

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

**FIRST APPEAL NO.294 OF 2019**

Sandu s/o Changuna Kapse,  
Age 67 years, Occu. Agril.  
R/o Leha, Taluka Phulambri,  
District Aurangabad

**... APPELLANT**

**VERSUS**

- 1) The State of Maharashtra  
through the Collector,  
Aurangabad
- 2) The Special Land Acquisition Officer,  
Jayakwadi Project, Aurangabad

(Copy to be served on the  
Government Pleader, High Court of  
Bombay, Bench at Aurangabad)

- 3) The Executive Engineer,  
Minor Irrigation Division No.1,  
Aurangabad, Dist. Aurangabad

**... RESPONDENTS**

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Shri D.A. Bide, Advocate for appellant  
Shri S.N. Morampalle, A.G.P. for respondents No.1 and 2  
Shri R.B. Gaikwad, Advocate for respondent No.3.

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**CORAM : R. G. AVACHAT, J.**

**Date of reserving judgment : 18th November, 2021**

**Date of pronouncing judgment : 07th April, 2022**

**J U D G M E N T :**

This is an appeal under Section 54 of the Land  
Acquisition Act, 1894 (for short Act of 1894). The challenge

herein is to a judgment and award dated 1/1/2013, passed by 5th Jt. Civil Judge, Senior division, Aurangabad in Land Acquisition Reference (L.A.R.) No.180/2006. Under the impugned judgment and award, the compensation for the agricultural land of the appellant (original land owner) acquired for the public purpose has been enhanced @ Rs.2625/- with all consequential benefits. Still, feeling to have not been granted adequate enhancement in the amount of compensation, the present appeal has been filed for further enhancement.

2. Facts giving rise to the present appeal are as follows :-

Land in Gut No.90, admeasuring 1 Hector 95 R belonged to the appellant herein. It was acquired for Wakod Medium Project, Leha, Taluka Phulambri, District Aurangabad. Notification under Section 4 of the Act of 1894 was published on 22/8/1997. The award came to be passed on 4/11/2005. The Land Acquisition Officer (L.A.O.) offered compensation @ Rs.988/- per R, plus some amount towards fruit bearing trees like Chikoo, Guava, Jambhul, Jujubi etc. The Reference Court enhanced the amount of compensation as stated above. It has, however, not granted separate compensation for the fruit

bearing trees. In view of Reference Court, the land was seasonally irrigated. Only in the year 1994-1995 sugarcane was raised therein. Since the entire land was not under sugarcane, the Reference Court held it to be a seasonally irrigated land. For awarding compensation @ Rs.2625/-, the Reference Court relied on an award passed in Lok Adalat in respect of the land which was acquired under very acquisition proceedings. As per the terms of the award passed in Lok Adalat, for unirrigated land compensation was given @ Rs.2100/- per R, and for seasonally irrigated land, it was given @ Rs.2625/- per R. On the question of valuation of the fruit bearing trees, the Reference Court held that, valuation report has not been duly proved. The Valuer had paid visit to the land way back in May 1996 for assessment of the valuation. He, however, prepared the valuation report in November 2011 i.e. 15 years after his visit to the land. The Reference Court, therefore, did not rely on valuation report.

3. Heard. Learned counsel for the appellant would submit that, admittedly, there was newly dug well in the land acquired. Sugarcane was being raised in the land besides existence of fruit bearing trees. The Reference Court ought to have considered the land to be perennially irrigated. The

sale instance (Exh.32) was relied on. It was a sale deed executed in the year 1996 i.e. during the relevant time of the date of notification under Section 4 of the Act. The land comprised therein was unirrigated. In view of the known principles accepted by the High Court that rate of irrigated land shall be double the rate of unirrigated land, the Reference Court ought to have granted compensation @ Rs.5000/- per R. In the award passed in Lok Adalat, the rate awarded was Rs.3115/- per R. The same has also been ignored by the Reference Court. The real brother of the appellant had his L.A.R. settled in the Lok Adalat. He has been benefited with the grant of compensation @ Rs.3115/- per R. On the question of valuation report in respect of the fruit bearing trees, the learned counsel has relied on the judgment of the Apex Court in case of Chindha Fakira Patil, Died through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon [ 2012 AIR (SC) 481 ] to submit that it has now become a practice to grant compensation @ 80% of the valuation report. The learned counsel has relied on the judgment dated 25/2/2020 of this Court in **First Appeal No.1496/2018 with First Appeal No.1498/2018 [ Jijabai w/o Babulal Bankar Vs. The State of Maharashtra & ors. etc. ]** and urged for similar treatment. The learned counsel ultimately

urged for allowing the appeal. He placed reliance of the following authorities :-

- (1) Narayan Yashwanta Kapse Vs. The State of Maharashtra & ors. [ 2021 (1) ALL MR 331 ]
- (2) Vitthal Damodhar Patil Vs. The Special Land Acquisition Officer, M.I.W., Jalgaon & anr. (First Appeal No.2536 of 2015)
- (3) Chindha Fakira Patil, Died through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon [ 2012 AIR (SC) 481 ]
- (4) Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona & anr. [ (1988) AIR (SC) 1652 ]
- (5) Bayaji Tatya Kalunge Vs. State of Maharashtra [ 2007 (2) ALL MR 316 ]
- (6) Spl. L.A.O., City Improvement Trust Board Vs. S.G. Channabasavana Gowda & anr. [ AIR 2012 SC (Supp) 616 ]
- (7) Union of India Vs. Bal Ram [ 2004 AIR (SC) 3981 ]
- (8) Vidarbha Irrigation Development Corporation, Nagpur Vs. Laxman Seetaram Neulkar & anr. [ 2021(2) Mh.L.J. 198 ]

4. The learned A.G.P. for the respondents No.1 and 2 – State, and learned counsel for respondent No.3 – acquiring body would, on the other hand, submit that, more than just and reasonable compensation has been awarded. Once the compensation has been awarded considering the land to be seasonally irrigated, no separate compensation could be

awarded for the fruit bearing trees. It would otherwise be an unjust enrichment. Both the learned counsel, therefore, urged for dismissal of the appeal.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the impugned judgment and award.

The land of the appellant was acquired for Wakod Medium Project, Leha, Taluka Phulambri, District Aurangabad. Notification under Section 4 was published on 22/8/1997. The award came to be passed on 4/11/2005. The acquired land admeasured 1 Hectar 95 R (195 R). In the appeal memo, the appellant has claimed compensation @ Rs.3115/- per R since the same rate was granted to the adjoining land acquired for the very purpose. The said rate was awarded in Lok Adalat. The land therein belonged to the real brother of the appellant. The learned counsel would, however, submit that, the appellant would be content with the rate of compensation awarded by the Reference Court provided the appellant is granted compensation for the fruit bearing trees @ 80% of the valuation report submitted by the expert. He placed reliance on the judgment of this Court in case of Jijabai Bankar (supra). True, the lands comprised in those First

Appeals were acquired for the very purpose for which the land of the appellant herein came to be acquired. The acquisition process is one and the same. This Court, relying on the judgment of the Apex Court in Chindha Fakira Patil (supra), granted 80% of the valuation made by the Valuer. It was a case of mango and tamarind trees.

6. In the case in hand, admittedly there were 85 Chikoo trees, 2 Guava trees, 16 Orange trees, 2 Jambhul trees and 25 Jujubi trees. The existence of these trees is evident from the joint measurement report, E-statement and the observations in the judgment and award impugned herein. The Reference Court has, however, not granted any compensation for those trees. It is true that, in Chindha Fakira Patil's case (supra), the Apex Court granted compensation @ 80% of the valuation report. It needs no mention that each case has to be decided on its facts and circumstances. The Apex Court, in its later judgment in **The Executive Engineer, M.I.W. Vs. Vitthal Damodar Patil & anr. [ (2019) 7 SCC 225 ]**, wherein the report submitted by the very witness/ expert in some other L.A.R., has not been accepted, and remanded the matter back to the High Court for appreciation of his evidence.

7. The Reference Court did not grant compensation for fruit bearing trees on the ground that the report was not duly proved. It is not known as to why the valuation report had not been placed before the Land Acquisition Officer when it was said to have been made pending acquisition proceedings. It, however, appears that, the valuer had not been subjected to a detailed cross-examination. The report was only denied contending it to be a false and fabricated document. While the valuer paid visit, none of the representative of the respondent/ State or the acquiring body was present. It has to be assumed that, with a view to earn more compensation, the valuer might have given inflated valuation. In the fitness of things, this Court is inclined to grant compensation @ 70% of the valuation report.

8. The Apex Court, in case of State of Haryana Vs. Gurcharan Singh & anr. [ AIR 1996 SC 106 ], observed that,

“Section 23 – Compensation - Land with fruit bearing trees – Separate compensation for land and fruit trees cannot be awarded – Compensation is to value of acquired land and land includes benefits to arise from land.”

9. In view of the above, the First Appeal succeeds in

terms of the following order :-

**ORDER**

- (i) The First Appeal is partly allowed.
- (ii) The amount of compensation is enhanced, quantifying it at 70% of the Valuer's report, Exh.31 inclusive of the amount of compensation awarded by the Reference Court @ Rs.2625/- per R.
- (iii) Rest of the terms of the impugned award to stand unaltered.
- (iv) The appellant shall not be entitled for interest or any other financial benefits for the period from the date of the impugned award to the date of registration of the present appeal, since there was delay of little over five years in preferring the appeal.

**( R. G. AVACHAT )  
JUDGE**

fmp/-