IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.405/2012

APPELLANT : Shriram Devasthan Kopra Jankar
Through its President Sunil Dattatraya Shinde,
aged about 50 years, Occ. Agriculture,
Resident of Kopra Jankar, Tal. Babhulgaon,
Distt. Yavatmal.

...VERSUS...

RESPONDENTS :
1. State of Maharashtra,
   Represented by the Collector, Yavatmal.
2. Collector, Yavatmal.
3. The Executive Engineer
   Bembla Project Division, Yavatmal,
   Distt. Yavatmal.
4. Special Land Acquisition Officer,
   Minor Work No.1, Yavatmal.

Shri H.D. Dangre, Advocate for appellant
Shri M.A. Kadu, AGP for respondent nos.1, 2 and 4
Shri P.B. Patil, Advocate for respondent no.3

CORAM : AVINASH G. GHAROTE, J.
DATE : 05/12/2022, 06/12/2022,
07/12/2022 &13/12/2022

ORAL JUDGMENT

1. Heard Shri H.D. Dangre, learned counsel for the appellant, Shri M.A. Kadu, learned Assistant Government Pleader for

the respondent nos.1, 2 & 4 and Shri P.B. Patil, learned counsel for the respondent no.3.

2. First Appeal No.405/2012 questions the judgment of the learned Reference Court dated 19/11/2011 which has granted compensation at the rate of Rs.75,000/- per hectare as against the claim of Rs.5,00,000/- per hectare made before it. The land in question is Gat No.37, admeasuring 7.22 HR situated at village Panas, acquired by the Vidarbha Irrigation Development Corporation (VIDC) for the Bembla Project, a notification in respect of which under Section 4 of the Land Acquisition Act was published on 07/04/1994 and the award was passed on 30/03/1996, granting a compensation of Rs.26,750/- per hectare for 7.10 HR and at the rate of Rs.200/- per hectare for 0.12 HR (Pot Kharab land). What is material to note is that there are no trees on the land, which is an admitted position.

3. Reliance is placed by Shri Dangre, learned Counsel for the appellant, on Exh.50, a sale-deed dated 18/01/1994 of village Kopra Barad, by which the land admeasuring 1.21 HR was sold at Rs.1,50,000/- which has been discarded by the learned Reference

Court (para 14) on the ground that the distance is not specified, as against which, it is contended that the distance of 05 km. between the two villages is already on record. It is further submitted that the land in question is dry crop land, and has cultivation of Cotton and Tur, which is an admitted position. It is also contended that ***Vidarbha Irrigation Development Corporation, Yavatmal Vs. Anjali d/o Sharad Ballal and others, 2013 (2) Mh.L.J. 456*** also refers to the sale-deed dated 18/01/1994 of village Kopra Barad for deciding the compensation. Shri Dangre, learned Counsel for the appellant submits that considering all these instances, which are applicable according to the reasons mentioned therein, the compensation be awarded @ Rs.1,25,000/- per hectare for which the basis is Exh.50 the sale-deed dated 18/01/1994 of village Kopra Barad.

4. Shri Dangre, learned counsel for the appellant, has further relied upon the judgment of the Hon'ble Apex Court in ***Special Land Acquisition Officer Vs. Karigowda and others, (2010) 5 SCC 708***, which lays down the principles governing calculations of the compensation (paras 73 to 83) and so also on the judgment in ***Radha Mudaliyar Vs. Special Tahsildar (Land Acquisition), Tamil Nadu Housing Board, (2010) 13 SCC 384 (paras 12 and 13)***. He also

places reliance upon the judgment in ***Murlidhar s/o Bapurao Dehanikar Vs. The Executive Engineer, Bembla Project, Division Yavatmal and others (First Appeal No.557/2007) and other connected matters, decided on 10/07/2012***, which is of Village Dabha, in which the compensation for the dry crop agricultural land has been granted at Rs.1,37,000/- per hectare, relying upon the sale-deed dated 18/01/1994 of village Kopra Barad. Further reliance is placed upon ***Chetan s/o Narayan Mohankar and others Vs. The Executive Engineer, Bembla Project Division, Yavatmal and others (First Appeal No. 647/2007) decided on 14/12/2012***, which follows what has been laid in First Appeal No.557/2007. He has also relied upon ***Executive Engineer Vidarbha Irrigation Development Corp. Bembla Project Division, Yavatmal Vs. Chetan Narayan Mohokar (First Appeal No.792/2007),decided on 08/01/2013***, which relies upon ***Murlidhar Dehanikar*** (supra). Reliance is also placed upon ***Bhaskar s/o Sadashiv Pardhake Vs. The Executive Engineer, Bembla Project Division, Yavatmal Tq. & Dist. Yavatmal and others (First Appeal No. 1062/2014) decided on 22/03/2016*** of village Dighi awarding compensation of Rs.2,10,000/-, relying upon the sale instance dated 18/01/1994 of village Kopra Barad. He also relies upon ***Ashok s/o***

Uttamchand Kotecha (Since dead) Through his L.Rs. Savita wd/o Ashok Kotecha and Others. Vs. The State of Maharashtra, Through Collector, Yavatmal and others (First Appeal No. 399/2011) decided on 07/03/2019 of village Barad, wherein compensation of Rs.2,10,000/- per hectare has been awarded for the agricultural land, considering the sale-deed dated 18/01/1994 of Kopra Barad.

5. It is therefore submitted, that since in almost all the matters the sale instance of village Kopra Barad dated 18/01/1994, has been considered, that would be an appropriate standard to be adopted for village Panas also, and therefore, the land in question in the instant first appeal, would be entitled for compensation for Rs.1,25,000/- per hectare.

6. Shri Patil, learned counsel for the respondent No.3, opposes the contention, and submits, that even if the sale instance of village Kopra Barad dated 18/01/1994 is taken into consideration, the compensation, to be awarded cannot exceed Rs.1,00,000/- per hectare, for which, reliance is placed by him on ***Shriram Tukaram Solanke, Since deceased through L.Rs. Milind s/o Shriram Solanke and another Vs. State of Maharashtra, Through The Collector,***

Yavatmal and others (First Appeal No.97/2007), decided on 07/04/2016 for village Pimpalgaon, in which after considering the sale instance of Kopra Barad dated 18/01/1994 a compensation of Rs.1,00,000/- per hectare has been granted. He also relies upon the judgment in ***The State of Maharashtra through Collector, Yavatmal and others Vs. Sau. Usha w/o Jagannath Wanjari (First Appeal No.1143/2008), decided on 23/10/2018***, which is a case from village Panas itself in which the compensation of Rs.62,500/- as granted by the learned Reference Court has been affirmed by this Court. He further relies upon ***Shri Mukesh s/o Champatrao Vanjari Vs. State of Maharashtra Represented by Collector, Yavatmal, Tahsil and District Yavatmal and others (First Appeal No.954/2008) decided on 13/11/2019***, which is of village Panas itself, whereby compensation of Rs.85,000/- per hectare has been granted, in which though the sale instance dated 18/01/1994 of village Kopra Barad has been considered but has not been relied for the purpose of grant of compensation. He therefore submits, that in case there is any need for any modification of the judgment of the learned Reference Court, the enhancement cannot be beyond Rs.1,00,000/- per hectare.

7. Shri Dangre, learned counsel for the appellant, in rebuttal submits, that insofar as ***Shriram Solanke*** (supra) is concerned, the learned Court has held in para 5, thereof that the sale instance of village Kopra Barad dated 18/01/1994 could be taken into consideration considering the approximate distance of the acquired land from village Kopra. Village Pimpalgaon, according to him, is situated about 2.00 kms away as against which, Kopra Barad is hardly at a distance of 5 kms., as per evidence brought on record, and therefore, if the sale instance of Kopra Barad can be considered for Pimpalgaon the same can according to him also be considered for the purpose of determining the compensation for village Panas.

8. Insofar as ***Usha Wanjari*** (supra) (village Panas) is concerned, he submits, that the same is based upon the income capitalization method and though the sale-deed of Kopra Barad dated 18/01/1994, has been noted of, since the compensation already stood determined on the income capitalization method, the same has been discarded.

9. Insofar as ***Mukesh Vanjari*** (supra) (village Panas) is concerned, he contends, that since the learned Reference Court had

granted Rs.75,000/- per hectare in respect of the same Gat number, and considering the land being irrigated and the difference in the date of notification, 10% increase was granted and the sale instance of village Kopra Barad has not been considered.

10. Out of the various methods available for determining the compensation for agricultural land, the Hon'ble Apex Court in ***Karigowda*** (supra), has held as under:-

> *"72. Normally, where the compensation is awarded on agricultural yield or capitalization method basis, the principle of multiplier is also applied for final determination. These are broadly the methods which are applied by the courts with further reduction on account of development charges. In some cases, depending upon the peculiar facts, this Court has accepted the principle of granting compound increase at the rate of 10% to 15% of the fair market value determined in accordance with law to avoid any unfair loss to the claimants suffering from compulsive acquisition. However, this consideration should squarely fall within the parameters of Section 23 while taking care that the negative mandate contained in Section 24 of the Act is not offended. How one or any of the principles aforestated is to be applied by the courts, would depend on the facts and circumstances of a given case.*
>
> *73. In the present case, the Court has applied the method of agricultural yield and multiplier of 10 years. Further, it*

has declined to accept the method adopted by the Collector for granting compensation to the claimants for the reason that the SLAO ought not to have taken recourse to the method of sale statistics. It was further recorded that no sale instances of Sanaba Village three years prior to 2002 were available and instances of adjacent village should not have been taken into consideration. Instead, the market value should have been calculated by adopting capitalization method and no reason was stated as to why this method was not applied. We are unable to accept the approach of the High Court as well as that of the Reference Court on both these issues. Firstly, we are of the considered view that adopting the method of agricultural yield and applying the multiplier method on the basis that the cocoon was an agricultural crop and resultantly silk cocoon itself was an agricultural activity was not correct. We need not elaborate on this aspect in view of our detailed discussion on it supra. Secondly, we are also of the firm view that the Reference Court fell in error of law in stating that the lands of the adjacent or nearby villages could not have been taken into consideration and compensation could be determined with reference to the sales statistics.

74. *<u>It is not in dispute before us that the entire land was acquired for the same purpose and, in fact, the entire land including the land of the adjacent villages had submerged or was utilized for the purposes of construction and operation of the Hemavathi Dam. This Court has held in number of judgments that the lands of the adjacent villages can be taken into consideration for determining the fair market</u>*

<u>value of the land, provided they are comparable instances and satisfy the other ingredients stated in this judgment</u>. It can hardly be disputed that the land in the area of village Sanaba and the adjacent village is being used for growing mulberry crops which is supplied by the agriculturists to the silk factories or they use the same for their own benefit of manufacturing silk. The lands were given two classification i.e. wet land and lands which were not having their own regular source of irrigation (dry lands).

75. <u>It is a settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land. This principle of law is qualified by clear dictum of this Court itself that whenever direct evidence i.e. instances of the same villages are available, then it is most desirable that the court should consider that evidence. But where such evidence is not available court can safely rely upon the sales statistics of adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for such determination. Once it is shown that situation and potential of the land in two different villages are the same then they could be awarded similar compensation or such other compensation as would be just and fair.</u>

76. <u>The cases of acquisition are not unknown to our legal system where lands of a number of villages are acquired for the same public purpose or different schemes but on the commonality of purpose and unite development. The parties</u>

are expected to place documentary evidence on record that price of the land of adjoining village has an increasing trend and the court may adopt such a price as the same is not impermissible. Where there is commonality of purpose and common development, compensation based on statistical data of adjacent villages was held to be proper. Usefully, reference can be made to the judgments of this Court to the cases of Kanwar Singh & Ors. v. Union of India and Union of India v. Bal Ram.

81. The above compensation was computed by the SLAO on the basis of the sale instances of the villages falling within the same circle as well as on the basis of the guidance value maintained in the Register of the Sub-Registrar of the concerned villages. From the report, it is evident that both these villages Sanaba and Pandavapura are located in the same circle and are practically part of the larger revenue estate. It was not in dispute before us that primarily all these lands were being used for cultivating mulberry crop which is the sole agricultural activity. The court has to keep in mind a very pertinent equitable principle while awarding compensation, i.e the court should grant just and fair market value of the land at the time of the acquisition while ensuring that there is no undue enrichment. These are compulsive acquisitions but the guiding factor for the court is sale instances of a willing seller and a willing purchaser while determining the compensation payable. To award fair compensation is the obligation of the State and depending on the facts and circumstances of the case, the courts may enhance the compensation within the framework of law. The *sale instances referred to by the Collector in his report are from the same villages or nearby villages or adjacent villages which are a part of the same circle and where the land can easily said to be comparable as the entire chunk of the land was being used for raising mulberry crop and was acquired for common purpose, that is, the lands were submerged in the water coming from the Hemavathi Dam.*

82. This Court in the case of Shaji Kuriakose held that out of the three aforestated methods, the courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. Comparable sales method of valuation of land is preferred than the other methods such as capitalization of net income method or expert opinion method. Comparable sales methods of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Act. In Kantaben Manibhai Amin v. Land Acquisition Officer, this Court also stated that latest sale instance closer to the date of notification for acquisition of the land should be taken into consideration.

83. It is also an accepted judicial norm that the claimants can be given the benefit of awarding compensation on the basis of the genuine sale instance containing the highest rate, provided it has been proved in accordance with law and is a comparable instance. Such sale instance must satisfy all the requirements and prerequisite stated in the

Act. It should be a bonafide transaction and should also be in reasonable proximity to the date of notification under Section 4 of the Act. Since the SLAO had referred to the four sale instances which were produced before him and being part of the reference file, they were duly noticed by the Reference Court as well as by the High Court. But the courts held that it was not appropriate to apply sales statistics method in the facts and circumstances of the case. Admittedly, the claimants produced no sale instances. In our view, these sale instances can be taken into consideration by the Court and benefit of the highest instance can be granted to the claimants in accordance with law in fixing the market value of the acquired land. Whatever benefit accrues to the claimants from the record produced and proved by the respondents, cannot be denied to them just because they have not produced evidence by way of sale instances."

11. In ***Radha Mudaliyar*** (supra), it has been held as under :-

"12. It is a well-settled principle of law that comparable sale instances, subject to their satisfying the basic ingredients of law, are the best piece of evidence to be considered by the court for the purpose of determining the compensation. Even awards and transactions of the adjacent areas have been treated as best evidence which will fall within the zone of consideration by the court. Of course, such instances must be comparable and legally admissible in evidence. In this aspect, we may refer to the

judgments of this Court in the case of Harcharan v. State of Haryana; Kantaben Manibhai Amin v. Land Acquisition Officer and ONGC Ltd. V. Sendhabhai Vastram Patel.

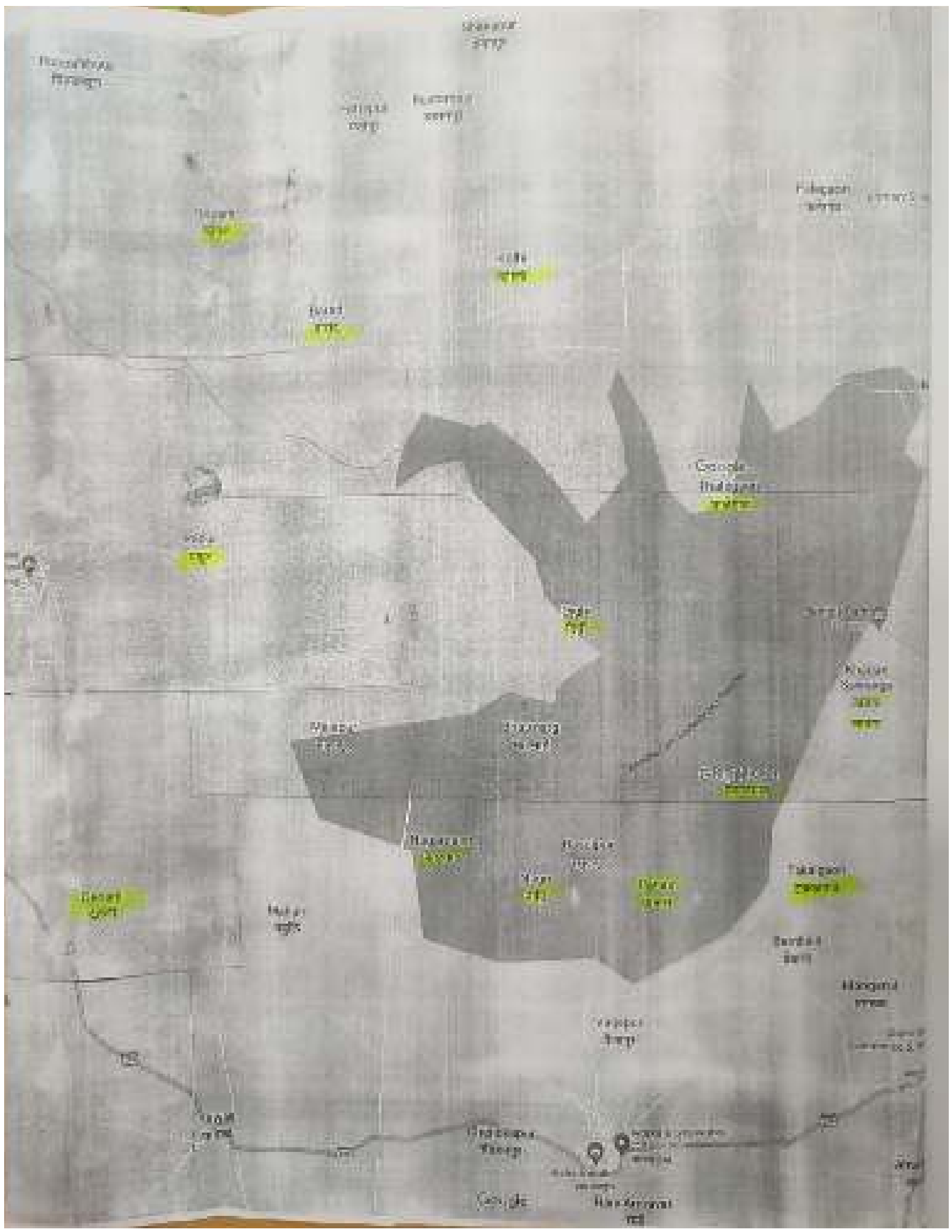
13. Comparable sale instances are the safest method for determining the market value of the acquired land and as laid down in Shaji Kuriakose v. Indian Oil Corpn. Ltd., it should satisfy the factors, inter alia, (1) the sale must be genuine transaction; (2) the sale deed must have been executed at the time proximate to the date of issuance of notification under Section 4 of the Act; (3) the land covered by the sale must be in vicinity of the acquired land; (4) the land covered by the sale must be similar to the acquired land; and (5) size of the plot of the land covered by the sale be comparable to the acquired land. The sale instances should preferably be closest to the date of the notification as then alone it would satisfy the touchstone of the principles contemplated under Section 23 of the Act, as held in Kanwar Singh v. Union of India."

12. It is thus apparent, that out of all the methods available, the best method, which needs to be applied is the comparable sales method which is based upon the latest sale instance closer to the date of notification under Section 4 of the Land Acquisition Act and of the nearest villages keeping in mind that the quality of the land under cultivation, remains the same. The sale instance, is considered to be a transaction, which is voluntary between the parties to it and

therefore, indicates, the genuine market rate in respect of the property which is its subject matter, so as to form a basis for determination of the compensation for the lands either of the same village or neighbouring villages. In case, the sale instance of the same village is not available, it is permissible for taking into consideration the sale instance of the neighbouring village. The Hon'ble Apex Court has also considered the idea of a larger revenue estate, in view of the fact, that the acquisition, was for the same purpose under the same notification. Even if the notification is different and the purpose remains the same, the sale instance could always be considered subject to leeway to be granted for the difference in the date of notification.

13. In the instant case it is not in dispute, that multiple villages, have been acquired for the Bembla River Project for construction of the land, as a result of which, most of the villages have submerged in the backwaters created due to the construction of the dam. The position, therefore will have to be construed in light of what has been held in ***Karigowda*** (supra), that the land was part of larger revenue estate under the same project.

14. The following map, would indicate, the comparative locations of Kopra Barad, Kolhi, Nagargaon, Thalegaon, Panas, Dighi, Dabha, Pahur, Takalgaon and Khadaksawanga, all of which are villages claimed to be adjacent or near to the village Panas.



15. In ***Anjali Ballal*** (supra) the learned Court, has noted the following sale instances which are from the same notification for the Bembla Project :-

Village	Rate of Land in Rupees	Area of land	Date of sale deed	Rate per hectare of land in Rupees.
Kopra Barad	1,50,000/-	1.21 H.R.	18-1-1994	1,23,967/-
Kolhi	1,90,000/-	1.55 H.R.	19-4-1994	1,22,580/-
Nagargaon	1,65,000/-	1.10.H.R.	16-3-2000	1,50,000/-
Thelegaon	99,000/-	1.21 H.R.	5-8-1994	81,818/-
Panas	1,00,000/-	0.99 H.R.	22-3-1996	1,01,000/-
Rustampur	3,00,000/-	1.34 H.R.	2-8-2001	2,23,880/-

15.1. In ***Murlidhar Dehanikar (First Appeal No. 557/2007)*** (supra) and other connected matters decided on 10/07/2012 the following sale instances have been quoted :-

Date of sale	Vendor	Vendee	Village	Area in H.R.	Consideration	Price fetched per hectare
5/7/1996	Pandurang Thokal	Leela Harishchandra Kadu	Dehani	1.21	Rs.1,20,000/-	Rs.99,174/-
21/5/1999	Avinash Dahekar	Subhash Kherde	Dabha	0.29	Rs.50,000/-	Rs.1,72,413/-
18/1/1994	Subhashcha -ndra Atal	Vinod Ramchandra Lokhande	Kopra	1.21	Rs.1,50,000/-	Rs.1,23,996/-
19/4/1994	Anil Mukkawar	Shankarrao Vaidya	Kolhi	1.55	Rs.1,90,000/-	Rs.1,22,580/-

16. The judgments, for which compensation has been granted for the villages in the same project, as supplied by the learned counsels for the respective parties, are as indicated below.

Judgments – Date	**Reference, Reliance, Consideration & Findings**	**Compensation by HC. PH (Rs)**
TAKALGAON – NOTIFICATION DATED 18/02/1993		
First Appeal No. 1251/2009 and connected matters; VIDC – Vs- Ambadas Raut [Hon'ble Shri Justice A.S. Chandurkar] Dated 28/10/2015	• After considering Judgment in FA No. 1552/2008, dated 12/02/2015 Khadaksawanga determining Rs.1,00,000/- (minus) Rs.10,000/- being earlier date of notification. • Sale Deed – Panas- dated 22/03/1996 @ Rs.1,01,100/- PH – referred but not considered. • Sale Deed -Kopra Barad - dated 18/1/1994 @ Rs.1,23,947/- PH –referred but not considered.	**90,000/-**
KHADAKSAWANGA – NOTIFICATION DATED 15/09/1994.		
First Appeal No. 1552 of 2008, VIDC-vs-Padmakar Thakre with cross-objection. [Hon'ble Shri Justice Z.A. Haq] Dated 12/02/2015	As VIDC accepted / paid compensation of Rs.1,00,000/- PH awarded by Reference Court for other lands under same notification.	**1,00,000/-**
First Appeal No.1175/2009; Gulabrao Thakre –vs- State of Mah. [Hon'ble Shri Justice A.S. Chandurkar] Dated 01/03/2019	After considering that Adjudication in identical matters of adjoining lands had attained finality in FA No.111/2009 in LAC 329/2000 @ Rs.1,00,000/-.	**1,00,000/-**

PANAS – NOTIFICATION DATED 07/04/1994		
First Appeal No. 1143/2008 and connected matters; State of Maharashtra – Vs- Usha Wanjari [Hon'ble Shri Justice V.M. Deshpande] Dated 23/10/2018	• Compensation decided on the basis of Income Capitalization method. • Sale Deed -Kopra Barad - dated 18/1/1994 @ Rs.1,23,947/- PH –referred but not considered.	**Dry Crop 62,500/-**
PANAS – NOTIFICATIONS DATED 25/03/1993 & 07/04/1994		
First Appeal No.954/2008; Mukesh Vanjari -vs- The State of Maharashtra and others. [Hon'ble Smt. Justice Pushpa V. Ganediwala] Dated 13/11/2019	• Compensation for 1993 notification was Rs.75,000/- as per reference Court + 10 %.	**85,000/-**
PIMPALGAON – NOTIFICATION DATED 19/04/1994		
First Appeal No.97/2007; Shriram Solanke -vs- The State of Maharashtra Executive Engineer and others. [Hon'ble Shri Justice A.S. Chandurkar] Dated 07/04/2016	• Sale Deed -Kopra Barad - dated 18/1/1994 @ Rs. 1,23,947/- PH. • Relied on FA No.343/2004 of Thalegaon granting Rs.1,35,000/- PH.	**Dry Crop 1,00,000/-**
DEHANI – NOTIFICATION DATED 31/12/1998		
First Appeal No.554/2007; Narmadabai Thokal vs- The State of Maharashtra and others.	• Sale Deed - Kopra Barad dated 18/1/1994 @ Rs.1,23,947/- PH relied however, not taken into consideration "*because sale instance of village Dahanu was*	**1,60,000/-**

[Hon'ble Shri Justice A.S. Chandurkar] Dated 07/03/2019	*available."* • Sale Deed - Dahanu from the same survey number dated 05/07/1996 @ Rs.1,00,000/- PH for Dry Land. Land acquired is of bigger area. Therefore, Rs.1,60,000/- PH. • Compensation of Rs.1,60,000/- PH from the same village attained finality in view of withdrawal of FA No.118/2018 by VIDC.	
DABHA – NOTIFICATION DATED 2/3/2000		
First Appeal No. 557/2007 with connected matters Murlidhar Dehanikar -vs- The Executive Engineer and others. [Hon'ble Shri Justice M.N. Gilani], dated 10/07/2012 -	• Sale Deed - Kopra Barad - dated 18/1/1994 @ Rs.1,23,947/- PH. • Sale Deed - Dehani - dated 05/7/1996 @ Rs.99,174/- PH. • Sale Deed - Dabha - dated 21/5/1999 @ Rs.1,72,413/- PH. • Sale Deed – Kolhi - dated 19/4/1994 @ Rs. 1,22,580/- PH. • Policy decision of water conservation department dated 02/06/2010 that compensation for the lands acquired for Bembla project should be paid @ Rs. 1,25,000/- PH.	**Dry Crop 1,37,000/-**
First Appeal No. 647/2007 Chetan Mohankar –Vs- The Executive Engineer. [Hon'ble Shri Justice M.N. Gilani], Dated 14/12/2012	On par with Judgment in FA No. 557/2007	**Dry Crop 1,37,000/-**
First Appeal No.792/2007 Executive Engineer	Appeal dismissed in view of findings recorded in First Appeal No.557/2007 on 2/3/2000.	-

–vs- Chetan Mohokar and others. [Hon'ble Shri Justice M.N. Gilani], Dated 08/01/2013		
PAHUR – NOTIFICATION DATED 11/05/2000		
2013 (2) Mh. L. J. FA 863/2010 and connected matters, Vidarbha Irrigation Development Corporation, Yavatmal -vs- Anjali d/o Sharad Ballal and others. [Hon'ble Shri Justice M.N. Gilani], dated18/10/2012	• Sale Deed -Kopra Barad - dated 18/1/1994 @ Rs. 1,23,947/- PH. • Sale Deed – Kohli -dated 19/4/1994 @ Rs. 1,22,580/- PH. • Sale Deed – Nagargaon - dated 16/3/2000 @ Rs. 1,50,000/- PH. • Sale Deed – Thelegaon - dated 05/08/1994 @ Rs.81,818/- PH. • Sale Deed – Panas -dated 22/3/1996 @ Rs.1,01,000/- PH. • Sale Deed – Rustampur- dated 02/08/2001 @ Rs. 2,23,880/- PH. • Compensation decided on the basis of Nagargaon sale instance, advantageous factors of village Pahur.	**Dry Crop 1,60,000/-**
BARAD – NOTIFICATION DATED 24/07/2003		
First Appeal No.399/2011; Ashok s/o Uttamchand Kotecha and others -vs- The State of Maharashtra and others. [Hon'ble Shri Justice A.S. Chandurkar] Dated 07/03/2019	• Sale Deed - Kopra Barad dated 18/1/1994 @ Rs. 1,23,947/- PH- accepted as evidence. • Value in aforesaid sale deed + 10% increase on the basis of year of notification. • Equivalent to village Dighi as per FA No.1062/2014.	**2,10,000/-**

PIMPALKHED – NOTIFICATION DATED 27/02/2003		
First Appeal No. 1058/2014; Arvind Pawar -vs- The State of Maharashtra and others. [Hon'ble Smt. Justice Pushpa V. Ganediwala] Dated 28/11/2019		**Perennially Irrigated 2,50,000/-**
PIMPALKHUTA – NOTIFICATION DATED 06/03/2003		
First appeal No. 6188/2007; Executive Enigneer –vs- Ganesh Iratkar and others. [Hon'ble Shri Justice A.S. Chandurkar] Dated 08/01/2019	• Appeal withdrawn by VIDC accepting Rs. 2,25,000/- PH awarded by Reference Court.	**2,25,000/-**
DIGHI – NOTIFICATION DATED 14/08/2003		
First Appeal No. 1062/2014; Bhaskar s/o Sadashiv Pardhake -vs- The Executive Engineer and others. [Hon'ble Shri Justice R. K. Deshpande] Dated 22/03/2016	• Relied upon 2013 (2) Mh. L. J., FA No. 863/2010. • Sale Deed -Kopra Barad -dated 18/1/1994 @ Rs. 1,23,947/- PH. • Rs.1,60,000/- as awarded for village Pahur + 10 % increase.	**Dry Crop 2,10,000/-**

17. The following is the position, which can be culled out from the various judgments, which are from village Panas and from the neighbouring villages.

ANALYSIS CHART FOR VILLAGE PANAS										
Sr. No	**F.A. No.**	**Section 4**	**Villag-e**	**Dista-nce From Villag-e Panas (appr-ox.)**	**Sale Deeds Considered/Discussed**				**L.A.C. Conside-red**	**Rate Determine-d**
					Village	**Date**	**Area**	**Rate**		
1	1143/2008	07.04.1994	Panas	0 K.M.	Kopra	19.01 .1994	1.21 H.R.	1,23, 000 P.H.	-	Neither Sale Deed Nor L.A.C. relied, capitalizatio-n method adopted
2	954/2008	07.04.1994	Panas	0 K.M.	-	-	-	-	-	Neither Sale Deed Nor L.A.C. relied, 10% increase criteria applied
3	97/2007	19.04.1994	Pimp algao n	1.5 to 2 K.M.	Kopra	19.01 .1994	1.21 H.R.	1,23, 000 P.H.	-	(para 16) On basis of F.A. No. 343/2004 of adjacent village Khadak Sawanga rate determined Rs.1,00,000/- P.H.
					Thalega on	05.08 .1994	not given	not given	-	
4	399/2011	24.07.2003	Bara-d	5 K.M.	Kopra	18.01 .1994	1.21 H.R.	1,23, 000 P.H.	-	on the basis of both sale instance Rs.2,10,000/- granted
	916/2013				Kolhi	19.04 .1994	not given	not given	-	
5	1235/2016	14.08.2003	Dighi	3 K.M.	-	-	-	-	-	on the basis of F.A. No. 1062/2004 & 527/2015 rate Rs. 2,10,000/- P.H. granted

6	544/2010	18.02.1993	Takal -gaon	2 K.M.	-	-	-	-	-	on the basis of F.A. No. 910/2016 & 1402/2008 rate Rs. 1,00,000/- P.H. granted
7	890/2016	17.12.1998	Bhat-marg	2.5 K.M.	-	-	-	-	-	on the basis of F.A. No. 632/201 Rs. 1,80,000/- granted for dry crop land
8	1349/2008	18.03.1993	Takal -gaon	2 K.M.	-	-	-	-	-	on the basis of Guesswork Rs.62,500/- P.H. granted
9	863/2010	11.05.2000	Pahu r	6.2 K.M.	Kopra Barad	18.1. 1994	1.21 H.R.	1,50, 000/-	-	Compensati-on granted on the basis of Nagargaon Sale Instance
					Kolhi	19.4. 1994	1.55 H.R.	1,90, 000/-		
					Nagarg aon	16.03 .2000	1.10 H.R.	1,65, 000/-		
					Thalega on	05.08 .1994	1.21 H.R.	99,00 0/-		
					Panas	23.03 .1996	0.99 H.R.	1,00, 000/-		
					Rustam pur	8/2/ 2001	1.34 H.R.	3,00, 000/-		
10	418/2016	29/5/1997	Taka-lgaon	1.9 K.M.	-	-	-	-	L.A.C. relied where Rs.1,10, 000/- P.H. was decided but Section 4 Date was 25/08/ 1994	The Section 4 date in L.A.C. number was prior 3 years of Section 4 Notification therefore 30 % was enhanced Rs.1,40,000/- granted

18. The distance between village Panas and the surrounding villages, as per the chart submitted by Shri Patil, learned counsel for

the acquiring body is as under :-

DISTANCE BETWEEN PANAS AND SURROUNDING VILLAGES			
Sr. No.	**Distance Between Villages**		**Distance (approx)**
1	Panas	Pimpalgaon	2.0 km
2	Panas	Takalgaon	1.9 km
3	Panas	Rasulpur	1.0 km
4	Panas	Nagri	1.2 km
5	Panas	Nagargaon	2.5 km
6	Panas	Bhatmarg	2.5 km
7	Panas	Dighi	3.2 km
8	Panas	Thalegaon	4.5 km
9	Panas	Khadak Sawanga	3.3 km
10	Panas	Mithnapur	6.4 km
11	Panas	Kolhi	7.0 km
12	Panas	Barad	7.4 km
13	Panas	Kopra	9.0 km
14	Panas	Pimpalkuta	11.0 km
15	Panas	Dehni	6.2 km
16	Panas	Pimpalgaon	7.2 km
17	Panas	Dabha	11.0 km
18	Panas	Pahur	6.2 km
19	Panas	Yerad	14 km
Note : The distances mentioned above are taken as shown in Google Map			

19. The position therefore has to be judged on the basis of the sale instances, available in respect of the village Panas, in conjunction with those for the surrounding villages, considering the factum that the land of village Panas as well as surrounding villages

was acquired for the same project and therefore, was practically part of a larger revenue estate, considering the expanse of the project.

20. The table enumerated in para 16 above would indicate that there are two cases in relation to the acquisition of land at village Panas. Insofar as the judgment in ***Usha Wanjari*** (supra) is concerned, it would be material to note that though it refers to the sale-deed dated 18/01/1994 of village Kopra Barad, however, nothing is said about it, either way, which is clearly apparent for the reason that the said judgment merely affirms the rate awarded by the learned Reference Court holding that income capitalization method had been applied by the Reference Court which has been affirmed. As has been held in ***Karigowda*** (supra) the Hon'ble Apex Court has categorically held that the comparable sale instances method ought to take preference over all other methods, and therefore, the judgment in ***Usha Wanjari*** (supra) which is based upon the income capitalization method, in light of the fact, that the sale instance was available would be of no assistance. In ***Mukesh Vanjari*** (supra) which is from village Panas, rate of Rs.82,500/- per hectare has been awarded, which has been rounded off to Rs.85,000/- per hectare. ***Mukesh Vanjari*** (supra) also takes into consideration, that the 7/12

extract showed the existence of 250 orange trees of the age 1 to 2 years at the time of Section 4 notification, whereas the joint measurement report (JMR) showed the existence of 50 orange trees and the valuer report showed the report of 150 orange trees and the learned Court considering the nature of the proceedings, the evidence which was beneficial to the claimant and was to be considered, had accepted the 7/12 extract and its contents. In the instant matter, it is an admitted position that the land in question is a dry crop land and there are no trees whatsoever, and therefore that consideration, does not apply.

21. The judgment in ***Mukesh Vanjari*** (supra) thus can form the basis for the determination of compensation in the instant matter. Certain other factors such as the location of the land in proximity to the Babhulgaon-Ner road, the possibility of the land having non-agriculture (NA) potentiality on that count are also required to be taken into consideration, on which count there is no serious cross-examination of PW-1 the President of the claimant, apart from the sale instances for the village of Panas and the neighbouring villages.

22. It is also material to note that in ***Deorao s/o Parasram Wanjari Vs. State of Maharashtra, Through District Collector, Yavatmal and others (L.A.C. No.719/2006)***, decided by the Reference Court on 31/01/2009 the land of Survey No.53, admeasuring 2.02 HR of village Rasulpur Tq. Babhulgaon, Distt. Yavatmal which was also acquired for the Bembla project under notification dated 15/12/1997, the compensation at the rate of Rs.1,25,000/- per hectare was awarded, First Appeal No.842/2010 against which, was withdrawn.

23. Shri Patil, learned counsel for the respondent no.3 further relied upon the judgment of the Hon'ble Supreme Court in ***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another, (2008) 14 SCC 745*** (para 15), which according to him prohibits the Court from considering the sale instance which is more than five years prior to the date of Section 4 notification.

24. In the instant matter, from the table in para 17 it would be apparent that in two of the first appeals the rate of Rs.62,500/-

and Rs.85,000/- has been granted for the agricultural lands of village Panas.

25. The evidence of PW 1 – Sunil Dattatraya Shinde, the President of the Shriram Devasthan (Ex.71) indicates, the following position in respect of the land in question :-

> *"The field of the applicant Gat No.37 of village Panas, Tq. Babhulgaon is on Babhulgaon-Ner Road which is a tar road. The said field is black cotton soil and highly fertile wherein the crops of cotton and Tur are normally and usually taken by the applicant. "Iwala River" passes by the side of the field Gat No.37. The river has water throughout the year. The river water from river Hiwala was used by the applicant for irrigation Gat No.37. Therefore, the N.A. No.4 L.A.O. ought to have considered that the field of Applicant was irrigated one."*

The claimant, through its President, before the learned Reference Court (pg.71) and has contended that the land in question, i.e. Gat No.37 was situated on Babhulgaon-Ner Road. The land was black cotton soil with high fertility and considering that the river Iwala (Hiwala) passed by the side of the said field, water was available throughout the year and therefore the land was irrigated, apart from which, considering that it was adjacent to road, it had non-agriculture (NA) potential, apart from the fact that it was situated quite near to Babhulgaon and was approachable by a private Rikshaw from there. It is also averred by him that the claimant was cultivating the said field by using modern techniques and mechanized farming. It is also contended that he used to reap harvest on an average of 8 to 10 quintals of cotton and two quintals of Tur per acre and was thus having a net profit of Rs.15,000/- per acre per year from the said land, in view of which, it was claimed that the claimant/appellant was entitled to a compensation of Rs.2,25,000/- per acre. It is also contended that the sale instances at village Panas were negligible and whatever the sale instances were available they were intentionally undervalued, to avoid stamp duty and registration charges. The sale-deed dated 18/01/1994 of village Kopara Barad in which land admeasuring 1.21 HR was sold for consideration of Rs.1,50,000/-, which gave the rate of Rs.1,23,967/-, was also relied vide Exh.50. In the cross-examination however, he has categorically admitted that no sale instances of village Panas were filed on record. Though it is contended that the land was under cultivation throughout the year, however, it is material to note that the factum of cultivation is absent in view of any material being placed on record, such as 7/12 extract, 8-A Form, the revenue book, which would contain the entries regarding the cultivation being taken from the said field, throughout the agricultural year. Neither any sale receipts of the Agricultural Produce Market Committee (APMC) or any other document has been placed on record to indicate that there was net profit of Rs.15,000/- per acre per year from the crop being taken out from the said field. That being the position, it is difficult to accept the contention that the land was cultivated throughout the year and therefore, was giving a substantial income to the appellant so that the rate of Rs.2,25,000/- per hectare, as claimed could be justified.

26. A perusal of his cross-examination would indicate that there is no cross-examination worthy of its name insofar as the nature, fertility and locality of the land is concerned (pg.79 of the paper-book). It is thus apparent that the evidence of PW 1 - Sunil Shinde, insofar as this position is concerned, has remained unchallenged. The compensation therefore ought to have been determined, considering the fact that the land of Gat no.37, was on

the Babulghaon-Ner road and was situated adjacent to the Iwala river. However, it is fairly conceded by Shri Dangre, learned counsel for the appellant that apart from the above there is no other material on record to indicate that the land was throughout irrigated from the water from Iwala river, considering which, the plea raised that it was an irrigated land on account of its location adjacent to the Iwala river cannot be accepted, though the proximity of the land in question to the Babulgaon-Ner road would indicate its potentiality in future to be used for non-agriculture (NA) purpose.

27. The table in para 17 above, would indicate that in ***Usha Wanjari*** (supra) the sale instance of village Kopra was noted but not considered, which is about 9 kms. from village Panas, as it was a judgment based upon the income capitalization method (para 17). In ***Mukesh Vanjari*** (supra) though no sale instance has been considered, however, compensation has been awarded at Rs.85,000/- per hectare. The table in para 17, would indicate that for the village Takalgaon, which is at a distance of 2 kms., from the village Panas, a compensation of Rs.1,00,000/- per hectare has been granted in First Appeal No.544/2010, the notification under

Section 4 in which case was dated 18/02/1993. The notification in the instance case is dated 07/04/1994 that is more than a year later, which would indicate that there could be an increase of 10% in the land rate in the duration, taking into consideration which, in my considered opinion, a rate of Rs.1,05,000/- per hectare would be the appropriate rate for the dry crop land at village Panas. The contention of Shri Dangre, learned counsel for the appellant that a rate of Rs.1,23,000/- per hectare based upon the sale instance dated 18/01/1994 for village Kopra Barad ought to have been granted, is not acceptable on the ground that the distance between Panas and Kopra Barad is between 7.4 to 9 kms., whereas the rates determined for the villages, in the near proximity of village Panas would be more appropriate, to be considered.

28. Insofar as the plea for grant of compensation equivalent to dry crop land for Pot Kharab land admeasuring 0.12 HR from and out of land of Gat No.37 is concerned, the policy of the Government dated 30/08/2011 which states this position, appears to be applicable only for the village Pahur and has not been made universally applicable to all Pot Kharab lands in the Bembla Village

Project, considering which, I am unable to accept the contention of learned counsel for the appellant in this regard. Though it is also contended that, the Government Resolution dated 30/08/2011, was on the basis of a principle regarding fixation of the rate for the Pot Kharab land, however, a perusal of the Government Resolution indicates that it was brought into effect as a special case for village Pahur only, considering which, it cannot be accepted as a general principle applicable to all Pot Kharab lands in the Bembla Irrigation Project.

29. The reliance placed upon the judgment of the learned Reference Court in ***Arvind Dyaneshwar Waikar and another Vs. The State of Maharashtra, Represented by the Collector, Yavatmal and others, Land Acquisition Case No.798/2006, decided on 26/08/2009*** to contend that for Pot Kharab land 50% of the rate granted for dry crop land has to be given, does not appeal to me for the reason that the judgment in ***Arvind Waikar*** (supra) does not assign any reason whatsoever for this proposition (para 10) and therefore cannot be an acceptable proposition.

30. In view of the above position, the first appeal is partly allowed by modifying the judgment of the learned Reference Court and enhancing the compensation for dry crop agricultural land of Gat No.37 admeasuring 7.10 HR from Rs.75,000/- per hectare as granted by the learned Reference Court to Rs.1,05,000/- per hectare.

31. The respondent no.3 shall make appropriate calculations for the compensation payable to the appellant with all ancillary benefits, and shall deposit the same within a period of ten weeks from today. In case any court fee is payable upon the enhanced compensation the appellant shall pay the same within one week thereafter.

(AVINASH G. GHAROTE, J.)

Jalit/Bhimte/Wadkar