

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

FIRST APPEAL NO.2036 OF 2021

Pandharinath s/o Laxuman Jadhav
Age years, Occu. Agril.,
R/o Bhaswadi, Tq. Mukhed,
District Nanded

... APPELLANT

VERSUS

1. The State of Maharashtra
 through District Collector,
 Nanded
 2. The Executive Engineer,
 Vishnupuri Prakalp,
 Division No.1, Nanded
 3. The Special Land Acquisition Officer,
 M.I.W., Nanded.
- ... RESPONDENTS**

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Shri S.N. Patil, Advocate holding for
Shri K.B. Jadhv and Shri A.B. Shinde, Advocates for appellant
Shri B.V. Virdhe, A.G.P. for respondents No.1 & 2
Mrs. S.D. Shelke, Advocate for respondent No.3

WITH

FIRST APPEAL NO.2037 OF 2021

- 1) Digambar Kisan Khandagale,
 Age 73 years, Occ. Labour
- 2) Kisan Manikrao Khandagale,
 Died, through L.R.

Digambar Kisan Khandagale,
Age 73 years, Occu. Labour.
R/o Bhaswadi, Tq. Mukhed,
District Nanded

... APPELLANT

VERSUS

1. The State of Maharashtra
through District Collector,
Nanded
2. The Special Land Acquisition Officer,
M.I.W., Nanded.
3. The Executive Engineer,
Vishnupuri Prkalp,
Division No.1, Nanded
Tq. & Dist. Nanded

... RESPONDENTS

.....
Shri S.N. Patil, Advocate for appellant
Shri A.M. Phule, A.G.P. for respondents No.1 & 2
Mrs. S.D. Shelke, Advocate for respondent No.3

WITH

FIRST APPEAL NO.2038 OF 2021

Sitaram s/o Venkatrao Jadhav,
Age 73 years, Occ. Labour,
R/o Bhaswadi, Tq. Mukhed,
District Nanded

... APPELLANT

VERSUS

1. The State of Maharashtra
through District Collector,
Nanded
2. The Special Land Acquisition Officer,
M.I.W., Nanded.
3. The Executive Engineer,
M.I.W. Division, Nanded
Tq. & Dist. Nanded

... RESPONDENTS

.....

Shri S.N. Patil, Advocate for appellant
Shri S.N. Kendre, A.G.P. for respondents No.1 & 2
Mrs. S.D. Shelke, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 5th October, 2021

Date of pronouncing judgment : 2nd May, 2022

J U D G M E N T :

This group of three appeals preferred under Section 54 of the Land Acquisition Act is decided by this common judgment since common questions of facts and law arise therein.

2. The appellants in all the three appeals are the original land owners. Their lands, particularly described in their respective Land Acquisition Reference/s (L.A.Rs.) were acquired for construction of water storage of "Lendi Major Project". Having not been satisfied with the amount of compensation offered by the Land Acquisition Officer (L.A.O.), the appellants herein preferred respective L.A.Rs. The learned Civil Judge, Senior Division, Kandhar, vide his judgment and order dated 27/2/2018, passed in respective L.A.Rs., granted 30% enhancement in the amount of

compensation offered by the L.A.O. feeling to have not been granted adequate enhancement in the amount of compensation, the present appeals have been preferred.

3. Heard. Learned counsel for the appellants would submit that, some of the lands acquired were irrigated. Their 7/12 extracts indicate existence of well in the acquired lands. A sale instance dated 21/1/1998 was relied on before the Reference Court. 81 R land was sold for Rs.1,20,000/- under the sale instance. Since the lands acquired were irrigated one, the appellants were entitled for grant of compensation at a rate of Rs.4 Lakhs per acre. Three more sale instance have been placed on record of this Court. The learned counsel would further submit that, the land valuer/ expert had paid visit to the lands. He has valued the land and submitted his valuation report/s. The Reference Court ought to have relied on the valuer's report for grant of compensate in terms therewith. The learned counsel, therefore, urged for allowing the appeals with grant of compensation @ Rs.4 Lakhs per acre.

4. The learned A.G.P. and learned counsel for the acquiring body would, on the other hand, submit that, the amount of compensation offered by the L.A.O. was as per the

then prevalent market value of the lands acquired. The Reference Court should not have enhanced the same. According to learned counsel, the sale instance relied on was from the other village. The same, therefore, could not be termed to be a comparable sale instance. The lands acquired were unirrigated. Both the learned counsels, therefore, urged for dismissal of the appeals.

5. Considered the submissions advanced. Perused the evidence relied on. Admittedly, the lands belonging to the appellants were acquired for "Lendi Major project. Notification under Section 4 of the Land Acquisition act was published way back on 17/9/1997. The award has been passed on 30/3/2003. The details of the lands acquired with the amount of compensation offered by the L.A.O. and enhanced by the Reference Court are given below :-

Sr. No.	First Appeal No.	Land Gut/ Survey/Gut No.	Compensatio n offered by the LAO (Rs.)	Compensation enhanced by Reference Court (Rs.)
1	2036/2021	S.No.136, 1 H 54 R & Gut No.64 76 R	2,31,741/-	69,022/-
2	2037/2021	Gut No.191/1 37 R Gut No.21	4,82,307/-	76,524/-

		2 R Gut No.187/4 1 H 50 R Gut No.187/1 1 H 84 R		
3	2038/2021	Gut No.60, 2 H 93 R	5,44,731/-	86,392/-

6. Before the Reference Court, the respective land owners/ appellants gave their oral evidence. It appears that, the learned A.G.P. remained absent to cross-examine them. As such, their oral evidence went unchallenged. For the sake of convenience, the evidence in L.A.R. No.250/2007 is referred to. A sale instance (Exh.24) was relied on. It was a sale deed dated 21/1/1998 in respect of sale of 81 R land for Rs.1,20,000/-. The land has been described therein as unirrigated. According to learned counsel for the appellants, compensation for irrigated land ought to have at least been double i.e. Rs.2,40,000/- for 2 acres of land.

Before this Court, 3 more sale instances namely two sale deeds dated 19/4/1997 in respect of 11 R land bearing Survey No.82, situated at village Bhaswadi; sale deed dated dated 6/10/1997 in respect of 1 H 22 R land bearing Survey No.25/2, situated at village Bhatapur and sale deed dated 21/5/1998, in respect of 28 R land bearing Survey

No.28, situated at village Itgyal were relied on. This Court is not inclined to refer to these sale instances mainly on the ground that those were not produced before the Reference Court. No permission of this Court was obtained for leading additional evidence in appeal. Under first two sale instances, only 11 R land was sold for Rs.22,500/-. These sale deeds cannot be termed to be comparable sale instances. Same is the case about the fourth sale instance. As regards the report submitted by the valuer is concerned, the same is stated to be rejected by mere look at it. True, the expert was examined as a witness before the Reference Court. He claimed to be an approved valuer. The record indicates that, he gave his report in January 2005 in respect of the valuation made by him way back in August 1998. As such, the valuer gave his report 7 years after he paid visit to the lands for assessment of the valuation. It is not known as to why the valuer did not give his report soon after he valued the land. The valuation report, therefore, loses its efficacy and is deemed to have no evidentiary value at all.

7. The lands acquired were situated at Bhaswadi, Taluka Mukhed, District Nanded, whereas the sale exemplar (Ex.24) pertained to the land situated at village Mukramabad.

It is not the case of any of the appellants that no sale exemplar from village Bhaswadi was available for being relied on. Moreover, the said exemplar (Exh.24) is dated 21/1/1998. Admittedly, notification under Section 4 of the Act was published in September 1997. As such, the sale exemplar is post publication of notification under Section 4 of the Act. The Reference Court has, therefore, rightly discarded the said exemplar. This Court also ignores the same.

8. This Court, however, finds that, the amount of compensation offered by the LAO was not adequate one. Only 30% enhancement therein granted by this Court is also found to be inadequate. This Court is, therefore, inclined to enhance the amount of compensation from 30% to 70%.

9. In view of the above, the appeals are partly allowed. Hence the order :-

ORDER

- (i) The appeals are partly allowed.
- (ii) The amount of compensation granted by the Reference Court is enhanced from 30% to 70%.
- (iii) Rest of the terms of the impugned award to stand

unaltered, provided the interest shall be awarded from the date of the award.

(iv) There is delay in preferring the present appeals. The appellants, therefore, shall not be entitled for component of interest or any other monetary benefit for the period from the date of impugned awards to the date of registration of these appeals.

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

fmp/-