

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 276 OF 2002

Prabhakar s/o Dhondiba Dhanpalwar
Age 45 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 278 OF 2002
WITH
CIVIL APPLICATION NO. 9654 OF 2018

Manohar s/o Maroti Gummadwad
Age 30 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 279 OF 2002
WITH
CIVIL APPLICATION NO. 9691 OF 2018

Vijay s/o Vithalrao Dachawar
Age 30 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 280 OF 2002
WITH
CIVIL APPLICATION NO. 9693 2018

Shivrya s/o Ganpati Mamtabade
Age 70 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 286 OF 2002
WITH
CIVIL APPLICATION NO. 9554 OF 2017
WITH
CIVIL APPLICATION NO. 13018 OF 2019

Gurucharan s/o Karanlal Saxena,
Died through L.Rs.

1. Smt. Godawaribai w/o Gurucharan Saxena,
Age 35 years, Occu: Household,
R/o. Rawangaon, Tq. Mukhed,
Dist. Nanded.
2. Shrinivas s/o Gurucharan Saxena,
Age : 15 years,
3. Kum Saritadevi D/o Gurucharan Saxena,
Age : 13 years,
4. Nagendra s/o Gurucharan Saxena,
Age : 10 years,
Petitioners 2 to 4 are minors and
U/g of Godawaribai the petitioner No.1.

...Appellants
(Orig. Claimants)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 285 OF 2002

Dnyanoba s/o Laxuman Dachawar
Age 42 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 284 OF 2002

Tukaram s/o Laxuman Dachawar
Age 30 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 283 OF 2002

Subhash s/o Laxuman Dachawar
Age 45 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.

2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 287 OF 2002
WITH
CIVIL APPLICATION NO. 9689 2018

Suresh s/o Dhondiba Dhanpalwar
Age 40 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 288 OF 2002

Smt Tarabai Shambhurai Shriwastav
Died per heirs and L.Rs.

(A) Nandulal Sadashiv Shriwastav,
Age : 68 years, Occu: Agril.,

(B) Ruplal Sadashiv Shriwastav,
Age : 65 years, Occu : Agril.,

(C) Omprakash Ramraj Shriwastav,
Age : 45 Years, Occu: Service,

(D) Godawari w/o Kishanlal Shriwastav,
Age : 40 years, Occu: Household

All R/o. Ravangaon, Tal. Mukhed,
Dist. Nanded.

....APPELLANTS
(Orig. Claimants)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

WITH
FIRST APPEAL NO. 290 OF 2002

Narayan s/o Laxuman Dachawar
Age 43 years, Occu: Agril.,
R/o. Ravangaon, Tq. Mukhed,
Dist. Nanded.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through District Collector, Nanded.
2. The Spl. Land Acquisition Officer,
Minor Irrigation Works Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

...Respondents
(Orig. Respondents)

Mr M.D. Narwadkar and Mr M.V. Deshpande, Advocates for Appellants
Mr B.V. Virdhe, AGP for Respondent Nos. 1 and 2
Mr S.P. Sonpawale, Advocate for Respondent No. 3
Mr A.R. Tapse, Advocate for Intervenors in
C.A. No. 9554/2017 & 13108/2019 in F.A. No. 286/2002

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 06.12.2021

DELIVERED ON : 01.04.2022

JUDGMENT :

1. This batch of appeals can be disposed of by common Judgment.

2. The dispute in narrow compass is as under :-

(a) The appellants/original claimants are resident of village Ravangaon, Tal. Mukhed, Dist. Nanded. Their lands came to be acquired for major irrigation dam known as 'Lendi Project'. The area of acquired land of respective claimants arising out of the appeals are given below in the chart.

Sr. No.	First Appeal Number	Land Acquisition Reference Number	Survey Number	Acquired Area	Compensation granted by S.L.A.O	Compensation claimed	Category of lands made by claimants	Category of lands made by SLAO on basis of revenue assessment
1	FA/276/2002	42/1994	42/A/3	1H. 17 R	Rs.32500/- P.H.	75,000/-	Dry Land	C
2	FA/278/2002	46/1994	42/A/1	0.44 R	Rs.32500/- P.H.	75,000/-	Dry Land	C
3	FA/279/2002	53/1994	44/B/2	3H. 69 R	Rs.38000/- P.H.	1,50,000/-	Irrigated Land	D
4	FA/280/2002	54/1994	41/A/1	1H. 63 R	Rs.33000/- P.H.	75,000/-	Dry Land	D
5	FA/283/2002	55/1994	44/A/4	1H.	Rs.35650/- P.H.	1,50,000/-	Irrigated Land	D
6	FA/284/2002	47/1994	44/A/2	1H.	Rs.35650/- P.H.	1,50,000/-	Irrigated Land	D
7	FA/285/200	43/1994	44/A/3	1H.	Rs.35650/- P.H.	87,000/-	Dry Land	D
8	FA/287/2002	48/1994	42/A/2	1H. 16R	Rs.32500/- P.H.	87,000/-	Dry Land	C
9	FA/288/2002	52/1994	42/C	0.89 R	Rs.32000/- P.H.	75,000/-	Dry Land	C
10	FA/290/2002	51/1994	44/A/4	1H.	Rs.35650/- P.H.	1,50,000/-	Irrigated Land	D
11	FA/286/2002	45/1994	42/B	1H.55R	Rs.32,000 P.H.	Rs.75,000/-	Dry Land	C

(b) The notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for the sake of convenience) was published on 26.03.1992. The Special Land Acquisition Officer was pleased to pass award under section 12 of the Act on 16.06.1994 in respect of above referred acquired lands. The Special Land Acquisition

Officer awarded the compensation to the claimants by making three categories of the acquired land as under :

- (i) Rs. 32,000/- P.H. for category B – treated as dry land
- (ii) Rs. 32,500/- for category C – treated as dry and,
- (iii) Rs. 33,000/- for category D – treated as Bagayat land

(c) The claimants produced their oral evidence in support of their claim. In addition to oral evidence, they have produced copies of sale instances vide Exh. 20 to 22 in LAR Nos. 54/1992 from village Gonegaon and sale instances vide Exh. 23 and 24 from village Ravangaon.

(d) The Reference Court was pleased to discard sale instances vide Exh. 23 and 24 on the ground that they are post notification under section 4 of the Act. The sale instance vide Exh. 21 dated 23.04.1992 was not relied upon by the Reference Court on the ground that it is in respect of 4 R land. The sale instances vide Exh. 20 and 22 are also not accepted by the Reference Court since though sale instances are before notification under section 4 of the Act, no satisfactory evidence is produced by the respective claimants in order to show the distance between the acquired lands and their lands under sale deeds vide Exh. 20 and 22.

(e) The Reference Court was pleased to dismiss all the claims filed by the respective claimants under section 18 of the Act under common Judgment and award dated 23.11.1995.

(f) Feeling aggrieved by the impugned common Judgment and award passed by the Reference Court, the claimants have preferred these

appeals before this Court by taking aid of section 54 of the Act on various grounds.

3. Heard Mr M.D. Narwadkar, learned counsel for the appellants/claimants, Mr B.V. Virdhe, learned AGP for the State/Respondent Nos. 1 and 2, Mr S.P. Sonpawale, learned counsel for respondent No.3/acquiring body and Mr A.R. Tapse, learned counsel for the intervenors in C.A. No. 9554/2017 & 13018/2019 in F.A. No. 286/2002.

**SUBMISSIONS OF MR M.D. NARWADKAR, LEARNED
COUNSEL FOR THE APPELLANTS/CLAIMANTS**

4. Mr Narwadkar, learned counsel for the appellants vehemently submitted that while passing the award, the Land Acquisition Officer has taken into consideration the sale instances from adjacent villages and accordingly, determined the market value of the acquired lands. The appellants have relied upon the sale instances of the same village while their claim for enhancement but the Reference Court has not accepted the same and thereby committed a grave error. The Reference Court has also committed an error in discarding the sale instances from village Ravangaon on the basis that sale instances are of the same period when notification was issued. Mr Narwadkar submitted that the impugned common Judgment and award passed by the Reference Court is bad in law and liable to be quashed and set aside. The Reference Court has overlooked oral and documentary evidence produced by the claimants in support of their claim. The sale instances of relevant period are placed on record. However, the Reference Court has discarded the same by giving

improper, incorrect and illogical reasons.

5. Mr Narwadkar, learned counsel submitted that the market value of the acquired land at the relevant point of time was @ Rs. 75,000/- per hectare for irrigated land and Rs. 50,000/- per hectare for dry land and the same fact has been proved by the claimants by producing cogent evidence. He pointed out that the Reference Court has even not accepted the award passed by this Court on earlier occasion in LAR No. 3/1994. The Reference Court has committed an error while interpreting and applying the provisions of the Act.

6. Mr Narwadkar, learned counsel submitted that the Reference under section 18 of the Act is not an appeal. The material relied upon by the Land Acquisition Officer in his award cannot be relied upon unless same is produced and proved. He has relied upon the citation in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona*** reported in ***1988 (3) SCC 751***.

7. Mr Narwadkar, learned counsel further placed his reliance in case of ***Cement Corporation of India Vs. Purya and Others*** reported in ***2004 AIR (SC) 4830*** on the point that in view of section 51A of the Act, certified copies of the sale instances are admissible in evidence. It is not necessary to examine either vendor or vendee for proving the contents thereof.

8. Mr Narwadkar, learned counsel further placed his reliance in case of ***Mehrawal Khewaji Trust (Regd.), Faridkot & Ors. Vs. State of***

Punjab & Ors. reported in **2012 AIR (SC) 2721** on the point of comparative sale deeds. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction.

9. By placing reliance on above stock of citations, Mr Narwadkar, learned counsel urged to allow the appeals according to the claim putforth by the respective appellants/claimants in their respective LAR proceedings.

**SUBMISSIONS OF MR B.V. VIRDHE, LEARNED
AGP FOR THE STATE AND MR S.P. SONPAWALE,
LEARNED COUNSEL FOR THE ACQUIRING BODY:**

10. They have supported the findings recorded by the Reference Court. They submitted that the Reference Court has considered the rival pleadings of the parties, evidence on record and sale instances relied upon by the claimants. The Reference Court has rightly discarded the sale instances by giving cogent reasons. The Reference Court has rightly dismissed the references filed by the respective claimants. The claimants have failed to adduce sufficient evidence in support of their claim of enhancement under section 18 of the Act. There is no legal defect in the impugned common Judgment and award passed by the Reference Court. They submitted that the claimants have failed to prove that the compensation awarded by the Special Land Acquisition Officer in respect of the acquired lands was inadequate for want of sufficient evidence. Both of them submitted that there is no merit in the appeals preferred by the

appellants/claimants. All the appeals are liable to be dismissed.

11. Mr B.V. Virdhe, learned AGP has placed reliance on following citations in support of his argument :-

- (i) ***Ramanlal Deochand Shah Vs. The State of Maharashtra and Anr. reported in AIR 2013 SC 3452***
- (ii) ***Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and Anr State of W.B. Vs. Gobinda Chandra Makal and Anr. reported in AIR 2011 SC 3834***
- (iii) ***Land Acquisition Officer, Eluru Vs. Jasti Rohini reported in 1995 (1) SCC 717***
- (iv) ***Viluben Jhalejar Contractor (D) by Lrs Vs. State of Gujarat reported in AIR 2005 SC 2214***

12. I have considered the submissions of learned counsel for the appellants/claimants, learned AGP for the State and learned counsel for acquiring body. I have also gone through the impugned common Judgment and award passed by the Reference Court and relevant evidence and sale instances.

13. The Reference under section 18 of the Act is not an appeal. Whatever material relied upon by the Special Land Acquisition Officer while passing the award, cannot be relied upon unless it is produced and proved according to the provisions of the Act. Secondly, award of the Land Acquisition Officer is not to be treated as a Judgment of the Trial Court and thirdly, the Court has to consider a reference as an original proceedings before it and the claimant is in the position of a plaintiff, who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court.

14. The useful reference can be made in case of ***Chimanlal***

Hargovinddas Vs. Special Land Acquisition Officer, Poona (supra).

The Hon'ble Supreme Court has laid down the guidelines in what manner a reference under section 18 of the Act is to be decided by the Reference Court which are reproduced hereunder :-

4. The following factors must be etched on the mental screen:

(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved

by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land

under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

<i>Plus factors</i>	<i>Minus factors</i>
1. smallness of size.	1. largeness of area.
2. proximity to a road.	2. situation in the interior at a distance from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to depth.
4. nearness to developed area	4. lower level requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition	6. some special disadvantageous

factor which would
deter a purchaser

7. special value for an
owner of an adjoining property
to whom it may have some
very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

15. In case of ***Ramanlal Deochand Shah Vs. The State of Maharashtra and Anr.***(supra), it is held by the Hon'ble Supreme Court that the compensation can be enhanced by the Reference Court under section 18 of the

Act only if claimant adduces evidence to show that amount awarded does not represent correct market value.

16. In case of ***Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and Anr Vs. Gobinda Chandra Makal and Anr.*** (supra), it is held by the Hon'ble Supreme Court that date of publication of section 4 notification in official gazette is important and relevant for determination of compensation.

17. In case of ***Land Acquisition Officer, Eluru Vs. Jasti Rohini*** (supra), it is held by the Hon'ble Supreme Court that while determination of market value of the land, *bona fide* sale of the land in the neighbourhood having almost similar quality would be relevant for that purpose.

18. In case of ***Viluben Jhalejar Contractor (D) by Lrs Vs. State of Gujarat*** (supra), the Hon'ble Supreme Court has taken the same view regarding determination of market value on the basis of comparable sale instances which are *bona fide*.

19. Having regard to the guidelines laid down by the Hon'ble Supreme Court, let me examine the claim of appellants/original claimants.

20. Claimant - Shivrya s/o Ganpati Mamtabade has examined himself in LAR No. 54/1994 as well as on behalf of other claimants in connected references vide Exh. 27. The State and acquiring body seems to have not adduced any iota of evidence.

21. Claimant - Shivrya s/o Ganpati Mamtabade has stated during his evidence that the Government has paid compensation of the acquired land @

Rs. 13,800/- per acre which is inadequate having regard to the market value. They were taking Kharip and rabbi crops in the acquired lands. According to the claimant, the market value of the acquired lands was Rs. 30,000/- per acre. He has also stated that there were no sale instances of material period in his village Ravangaon due to acquisition proposal of the lands. He further disclosed that village Gonegaon is adjacent to his village Ravangaon. He has also produced a map showing location of two villages i.e. Ravangaon and Gonegaon. He has also placed on record four sale instances vide Exh. 20 to 22 in LAR Nos. 54/1992 as well as two sale instances from village Ravangaon at Exh. 23 and 24. While facing the cross-examination, the claimant has admitted that he has no personal knowledge about the income derived from the lands under the sale instances.

The details of sale instances relied upon by the claimants are as under :-

Sr.No.	Name of village	Exh.No	Date	Consideration	Area	Price Per R
1.	Gonegaon	20	04.05.1991	Rs.40,000/-	54R	Rs.740/- Per R
2.	Gonegaon	21	23.04.1992	Rs.12,000/-	04 R	Rs.3000/- Per R
3.	Gonegaon	22	27.05.1992	Rs.16,000/-	28 R	Rs. 571/- Per R
4.	Ravangaon	23	08.06.1992	Rs.57,000/-	1H. 01R	Rs. 564/- Per R (<i>Bagayat</i>)
5.	Ravangaon	24	08.06.1992	Rs.57,000/-	1H.01R	Rs.564/- Per R

22. The sale instances at Exh. 21 dated 23.04.1992 for 4 R land for consideration of Rs. 12,000/- is rightly rejected by the Reference Court in view of small area of the land under sale instance. The sale instances at Exh. 20 and 22 are also from village Gonegaon and prior to the date of notification under section 4 of the Act. However, those have been not considered by the Reference Court on the ground that those sale instances are after taking over of possession of the acquired lands and secondly, the claimant has failed to show the similarity of the lands. The reasons given by the Reference Court while discarding above two sale instances vide Exh. 20 and 22 not acceptable to a prudent man when the

sale instances of the relevant period from village Ravangaon are not available. The certified copy of the award also indicates that there were no sale instances of the relevant period. As such, it was not proper on the part of the Reference Court to discard those sale instances. The claimants have proved that village Gonegaon and Ravangaon are adjacent to each other and quality and fertility of the lands of both the villages is practically of equal character.

23. Apart from that, sale instance vide Exh. 23 and 24 from village Ravangaon are available for determining the market value of the acquired land. Exh. 23 and 24 are of same and one transaction. It seems to have been produced by the claimants in double number. On going through the sale instances vide Exh. 23 and 24, it is noticed that the sale instance had taken place on 08.06.1992 just after three days of notification under section 4 of the Act. One hectare and .01 R Bagayat land seems to have been sold for consideration of Rs. 57,000/-. Meaning thereby at Rs. 564/- per R. Only because sale instance vide Exh. 23 is just after three days of notification under section 4 of the Act cannot be discarded on that sole ground. It is pertinent to note that State and acquiring body have not produced any evidence by way of rebuttal to take doubt about the genuineness of the sale transaction vide Exh. 23. It is nowhere shown by the State and acquiring body that sale instance vide Exh. 23 is rigged up in anticipation of acquisition of land. As such, it was not proper on the part of the Reference Court to discard the sale instance vide Exh. 23 when it was found to be genuine sale instance. In case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona*** (supra), it is made clear by the Hon'ble Supreme Court that even post notification instances can be taken into account. (1) if they are very proximate (2) genuine and (3) acquisition itself has not motivated the purchaser to pay higher price on account of the resultant

improvement in development prospects. By applying above said yardstick, if the sale instance vide Exh. 23 is carefully examined, it is found to be genuine sale instance. There is no difficulty to accept the same to determine the market value of the acquired land.

24. For comparative assessment, I have also examined sale instance vide Exh. 22 from village Gonegaon dated 27.05.1992 whereby 28 R land came to be sold for Rs. 60,000/-. Meaning thereby, @ Rs.571/- per R which is practically equal to the market rate under the sale instance vide Exh. 23 from village Ravangaon. It is one more positive factor supporting to sale instance vide Exh. 23 showing real market price of the acquired land at the time of notification under section 4 of the Act.

25. Having regard to the above reasons and discussion, I am of the view that the approach of the Reference Court is found to be erroneous while discarding the sale instances vide Exh. 20, 22 and 23. Exh. 24 is nothing but replica of Exh. 23 of same transaction/sale instance.

26. The lands of the respective claimants came to be acquired by way of compulsory land acquisition for Lendi Project. The claimants have been deprived of their source of income. Certainly, they are entitled to get adequate compensation in respect of their acquired lands. The claimants are entitled to get compensation on the basis of bona fide sale instance which has taken place at the relevant point of time while issuing notification under section 4 of the Act.

27. Having regard to the above reasons and discussion, I arrived at conclusion that the Reference Court has dismissed the references filed by the respective claimants under section 18 of the Act by taking hyper technical view and overlooking the object of the said Act. The sale instance vide Exh. 23 is from

same village Ravangaon. The sale instance had taken place on 08.06.1992 just after two months and some days of the notification under section 4 of the Act. The land of one hectare and one R has been sold for consideration of Rs.57,000/- i.e. @ Rs. 564/- per R. It was a for bagayat land. As such, the claimants from the respective first appeals, who owned irrigated land, are entitled to get compensation @ Rs.564/- per R i.e. Rs. 56,400/- per hectare whereas claimants from respective first appeals whose lands were falling under the dry land, are entitled to get compensation @ Rs. 28,200/- per hectare meaning thereby one half of the Bagayat land.

28. The Special Land Acquisition Officer has made category of acquired lands as B, C and D on the basis of market price of the acquired land on the date of notification under section 4 of the Act. On that basis, the land arising out of First appeal Nos. 276/2002, 278/2002, 287/2002 and 288/2002 fall in the 'C' category known as dry land. Whereas, the land arising out of First Appeal Nos. 279/2002, 280/2002, 283/2002, 284/2002, 285/2002 and 290/2002 fall in the category of 'D' good quality meaning thereby irrigated land. On that basis, the respective appellants/claimants are entitled to get enhanced compensation.

29. The appellants/claimants are entitled to get solatium @ 30% on the enhanced compensation. The appellants are also entitled to get interest under section 28 and 34 of the Act from the date of award.

30. In the result, the impugned common Judgment and award passed by the Reference Court in LAR proceedings referred above, is liable to be quashed and set aside.

31. Lastly, coming to the intervention application vide Civil Application No. 9554/2017 moved by the applicants/inervenors who happened to be the real

brothers and legal heirs of deceased Karanlal i.e. brother of deceased Gurucharan Karanlal Saxena. According to Mr A.R. Tapse, learned counsel for the intervenors/applicants, they are necessary party to the appeal and they are entitled to get their share in the compensation amount. It is rightly pointed out by the learned AGP and learned counsel for the acquiring body that these two applicants/intervenors were not party to the proceedings of reference filed under section 18 of the Act, 1894. Both of them have rightly pointed out that the legal interest of the applicants/intervenors is in dispute. As such, their prayer to intervene in the appeal cannot be entertained.

32. I found merit in the submissions of the learned AGP and the learned counsel for the acquiring body. Admittedly, the applicants/intervenors were not party to the reference proceedings under section 18 of the Act. They were aware about their land acquisition proceedings as well as reference under section 18 of the Act. They did not put forth their legal right if any before the Reference Court. After decision of the Reference under section 18 of the Act, and that too at appeal proceedings of the year 2002, they have filed this intervention application on 02.03.2017. Certainly, it cannot be entertained. Hence, intervention application/Civil Application No.9554/2017 needs to be rejected.

33. The appeals need to be partly allowed as under :-

ORDER

(A) The appeals are partly allowed as under :-

- (i) The impugned common Judgment and award passed in LAR Nos. 42/1994, 46/1994, 53/1994, 54/1994, 45/1994, 43/1994, 47/1994, 55/1994, 48/1994, 52/1994, 51/1994 is hereby quashed and set aside.
- (ii) The appellants/claimants in First Appeal Nos. 279/2002,

280/2002, 283/2002, 284/2002, 285/2002 and 290/2002 shall be entitled to get enhanced compensation of their acquired land @ Rs. 56,400/- per hectare (Rs.564/- per R). However, after deducting the compensation paid earlier by the Special Land Acquisition Officer.

- (iii) The appellants/claimants in First Appeal Nos. 276/2002, 278/2002, 287/2002, 288/2002 and 286/2002 shall be entitled to get compensation of their acquired land @ Rs. 28,200/- per hectare (Rs. 282/- per R). However, after deducting the amount of compensation paid earlier by Special Land Acquisition Officer.
- (iv) The appellants/claimants in all appeals are entitled to get 30 % solatium on the above said amount of compensation under section 23(2) of the Act.
- (v) The appellants/claimants in all appeals are also entitled to get interest under section 28 and 34 of the Act from the date of passing of award i.e. 16.06.1994.
- (vi) The award be drawn up accordingly.
- (vii) No order as to costs.
- (viii) The appeals are accordingly disposed of.
- (ix) The Civil Application No.9554/2017 in First Appeal 286/2002 stands rejected.
- (x) In view of disposal of appeals, remaining civil applications, if any, also stand disposed of.