provisions of Section 107 of C.P.C. carves out an exception to the general rule, enables an Appellate Forum to take additional evidence on record subject to conditions and limitations prescribed under Order 41, Rule 27 of C.P.C. The additional evidence can be admitted only when circumstances stipulated under Order 41, Rule 27 of C.P.C. found to exist. The provision of Order 41, Rule 27, would be reproduced as under:-

***"Rule 27 Order XLI of Code of Civil Procedure 1908
"Production of additional in Appellate Court"***

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

13. In the matter-in-hand, it would significant to take into consideration that the appellant - CIDCO commenced the acquisition proceeding of the acquired land in the year 1998 i.e. after publication of notification under Section 126(4) of the Act of 1966 on 10-12-1998. The SLAO declared the award under Section 11 of Act of 1894 on 19-

03-2005 and offered the market price. But, claimant did not satisfy with the compensation awarded to them. Therefore, they preferred the Reference under Section 18 of Act of 1894 in the year 2005 and since then up-till 2017 the claimants were stranded for appropriate market value of their acquired land. The matter did not come to an end in the year 2017 after adjudication of reference filed under Section 18 of the Act of 1894 on merit. The appellant -CIDCO taking recourse of remedy under Section 54 of the Act of 1894 preferred the present appeal in the year 2017 to redress its grievances. However, the appellant moved the present Civil Application No. 2052 of 2020 in the year 2020 for adducing additional evidence under Order 41, Rule 27 of C.P.C., I find it difficult to entertain the present application after efflux of colossal period at such belated stage in the present appeal. The reference under Section 18 of the Act of 1894 for determination of market value of acquired land was *sub-judice* before the learned Reference Court since year 2005. The appellant - CIDCO authority appeared in the proceeding through its legal counsel. Moreover, the appellant - CIDCO also adduced the evidence of its witness, namely, Smt. Vidya Ramrao Munde (Exhibit-75). She was the Administrator of CIDCO during the relevant period. But, the appellant -Acquiring Body did not pain-stake to produce and prove the document of sale instances sought to be produced at this stage as an additional evidence under Order 41, Rule 27 of C.P.C. The reasons mentioned in the application appears to be preposterous and incomprehensible one. It would be reiterated that as per general proposition, ignorance of law has no any excuse. It cannot be said that these documents were not within the knowledge of

appellant - CIDCO authority. Therefore, the present application can not be entertained by invoking remedy under clause (aa) of Rule 27 of Order 41 of C.P.C. Moreover, the additional evidence cannot be allowed to be produced, either for shaking the credit of witnesses or to patch-up the weak part of the appellant's case on the ground that certain evidence is important for decision of matter in issue on merit. In such circumstances, the judicial conscience does not permit in the interest of justice to allow the application filed after efflux of colossal period in the year 2020 at such belated stage in present appeal.

14. I am also not inclined to allow the appellant – CIDCO to adduce additional evidence under clause (b) of Rule 27 of Order 41 of C.P.C. for the reason that both the appellant and claimants during the course of arguments attempted to keep reliance on the Judgment delivered by the co-ordinate Bench of this Court in First Appeal No. 732 of 2015. The learned Single Judge of this Court (Coram : Sunil K. Kotwal, J.) after consideration of factual aspect determined the compensation of land Gut No. 47, which was located abutting to the present acquired land Gut No. 48 of the claimants. The market value for dry land within the vicinity of acquired land was calculated by learned Single Judge of this Court @ Rs. 10,043/- per R (say Rs.10,000/- per R). But, after requisite deduction for remote location from land under sale, the cost was valued @ Rs.9,000/- per R for dry land and allowed the enhancement @ Rs.13,500/- for land Gut No.47 being seasonally irrigated land.

15. The learned counsel Mr. Bajaj gave much more emphasis on the

Judgment delivered in First Appeal No. 732 of 2015 dated 28-11-2018 and requested to accept the same being an additional evidence in this appeal. It is to be noted that the Reference Court adjudicated the petition under Section 18 of the Act of 1894 on 21-07-2017 and subsequently on 28-11-2018 the Judgment came to be delivered in First Appeal No.732 of 2015. Therefore, it cannot be permitted to be a part of evidence adduced before the learned Reference Court by resorting to remedy under Order 41, Rule 27 of C.P.C. in the interest of justice. The subsequent Judgment in First Appeal No. 732 of 2015 and First appeal No. 72 of 2015 at the most could be taken into consideration as judicial precedent subject to provisions of law of precedents. Therefore, both the applications filed under Order 41, Rule 27 of C.P.C. deserve to be rejected.

16. In regard to the crucial issue of fixation of market value of the land Gut No. 48 of the claimants under acquisition, as referred supra, the learned Reference Court appreciated the sale instances (Exhibits- 42, 64/3 and 44) being most comparable sale instances to provide index for assessment of market price of the lands located within the vicinity during the relevant period of December, 1998. Accordingly, after consideration of all plus and minus factor, the learned Reference Court calculated the market value of acquired land @ Rs.21,000/- per R. The Reference Court held the acquired land as Bagayat land i.e. perennially irrigated land for determination of its market value within parameters of Section 23 of the Act of 1894.

17. While arguments on behalf of appellant- CIDCO, the learned

counsel Shri. Bajaj kept reliance on the market value of adjoining lands Gat No. 45 and 47 calculated in First Appeal No. 732 of 2015 and 72 of 2015. As mentioned above, he has also moved the Civil Application No. 2053 of 2020 to allow the CIDCO to adduce additional evidence in the shape of copy of Judgment dated 28-11-2018 in FA/732/2015 and same be taken on record. It is discernible from aforesaid motion on the part of appellant – CIDCO that it has no grievance against the market value determined @ Rs.9,000/- per R approximately for dry lands and 1½ times of market rate of dry lands to the seasonally irrigated land which would accrued to Rs.13,500/- per R. approximately.

18. Ironically, the learned counsel Shri. Bhandari, appearing for claimant-land owner also produced the copy of Judgment of First Appeal No. 732 of 2015 and placed reliance on the exercise conducted by learned Single Judge of Co-ordinate Bench of this Court for fixation of market value of lands located within the vicinity of acquired land. He submits that the market rate for dry land of the vicinity was calculated @ Rs.9,000/- per R. approximately. Learned counsel Shri. Bhandari contended that the appellant- CIDCO filed proceeding of SLP (Civil) Diary No. 16222 of 2019 before Honourable Apex Court. However, the proceeding of SLP came to be withdrawn at the instance of appellant- CIDCO. Therefore, the market value of dry land in the vicinity determined in the First Appeal No. 732 of 2015 become final and conclusive one. According to learned counsel Mr. Bhandari, in view of observation in the case of *State of Maharashtra Versus Mishrilal Bansilal Jain*, reported in (2009) 3 All MR 509, the learned Single Judge

awarded the compensation to land Gat No. 47 @ Rs.13,560/- per R. being seasonally irrigated land (i.e. 1½ times of rate of dry land). He submits that the acquired land Gat No. 48 of the claimants was perennially irrigated lands. There were wells in the acquired lands having ample source of water. The claimants used to take yield of crops like Sugarcane, Wheat, Jawar, etc. from acquired land. There were fruit bearing trees like Coconut, Guava, etc. Therefore, the market price of land under acquisition is required to be calculated double the market value of dry land. He is in agreement that the market price of dry land during the relevant period in the vicinity would be @ Rs.9,000/- per R. approximately and he claimed double rate i.e. @ Rs.18,000/- per R. for acquired land being Bagayat land. He relied on the ratio laid down by Honourable Apex Court in the Chindha Fakira's case (*cited supra*).

19. The aforesaid circumstances adumbrates that pursuant to judgment in First Appeal No. 732 of 2015 which came to be confirmed after dismissal of SLP (Civil) Diary No. 16222 of 2019 as withdrawn, filed by Acquiring Body i.e. CIDCO, it is not put into controversy that the market rate determined for dry land located within vicinity @ Rs.9000/- per R would provide the index of market value for appreciation to fix the price of acquired land Gut No. 48 of the claimants in this appeal.

20. It is worth to mention that the previous judgment delivered in First Appeal No. 732 of 2015 no doubt has relevance as it relates to the land Gut No. 47 situated in the vicinity of Golwadi nearby the land Gut No. 48 under acquisition of the claimants herein. The Judgment

also contain determination of value on the date or proximate to the relevant date in the present matter-in-hand. The valuation of land Gut No. 47 which was the subject-matter of First Appeal No. 732 of 2015, came to be calculated @ Rs. 13,500/- being seasonally irrigated land. The assessment was done 1½ times of rate determined for dry land @ Rs. 9043/- per R and its 1½ times @ Rs.13,564/- say Rs. 13,560/-. The learned counsel Mr. Bajaj kept reliance on the findings expressed in the previous judgment in First Appeal No. 732 of 2015 and submits that the lands Gut No. 48 of the claimants herein and land Gut No. 47, which was subject matter of First Appeal No. 732 of 2015, both were situated adjoining to each other, having similar advantages and potentiality, therefore, no different valuation than the land Gut No. 47 of the First Appeal No. 732 of 2015 would be ascertained for the land in question of the claimants Gut No. 48 in the present appeal. According to learned counsel Shri. Bajaj, the findings expressed in the Judgment of First Appeal No. 732 of 2015 were approved by the Honourable Apex Court and dismissed the SLP (Civil) Diary No. 11500 of 2019 filed by the original claimant Shri. Kasturchand and others. Therefore, the Judgment in First Appeal No. 715 of 2015 has binding force as a precedent.

21. It is to be borne in mind that the Award in land acquisition cases are essentially a decision on a question of fact depending on the facts and circumstances of each case; and unless a question of law or principle has been settled therein, it cannot be said that such Judgment has binding force as a precedent. The Full Bench of this Court in the case of *State of Maharashtra Versus Prashram Jagannath Aute*,

reported in **2007(5) Bom. C.R. 847**, reiterated that before a precedent can be applied to a subsequent case, Court has to examine that such a precedent satisfies principles of ratio *decidenti*. It must apply on facts and on question of law. A peculiar decision taken on facts of a given case would per se not be law applicable to other cases. Moreover, in the case of **Manoj Kumar and others Versus State of Haryana**, reported in **(2018) 13 SCC 96**, the Honourable Apex Court held that the dismissal of SLP without assigning of reason cannot be treated as a binding precedent of the Supreme Court, but the Court has to consider various aspects of the matter such as quality of the land, category, time gap, its size, etc. and then render the decision. The Honourable Apex Court in paragraph No. 24 enunciated as under :-

"24. The High Court has observed that the decision in Swaran Singh's case has been affirmed by the judgment of the Supreme Court. As a matter of fact, the special leave petition was dismissed. The dismissal of the special leave petition without assigning of reason cannot be treated as a binding precedent of this Court. The High Court treated as if this Court has decided the matter on merits and has approved the decision of the High Court. Even if that be so, the Courts are bound to take into consideration the various aspects as discussed in each and every case before relying upon and following the award or judgment in other cases relating to determination of the compensation as there is no res judicata in such cases. In each case, some change in the factual scenario is bound to be there such as quality of the land, category, time gap and largeness and smallness, deduction to be made. There are various factors which have to be taken into consideration only then, decision has to be rendered."

22. It is evident that the previous Judgment in the First Appeal No. 732 of 2015 cannot be treated as an binding precedent. But, it has an relevance only to the extent of guidelines for fixation of market value of the lands located in the similar area having proximity from time and situation angles. The findings expressed in the Judgment of First Appeal No. 732 of 2015 in regard to quality, classification or potentiality of land in question cannot be made applicable straight-way for valuation purpose in this case. But, it is incumbent to consider the factual aspects of the matter-in-hand independently and separately to determine the just and fair market value of the land Gut No. 48 of the claimant in this appeal. Moreover, the incidental remarks about the drought situation in Marathwada region, availability of irrigation facilities etc. made in the Judgment cannot be regarded as affecting the circumstances to be considered for valuation of land in question in this appeal. Be that as it may, the market value of lands located in the similar area and its proximity of time, etc. determined in First Appeal No. 732 of 2015, is not put into controversy on behalf of claimants-land owner. The appellant- CIDCO also attempted to keep reliance on the similar market value fixed for adjoining land Gut No. 47 in First Appeal No. 732 of 2015. Therefore, there is no impediment to consider the market price of the land calculated in First Appeal No. 732 of 2015 as basis for evaluation of just and fair price for acquired land Gut No. 48 in this appeal.

23. The minute scrutiny of evidence adduced on record on behalf of claimants reveals that the claimants purchased the acquired land Gut No. 48 in the year 1972. The claimants produced the documents of sale

deed (Exhibit-64) executed in the year 1972 for purchase of acquired land. It transpired that there were three wells with electric pump set on each well in the land Gut No.48. There were fruit bearing trees in the acquired land. The learned Reference Court classified the acquired land as Bagayat land. I do not find any error in the findings of learned Reference Court for interference that the acquired land was Bagayat – Perennially Irrigated land. Learned counsel Mr. Bajaj gave much more stress on the circumstances that there were no any Bagayat crop entries in the 7/12 extract of acquired land and it would hard to perceive that the entire area of Gut No. 48 was Perennially Irrigated land. He drawn attention of this Court towards the observations made in the Judgment of First Appeal No. 732 of 2015 about irrigation facility available in the land Gut No. 47, which resulted into conclusion to award the compensation as seasonally irrigated land. In short, his argument conjures up an image that the similar yardstick should be applied to the acquired land Gut No. 48 of the claimants herein.

24. The evidence adduced on record on behalf of claimants in the matter-in-hand would show that the land Gut No. 48 under acquisition was located on the 24' meter wide internal approach road. The Aurangabad to Paithan State-High-way was at a distance of one Kilometer from acquired land. The surrounding area was also covered under development plan of appellant - CIDCO. Admittedly, the acquired land was contiguous to the area of Municipal Corporation Aurangabad city. It was acquired for residential, commercial and industrial purpose of the project of Waluj Mahanagar, New Aurangabad. The spot inspection report referred in the Award of SLAO itself

described the situation, quality, potentiality of the acquired land. The observations made in the spot inspection report are very well reflects from the columns No. 5 and 6 of the impugned Award of SLAO dated 19-03-2005. It has been mentioned that the acquired land was of higher quality Bagayat land having source of water from the well. In view of surrounding circumstances, quality of land, its category as irrigated land, there is no doubt that the acquired land Gut No. 48 would fetch more value than the price @ Rs.13,560/- per R. determined for seasonally irrigated land in the Judgment of First Appeal No. 732 of 2005. At this juncture, it would appropriate to make a reference of observation of Honourable Apex Court, in paragraph No. 13 of **Chindha Fakira Patil's** case (cited supra)

"13. The High Court was also not right in upsetting the finding of the Reference Court on the issue of nature of land. In his deposition, Arjun Sukdeo Patil categorically stated that there were wells in the lands of the appellants and there were Jujubee, Tambrine, Mango, Pomegranate trees. This was supported by the entries contained in 7/12 extracts. The High Court discarded the evidence of the appellants by observing that they had not cultivated sugarcane and wheat. When it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the land was not irrigated and, in our view, there was no valid reason for the High Court to interfere with the finding recorded by the Reference Court that parts of the lands were Bagayat and for such land they were entitled to compensation @ Rs. 6 lacs per hectare."

25. It would be reiterated that where the acquired land is agricultural land and compensation is claimed on the basis of

agricultural land including its potentialities as such, the first element that a hypothetical purchaser would consider is the nature of land. In the instant case, after considering amenities available in the land, the hypothetical purchaser would prefer to pay price for the entire area as irrigated Bagayat land. There is no error in the findings recorded by the learned Reference Court that the acquired land was Bagayat land. In such peculiar circumstances, obviously, the acquired land would fetch price @ Rs.18,000/- per R. i.e. double to the price of dry land @ Rs.9,000/- per R. It would fallacious to appreciate that the acquired land was essentially to be valued at 1½ times of market rate of dry land being seasonally irrigated land. The legal proposition as to assessment of market value contemplates that value to be ascertained is a price to be paid for the land with all potentialities and by reference not merely to the use to which it is being put at the time at which its value has to be determined, but also to the uses to which it is reasonably capable being put in the future. In view of situation, quality, future potentiality, irrigation facility available in the land etc., the market price @ Rs.18,000/- per R. would definitely sub-serve the purpose being just and fair valuation of acquired land. Therefore, I am of the considered opinion that the market value of acquired land Gut No. 48 of claimants under acquisition would be accrued to Rs.18,000/- per R.

26. Now, turning to another spectrum of the matter of valuation of fruit bearing trees, the learned counsel Mr. Bajaj appearing for appellant - CIDCO criticized the findings recorded by learned Reference Court in regard to valuation of the fruit bearing trees located in the

acquired land Gut No. 48 of the claimants. He submits that the learned Reference Court did not appreciate the evidence of claimants' valuer in proper manner. The valuation report (Exhibit-67) cannot be taken into consideration for lack of scientific method. His evidence is not sufficient for valuation of fruit bearing trees located in acquired land Gut No. 48 of the claimants. According to learned counsel Mr. Bajaj the valuation of the fruit bearing trees made by learned Reference Court is erroneous, imperfect and excessive in nature.

27. It is not in dispute that there were acquisition of 35 Coconut and 51 Guava fruit bearing trees located in the acquired land Gut No. 48 of the claimants. The SLAO also determined the valuation of fruit bearing trees and paid the compensation of Rs.1, 12,995/- for acquired trees to the claimants. However, the valuation of fruit bearing trees made by SLAO was put-in-controversy on behalf of claimants in reference petition filed under Section 18 of the Act of 1894. The claimants adduced the evidence of valuer Dr. V. K. Patil, (Exhibit-66). Dr. Patil was the approved Government Valuer, having sufficient educational qualification and experience being Expert in the field of Horticulture. He produced the relevant documents and certificates of his educational qualification and professional career on record. It has come in his evidence that, he had an occasion to visit to the acquired land for valuation of fruit bearing trees. He visited to the land under acquisition at the instance of claimants-land owners. He personally carried out inspection of fruit bearing trees, found standing in the acquired land. He reduced into writing the details of fruit bearing trees in presence of panchas, farmers and residents of the village Golwadi. He has

recorded detail particulars of number of trees, its age, height, width, stemgirth, its general condition as well as production capacity, etc. He deposed that he prepared valuation report of the fruit bearing trees located in the acquired land as per the guidelines issued by the Government of Maharashtra under respective resolutions, circulars and as per A.E.Miram's Real property Table Method. He has also taken into consideration average of whole-sale rates of the fruits as supplied by Agricultural Produce Market Committee, Aurangabad, for the purpose of valuation of fruit bearing trees. Accordingly, he prepared the valuation report, which is produced and proved on record (Exhibit-67).

28. The evidence of valuer Dr. Patil reflects that the claimants examined him as an Expert in the field of agriculture and horticulture science. The function of Expert is to furnish data with necessary scientific criteria so as to enable the Court to come to an independent conclusion to resolve the impasse for proper adjudication of the issue on merit. The evidence of Horticulturist Dr. Patil is admissible under Section 45 of the Evidence Act being opinion of third person on the point of valuation of fruit bearing trees. He was the person specifically skilled in science relating to topic of Horticulture. Learned Reference Court correctly appreciated the evidence of Horticulturalist Dr. Patil in its proper perspective and made the valuation of the acquired trees @ 80 % of valuation calculated by claimants' valuer Dr. Patil. The valuation made by claimants' valuer appears to be more effective for appreciation to ascertain market value of acquired fruit bearing trees of the claimants. The learned Reference Court has appropriately resorted to the particular mode adopted by the Honourable Apex Court

in the Chindha Fakira's case (cited supra) for calculation of market price of fruit bearing trees on the basis of valuation report of claimants' valuer. There is no imperfection or error in the valuation calculated by learned Reference Court for fruit bearing trees located in the acquired land.

29. It is also essential to take note that there was no any arduous cross-examination on behalf of appellant- CIDCO - Acquiring Body to the valuer Dr. Patil sufficient to discredit his evidence as expert in this matter. Moreover, in view of legal guidelines delineated by the Honourable Apex Court in the case of *Chimanlal Hargovinddas Versus Special Land Acquisition Officer (referred supra)*, except the valuation report of Dr.Patil produced and proved on record (Exhibit-67), no other documents available for appreciation on record in this case. The appellant- Acquiring Body did not take any efforts to produce the valuation report of any Horticulturist from Government Department on record for evaluation of market price of the fruit bearing trees located in the acquired land.

30. In the above premise, there is no impediment to arrive at the conclusion that the acquired land Gut No. 48 of the claimants would fetch market price @ Rs.18,000/- per R. which would prevailing over in the area during the relevant period at the time of notification under Section 126(4) of the Act of 1966. Definitely, it would be just and fair price for the acquired land. Therefore, claimants-land owner are not entitled to get enhancement of compensation amount more than @ Rs.18,000/- per R. Hence, proceeding of First Appeal No. 489 of 2020

filed on behalf of appellant-claimants being devoid of merit, deserves to be dismissed. However, the proceeding of First Appeal No. 5206 of 2017 filed on behalf of appellant- CIDCO is required to be allowed partly.

31. Accordingly, the proceeding of First Appeal No.489 of 2020 filed by claimants fails and is dismissed.

The proceeding of First Appeal No. 5206 of 2017 filed on behalf of appellant - CIDCO stands allowed partly. The impugned Judgment and Award rendered by learned Reference Court is hereby modified to the extent that the claimants are entitled for enhancement of compensation @ Rs.18,000/- per R. for their acquired land Gut No. 48 admeasuring 4 H -12 R. located at village Golwadi, Taluka Gangapur, District Aurangabad. The claimants are also entitled to get statutory benefits as contemplated under Section 23(1-A) and 23(2) of the Act of 1894 for the period specified by the learned Reference Court in the impugned Judgment and Award. Moreover, the claimants are eligible for interest as prescribed under Sections 28 and 34 of the Act of 1894, from the date of Award till realization of enhanced compensation amount, more specifically stipulated in the impugned Award by learned Reference Court. The compensation amount awarded for fruit bearing trees by learned Reference Court is hereby made absolute and confirmed.

32. In the result, the proceeding of both the first Appeal No. 5206 of 2017 and First Appeal No. 489 of 2020 stand disposed of in above terms. In the light of adjudication of aforesaid First Appeals on merit,

the pending civil applications stand disposed of accordingly. No order as to costs. The deposited decretal amount remained balance in the proceeding of First Appeal No.5206 of 2017, if any, including the amount invested in FDR Account with interest accrued thereon etc., be remitted forthwith to the concerned Reference/Executing Court, to enable for execution of award within the ambit of law. Registry to do the needful as directed above.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK
