

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 3420 OF 2018

1. The State of Maharashtra,
Through its District Collector,
Aurangabad.
2. The Special Land Acquisition Officer,
Jayakwadi Project Division No.1,
Aurangabad.
3. The Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad, District Aurangabad.

... APPELLANTS
(Original Opponents)

VERSUS

1. Bhimdeo s/o Rattu Rathod
Age: 28 years,
2. Megha Rattu
3. Neelabai w/o Rattu
All residents of Kolwadi Tanda,
Taluka Kannad, District Aurangabad.

... RESPONDENTS
(Original Claimants)

AND

FIRST APPEAL NO. 3421 OF 2018

1. The State of Maharashtra,
Through its District Collector,
Aurangabad.
2. The Special Land Acquisition Officer,
Jayakwadi Project Division No.1,
Aurangabad.

3. The Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad, District Aurangabad.

... APPELLANTS
(Original Opponents)

VERSUS

Pandu Haru Mantibai w/o Haru,
Age-48 Yrs, Occu. Agril.,
Resident of Kolwadi Tanda,
Taluka Kannad, District Aurangabad.

... RESPONDENT
(Original Claimant)

...
Mr. B. V. Virdhe, AGP for Appellants.

Mr. Vikas G. Kodale, h/f Mr. V. D. Gunale, Advocate for
Respondents/Original Claimants.

...

CORAM : **SHRIKANT D. KULKARNI, J.**
RESERVED ON : 29th November, 2021
PRONOUNCED ON : 09th March, 2022

JUDGMENT:

. The State has preferred these two appeals feeling aggrieved by the common impugned judgment and award passed by the Reference Court in LAR No.05 of 2013 and LAR No.06 of 2013 under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act" for the sake of convenience). Both appeals can be disposed of by common judgment.

2 The following factual scenario would cover the dispute in narrow compass:

- 1) Name of the Village :- Kolwadi Tanda, Taluka Kannad, District Aurangabad.

2)

Gat Number	Acquired Area
301	1 H 56 R
301	1 H 98 R
301	2 H 00 R

- 3) Date of Notification U/s. 4 of L.A. Act published in Mah. Gov. Gazette Date: 31-7-1995
- 4) Date of Notice U/s.4 of L.A. Act received by the claimants. Date: 02-4-1998
- 5) Date of possession of the land taken by the Ex. Engg. by private negotiation Date: 09-4-1996
- 6) Date of Award U/sec. 11 Date 25-7-2000
- 7) Date on which Notice of the award u/s. 12(2) received by the claimants. Date: 22-1-2001
- 8) Date of payment of compensation Date: 24-1-2001

The lands were acquired for minor irrigation project.

3 In LAR No.05 of 2013, the Special Land Acquisition Officer was pleased to fix the market price at the rate of Rs.59,400/- for 1 H 98 R classifying it as *Jirayat* land (Rs.300/- per R). The Reference Court enhanced the same at Rs.2,500/- per R. In LAR No.06 of 2013, the Special Land Acquisition Officer was pleased to award the compensation at the rate of Rs.3,750/- per R thereby determining the valuation of the acquired land at Rs.2,85,000/- apart from valuation of trees.

4 Heard Mr. Virdhe, AGP for Appellants/State and Mr. Vikas Kodale, holding for Mr. V. D. Gunale, learned counsel for respondents/ original claimants.

5 Mr. Virdhe, learned AGP invited my attention to the impugned judgment paragraphs 19 to 24. He submitted that the original claimants have placed on record two sale instances in support of their claim for enhancement of compensation. One sale instance is of dated 15th April, 1997 for 4 R land, which cannot be taken into consideration as a base to determine the compensation. The Reference Court has also observed to that effect in paragraph 21 and not acted upon. He further pointed out that the second sale instance is of dated 22nd April, 1998 for 20 R land for consideration of Rs.50,000/-. He submitted that Section 4 notification came to be published in the Government Gazette on 31st July, 1997 and public notice under Section 4 came to be published on 2nd April, 1998. The sale instance of dated 22nd April, 1998 is of post notification under Section 4 of the Act. The Reference Court also observed that second sale instance is of post notification under Section 4 of the Act.

6 Mr. Virdhe, learned AGP submitted that the claimants had filed reference under Section 18 of the Act for enhancement of compensation. As per the issues framed by the Reference Court, the burden is on the claimants to prove that the market price of the acquired land was much higher than the market price determined by the SLAO while passing the award by placing on record the comparative sale instances in support of their claim. He submitted that the Reference Court has committed an error in observing that since there was no evidence produced on behalf of the respondents/State in order to show what was the market price of the lands in the month of April, 1998, the evidence put forth by the claimants for enhancement was accepted. The Reference Court was pleased to determine the market price of the acquired land at Rs.2,500/- per R for *Jirayat* land and Rs.3,750/- per R for *Bagayat* land. Mr. Virdhe, learned AGP vehemently submitted that the Reference Court has completely overlooked the issues and the burden to prove the market price. The burden was on the claimants to prove the market price was higher than the market price determined by the SLAO on the basis of evidence. The claimants have failed to adduce evidence. Even then the Reference Court was pleased to enhance the compensation of acquired lands blaming the State. He, therefore, submitted that the whole approach of the

Reference Court in deciding the reference is found to be against the State. He submitted that there was no iota of evidence from the side of claimants to enhance the compensation. The Reference Court has committed grave error in granting enhancement without any evidence.

7 Mr. Virdhe, learned AGP further invited my attention to the impugned judgment more particularly the observations made by the Reference Court regarding evidence of expert PW-2 Dr. Vishnu Patil regarding valuation of trees. He submitted that PW-2 Dr. Vishnu Patil is an expert. His evidence is of advisory character. An expert is not a witness of fact. Mr. Virdhe, learned AGP took me through the relevant part of evidence of PW-2 Dr. Vishnu Patil (expert) and submitted that this expert witness has allegedly visited the acquired land for spot inspection in presence of two *Panch* witnesses and accordingly carried out the inspection and prepared valuation report of the trees standing in the acquired lands and submitted the same. He submitted that the alleged inspection was conducted by expert/PW-2 Dr. Vishnu Patil in absence of SLAO/acquiring body. No intimation was given to SLAO/acquiring body regarding inspection of the acquired land for determining the valuation of the trees. Mr. Virdhe, learned AGP also invited my attention to the cross-examination of expert witness/PW-2 Dr. Vishnu Patil. He pointed out that the State Government has not

approved PW-2 Dr. Vishnu Patil as an expert. PW-2 Dr. Vishnu Patil has admitted that there were no entries of trees in 7/12 extract. He has admitted that Agriculture Officers in the Government Department used to visit the site for making valuation of the fruit trees. Mr. Virdhe, learned AGP further invited my attention that the so-called valuation report was handed over to the claimants in the year 2003 and not submitted alongwith examination-in-chief on affidavit. Mr. Virdhe, learned AGP vehemently submitted that the valuation report of fruit trees prepared by PW-2 Dr. Vishnu Patil (expert) is highly suspicious. It seems to have been prepared in collusion with the claimants. The so-called inspection was conducted in absence of SLAO/acquiring body. Such a report of expert cannot be relied upon. He submitted that the Reference Court has committed an error in accepting the evidence of PW-2 Dr. Vishnu Patil (expert) and thereby making calculations on the basis of his report of valuation for horticulture plants. Mr. Virdhe, learned AGP, therefore, forcefully submitted that the impugned judgment and award passed by the Reference Court does not sustain in the eye of law. The claimants have miserably failed to prove their claim for enhancement of compensation. Both appeals need to be allowed.

8 Mr. Virdhe, learned AGP placed reliance on the following citations in support of his argument:

- a) ***State of Himachal Pradesh Vs. Jai Lal***, reported in, ***1999 AIR (Supreme Court) 3318*** ;
- b) ***Vidarbha Irrigation Development Vs. Vikram Laxmanrao Deshmukh and others***, reported in, ***2020 (1) Mh.L.J. 931*** ;
- c) ***Special Land Acquisition Officer and another Vs. Sidappa Omanna Tumari and others***, reported in, ***1995 Supp (2) Supreme Court Cases 168*** ;
- d) ***The Executive Engineer, Minor Irrigation Works, Jalgaon Vs. Vitthal Damodar Patil and another***, reported in, ***(2019) 7 Supreme Court Cases 225*** ;
- e) ***State of Maharashtra Vs. Vishram Kundalik Raorane***, reported in, ***2009(1) Mh.LJ 827*** ;
- f) The decision of this Court, Bench at Aurangabad, in ***First Appeal No.256 of 2011 (Gangadhar s/o Devidas Mane and another Vs. The State of Maharashtra and others)*** with connected first appeals dated 7th January, 2019 ; and
- g) The decision of this Court, Bench at Nagpur, in ***First***

Appeal No.870 of 2012 (State of Maharashtra and others Vs. Manik Shivram Navalkar) dated 31st October, 2018.

9 Mr. Vikas Kodale, holding for Mr. V. D. Gunale, learned counsel for respondents/original claimants supported the findings recorded by the Reference Court. He submitted that the market price determined by the SLAO was at very much lower side. The Reference Court has taken into consideration the quality and fertility of the land coupled with sale instances of relevant period and accordingly, enhanced the amount of compensation. There is no error on the part of the Reference Court while enhancing the compensation of acquired lands.

10 Mr. Kodale, learned counsel for claimants submitted that PW-2 Dr. Vishnu Patil is an expert in the field of horticulture. He has visited the site and inspected the fruit trees in presence of *Panch* witnesses and the claimants and accordingly, prepared the valuation report of fruit trees. He was examined before the Reference Court and accordingly, the Reference Court has considered the evidence of expert and his report and accordingly, awarded the compensation in the light of earlier decisions of the Reference Court. He, therefore,

submitted that there is no merit in the submissions of the learned AGP that the report submitted by the expert is tainted and cannot be relied upon. He submitted that there is no merit in the appeals and both the appeals need to be dismissed.

11 It is a reference under Section 18 of the Land Acquisition Act, 1894. The Collector's award under Section 11 of the Land Acquisition Act, 1894 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant. The Court has to treat the reference as an original proceedings before it and determine the market value afresh on the basis of the material produced before it. 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 materials produced in the Court.

12 In a recent decision, in case of ***Loveleen Kumar and others Vs. State of Harayana an others*** reported in ***(2018) 7 SCC 492***, it is held by the Hon'ble Supreme Court that in view of Section 18 and 23 of the Land Acquisition Act, 1894, in a reference, it is a settled principle of law that onus to prove entitlement to receive higher

compensation is upon claimants. The claimant is expected to lead cogent and proper evidence in support of his claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidence as they deem proper, keeping in mind method of computation for awarding compensation which they rely upon. In reference under Section 18 of the Land Acquisition Act, each case must be examined on its own facts, keeping in view of scheme of the Act and interpretation of these provisions received in the past.

13 In ***Special Deputy Collector and another Vs. Kurra Samasiva Rao and others*** reported in ***(1997) 6 SCC 4***, it is held by the Hon'ble Supreme Court that in view of Sections 23 and 18 of the Land Acquisition Act, 1984, the burden is on claimants to establish that the land was capable of fetching higher market value. The burden of proof that the amount awarded by the Land Acquisition Officer / Collector is not adequate is always on the claimant. The object of the enquiry in a reference under Section 18 is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the sale transaction, the nature of the land, its suitability, nature of the use to

which the lands are put to on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the same notification are all relevant factors taken into consideration in determining the market value. It is, therefore, the paramount duty of the courts on facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value.

14 The same view is consistently taken by the Hon'ble Supreme Court in following citations:

(i) ***M.V.K. Gundarao Vs. Revenue Divisional Officer, (L.A.O.), Narasaraopet*** reported in **(1996) 3 SCC 129**.

(ii) ***Bhule Ram Vs. Union Of India and another*** reported in **(2014) 11 SCC 307**.

(iii) ***Special Land Acquisition Officer Vs. Karigowda and others*** reported in **(2010) 5 SCC 708**.

(iv) ***Topandas Kundanmal, since deceased thereafter by his heirs and LRS. Vs. State through the Land Acquisition Officer Jamnagar*** reported in **(1995) 5 SCC 336**.

15 Why I have referred above stock of citations, the reason is incorrect observations made by the reference Court while passing the impugned judgment by taking contrary view when the position of law is well settled by the Hon'ble Supreme Court.

16 Two sale instances were produced on behalf of the claimants for enhancement of claim. One sale instance is of dated 15.04.1997 pertaining to 4 R land. The reference Court has observed that said sale instance is of small area of land, and therefore, it cannot be accepted as a basis to determine the market price of the acquired lands. The reference Court has observed to that effect in para 21 of the impugned judgment and kept out that sale instance from consideration. Another sale instance is of dated 22.04.1988, which is of post notification under Section 4 of the Act, which cannot be taken into consideration in view of citation in case of ***Vidarbha Irrigation Development Vs. Vikram Laxmanrao Deshmukh and others*** reported in ***2020 (1) Mh.L.J. 931***, which has relied on citation of the Apex Court in case of ***Maya Devi (Dead) through Legal Representatives Vs. State of Haryana and another*** reported in ***2018 (4) All M.R. 489***.

17 In view of decision in case of ***Land Acquisition Officer and Sub-Collector, Gadwals Vs. Sreelatha Bhoopal (Smt.) and another*** reported in ***(1997) 9 SCC 628***, it is held by the Hon'ble Supreme Court that while determining market value of the acquired land, reliance on sale deed relating to small piece of land is improper. The burden is on the claimant to prove by acceptable evidence for higher compensation.

18 The reference Court has considered this aspect. However, lost its sight and legal position and held that since the State has not produced any evidence in order to show what was the market price of the acquired land in the month of April 1998, by accepting the evidence in the form of two sale instances referred above and determined the market value of the acquired lands. The claimants are at par with plaintiffs. Section 23 of the Act provides determination of market value and factors to be considered on the basis of evidence of compatible sale instances. In a reference under Section 18 of the Act, the burden of proving that the acquired land is capable and fetching higher market value is on the claimant and the amount offered by the Land Acquisition Officer / Collector was inadequate and he proceeded on a wrong premise or principle. The burden lies on the claimant like plaintiff to prove proper, just and adequate compensation to the

acquired land in view of Sections 18 and 23 of the Land Acquisition Act 1984. Thereafter, the onus shifts on the State to disprove it. The claimant must establish that lands relating to the sale transactions and lands under acquisition are possessed of same value and the nature of the lands are same. The reference Court is required to evaluate the evidence carefully and determine the market value to avoid needless burden of exchequer.

19 The reference Court in para 21 of the impugned judgment discarded the sale instance dated 15.04.1997, which was 4 R land and second sale instance dated 22.04.1998, which was post notification under Section 4 of the Act. No other evidence was before the reference Court to enhance the compensation for the acquired lands. The claimants have not discharged their burden in view of settled position of law. As such, the onus would not shift on the State to show a contrary picture. The reference Court has committed a grave error in the eye of law and enhanced compensation in favour of claimants, though there was no evidence to support the claim for enhancement in the eye of law and in view of Section 23 of the Land Acquisition Act, 1894. Certainly, the finding recorded by the learned reference Court against issue no.1 does not sustain in the eye of law and it needs to be set aside.

20 So far as the market value of the fruit trees is concerned, the reference Court has enhanced the compensation in respect of fruit trees in L.A.R. nos. 5 of 2013 and 6 of 2013. I have studied the reasons given by the reference Court to that effect in para 42 and 43 of the impugned judgment. There is absolutely no discussion on what basis the reference Court has enhanced the amount of compensation in respect of fruit trees. No reasons are assigned in support of finding. The reference Court has simply considered the amount of compensation determined by the Special Land Acquisition Officer in respect of fruit trees and enhanced the same simply on making the guess work. There is cursory reference in the impugned judgment in para nos. 27 and 28 about visit of PW-2 Dr. Vishnu Patil to the acquired land, *panchanama* of the fruit trees and valuation thereof and report. The reference Court seems to have blindly accepted the expert report below Exhibit 15 without making the exercise of scrutiny of the expert report.

21 Mr. Virdhe, learned AGP has rightly pointed out that the evidence of expert is of advisory character. He is not a witness of fact. He has rightly pointed out that PW-2 Dr. Vishnu Patil has visited the acquired land in question for spot inspection in presence of two

panch witnesses and accordingly carried out the inspection and prepared valuation report of fruit trees standing in the acquired land in absence of Special Land Acquisition Officer / acquiring body. No intimation was given to the Special Land Acquisition Officer / acquiring body regarding inspection of acquired land for determination of value of fruit trees. It is pointed by Mr. Virdhe, learned AGP that the State Government has not approved PW-2 Dr. Vishnu Patil as an expert. He further pointed out that PW-2 Dr. Vishnu Patil has admitted the fact that there was no entry of trees in 7/12 extract. Mr. Virdhe further pointed out that the so called valuation report prepared by PW-2 Dr. Vishnu Patil was handed over to the claimants in the year 2003. The said report was not submitted along with examination-in-chief on affidavit.

22 Mr. Virdhe, learned AGP, therefore, raised serious doubt about genuineness and authenticity of the valuation report prepared by PW-2 Dr. Vishnu Patil. I found merit in the submissions of Mr. Virdhe, learned AGP for the State. PW-2 Dr. Vishnu Patil (expert) visited the spot in absence of Special Land Acquisition Officer / acquiring body. The report seems to have prepared by PW-2 Dr. Vishnu Patil behind back of Special Land Acquisition Officer / acquiring body. The agriculture officers in the Government department

were even not intimated about the visit of expert to the spot for making valuation of fruit trees. The report alleged to have been prepared and handed over to the claimants in the year 2003. On perusing the expert report below Exhibit 15 form O-2, it speaks that it was prepared on 20.10.2010 by PW-2 Dr. V.K. Patil. He seems to have allegedly given to claimants in the year 2003. How such a expert report can be accepted. This is very serious. The report was not produced along with examination-in-chief on affidavit of PW-2 Dr. Vishnu Patil. If all these aspects are taken into consideration, the evidence of PW-2 Dr. Vishnu Patil is found unworthy of credence. The report below Exhibit 15 prepared by PW-2 Dr. Vishnu Patil is found highly suspicious. Mr. Virdhe has rightly referred the citation in case of ***The Executive Engineer, Minor Irrigation Works, Jalgaon Vs. Vitthal Damodhar Patil*** (supra), wherein it is held by the Hon'ble Supreme Court that while determination of market value in a reference under Sections 18 and 23, every reference proceeding must be decided on evidence produced and issues raised therein. The dispute regarding competency, capability of expert to prepare valuation report and procedure adopted by him in preparing valuation report cannot be mechanically accepted, merely because it is a report prepared by the expert.

23 Mr. Virdhe, learned AGP has also relied upon the citation in case of ***State of Himachal Pradesh Vs. Jail Lal*** (supra), wherein the Hon'ble Supreme Court has held as under.

“(i) It should be showed that expert has made special study of the subject or acquired a special experience and that he is skilled and has adequate knowledge of the subject.

(ii) An expert is not a witness of fact – His evidence is really of an advisory character.

(iii) Duty of expert witness is to furnish the Judge with necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment.

(iv) Scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration alongwith other evidence of case.

(v) Report submitted by expert does not go in evidence automatically – He has to be examined as witness.”

24 The Hon'ble Supreme Court has further observed in para 17 as under.

“ An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.”

26 The report submitted by an expert does not go in evidence automatically. His evidence needs to be examined on the basis of well settled parameters. In the background of legal position made clear by the Hon'ble Supreme Court in above referred citations regarding value of evidence of expert witness and its admissibility. If the evidence of PW-2 Dr. Vishnu Patil is carefully scrutinized, his evidence is unworthy of credence. His report below Exhibit 15 is also found highly suspicious. Certainly, expert's report cannot be accepted and acted upon when it is found to be highly suspicious. The expert's report is not found impartial. The reference Court seems to have

mechanically accepted the evidence of the expert and his report and enhanced the compensation of fruit trees, which is improper and incorrect. The approach of the reference Court is found to be a very casual nature. No pains were taken by the reference Court to make scrutiny of the evidence of the expert while granting enhancement of compensation in respect of fruit trees.

27 Claimant stands in the position of plaintiff and the onus on him to adduce necessary and relevant evidence in proof of the objection for higher compensation. The Court is also enjoined to carefully scrutinise and analyse the evidence and applying the arm chair test of a prudent purchaser and a willing vendor or the realised income on the crops, the true, correct and fair market value should be arrived at. The reference Court has absolutely failed to apply these tests in determining the compensation.

28 Having regard to the above reasons and discussion, I arrive at conclusion that the findings recorded by the Reference Court are not only erroneous, but contrary to the well settled position of law. The reference Court seems to have enhanced the compensation in respect of acquired lands when there was no reliable evidence produced by the claimants to support their claim of enhancement

except two sale instances, which were found to be unreliable. Except two sale deeds no evidence was produced by the claimants in respect of their claim of enhancement of compensation. The enhancement awarded by the reference Court in respect of fruit trees is also found to be an empty exercise without making careful scrutiny of the evidence of the expert and his report and its admissibility. The findings recorded by the reference Court are liable to be upset. The claimants have failed to prove their claim for enhancement of compensation under Section 18 and 23 of the Land Acquisition Act, 1894. The reference Court has committed an error in awarding compensation in respect of acquired land as well as fruit trees. The impugned common judgment and award passed in L.A.R. nos. 5 of 2013 and 6 of 2013 is liable to be quashed and set aside by allowing the appeals.

ORDER

- (i) The appeals stand allowed.
- (ii) The impugned judgment and award passed in L.A.R. Nos. 5 of 2013 and 6 of 2013 by the 2nd Joint Civil Judge, Senior Division, Auranabad / reference Court (decided by common judgment) dated 05.05.2015 is hereby quashed and set aside.
- (iii) L.A.R. Nos. 5 of 2013 and 6 of 2013 filed by the respective claimants stand dismissed.

- (iv) The respondents / original claimants shall deposit the enhanced amount of compensation within two months from today in this Court, if it is withdrawn.
- (v) No order as to costs.
- (vi) Award be drawn up accordingly.
- (vii) Record and Proceedings be sent to the reference Court.

[SHRIKANT D. KULKARNI, J.]

nga / S P Rane