

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

915 FIRST APPEAL NO. 3331 OF 2023

Bhagwat Sukdeo Dhekale
Age 66 years, Occ : Agri,
R/o. Khadgaon, Tq.Jamner,
Dist. Jalgaon.

**.. APPELLANT
(Ori Claimants)**

VERSUS

1. The Special Land Acquisition Officer,
UTPH-1, Jalgaon

2. The Executive Engineer,
Waghur Project, jalgaon.

**..RESPONDENTS
(Ori Respondents)**

...

Adv.S.A.Kale holding for Mr.A.B.Kale, learned counsel for
the appellant.

Mr.K.B.Jadhavar, AGP for the respondent-State

Mr.V.V.Tarde, Advocate for respondent no.2.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 20.10.2023

P.C. :

1] Heard the learned counsel for the parties.

2] Arising out of the same acquisition proceedings
and same similarly placed land in the appeal filed by the
acquiring body, the Division Bench of this Court in the case
of **Special Land Acquisition Officer (III), Jalgaon & another**

Vs. Bhagwat Vithal Sonwane reported in **2009 (4) Mh.L.J. 308** relying upon the judgment of the Hon'ble Supreme Court, at para 10 has held as under :

10. It is pertinent to note that amount of compensation cannot be ascertained with mathematical accuracy. The comparable instances have to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, a suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. For this purpose we can rely on the Apex Court Judgment in the matter of Viluben Jhalejar Contractor vs. State of Gujarat, reported in (2005) 4 SCC 789. Paras 18, 19 and 20 of the said Judgment reads as under:

"18) One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19) Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition....."

The Apex Court held that the amount of compensation cannot be ascertained with mathematical accuracy. We have to consider plus and minus factors for that purpose. In the present case two sale instances produced by the respondents/original claimants of the year 1996 and 1997 which can be considered for fixing the market value of the acquired land. The Reference Court considering these two sale instances, came to the conclusion that the

claimants are entitled to compensation in respect of acquired Jirayat land at the rate of Rs. 2,00,000/- per Hectare. Both the sale instances were in respect of Jirayat land only. The rate of land in respect of sale instance dated 16th January, 1996 comes to Rs. 2,50,000/- per Hectare and rate of land in respect of sale instance dated 13th January, 1997 comes to Rs. 2,55,000/- per Hectare. Considering both the sale instances the Reference Court decided the market value in respect of acquired Jirayat land at the rate of Rs. 2,00,000/- per Hectare. It is to be noted here that out of the acquired land, some land was Bagayat land, as even the S.L.A.O. in his award under section 11 of the Act of 1894 specifically stated that the claimants have installed drip irrigation in their respective fields. The Reference Court decided the market value of Bagayat land double the value of Jirayat land. It is pertinent to note here that previously our High Court also took the same view that market value of Bagayat land can be double the value of Jirayat land, in the matter of Narayan s/o Sambhaji Shelke and another vs. State of Maharashtra through the Collector, Latur, reported in 2003 (7) LJSOFT (URC) Page 60. This Court held that:

"The learned advocate pointed out that the facts of the case, referred to above, are mostly similar to the facts of the present case before us. There is ample evidence on record, which will indicate that some of the acquired lands are irrigated lands and even crops on irrigation

are grown in this fields. Taking into consideration all these facts and also the view taken by this Court earlier, referred to above, in the present case also, the market value of the irrigated or bagayat land should be double than the value of dry crop land (Rs. 18,000/- per acre) and it should be Rs.36,000/- per acre or Rs.90,000/- per hectare.”

3] The learned counsel for the appellant submits that the acquiring body has granted Rs.3,60,000/- per hectare. The learned counsel for the appellant submits that in terms of the order passed by this Court dated 05.01.2009 in the case of **Special Land Acquisition Officer** [supra], the lands are Bagayat lands and they have to be granted compensation at the rate of Rs.4,00,000/- per hectare.

4] The learned counsel for respondent no.2 – acquiring body has not disputed the fact that the lands are Bagayat and that the aforesaid judgment would also be applicable to the facts of the present case.

5] In view of the same, the Reference Court is directed to modify the award to the extent of Bagayat land and the appellant be granted compensation of Rs.4 lacs per hectare to the Bagayat land.

6] Remaining compensation and interest would be worked out accordingly by the Executing Court. Other statutory benefits would also be worked out by the Executing Court.

7] Award be modified accordingly. First Appeal is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC