

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

**FIRST APPEAL NO. 1984 OF 2015
FIRST APPEAL NO. 1985 OF 2015
FIRST APPEAL NO. 1986 OF 2015
FIRST APPEAL NO. 1987 OF 2015
FIRST APPEAL NO. 1988 OF 2015
FIRST APPEAL NO. 1989 OF 2015
FIRST APPEAL NO. 2000 OF 2015**

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FIRST APPEAL NO. 1984 OF 2015

Nanasaheb s/o. Sonyabapu Bhagat .. Appellant
Age. M years, major, Occ. Agriculture,
R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Special Land Acquisition Officer,
Aurangabad.
2. The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad.

**WITH
FIRST APPEAL NO. 1985 OF 2015**

- 1) Suresh s/o. Vishnu Ghaywat .. Appellants
Age. M years major, Occ. Agriculture,
R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.
- 2) Ramesh s/o. Vishnu Ghaywat,
Age. M years, major, Occ. Agriculture,

R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.

- 3) Satish s/o. Vishnu Ghaywat,
Age. M years, major, Occ. Agriculture,
R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.

Versus

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| 1. | The State of Maharashtra
Through Special Land Acquisition Officer,
Aurangabad. | .. | Respondents |
| 2. | The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad. | | |

**WITH
FIRST APPEAL NO. 1986 OF 2015**

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| 1) | Smt. Ashwini Ashokrao Punde
Age. 61 years, Occ. Housewife,
R/o. N-9, L-5/1, CIDCO, Aurangabad. | .. | Appellants |
| 2) | Anand s/o. Ashokrao Punde
Age. 32 years, Occ. Service,
R/o. As above. | | |
| 3) | Sou. Promodini w/o. Manav Dange
Age. 33 years, Occ. Service,
R/o. N-8, F-4, Plot No.19, CIDCO,
Aurangabad. | | |
| 4) | Sou. Shital w/o. Swapnil Sodegaonkar,
Age. 30 years, Occ. Housewife,
R/o. 9-1, Dashmeshnagar,
District – Aurangabad. | | |

Versus

1. The State of Maharashtra .. Respondents
Through Special Land Acquisition Officer,
Aurangabad.
2. The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad.

**WITH
FIRST APPEAL NO. 1987 OF 2015**

Mandabai w/o. Govind Nikam .. Appellant
Age. M years, major, Occ. Agriculture,
R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Special Land Acquisition Officer,
Aurangabad.
2. The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad.

**WITH
FIRST APPEAL NO. 1988 OF 2015**

Gorakhnath s/o. Vithal Ghaywat .. Appellant
Age. M years, major, Occ. Agriculture,
R/o. Chikatgaon, Taluka Vaijapur,
Dist. Aurangabad.

Versus

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| 1. | The State of Maharashtra
Through Special Land Acquisition Officer,
Aurangabad. | .. | Respondents |
| 2. | The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad. | | |

**WITH
FIRST APPEAL NO. 1989 OF 2015**

Vimalbai Harischandra Nikam Age. M years, major, Occ. Agriculture, R/o. Chikatgaon, Taluka Vaijapur, Dist. Aurangabad.	..	Appellant
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Versus

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| 1. | The State of Maharashtra
Through Special Land Acquisition Officer,
Aurangabad. | .. | Respondents |
| 2. | The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad. | | |

**WITH
FIRST APPEAL NO. 2000 OF 2015**

Tarabai w/o. Sheshrao Nikam Age. M years, major, Occ. Agriculture, R/o. Chikatgaon, Taluka Vaijapur, Dist. Aurangabad.	..	Appellant
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Versus

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| 1. | The State of Maharashtra
Through Special Land Acquisition Officer,
Aurangabad. | .. | Respondents |
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2. The Executive Engineer,
Irrigation Division, Zilla Parishad,
Aurangabad, District-Aurangabad.

Mr. D.A. Bide h/f. Mr. C.K. Sonawane, Mr. N.R. Thorat, Advocates for the appellants.

Mr. S.B. Pulkundwar, AGP for respondent No.1.

Mr. D.B. Pawar, Advocate for respondent No.2

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	13.09.2023
PRONOUNCED ON	:	09.11.2023

J U D G M E N T :-

01. Present group of matters is arising out of the same notification and the same acquisition proceedings and therefore is taken together and is being disposed off by a common judgment.

02. Heard learned Advocates for the parties.

03. The present appeals are filed seeking enhancement in the amount of compensation towards agricultural lands acquired for the project, namely, village tank at village Chikatgaon, Tq. Vaijapur, Dist. Aurangabad. A notification under section 4 of the Land Acquisition Act came to be issued on 19.01.2006. The award under section 11 came to be declared on 05.06.2008. It is case that lands were taken in possession on 02.05.2003 itself. The learned

Special Land Acquisition Officer (for short “SLAO”) in the award granted rate of Rs.915/- per R. The appellants/claimants filed respective award for enhancement. Following is the chart giving the details.

Sr. No.	First Appeal No.	LAR No.	Land Acquired	Gat No.	Enhancement granted by Reference Court.
1	1984/2015	521/2010	0 H 68 R	200	Rs.2244/- per R Dry land
2	1985/2015	144/2010	2 H 61 R	190	Rs.3366/- per R Irrigated land
3	1986/2015	519/2010	1 H 32 R	200	Rs.2244/- per R Dry land
4	1987/2015	520/2010	1 H 78 R	191	Rs.2244/- per R Dry land
5	1988/2015	522/2010	0 H 45 R	189	Rs.2244 per R Dry land
6	1989/2015	523/2010	1 H 97 R	191	Rs.2244 per R Dry land
7	2000/2015	141/2010	1 H 24 R	191	Rs.2244 per R Dry land

04. A common evidence was led in LAR No.144 of 2010 (First Appeal No.1985 of 2015) and same was adopted in all other references. It is case of the appellants that the learned Reference Court failed to appreciate the sale instance and thereby did not enhance the amount of compensation as prayed by the claimants. The learned SLAO had granted rate of Rs.915/- per R. The

notification was issued in 2006. The sale instance was of 04.03.2003. The Reference Court, however, did not grant enhancement of 15% per annum, while passing the award.

05. It is submission of the learned Advocate for the appellants that the sale instance was in respect of 78 R land from the same village, wherein the value was shown to be Rs.1,75,000/-. Taking the value of land of 17 R, the rate comes to Rs.2244/- per R. Considering rise of 15% the rate ought to have been given as Rs.2587/-. It is also a case of the appellants that in the land there was a well and the land ought to have been considered as an irrigated land, whereas the Reference Court granted compensation by considering the land as dry land except in LAR No.144 of 2010 (First Appeal No.1985 of 2015). The land ought to have been considered as irrigated land and thus the amount should have been granted double than the rate given to the dry land. It is submitted that even considering the rate of dry land at Rs.2244/-, considering 10% rise every year, the Reference Court ought to have granted the amount @ Rs.3142/- per R. It is, thus, submitted that the Reference Court has committed error by not granting 15% rise per year.

06. The learned Advocate for the respondents vehemently opposes the appeal submitting that the learned Trial Court has rightly considered the valuation of land. There is nothing on record to show that the lands were irrigated land. Though it is shown that there was a well in the land of Mr. Suresh Ghayawat (LAR No.144 of 2010), there is no evidence to show that he was taking the crops which require irrigation facilities round the year. In other cases also there is nothing to show that the lands were irrigated land. Merely having a well in the land is not sufficient to hold and accept that the land is irrigated land. He further submits that unless it is found that the award is wrongly passed by the learned Trial Court, no interference is required and prays for dismissal of the appeals.

07. This Court has called for the record and proceedings and considered the same. From the 7/12 extract, in LAR No.521 of 2010, in case of Nanasaheb, though it is seen that there is well in his land Gat No.200, however, the crop taken in the year 2004-05 is cotton, for 2005-06 there is crop of Bajra and Cotton. For the year 2006-07 he has taken crop of Bajra, Groundnut, Maize and Cotton.

. Coming to the 7/12 extract in case of Gorakhnath (LAR No.522 of

2010) the crops taken are as, 2004-05 – cotton, 2005-06 – cotton, 2006-07 – Bajra and Cotton.

. In LAR No.523 of 2010 in case of Vimalbai crops taken are 2004-05 – cotton, 2005-06 – Bajra, Cotton, Toor, 2006-07 – Bajra, Cotton, Jawar.

. In LAR No.141 of 2010 in case of Tarabai the crops taken are 2004-05 – cotton, 2005-06 – Bajra, cotton and toor, 2006-07 – Bajra, Cotton and Jawar.

. From this, it is clear that the lands do not appear to be irrigated land. There is no evidence produced of taking any crop like sugar-cane etc, which requires irrigation facilities.

08. Coming to the sale instance, it is seen that the land was sold by Savitrabai Nikam to Nirmalabai Nikam vide sale deed dated 04.03.2003 for an amount of Rs,1,75,000/-. This fact is not much disputed. Considering this value, the rate comes to Rs.2244/- per R.

09. The learned Advocate for the appellants in support of his case relied upon judgment in the cases of :-

(i) **Chinda Fakira Patil (D) through LRs.Vs. The Special Land Acquisition Officer, Jalgaon reported in (2012) AIR (SCW)**

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- (ii) **Krishi Utpadan Mandi Samiti Sahaswan District Badaun Vs. Bipin Kumar and Anr, reported in (2004) AIR (SCW) 533;**
- (iii) **Jage Ram (D) Thr. LRs. Vs. Union of India reported in (2017) ALL SCR 1070.**

09. In the case of **Chinda Fakira Patil (Supra)**, the Reference Court had considered the sale instance while determining the award by value of the land. The High Court, however, reversed the findings of the Reference Court and discarded the sale instance observing that there may be some special reason, the purchaser may have offered Rs.3 lakhs per hectare. The Hon'ble Apex Court set aside the observations of the High Court holding that the High Court committed error by not considering Exh.28 i.e. sale instance in that case.

10. In the case of **Krushni Utpadan Mandi (Supra)** the Hon'ble Apex Court considered that the increase of 15% per year in the value was rightly considered by the High Court. In that case the High court had granted 15% increase per year looking to the evidence of high potentiality of the land. In that case the increase of 60% was given for four years and same was not interfered by the Hon'ble Apex Court.

11. In the case of Jage Ram (Supra) the Hon'ble Apex Court considered the sale instance of the land as the same was having approximately similar dimension and the lands were situated in the same village. Said sale instance was relied upon by the claimants. The Hon'ble Apex Court in that case determined the value of the land relying upon said sale instance, in absence of any other reliable material on record.

12. Thus, this Court finds that the learned Advocate for the appellant has rightly relied upon the judgments cited above. Considering the ratio of the judgments, this Court finds that in the appeals, the only evidence that was produced was sale instance Exh.22 in LAR No. 144 of 2010. Looking to that this Court holds that 10% rise would be reasonable. Though in the case of Krishi Utpadan Mandi (Supra), it was taken as 15%, however, it was granted looking to the high potentiality of the land. In this case, there is nothing to show that there was high potentiality and thus 10% would be a reasonable rise. This Court, thus, holds that it is proved rate as per sale instance @ Rs.2244/- per R by adding 10% rise per year i.e. Rs.3142/- in all the appeals, except First Appeal No.1985 of 2015. In First Appeal No.1985 of 2015 the

Court has awarded rate of Rs.3366/- considering the land to be semi irrigated land, by adding 40% increase for four years, it would be Rs.4712/-. This Court, thus, holds that the appellants would be entitled to get Rs.3142/- (Rupees Three Thousand One Hundred Forty Two Only) per R in all the appeals except First Appeal No.1985 of 2015 and Rs. 4712/-(Rupees Four Thousand Seven Hundred Twelve Only) in First Appeal No.1985 of 2015 (LAR No.144 of 2010). The award be modified accordingly. The appellants shall be entitled to all other statutory benefits and interest accordingly on the enhanced compensation amount. The First Appeals are accordingly allowed and disposed off.

[KISHORE C. SANT, J.]