

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

FIRST APPEAL NO.1954 OF 2018

Ganpat s/o Annasaheb Chavan
Age 50 years, Occu. Agri.,
R/o Pangaon, Tq. Renapur,
District Latur

... APPELLANT

VERSUS

1. The State of Maharashtra
through the Collector, Latur
2. The Special Land Acquisition Officer,
(M.I.W.), Latur
3. The Executive Engineer,
Minor Irrigation Division,
Latur, District Latur.

... RESPONDENTS

.....
Shri N.D. Kendre, Advocate for appellant
Shri A.B. Chate, A.G.P. for respondents No.1 and 2
Mrs. Chaitali Kutti Choudhary, Advocate for R.No.3
.....

WITH

FIRST APPEAL NO.1955 OF 2018

Pralhad s/o Nivrutti Motipalle
Age 48 years, Occu. Agri.,
R/o Pangaon, Tq. Renapur,
District Latur

... APPELLANT

VERSUS

1. The State of Maharashtra
through the Collector, Latur

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2. The Special Land Acquisition Officer,
(M.I.W.), Latur
3. The Executive Engineer,
Minor Irrigation Division,
Latur, District Latur.

... RESPONDENTS

.....
Shri N.D. Kendre, Advocate for appellant
Shri A.B. Chate, A.G.P. for respondents No.1 and 2
Mrs. Chaitali Kutti Choudhary, Advocate for R.No.3

.....

WITH

**FIRST APPEAL NO.2387 OF 2021 WITH
CIVIL APPLICATION NO.2009 OF 2020**

1. Executive Engineer,
Latur Minor Irrigation Division,
Latur, under Godawari Marathwada
Irrigation Development Corporation,
Aurangabad
2. The State of Maharashtra
through District Collector, Latur
3. The Special Land Acquisition Officer,
M.I.W., Latur

... APPELLANTS

VERSUS

Ganpat s/o Annasaheb Chavan
Age 50 years, Occu. Agri.,
R/o Pangaon, Tq. Renapur,
District Latur

... RESPONDENT

.....
Shri B.R. Surwase, Advocate for appellant
Shri A.B. Chate, A.G.P. for State
Shri N.D. Kendre, Advocate for respondent

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 6th December, 2021

Date of pronouncing judgment : 20th April, 2022

J U D G M E N T :

These three appeals under Section 54 of the Land Acquisition Act, 1894 (for short Act of 1894) have been filed, taking exception to a common judgment and award dated 31/3/2018, passed by 3rd Jt. Civil Judge, Senior Division, Latur in Land Acquisition Reference (L.A.R. Nos.83/2011 and 91/2011). The first two appeals (No.1954/2018 and 1955/2018) have been preferred by the erstwhile land owners for enhancement of the amount of compensation awarded under the impugned judgment and award. Whereas the appeal being No.2387/2021 has been filed by the acquiring body for reduction in the amount of compensation awarded under the impugned judgment and award to the appellants in First Appeal No.1954/2018.

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

Agricultural lands, being Block No.720 and 745,

admeasuring 1 Hector 53 R and 26 R belonged to the appellants in First Appeal Nos.1954/2018 and 1955/2018 respectively. Both these lands came to be acquired for construction of Patharwadi Storage Tank (submergence), Taluka Renapur, District Latur. Notification under Section 4 of the Act of 1894 was published on 8/11/2017 while the awards came to be passed on 19/6/2010. The appellant land owners claimed compensation @ Rs.20 Lakhs per acre. According to them, the lands were perennially irrigated. The land Gut No.720 was in the nature of an Orchard. There were superstructures and pipeline as well on this land. The compensation offered by the Land Acquisition Officer (LAO) was grossly inadequate. The appellant land owners, therefore, preferred L.A.R. Nos.83/2011 and 91/2011 respectively. The Reference Court held the land in Gut No.720 to be perennially irrigated. It, therefore, granted compensation @ Rs.3,95,000/- per acre besides a sum of Rs.1,32,250/- as compensation in respect of superstructure and Rs.3,94,519/- for fruit bearing trees (pomegranate orchard). Since the land in Gut No.745 was found to be unirrigated, the owner thereof (appellant in First Appeal No.1955/2018) was awarded compensation @ Rs.1,97,500/- per acre (50% of the compensation awarded for perennially

irrigated land). In addition to the award of this compensation, the appellant land owners were held to be entitled for all consequential benefits such as 30% solatium, 12% increase and interest as well.

3. Heard. Learned Advocate for the appellants land owners would submit that, both the lands were perennially irrigated. In the land Gut No.720, there was an Orchard and superstructure as well. The land owners had appointed the experts for valuation of the superstructure and Orchard too. The experts paid visit to the land and gave their valuation reports. The Reference Court, instead of granting compensation equal to that of the valuation made by the valuers, granted only 25 thereof. The learned Advocate has relied on a judgment and award dated 24/4/2019 passed by 6th Jt. Civil Judge, Senior Division, Latur in L.A.R. No.71/2018 and connected L.A.Rs., wherein the Reference Court was pleased to grant compensation @ Rs.7,90,000/- per acre besides 80% of the valuation made by the Valuer in respect of fruit bearing trees. The lands comprised in the said group of L.A.Rs. were acquired for the very purpose, although the lands were situated in an adjoining village. The learned Advocate, therefore, urged for grant of compensation equal to

that of granted in L.A.R. No.71/2018 and connected L.A.Rs., on the ground of parity. He placed reliance on very many citations as well.

4. The learned Advocate for the appellant - acquiring body in First Appeal No.2387/2021 would, on the other hand, submit that, the valuers' reports were false and fabricated documents. Had the valuers really visited the subject lands on the dates stated in the valuation reports, the appellant land owners would have placed those reports before LAOs before award under Section 11 was passed. According to learned Advocate, the sale instance relied on pertained to the land situated at a different village. According to him, compensation awarded in respect of land Gut No.720 is exorbitant and, therefore, needs to be scaled down to one granted by the LAO.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations.

The lands admeasuring 153 R and 26 R in Gut Nos.720 and 745 belonging to the appellants in First Appeal Nos.1954/2018 and 1955/2018 respectively have been

acquired for construction of Patharwadi Storage Tank. Both these lands were situated at village Pangaon. Notification under Section 4 was published on 8/11/2007 while the awards came to be passed on 19/6/2010. The appellant land owners claimed compensation @ Rs.20 Lakhs per acre before the LAO and Reference Court as well. The LAO did not grant the owner of the land Gut No.720 any compensation towards superstructure and fruit bearing trees. Before adverting to appreciate the evidence in both the appeals, let us have a look at observations in the citations relied on by the learned Advocate for the appellant land owners.

- (1) Union of India Vs. Raj Kumar Baghal Singh (Dead) through legal representatives and others [(2014) 10 SCC 422]
- (2) Vithal Rao & anr. Vs. Special Land Acquisition Officer etc. [(2017) 8 SCC 558]
- (3) Chanabasappa Vs. Karnataka neeravari Nigam Limited & anr. [(2020) 11 SCC 370]
- (4) State of Maharashtra Vs. Bhaskar Namdeo Wagh & ors. [2009 (1) Mh.L.J. 299]
- (5) Nelatur Sampooramma w/o Srinivasulureddy Vs. Special Deputy Collector, Land Acquisition, Telugu Ganga Project, Podalakur at Nellore, Andhra Pradesh & anr. [(2017) 12 SCC 835]
- (6) Raghunath Baba Pathare & ors. Vs. State of Maharashtra [2009(4) Mh.L.J. 288]

- (7) Vitthal Lakadaji Gawande & ors. Vs. State of Maharashtra & ors. [2010(4) Mh.L.J. 578]
- (8) State of Maharashtra Vs. Shantaram Govind Tendel & ors. [2011(4) Mh.L.J. 179]
- (9) Vidarbha Irrigation Development Corporation, Pusad Vs. Prakash Namdeo Dive & ors. [2017(6) Mh.L.J. 904]
- (10) Shaikh Noor s/o Shaikh Shabu Vs. State of Maharashtra & anr. [2020(6) Mh.L.J. 501]
- (11) Vidarbha Irrigation Development Corporation, Nagpur Vs. Laxman Seetaram Neulkar & anr. [2021(2) Mh.L.J. 198]
- (12) Dhirajbhai Premjibhai Patel & anr. Vs. Collector, Nagpur & anr. [2021 DGLS (Bom.) 275]

6. In case of Raj Kumar (supra), the Hon'ble Supreme Court held :-

“Factors to be considered - Sale instance should be adjacent to acquired land, proximate to date of acquisition, possessing similar advantages - In absence of evidence of similar transaction, it is permissible to take into account transaction of nearest land around date of notification by making suitable allowance - However, no fixed criteria as to what would be suitable addition/ subtraction from value of relied upon transaction - Further held - other methods of valuation like opinion of experts and yield method, may also be used - On facts held, reliance on sale instances subject matter of which was situated within 20 kills or less from land under acquisition was justified.

In case of Vitthal Rao (supra), the Hon'ble Supreme Court held :-

Sale instance to be of land nearby/ adjacent to acquired land, and sale to be proximate to date of acquisition, possessing similar advantages - 17 principles laid down in Chimanlal Hargovinddas, (1988) 3 SCC 751 and Raj Kumar Baghal Singh, (2014) 10 SCC 422 reiterated and applied.

In case of Chanabasappa (supra), the Hon'ble Supreme Court held :-

Original height of newly constructed dam later on raised, without proper survey of land to be submerged - Date of entitlement to damage for submergence of the land, and, entitlement to interest on compensation to be awarded under 1894 Act.

In case of Nelatur Sampooramma (supra), the Hon'ble Supreme Court held :-

Compensation of - Orchard land - Fruit-bearing trees - Planting, raising and making commercial use of fruit-bearing trees is a painstaking affair and cost of same is consistently on rise as years are passing by which is to be kept in view - Award of compensation in relation to fruit-bearing trees depends on facts and circumstances of each case - Claim on yield basis is relevant for determining amount of compensation payable in such cases.

In case of Bhaskar Namdeo Wagh (supra) the Division Bench of this Court held :-

The consideration in terms of price received for land under bona fide transaction on the date of notification issued under Section 4 of the Act or a few days before or after the issue of notification generally shows the market value of the acquired land and the value of the acquired land has to be assessed in terms of those transactions - A transaction immediately preceding or succeeding would afford a good guidance to determine the market value of the acquired land. 1997(8) SCC 186 relied.

Categorisation of land as Bagayat and Jirayat - Depends upon the nature of the crops, having wherein Jawar, Bajari etc. are shown to have been cultivated, such lands have been treated as Jirayat lands; lands wherein sugarcane, onion, groundnuts etc. are cultivated by irrigation, such lands have been treated as Bagayat lands - Such classification of lands into Bagayat and Jirayat was proper.

In case of Raghunath Pathare (supra), this Court held :-

Land in question though had a well and being irrigated held a dry land on the basis of 7/12 extract - Order of Reference Court granting compensation at Rs.12,950/- set aside - Instead the claimants held entitled to receive Rs.46,500/- as compensation as irrigated land.

In case of Vitthal Gawande (supra), this Court held :-

Lands notified under the same notification and for the same project without any differentiation in the quality - Must be treated alike in awarding compensation.

In case of Prakash Dive (supra), this Court held :-

Value of land and trees enhanced by Reference Court - Validity - Relevant sale instances considered by Reference Court - Claimant has given details of number of trees, kind of trees, their age and their overall health and also yields given out per annum by them - No effective cross-examination of claimant in this regard by acquiring body as well as State - Therefore, evidence of claimant accepted as reliable and inspiring confidence - Reference Court considered cumulative effect of evidence of claimant and expert witness in ascertaining valuation of trees - These conclusions cannot be said to be suffering from any factual or legal error - Compensation awarded by Reference Court is just and proper.

In case of Shantaram Tandel (supra), this Court held :-

Market value - determination of - When sale instances from the same village wherefrom land is acquired are not available, the Court can always consider the sale instances of the lands in the surrounding villages.

Lands in question from village 'K' acquired for setting up satellite city of New Bombay - Notification under Section 4(1) published on 24-9-1986 - In February 1970, vast tracts of lands in 96 villages including the village 'K' were notified for the same purpose - Market value fixed by the High Court in other cases as of 1970 is in range of Rs.10/- to Rs.15/- per square metre - Taking base value as Rs.12/- per square metre in the year 1970 and adopting cumulative method, by giving escalation of 10%, the market value for the year 1985 would be Rs.50.08 per square metre - Market value to be fixed @ Rs.50/- per square metre. (2008) 14 SCC 745 relied.

In case of Shaikh Noor (supra), this Court held :-

Compensation for acquired land - Determination - Nature of land - Existence of well in acquired land - Absence of entries of sugarcane, wheat etc. in 7/12 extract - Not sufficient to draw inference that acquired land was not perennially irrigated land - Appellant-claimant has proved that acquired land was essential to be classified as (Bagayat) Perennially land for calculation of market price - Reference Court fallaciously drew inference that as there were no entries of crops like sugarcane, wheat, etc., in 7/12 extract, nature of acquired land would be seasonally irrigate land.

Compensation for acquired land - Perennially irrigated land - Determination - In acquired land appellant constructed well having ample source of water - Reference Court found found that entries in cultivation column of 7/12 extract during relevant period showed that claimant had sown

crops like bajra, jawar, cotton and groundnuts -
Absence of entries of sugarcane, wheat etc. in
cultivation column of 7/12 extract would not be
sufficient to draw inference that acquired land
was not perennially irrigated land.

In case of Laxman Neulkar (supra), this Court held:-

Acquisition of land - Claim of compensation -
Duty of Court - It is duty of Court to award just
and fair compensation taking into consideration
true market value and other relevant factors,
irrespective of claim made by claimant.

In case of Dhirajbhai Patel (supra), this Court held:-

In absence of any material on record to indicate
that appellants had knowledge about acquisition
process and they had entered into transaction
only with intention of creating evidence as to
claim higher compensation, sale instance of
acquired land cannot be denied.

Sale instance of acquired land - Non-
consideration of - On ground that sale-deed was
entered into after authority had taken joint
measurement of acquired land - Sale transaction
was executed more than a year prior to
publication of Section 4 notification - Nothing
came in evidence which shows that
measurements were taken prior to publication of
notification or internal communication was
within public domain - No material on record to
indicate that appellants had knowledge about
acquisition process and they had entered into
transaction only with intention of creating

evidence as to claim higher compensation -
Further respondent had not challenged the
genuineness of sale transaction - Reference
Court not justified in doubting genuineness of
sale transaction and discarding best available
evidence to assess market value of acquired land
- Non-consideration of sale instance of acquired
land improper.

7. 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.”

8. Keeping on mind the legal position, let us appreciate the evidence in the matters. Following points arise for my determination.

- (1) Whether the appellant land owners
prove the amount of compensation
awarded under the impugned awards
to be inadequate and therefore
entitled for enhancement therein ? ...No
- (2) If yes, to what extent ? As per final order

9. Admittedly, the land Gut No.720 was perennially irrigated land. A well and two borewells were in the said land. The appellant land owners placed reliance on a sale instance (Exh.29) pertaining to the land situated at village Manus-Marwadi, Taluka Renapur. Village Pangaon and village Manus-Marwadi are said to be adjoining villages to each others. The sale deed (Exh.29) was executed in April 2007 i.e. just 6 - 7 months before notification under Section 4 of the Act of 1894 was published. From the recitals of the sale deed, it does appear that, land admeasuring 83 R, i.e. little over 2 acres was sold for Rs.8,20,000/-. Only a sum of Rs.2,20,000/- was paid to the vendor in the presence of the Sub-Registrar. Remaining amount of consideration of Rs.6,00,000/- is admitted to have been received some days before the sale deed was executed. Since no issue in this regard was raised by any of the parties, this Court will assume the sale transaction to have been executed for consideration of Rs.8,20,000/-. The rate per R comes to Rs.9879/-. The appellant land owners in their Reference and oral evidence as well, had relied on the sale instance and urged for grant of compensation at par therewith. It is their contention that the lands acquired were similar to the land comprised in the sale instance (Exh.29). The land owners did not place on record

any evidence to indicate that land comprised in the sale instance was unirrigated and, therefore, they were entitled to compensation at double the rate.

10. I have perused the judgment dated 24/4/2019 passed by the Reference Court in L.A.R. No.71/2011 and connected L.A.Rs. It is not shown that the said judgment has attained finality. Although this Court is not sitting in appeal over the judgment and award passed in the said L.A.R., this Court did not find anything therein to hold the land comprised in the very sale instance (Exh.29 herein) which was relied on those LARs. as well that it was unirrigated land.

11. There is another aspect of the matter. When the land Gut No.720 was in the nature of an Orchard, the Reference Court ought not to have granted compensation separately for the land and the Orchard as well.

12. Due to existence of well and borewell in the land Gut No.720, compensation has been awarded considering it to be perennially irrigated land. The Reference Court, therefore, ought not to have granted separate compensation on account of existence of well and borewell. Be that as it may.

13. The appellant – owner in First Appeal No.1954/2018 has relied on evidence of C.W.2 Vilas, so called Horticulturist. It is in his evidence that he had paid visit to the land on 8/7/2008 to find 178 pomegranate trees, one tamarind tree and 30 Bel trees. He made valuation thereof at Rs.15,78,076/-. It is in evidence that, he considered age, annual fruit production, market rate, cost of cultivation etc. for arriving at his conclusion.

Admittedly, no representative of the acquiring body or the respondent – State was present when the valuer paid visit to the land. No rough notes or data of what the valuer noticed during his visit has been placed on record. This Court is, therefore, not inclined to rely on the valuer's report in toto. Granting compensation @ 80% of the valuer's report could not be termed to be a law of precedent although in some of the cases compensation has been awarded at 80% of the valuer's report. Each case has to be decided on its own facts and merits. If we consider the details of compensation awarded by the Reference Court, it would come to $9879 \times 153 = \text{Rs.}15,11,487 + \text{Rs.}1,32,252$ towards superstructure + Rs.3,94,519 towards fruit bearing trees. As such, the total compensation comes to Rs.20,38,258/-. Even if this Court

grants the appellant – land owner in First Appeal No.1954/2018 the compensation equal to that of valuation of the Orchard, still the compensation awarded by the Reference Court is more than that. This Court is, therefore, not inclined to grant the appellant any enhancement in the amount of compensation awarded under the impugned judgment and award. In view of this Court, the compensation awarded by the Reference Court is more than the market value of the acquired land. It is again observed herein that the Reference Court, under the judgment in L.A.R. N.71/2021 ought not to have granted separate compensation, one for the land and then 80% of valuer's report. This Court is, therefore, not inclined to interfere with the impugned judgment and awards.

14. In the result, all the three appeals fail. The appeals are dismissed. The amount in deposit with this Court be paid to the land owners – claimants, along with interest accrued thereon.

Pending Civil Application is disposed of.

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

fmp/-