



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

First Appeal No. 587 of 2009
with
Cross Objection No. 60 of 2019

Maharashtra Industrial Development
Corporation having its office at
Marol Industrial Estate, Andheri East,
Mumbai and having its Regional
Office at By Pass Road, Amravati
through its Chief Executive Officer.

... Appellant

- Versus -

- (1) Atul Haribhau Pande
aged about 27 years,
- (2) Shri Abhishekh Haribhau Pande
aged about 23 years,
r/o Radha Nagar,
Amravati District
Amravati.
- (3) State of Maharashtra
Through Collector,
Amravati.
- (4) Sub-Divisional Officer
And Special Land
Acquisition Officer,
Amravati.

... Respondents

Mr. M. M. Agnihotri with Mr. Najeeb Sheikh and Mr. Parth Sagdeo,
Advocates for the appellant
Mr. K. S. Narwade with Mr. V. B. Bhise, Advocates for cross
objectors/respondent nos. 1 & 2
Mr. S. C. Joshi, AGP for the State/respondent nos. 3 and 4

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 31-01-2024

Date of pronouncing judgment : 07-02-2024

JUDGMENT

The appellant – original Defendant No. 3 has filed present appeal challenging award and decree dated 23-1-2009 and 3-2-2009 respectively passed by the Civil Judge Senior Division, Amravati in Land Acquisition Case No. 334/1999. The Respondent Nos. 1 and 2 were original claimants. Respondent Nos. 3, Collector, Amravati and Respondent No. 4, Land Acquisition Officer were original Defendant Nos. 1 and 2. The appellant will be hereinafter referred to as MIDC, Respondent Nos. 1 and 2 as claimants, Respondent No. 3 as Collector, Amravati and Respondent No. 4 as LAO. The claimants have also filed cross-objection under Order 41 Rule 22 of the Code of Civil Procedure seeking enhancement in compensation.

2. The acquired land bearing Survey No. 110 admeasuring 8.15 Hectare (HR) was situated at Nandgaon Peth, District Amravati. The notification under Section 32(2) of the Maharashtra Industrial Development Corporation Act (in short 'MIDC Act') was published on 2-6-1994. The LAO has passed award on 20-3-1997. LAO awarded Rs. 64,434/- for land admeasuring 2.92 HR, Rs. 47,956/- for the land admeasuring 4.32 HR and Rs. 1,500/- for the land admeasuring 0.85HR. The claimants filed reference vide Land Acquisition Case No. 334/1999 seeking enhancement in the compensation to the tune of

Rs. 2,50,000/- per HR for 2.92 HR and Rs. 1,00,000/- per HR each for 4.38 HR and Rs. 1,00,000/- per HR for 0.85 HR.

3. Since the claimants have sought two different rates, it is pretty obvious that the land under question has different status which I will comment upon little later. The reference Court, however, has granted uniform rate of Rs. 1,60,000/- per HR for the entire land admeasuring 8.15 HR.

4. The following sale instances were relied upon to assess the value of the land.

Exh.	Date	Sur. No.	Village	Area	Consideration	Rate Per HR
52	8-7-1996 (Post Notification)	4/2B	Pandharpur	1.79 A	3,30,000/- (Orange Trees - 500)	2,22,700/-
53	11-7-1997 (Post Notification)	159	Rustampur	0.30 R (0.3 HR)	3,65,000/- (Touching Highway & south-Nandgaon Motor stand)	1,21,666/-
54	28-11-1997 (Post Notification)	231/3	Mahuli	0.44 HR	1,37,000/-	2,80,000/-
55	17-9-1994 (Post Notification)	19/3 Gat No. 61	Netampur	2.8 A	1,32,000/-	47,142/-
56	28-12-1993	184/4	Nandgaopeth	2.28 A 0.89 R	1,84,000/-	1,99,349/-
57	28-11-1993	21/1 B	Narayanpur/ Wagholi	3.64 HR	4,40,440/-	1,21,000/-

As could be seen, four out of six sale instances (Exhibits 52 to 55) are post the date of publication of notice under Section 32(2) of MIDC Act and, therefore, will have to be ignored. The sale instance at Exhibits 56 and 57 indicate that rate of land per HR were Rs. 1,99,349/- and Rs. 1,21,000/-. These sale instances will have to be considered on the basis of the comparative nature of the location, suitability and marketability etc. of the acquired land.

5. Before I deal with the rival contentions, it will be appropriate to first consider the judgments cited by both the sides which in a way spell out the settled principles of law for assessment of value of lands acquired in the acquisition proceedings. The judgments cited by the appellant are as under :

(i) ***Cement Corpn. Of India Ltd. Vs. Purya and others [(2004)8 SCC 270]***, the Supreme Court held in paragraph no. 40 as under.

“40. Having settled the scope of Section 51-A of the LA Act as stated herein above, we will consider the facts in Civil Appeal No. 6986 of 1999. In this appeal originally the Land Acquisition Officer awarded Rs. 3707/- per acre for the acquired land. On reference being made by the claimant, the Reference Court enhanced the said compensation to Rs. 8,000/- per acre which was challenged by the beneficiary of the acquisition before the High Court in a writ petition which was allowed and the matter was remanded back for fresh disposal to the Reference Court. Before the Reference Court, the respondent

herein produced two certified copies of two sale transactions which were marked as Exts. P-1 and P-2. The Reference Court, however, refused to place reliance on the said documents on the ground that the contents of the said document were not proved. Hence, it rejected the reference. Being aggrieved by the said order, the respondents claimants preferred an appeal before the High Court, the High Court disagreeing with the reference court relied on the contents of Exts. P-1 and P-2 and enhanced the compensation to Rs.15,000/- per acre. While doing so, the High Court proceeded merely on the contents of Exts. P-1 and P-2 and did not take into consideration the other evidence available on record in regard to the comparative nature of the land, location of the land, the market potentiality of the land etc. and fixed the compensation on an arithmetic calculation based on the value found in Exts. P-1 and P-2. We do not think this is the correct approach. While it is true the contents of Exts. P-1 and P-2 should be looked into as evidence produced by a party the evaluation of such evidence should be made taking into consideration other evidence if available on record like other sale transactions that may be produced, the comparative nature of the location, suitability, marketability etc. to fix the market value of the land acquired. Since such a comparative examination of the evidence has not been made by the High Court in the above appeal, even though there was material available on record, we think it proper that the impugned judgment in the above appeal be set aside and the matter be remanded to the High Court for consideration in accordance with law laid down and the directions given in this case. Accordingly, this appeal succeeds to the extent stated herein above.”

(ii) ***Shaji Kuriakose and another Vs. Indian Oil Corpn. Ltd. and others***

[(2001) 7 SCC 650], the Supreme Court held in paragraph no. 3 as under.

“3. It is no doubt true that courts adopt Comparable Sales Method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as Capitalisation of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in open market at the time of issue of notification under Section 4 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down" inter alia are : (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, that (3) the land covered by the sales must be in the vicinity of the acquired land, that (4) the land covered by the sale must be similar to the acquired land and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ext. A-4 is genuine, inasmuch as sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ext. A-4. The land covered by Ext. A-4 is situated at

Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlong from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ext. A-4 is a dry land and whereas the acquired land is a wet land. After acquisition, the acquired land has to be re-claimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ext. A-4 relates to a small piece of land which do not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation than what was the market value of the land covered by Ext. A-4. We therefore, do not find any infirmity in the judgment of the High Court.”

(iii) ***Basant Kumar and others Vs. Union of India and others [(1996) 11 SCC 542]***, the Supreme Court held in paragraph no. 5 as under.

“5. Shri N.C. Jain, the learned senior counsel appearing for the appellants, contended that in RFA No. 55/70 Raghuvir Singh v. Union of India arising out of the same notification, another Division Bench of the High Court had determined the compensation at the rate of Rs. 8700/- per bigha and less Rs. 500 per bigha for the notified lands; and similar was the view taken by another Bench of that Court in LPA No. 137/80 and batch decided on 19-4-1991 titled Chet Ram v. Union of India. All these lands being situated in the same village, the appellants are also entitled to the same rate of compensation. The Union of India had not filed any appeals against those cases. The lands are possessed of same potential value and, therefore, the appellants are entitled to the same compensation. We had adjourned the case on the last occasion, as no one appeared for the Union of India; Since, even today, no one is appearing for the Union of India, we have taken assistance of

Shri Jain and have waded through the entire material evidence. The question is: whether the appellants are entitled to the same compensation as was determined by the High Court in the appeals arising out of Raghubir Singh's case and Chet Ram's case? It has been firmly settled law by deed role of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the arm chair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and to the same extent. This test should always be kept in view and answer affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to sway, he out steps his domain of judicial decision and lands in misconduct amenable to disciplinary law. We have gone through the record and judgments in Chet Ram's case and Raghuvir Singh's case decided by the two Division Benches. The learned Judges have adopted the principle that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis. The principle is wholly unsustainable in law and cannot be a valid ground for determination of compensation. It is common knowledge that even in the same village, no two lands command same market value. The lands abutting main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for same kind of land. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value; It is common knowledge that the lands in the village spread over the vast extent. In this case, it is seen that land is as vast as admeasuring 1669 bighas, 18 biswas of land in the village. So, all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market value and the Court should adopt realistic standards and pragmatic approach in evaluation of the evidence. No doubt,

each individual had different parcels of the land out of that vast land. If that principle is accepted, as propounded by the High Court, irrespective of the quality of the land, all will be entitled to the same compensation. That principle is not the correct approach in law. The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not good principle acceptable for the aforesaid reasons when both the lands are proved to be possessed of same advantages, features etc., then only equal compensation is permissible.”

(iv) **Sindhu s/o Jaiwanta Jare Vs. State of Maharashtra [2018(5)**

Mh.L.J. 384], this Court held in paragraph nos. 12 and 13 as under.

“12. As mentioned above, there were no cogent and reliable evidence on record to show that the lands of the appellants under acquisition were Bagayat – irrigated lands. The Wells from the acquired lands except Gut No. 304, as discussed above, were not under acquisition. Moreover, mere existence of Wells in rest of the portion not under acquisition of acquired lands, would not itself sufficient to conceive that the acquired lands were Bagayat - irrigated lands.

13. In view of aforesaid Chimanlal's case (supra), it was obligatory for the appellants-claimants to adduce some sort of positive evidence to establish that the lands under acquisition were irrigated, fertile lands. Unfortunately, except bare version of the appellants-claimants on record no any other credible and dependable evidence available to prove that the lands under acquisition were Bagayat – irrigated lands. The conclusion drawn by the Reference Court that the acquired lands were Jirayat (dry) lands found justifiable, considerable and liable to be upheld.”

(v) This Court in ***First Appeal No. 866/2013 (V.I.D.C. Vs. Nani Balwantrao Kadu and ors.)*** held in paragraph no. 9 as under.

“9. The counsel for the petitioner has relied upon judgment of Coordinate Bench of this court in the case of ***Sidhu s/o Jaiwanta Jare Vs. State of Maharashtra***, reported in ***2019 (5) Mh.L.J. 384***, wherein the court held that mere existence of well would not itself be sufficient to conceive that the acquired lands were irrigated lands.”

(vi) ***Surender Singh Vs. State of Haryana and others [(2018) 3 SCC 278]***, the Supreme Court held in paragraph no. 28 as under.

28. *In our considered opinion, the approach of the High Court in the facts of these cases does not appear to be right inasmuch as the High Court failed to take into consideration several material issues which arose in these cases and had a bearing on determination of the fair market rate of the land in question under Section 23 of the Act.*

28.1. *First, the acquired land, in these cases, was a huge chunk of land measuring around 520 acres, 2 kanals and 13.5 marlas.*

28.2. *Second, the entire acquired land was not situated in village Kasan but it was spread over in 15 villages as detailed above.*

28.3. *Third, there is no evidence to show much less any finding of the High Court as to what was the actual distance among the 15 villages against one another, the location, situation/area of each village, whether any development had taken place and, if so, its type, nature and when it took place in any of these villages, the potentiality and the quality of the acquired land situated in each village, its nature and the basis, the market rate of the land situated in each village prior to the date of acquisition or in its near proximity, whether small piece*

of land or preferably big chunk of land, the actual distance of each village qua any other nearby big developed city, town or a place, whether any activity is being carried on in the nearby areas, their details.

28.4. Fourth, whether the acquired land in Pran Sukh in Village Kasan and the acquired land in question are similar in nature or different and, if so, how and on what basis, their total distance etc.

(vii) The coordinate Bench of this Court in the case of ***Western Coalfields Ltd., Chandrapur Vs. Subhash Dhondopant Deshmukh and ors. [2010(3) Mh.L.J. 156]*** held that while determining the value of land, there cannot be any comparison of the land which have no benefit of the river at all as against the land situated on the bank of river.

6. I have gone through the aforesaid judgments. The law on assessing value of land acquired under the land acquisition proceedings is well settled. While fixing the market value of the acquired land, comparable sale method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification under Section 4 of the Land Acquisition Act or

under Section 32(2) of the MIDC Act. The parameters on comparison have been culled down as under.

- (1) The sale must be a genuine transaction.
- (2) The sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Land Acquisition Act or 32(2) of the MIDC Act.
- (3) The land covered by the sale must be in the vicinity of the acquired land.
- (4) The land covered by the sales must be similar to the acquired land.
- (5) The size of plot of the land covered by the sales be comparable to the land acquired.
- (6) If there is a dissimilarity in regard to locality, shape, size or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon disadvantages attached with the acquired land.

7. The law on valuation is further crystallized as follows :

- (a) The Judge determining the compensation under the provisions of the Land Acquisition Act should sit in the armchair of a willing prudent purchaser in an open market and see whether he would offer

the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land.

(b) The Court cannot adopt principle that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis because in the same village, no two lands command same market value. For instance, the lands abutting the main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for the same kind of land.

(c) The burden is always on the claimant to prove market value and the Court should adopt realistic standards and pragmatic approach in evaluation of the evidence.

(d) The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not a good principle.

(e) The evaluation of surrounding circumstances and some guess work is permissible while calculating the market price of the lands under acquisition.

(f) Mere existence of Well would not itself be sufficient to conceive that the acquired lands were irrigated lands. The claimants are under obligation to adduce some sort of positive evidence to establish that the lands under acquisition were irrigated, fertile lands.

8. In the light of above, the challenge to the assessment of valuation of the acquired land done by the reference Court will have to be considered. The reference Court noted the sale instances, Exhibits 52 to 57 relied upon by the claimants. As stated earlier, sale instances at Exhibits 56 and 57 could only be considered being prior to and in proximity with the date of notification under Section 32(2) of the MIDC Act. Exhibit 56 is Index No. II of the land situated at Nandgaonpeth and Exhibit 57 is award passed in respect of the land situated at Narayanpur Wagholi. Exhibit 56 indicates that the land admeasuring 2 Acres 28 Gunthas was sold for Rs. 1,84,000/-, meaning thereby that the rate per hectare were Rs. 1,99,349/-.

9. The Court then considered the argument of the claimants that the LAO has not considered the value of Orange trees and other trees standing on the disputed land but took note of the fact that the claimants have not led any evidence that valuation of trees was not properly worked out by the LAO. The Court took note of the fact that the claimants have not examined any expert witness or produced report of valuation to show that the LAO has committed error. The claimant admitted that he has taken dry crop on land in dispute. The claimant further admitted that Orange trees standing in the acquired land were aged three years. He has admitted that the land admeasuring 3 to 4

Acres (should be 2 Acres) is covered by nullah and is not useful for cultivation, being *potkharab* land. Accordingly, the reference Court declined to award Rs. 2,50,000/- per hectare as compensation but awarded uniform rate of Rs. 1,60,000/- per hectare.

10. Mr. M. M. Agnihotri, learned counsel for the MIDC has invited my attention to the 7/12 extract, Exhibit 50 and the evidence of claimants. The 7/12 extract indicates that in the year 1991-92, the claimants have taken various crops, of which 6.90 Acre land was unirrigated. The land admeasuring 1.25 HR was not available for sowing. In the year 1992-93, the claimants have taken various crops, of which 3.46 Acres land was unirrigated and 2.82 Acres was irrigated.

11. It is worth mentioning here that in the year 1991-92, there is no entry of existence of Orange trees. The said entry finds place for the first time in the year 1992-93. The Orange trees have been sown in the area admeasuring 1.62 Acres which is shown under irrigated land. At this stage, it will be appropriate to refer to the cross-examination of the claimant. He admits that in the year 1991-92, the field was measured. A case was then put up by MIDC that he has managed the entry of Orange trees in 7/12 extract, Exhibit 50, which has been denied.

12. In my view, there are two obvious things to be noted. First is that in the year 1991-92, the land admeasuring 6.90 Acres has been shown under the head of unirrigated land and 1.25 Acres has been shown as not available for sowing. In the year 1992-93 i.e. after taking measurement of the field, the Orange trees were sown in 1.62 HR. In addition, other crops were taken and for the first time 2.82 Acres is shown under irrigation. There is no entry of Well against the year 1991-92. The said entry is reflected against the year 1992-93. These entries coupled with the admission of claimant that the field was measured in the year 1991-92 is a clear reflection of change of status of the land.

13. This status will be further cemented from the fact that the claimants have also placed on record 7/12 extract, Exhibit 49 obtained on 14-10-1992. The extract reflects the crops taken by the claimants in the year 1991-92. There is no mention of existence of Well. Thus, it is evident that Well has been excavated and Orange trees have been sowed subsequent to taking measurement of the field by the MIDC. There is, thus, every reason to believe that this attempt has been made to get enhanced compensation.

14. Thus, overall picture that emerges from 7/12 extracts, Exhibits 49 and 50 coupled with evidence of claimant is that in the year

1991-92, the claimants have taken multiple crops in an unirrigated land admeasuring 6.90 Acres. The land admeasuring 1.25 Acres was not available for sowing and was covered by nullah. In the year 1992-93, the claimants have taken multiple crops in an unirrigated land admeasuring 3.46 Acres and in irrigated land admeasuring 2.22 Acres, the land admeasuring 1.05 Acres was not available for sowing. The Orange trees were sowed in the land admeasuring 1.62 Acres in the year 1992-93 and the Well was excavated in the same year. The claimant has admitted in cross-examination that 2 Acres land was covered by nullah. This 2 Acres land, therefore, can be said to be not available for sowing. This status will have to be kept in mind while assessing market value of the acquired land.

15. Learned counsel for the respondents has invited my attention to judgment passed by the Supreme Court in the case of ***Chindha Fakira Patil (dead) through LRs. Vs. Special Land Acquisition Officer, Jalgaon [(2011) 10 SCC 787]*** wherein in paragraph 21, the Supreme Court observed as under.

“21. When it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the land was not irrigated and, in our view, there was no valid reason for the High Court to interfere with the finding recorded by the Reference Court that parts of the lands were bagayat and

for such land they were entitled to compensation @ 6 lakhs per hectare.”

Thus, the Supreme Court in the peculiar facts and circumstances held that the findings recorded by the reference Court that parts of the lands were *bagayat* could not have been interfered with by the High Court. The Supreme Court has not laid down a ratio that mere existence of Well will make the land irrigated.

16. To my mind, mere entry of existence of Well in 7/12 extract is not and cannot be a proof of existence of water in the Well as also the sufficiency of water to irrigate the entire land. When the existence of Well is shown in 7/12 extract with the entry of crops under the head of an unirrigated land, the document will have to be read as a whole meaning thereby that though there exists a Well, the land is unirrigated. At the same time, if the 7/12 extract indicates that some crops were taken under the head of irrigated land, the area of land shown under the said column should be treated as irrigated land. Thereafter and depending on the facts of the case as to which portion out of the two lands, viz. irrigated or unirrigated land has been acquired, the market value of the land should be determined. In such situation, the value of the land will have to be ascertained from the perspective of the purchaser. For illustration, if out of 10 acres land, the purchaser

intending to purchase 5 acres, which do not include Well, will only offer market rate for unirrigated land. In a given case, even if, the land with Well is to be purchased, the purchaser will definitely consider the quantum of water available in Well and will accordingly offer the sale consideration. In land acquisition cases, however, if the land is irrigated and part of land is acquired, the compensation will have to be paid for irrigated land. At the same time despite having a Well, if the entire land is not irrigated, the unirrigated land will have to be considered as dry crop land, which fact shall depend on crops taken by the land owner. In the circumstances, mere existence of Well cannot be said to be a proof of irrigated land. The argument made by the claimants is, therefore, without any substance.

17. Learned counsel for the claimants then submits that there were 527 Orange trees. The LAO has awarded only Rs. 36,457/- for these trees. According to the claimants, the LAO has not taken instructions from Agricultural Officer and has mechanically decided the price of the trees. He has then invited my attention to the judgment passed by this Court in First Appeal No. 143/2008. Admittedly, the notification under Section 32(2) of the MIDC Act has been published on 2-6-1994. The land has been thus acquired under the same notification and the valuation has been made in the same award dated 20-3-1997.

There were around 1600 Orange trees and 7000 teak trees. There was evidence that land was irrigated. The sale instances were then considered and accordingly, the reference Court granted rate of Rs. 3,00,000/- per hectare which was maintained by this Court. Thus the land was irrigated and hence the rate.

18. Learned counsel for the claimants has then invited my attention to the judgment passed by coordinate Bench in First Appeal No. 729/2008. This land was situated in Village Nandgaon Peth. The Court considered that the land having been situated near Nagpur - Amravati Highway and has also fruit bearing trees, the Court maintained the findings of the reference Court granting compensation at the rate of Rs. 1,50,000/- per hectare.

19. The next judgment cited is of the coordinate Bench in First Appeal No. 1077/2007. The land was also situated in Nandgaon Peth. The LAO has awarded Rs. 1500/- per hectare being *padik* land. This land is also covered by the same notification and award as in the present case. The reference Court has enhanced the rate to Rs. 1,20,000/- per hectare. The land was admeasuring 0.76 R. The Court then considered sale instance on the basis of index wherein the land admeasuring 1.09 HR was sold for Rs. 1,89,000/- per hectare. The sale deed was executed 15 days prior to notification and accordingly,

confirmed the findings of reference Court granting compensation at the rate of Rs. 1,20,000/-.

20. Learned counsel for the claimants, on the basis of aforesaid judgments submits that this Court in various first appeals has confirmed the rate of unirrigated land at Rs. 1,20,000/- per hectare and, therefore, this Court may not reduce rate any further. Accordingly, he submits that for irrigated land, the claimants will be entitled to double the rate of unirrigated land. Thus, he submits that irrigated land will fetch Rs. 2,50,000/- per hectare and the unirrigated land as also the land which was not available for sowing would fetch Rs. 1,20,000/- per hectare.

21. As against, Mr. Agnihotri, learned counsel for MIDC submits that the reference Court has not assigned any reason for granting uniform rate of Rs. 1,60,000/- per hectare to entire land. He further submits that status of land as reflected in 7/12 extract coupled with evidence will have to be considered by bifurcating the lands in three categories, namely, irrigated land, unirrigated land and *potkharab* land (land not available for sowing).

22. I am in complete agreement with the submissions put forth by the learned counsel for the MIDC.

23. There is clear evidence that acquired land has three different potentials. Some part is irrigated, some part is unirrigated and the remaining is *potkharab*. The evidence show that in the year 1991-92, there was no irrigation facility available and, therefore, the crops were taken in an unirrigated land admeasuring 5.90 Acres. Remaining 2 Acres is/was potkharab land being covered by nullah. This status has been changed in the year 1992-93. The Well has been constructed. Orange trees have been sowed. The crops have been taken in irrigated and unirrigated land. The Orange trees have been planted in the land admeasuring 1.62 Acres. Multiple crops were taken in the land admeasuring 3.46 Acres unirrigated and 2.82 Acres irrigated land (including 1.62 Acres for Orange trees), 2 Acres was not available for sowing.

24. The LAO, considering the age of saplings of Orange trees, has awarded an amount of Rs. 36,457.18. In my view and in absence of any evidence contrary to assessment so made by LAO and further considering the fact that land was acquired sometimes in the year 1997, I do not find this approach to be erroneous. Similarly, the LAO has awarded an amount of Rs. 47097/- for construction of Well. This compensation will have to be certified because there is no evidence contrary to what has been awarded by the LAO. The reference Court

has not really commented upon the valuation of the trees and the construction cost of the Well. Nonetheless, the challenge made by the claimants is found to be without merit for the reasons stated above.

25. Then, comes the assessment of the land. The LAO has considered land admeasuring 2.92 HR as irrigated, land admeasuring 4.38 HR as unirrigated and land admeasuring 0.85 HR as potkharab (being covered by nullah). In my view, if the land is covered by nullah, it will not fetch amount equivalent to land which is unirrigated or irrigated. Nonetheless, this land can be utilized for other purposes like storage of water by making appropriate arrangements and for ancillary business etc. This portion of land should therefore yield half of the rate of an unirrigated land.

26. As regards unirrigated land, considering various judgments cited by the claimants awarding compensation at the rate of Rs. 1,20,000/- per hectare for the land situated at Nandgaon Peth, one of which is situated near acquired land and since multiple crops were taken by claimants, in my considered view, the said rate may be granted for unirrigated land admeasuring 4.38 HR.

27. So far as the irrigated land is concerned, it is well settled that such land will attract double the price of unirrigated land.

However, and considering the fact that the status of land has been changed subsequent to taking measurement viz. land which was unirrigated in the year 1991-92 has been converted into irrigated in the year 1992-93, the claimants will not be entitled to double the rate of irrigated land, instead I propose to enhance it by $1\frac{1}{2}$ times; meaning thereby that the claimants are entitled for the rate of Rs. 1,80,000/- per hectare for 2.92 HR irrigated land.

28. Put all together the claimants will be entitled for the rate of Rs. 1,80,000/- per hectare for 2.92 HR irrigated land, Rs. 1,20,000/- per hectare for 4.38 HR unirrigated land and Rs. 60,000/- per hectare for 0.85 HR *potkharab* land. In addition, the claimants are entitled for amount of Rs. 36458/- for Orange trees and Rs. 47097/- for the construction of Well. Accordingly the award will have to be modified.

29. The claimants and the MIDC were both aggrieved by the uniform assessment made by the reference Court. The claimants sought enhancement in the rate, whereas the MIDC sought reduction. As could be seen, the rate has been enhanced from Rs. 1,60,000/- to Rs. 1,80,000/- per hectare for land admeasuring 2.92 HR and has been reduced for the remaining land which is a larger portion of land. Thus overall effect will be reduction in compensation amount. In that sense,

the appeal is partly allowed and cross objection is dismissed. Hence, following order.

ORDER

- (i) The appeal is partly allowed. Cross objection is dismissed.
- (ii) The claimants are entitled for compensation at the rate of Rs. 1,80,000/- per hectare for land admeasuring 2.92 HR, Rs. 1,20,000/- per hectare for the land admeasuring 4.38 HR and Rs. 60,000/- per hectare for the land admeasuring 0.85 HR. In addition to above, the claimants are entitled for an amount of Rs. 36,458/- for Orange trees and Rs. 47097/- for the construction of Well.
- (iii) Rest of award stands intact.
- (iv) With the aforesaid modifications, the appeal and cross objection is disposed of.
- (v) Decree be drawn accordingly.

(Anil L. Pansare, J.)