

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

FIRST APPEAL NO. 3361 OF 2019

Daga Narayan Mali (Died)
Through its L.Rs

Rukhmabai Daga Mali
Age: Major, Occu: Agri.,
R/o Bhalgaon, Tq. Erandol,
Dist. Jalgaon

... Appellant

Versus

1. State of Maharashtra
Through its Collector,
Jalgaon, Dist. Jalgaon

2. The Special Land Acquisition Officer
No.1, Upper Tapi Project, Hatnur,
Jalgaon

3. Tapi Irrigation Development
Corporation, Jalgaon
Through Executive Engineer,
M.I.W. Division, Jalgaon

... Respondents

**WITH
FIRST APPEAL NO. 3362 OF 2019**

1. Chudaman Waman Marathe
Age: Major, Occu: Agri.,

2. Madhav Waman Marathe
Age: Major, Occu. Agri.,

Both R/o. Bhalgaon, Tq. Erandol,
Dist. Jalgaon

... Appellants

Versus

1. State of Maharashtra
Through its Collector,
Jalgaon, Dist. Jalgaon
2. The Special Land Acquisition Officer
No.1, Upper Tapi Project, Hatnur,
Jalgaon
3. Tapi Irrigation Development
Corporation, Jalgaon
Through Executive Engineer,
M.I.W. Division, Jalgaon

... Respondents

....

Mr. Vijay B. Patil, Advocate for appellants

Mr. S. S. Dande, AGP for respondent Nos. 1 and 2

Mr. S. V. Munde, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 01st SEPTEMBER, 2021

PRONOUNCED ON : 11th FEBRUARY, 2022

J U D G M E N T :-

. Both these appeals under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), are being decided by this common judgment, since common questions of fact and law arise therein. The appellants therein were owners of agricultural lands, particularly described in the memo of appeals. The lands came to be acquired for construction of minor irrigation tank, Bhalgaon, Taluka

Erandol, District Jalgaon. Having been dissatisfied with the quantum of compensation offered by the Special Land Acquisition Officer (S.L.A.O.), the appellants herein preferred Land Acquisition References being L.A.R. No.520 and 531 of 2010. The Reference Court, vide its judgment and order dated 01.07.2019, enhanced the amount of compensation offered by the S.L.A.O. Still having not been satisfied with the quantum of enhancement granted by the Reference Court, the original land owners have preferred these appeals.

2. The details of the land acquired with the compensation offered by the S.L.A.O. and enhanced by the Reference Court, are as under:

Sr. No.	LAR Nos. (FA. NO.)	Acquired area of land	Compensation offered by SLAO	Compensation granted by the Reference Court
1.	LAR No.520/2010 (FA. No.3361/2019)	0H 31.92R Jirayat	Rs.96,600/- for Jirayat	Rs.3,18,139/- per hectare for Jirayat
		0H 3R Pot Kharab	—	Rs.1,59,069/- per hectare for Pot Kharab
2.	LAR No.531/2010 (FA.No.3362/2019)	0 H 20.24R	--	Rs.3,18,139/- per hectare for Jirayat Rs.1,75,000/- per hectare for Pot Kharab

3. Heard.

Learned Advocate for the appellants would submit that two sale instances dated 27.05.2002 and 12.01.2005 were produced before the Reference Court. Relying on the sale exemplar of highest value, the Reference Court ought to have granted compensation. The Court, however, did not rely on any of the two sale exemplars. The respondent – State did not lead any evidence nor has it filed any sale instances in support of the amount of compensation offered. The Reference Court went by a decision granting compensation at the rate of Rs.3,18,139/- per hectare for unirrigated land by Court of co-ordinate jurisdiction in another land reference although arising from acquisition of land under the very land acquisition proceedings. According to him, each case has to be decided on its peculiar facts and circumstances. No two lands may be similar. Therefore, there was no question of granting compensation on the ground of parity. The acquired lands were perennially irrigated. A highway passes from nearby of the acquired lands. All the facilities required for human habitation were available at and around the village. According to the learned Advocate, major portion of the lands acquired, was an orchard. An expert in agriculture, had paid visit to

the lands and valued the trees (Pomegranate, Ber etc.). The expert gave his report. There was no contra evidence to discard the valuation report. The Reference Court granted compensation for the trees at the rate 40% of the valuation made by the expert. According to the learned Advocate, the same should have been at least 80% of the valuation report. It has, now, become a settled practise of granting not less than 80% of the valuation made by the expert. Learned Advocate relying on the following authorities, ultimately urged for allowing the appeals granting substantial enhancement in the amount of compensation.

- (i) Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon – 2011 DGLS (SC) 884;
- (ii) Mahamaya Gen. Finance Co. Ltd. Vs. State of U.P. & Ors. – 2014 DGLS(SC) 484;
- (iii) Indian Council of Medical Research Vs. T. N. Sanikop – 2014 DGLS (SC) 920;
- (iv) Rajesh Valel Puthuvalil & Anr. Vs. Inland Waterways Authority of India & Anr. – 2014 DGLS (SC) 605;
- (v) Nelson Fernandes and ors. Vs. Special Land Acquisition Officer, South Goa & Ors. – 2007 DGLS (SC) 263;
- (vi) K. S. Sanjeev (Dead) by Lrs. Vs. State of Kerala and another – 2016 DGLS (SC) 27;

- (vii) Vidarbha Irrigation Development Corporation Vs. Prakash Namdeo Dive and Others – 2017 DGLS (Bom.) 1318;
- (viii) State of Maharashtra Vs. Shantaram Govind Tandel & Ors. – 2011 (6) Bom.C.R. 381;
- (ix) Collector & Anr. Vs. Laxman Tanba Jumle – 2010 (Supp.) Bom. C.R. 579;
- (x) State of Maharashtra Vs. Prashram Jagannath Aute – 2007(5) Bom. C.R. 847;
- (xi) Antonio Carvalha & ors. Vs. Executive Engineer – 2010 (Supp.) Bom. C.R. 633;
- (xii) State of Maharashtra, Through Special Land Acquisition Officer, Jalgaon Vs. Vijay Youraj Patil and another – Common order in First Appeal No.80 of 2005 (High Court of Bombay, Aurangabad Bench);
- (xiii) The Spl. Land Acquisition Officer Vs. Laxmansing Ratansing Pardeshi & Anr. – Common judgment in First Appeal No.652 of 2007 (High Court of Bombay, Aurangabad Bench);
- (xiv) Dhirajbhai Premjibhai Patel and another Vs. Collector, Nagpur and another – 2021 DGLS (Bom.) 275.

4. The learned AGP, representing the State, and the learned Advocate appearing for the Acquiring Body would, on the other hand, submit that the Reference Court has enhanced the compensation more than the acquired lands deserve. Both of them took this Court through the evidence of the appellants to submit that they were in the know in 1999 itself that their lands were going to

be acquired. The sale exemplars relied on, are from the different village. In spite of availability of comparable sale instances from the very village, those have not been produced. The Reference applications did not disclose existence of Wells in the lands acquired. The applications are also silent to suggest source of water for irrigating the lands. The Reference Court has, therefore, rightly held the lands to be non irrigated. According to them, when compensation was granted for the acquired lands, no separate compensation should have been given for the trees standing thereon. On the question of valuation report submitted by the so called expert is concerned, it was submitted that the valuer did not give any notice to any of the officials of the respondent of his proposed visit. It is not known that whether he has really paid such visit. During the relevant time, the witness had not earn the requisite expertise (certificate recognising him to be an approved valuer in agricultural and horticultural), as well. The so called valuation report prepared by him without presence of any of the authorities of the respondent, carries little evidentiary value. The learned Advocates relied on the judgment of the Apex Court in the case of *The Executive Engineer, M.I.W. Vs. Vitthal Damodar Patil and 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 the matter was remanded back to the High Court for appreciation of his evidence. According to the learned Advocates, the valuer has not placed on record the notes, if any, prepared by him during his visit to the acquired lands. An opinion of expert without foundation of reasons therefor ought not to be relied on. The appellants did not place on record village map to show distance between the lands acquired and the lands comprised in exemplars. Both the learned Advocates, ultimately urged for dismissal of the appeals.

5. Considered the submissions advanced. Perused the evidence relied on and the impugned judgment. Also perused the citations relied on. Keeping in mind observations therein, these appeals are being decided basically on the facts, circumstances and the evidence thereof.

6. The agricultural lands described herein above, belonging to the appellants were acquired for the purpose of construction of minor irrigation tank at Bhalgaon, taluka Erandol, district Jalgaon. The lands were situated at the very village. Notification under

Section 4 of the Act was published in September 2006, while the awards came to be passed in December, 2008. In the Reference Applications itself, the appellants claimed compensation at the rate Rs.6,00,000/- and Rs.3,00,000/- per hectare for bagayat and jirayat lands, respectively. The Reference Applications are in printed format containing column to state therein whether there is Well in the lands acquired. The said column has been consciously kept blank. In 7/12 extracts of the acquired lands, there is no mention of existences of Well. The Reference Applications are also silent to state the source of water to irrigate the lands. The Reference Court has, therefore, rightly considered the lands to be unirrigated and compensation granted more than one claimed. The Court is very much conscious of the fact that the claimants are entitled to compensation more than what has been claimed by them, if they make out the case for entitlement therefor. The appellants also could not be heard to claim compensation on the ground of N.A. potential of the lands acquired. For the reason, such was not claimed before the Reference Court. Admittedly, the population of the village was not more than 1700 at the relevant time. It has to be assumed that the claimants put up or raised inflated/swelled claim for compensation. Be that as it may.

7. On the ground of sale instances dated 27.05.2002 and 12.01.2005, it has to be stated that both the sale instances were from different villages. The lands comprised therein are situated within municipal limits of Erandol. It has been specifically mentioned in the award that the distance between Erandol and Bhalgaon is of 8 kms. The appellants claimed it to be 5 kms. No village map has been placed on record by the appellants in proof of the distance between the two. Since the lands comprised in the sale-deeds relied on are situated within the municipal limits, those are bound to fetch much more value/price than the acquired lands.

8. Both the appellants have unequivocally admitted in their cross-examination that sale transactions of agricultural lands situated in their village did take place during the period of three years next before publication of the notification under Section 4 of the Act. When comparable sale instances from the very village were available to be produced as an evidence, the appellants did not produce the same only with a view to take advantage of the sale instances of the lands located about 8 kms from the acquired lands and that too within municipal limits. There is one more aspect in the

matter for this Court to not rely on both the sale instances. In the sale-deed dated 12.01.2005, although the consideration of the amount has been shown as Rs. 24,25,000/-, not a single paisa was paid in cash or any other recognised mode of payment before the Sub-Registrar. None of the parties to the sale were examined as witnesses. The fact, however, remains as to whether really the consideration amount mentioned in the sale-deed has changed hands. Same is the case about second sale exemplar dated 27.05.2002. On two sides of the land comprised therein, there are roads. Whereas in respect of the land comprised in the former sale instance onto its one side, there is Dharangaon road. For all these reasons, this Court is not inclined to rely on the said exemplars.

9. **Compensation for Orchard :**

Admittedly, in the lands acquired, there are trees of Ber and Pomegranates. The Reference Court has granted compensation to the extent of 40% of the valuation of the trees by an expert. The learned Advocate for the appellants would submit that the Apex Court in case of ***Chindha Fakira Patil*** (supra) relying on the evidence of the very witness was pleased to observe that the compensation in another matter ought to have been granted equal to that of the

valuation made by the very witness. To counter the same, the learned Advocate for the acquiring body has placed on record a recent judgment of the Apex Court, wherein in the facts and circumstances of the case, it refused to rely on the evidence of the very witness in some another matter. The appeal was therefore remanded back to the High Court for appreciation of the evidence of the very witness in the light of the points raised by the learned Advocate for the appellant before the Apex Court.

10. In the case in hand, the very witness has in no uncertain quantum of terms admitted that his fee would depend upon the valuation he makes. More the valuation, more would be the fee. The Reference Court, therefore, presumed him to have given inflated valuation report and therefore, granted only 40% thereof as compensation. From the cross examination of this witness, it has come on record that he was neither a certified valuer nor conferred with a Degree or Diploma of being Horticulturist. Such a qualification he has acquired long after his visit to the lands in 2012. The witness had claimed to have visited to the lands in 2005, that too post commencement to the acquisition proceedings. It was expected of him to ensure all fairness and for the same should have

issued notices to the officials of the respondent and local revenue officials, such as, Talathi or the Circle Inspector. In short, he should have made his inspection in presence of the officials of the respondents or at least he should have given notice of his proposed visit. The same has not been done. In the case relied on by the appellants herein i.e. *Chindha Fakira Patil* (supra), the valuer was none other than a person appointed as Court Commissioner, pending proceedings before the Court. Necessarily, he did his job in presence of both the parties. This makes all the difference for this Court not to rely on this citation. The learned Advocate for the appellants also could not be heard to say that it has now become a practice or a thumb of rule to grant compensation not less than 80% of the valuation report submitted by an expert/valuer. It is reiterated that valuation is a question of fact. The same has to be decided on the basis of evidence obtainable in the case. In view of this Court, however, granting of compensation for the trees at the rate 40% of the valuation made by the expert would be extremely on lower side. After doing a guess work, this Court finds it to be just and reasonable to enhance it by 20%.

11. With all these reasons, the appeals are partly allowed in terms of following order.

ORDER

- (i) The impugned orders granting compensation in respect of the trees in the acquired lands at the rate 40% of the report of valuer, is enhanced to 60% thereof.
- (ii) Rest of the terms of the impugned award(s) to stand unaltered.

[R. G. AVACHAT, J.]

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