IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3062 OF 2019

1. The Executive Engineer,
Nimna Terna Project (Canal)
Division No.2, Latur
District Latur
Through
Satyawan s/o Namdeorao Bachpalle
Age 56 years, Occ. Service as
Sub -Divisional Engineer,
At Sakol Medium Project Sub Division
Walandi, District Latur (Ori. R. No.2)

2. The State of Maharashtra
Through – The Collector, Latur (Ori. R. No.1)

3. The Special Land Acquisition Officer (Ori. R. No.3)
Swarna Project, Latur ...Appellants

Versus

Bhausaheb Pandhari Rautrao
Age 38 years, Occ. Agriculture
R/o. Chikalthana, (Ori. Claimant)
Tq. and district Latur ...Respondent

AND
FIRST APPEAL NO. 3063 OF 2019

1. The Executive Engineer,
Nimna Terna Project (Canal)
Division No.2, Latur
District Latur
Through
Satyawan s/o Namdeorao Bachpalle
Age 56 years, Occ. Service as
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2. The State of Maharashtra

Through – The Collector, Latur (Ori. R. No.1)

3. The Special Land Acquisition Officer (Ori. R. No.3)
Swarna Project, Latur ...Appellants

Versus

Prabhavati w/o Limbraj Patil
Age 65 years, Occ. Agriculture
R/o. Chikalthana, (Ori. Claimant)
Tq. and district Latur ...Respondent

AND
FIRST APPEAL NO. 3064 OF 2019

1. The Executive Engineer,
Nimna Terna Project (Canal)
Division No.2, Latur
District Latur
Through
Satyawan s/o Namdeorao Bachpalle
Age 56 years, Occ. Service as
Sub -Divisional Engineer,
At Sakol Medium Project Sub Division
Walandi, District Latur (Ori. R. No.2)

2. The State of Maharashtra
Through – The Collector, Latur (Ori. R. No.1)

3. The Special Land Acquisition Officer (Ori. R. No.3)
Swarna Project, Latur ...Appellants

Versus

1. Ramesh Narayan Jadhav
Age 46 years, Occ. Agriculture

2. Dattatraya Narayan Jadhav
Age 41 years, Occ. Agriculture
Both R/o. Chikalthana, (Ori. Claimants)
Tq. and district Latur ...Respondents

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Mr. Shyam C. Arora, advocate for the appellant No.1
Mr. B.B. Bhise, A.G.P. for appellant Nos. 2 and 3

Mr. N.D. Kendre, advocate for respondents

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AND
FIRST APPEAL NO. 765 OF 2022

1. Ramesh Narayan Jadhav
Age 54 years, Occ. Agriculture

2. Dattatraya Narayan Jadhav
Age 49 years, Occ. Agriculture
Both R/o. Chikalthana, ….Appellants
Tq. and district Latur (Ori. Claimants)

versus

1. The State of Maharashtra
Through the Collector, Latur
district Latur

2. The Special Land Acquisition Officer
Swarna Project, Latur
District Latur

3. The Executive Engineer,
Nimna Terna Kalva Vibhag No.2
(Medium Project, Division No.2)
Latur District Latur ...Respondents

…..

AND
FIRST APPEAL NO. 766 OF 2022

Prabhavati w/o Limbraj Patil
Age 74 years, Occ. Agriculture
R/o. Chikalthana, ...Appellant
Tq. and district Latur (Ori. Claimants)

versus

1. The State of Maharashtra
Through the Collector, Latur
district Latur

2. The Special Land Acquisition Officer
Swarna Project, Latur

District Latur

3. The Executive Engineer,
Nimna Terna Kalva Vibhag No.2
(Medium Project, Division No.2)
Latur District Latur ...Respondents

…..

AND

FIRST APPEAL NO. 767 OF 2022

Bhausaheb s/o Pandhari Rautrao
Age 46 years, Occ. Agriculture
R/o. Chikalthana, ...Appellant
Tq. and district Latur (Ori. Claimants)

versus

1. The State of Maharashtra
Through the Collector, Latur
district Latur

2. The Special Land Acquisition Officer
Swarna Project, Latur
District Latur

3. The Executive Engineer,
Nimna Terna Kalva Vibhag No.2
(Medium Project, Division No.2)
Latur District Latur ...Respondents

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Mr. N.D. Kendre, advocate for appellants
Mr. B.B. Bhise, A.G.P. for appellant Nos. 1 and 2
Mr. Shyam C. Arora, advocate for the appellant No.3

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CORAM : SANJAY A. DESHMUKH, J.
DATE OF RESERVING THE JUDGMENT : 06.01.2025
DATE OF PRONOUNCING JUDGMENT : 04.04.2025

JUDGMENT:-

1. The first appeal Nos. 3062 of 2019, 3063 of 2019 and 3064

of 2019 are preferred by the acquiring body and the State of Maharashtra against the common judgment and award dated 31st October, 2017, delivered by the learned Reference Court in L.A.R. Nos. 117 of 2012, 121 of 2012 and 122 of 2012, whereas the first appeal Nos. 765 of 2022, 766 of 2022 and 767 of 2022 are filed by the claimants against the same common judgment and award. Since the lands in question and the Land Acqusition References are decided commonly, all these appeals are tagged together and are being disposed of by this common judgment.

2. The L.A.R. Nos. 117, 121 and 122 of 2012 were moved under Section 18 of the Land Acquisition Act, 1894 (for short the "LA Act") for enhancement of compensation amount. All those land references arose out of one and the same land acquisition process in respect of the agriculture lands situated in village Chikalthana, Tq. and district Latur vide Government notification under section 4 of LA Act, as per the following chart.

Sr. No.	**Name of claimants**	**L.A.R. No.**	**Block No.**	**Area acquired**	**Total compensation paid by L.A.O. per R**	**Awarded by Reference Court per R**
1	Bhausaheb Rautrao	122/12	131	44 R	2,66,997/-	13,610/-
2	Prabhavati Patil	117/12	131	0 H 23 R	1,49,002/-	13,610/-
3	Ramesh Jadhav and Dattatraya Jadhav	121/12	116	0 H 55 R	4,27,815/-	13,610/-

3. Those lands were acquired for the public purpose i.e. submergence of Khulgapur Upper level dam at village Chikalthana, Taluka and District Latur. The declaration under Sections 4 and 5 of the LA Act came to be published on 19.06.2009.

4. The claimants claim in short is as under:-

The claimants' grievance is that the acquired agriculture lands are situated at village Chikalthana, Tahsil and district Latur at bank of Manjara river having black rich cotton soil with depth of more than 80 feet. Those lands were having water facility through river Manjara. They used to cultivate those lands by getting water by pipeline from that river Manjara. The village Chikalthana is 8 kilometers away from Latur city. There is State highway at half kilometer away which passes from Latur to Nanded. The Latur city is developing towards the acquired lands. Moreover, agricultural college, agricultural university center are 5 kilometers away from the acquired lands. There are hotels, workshops, warehouses, big godowns, automobile show rooms, service centers etc. near to the said lands. There is solvent extraction oil plant. There are other commercial developments. Modern horticulture and floriculture centers are developed in that area and vicinity. There is railway station at village Bhatangali having broad-gauge between Latur to Hyderabad, which is two kilometers away from acquired land. The acquired lands are having N.A. potentiality for residential, commercial and modern developments. There are surrounding villages such as Bhatangali, Kasarkheda, Chikalthana, Kolpa and Bhatkheda, are within the vicinity of those lands and have scope for development.

5. It is also the case of the claimants that their lands are perennial irrigated lands. They were harvesting commercial crops, such as Sugarcane, Banana, Chilly, Paddy, Rabbi Jawar, vegetables etc. The acquired lands were capable of cultivating double crops i.e. rainy and winter season crops. The claimants were getting handsome income from the said lands, which are situated within the command area of four sugar factories. It is contended that the population of the said village was having more than 4000 at the time of acquisition. At village Bhatangali, there is Government Rural Hospital, which is adjacent to those acquired lands. There were facilities viz. telephone, school, bus-stand, veterinary hospital at Bhatkheda. There is post office, Gram Panchayat office, society etc. There are private as well as public buildings, temples within the vicinity of the said village. There is State Highway between Latur to Beed via Kolpa, which is only one and half kilometers away from the acquired lands. There is ring road which is one kilometer away from the said lands. The Government through the CIDCO declared the schemes of developments of Latur city in the vicinity of acquired lands.

6. The claimants further contended that the S.L.A.O. has ignored the above vital aspects and awarded the compensation of Rs.2720/- per Are. According to the claimants, the said compensation is grossly inadequate. According to the claimants, price of the acquired land is Rs.87,500/- per Are and the claimants claimed enhancement of compensation accordingly with respect to the lands, trees, pipeline and also claimed other statutory benefits.

7. The respondents by their written statement Exh.9 and 11 denied the material contentions raised by the claimants in their claim petitions. It is not disputed that the lands were acquired by the respondents. It is contended that the said lands are having medium type of quality and claimants were cultivating those only in Kharip season (rainy crops). According to the respondents there is no permanent source of water for irrigating those lands. The material facts that the said lands are of rich black cotton soil having huge depth and those were irrigated are denied. The respondents also denied the fertility and potentiality of the acquired lands.

8. The respondents-acquiring body further contended that they visited the site and verified the spot. They conducted enquiry and fixed the proper, adequate and reasonable price of the acquired lands. The compensation amount was fixed on the basis of sale

instances and considering the assessment of the land revenue. It is specifically denied that the possession of the acquired lands was taken by the private negotiations. It was lastly prayed to dismiss the claim petitions with other statutory benefits.

9. The learned Reference court framed five issues and held that the compensation awarded by the L.A.O. was inadequate. It also held that the market price of the acquired land was Rs.13,610/- per Are. Lastly, the references were allowed by granting compensation at the rate of Rs.13,610/- per Are.

10. Learned advocate for the acquiring body submitted that the amount of compensation awarded by the Reference court is not legal and correct. He submitted that the evidence is not properly appreciated and huge amount of compensation is awarded against the provisions of law and principles of natural justice. It is lastly prayed to dismiss the appeals filed by the claimants and allow the appeals filed by the acquiring body and the State Government by setting aside the impugned common judgment. It failed to consider entire evidence on record in its proper perspectives. The impugned common judgment is to be set aside.

11. The learned advocate for the claimants pointed out the oral and documentary evidence adduced by the claimants and prayed to

allow the appeals filed by them by enhancing the amount of compensation.

12. Learned A.G.P. for the respondents/State submitted that the amount of compensation granted by the reference court is reasonable amount. It is in accordance with the evidence on record. Learned A.G.P. for the respondent State further submitted that the reasoned awards were passed against which the references were preferred.

13. The following point emerged for consideration:-

(1) Is impugned common judgment and award illegal, incorrect and requires interference ?

14. The admitted facts are that in the reference case of LAR (G) No.122 of 2012 the amount of compensation at the rate of Rs.13,610/- per R was awarded.

15. This Court has perused the pleadings and entire evidence of both the sides.

16. The claimants have relied upon the documents particularly the awards passed by the LAO at Exh.22, in which all block numbers of the claimants which were acquired alongwith the area are mentioned.

The claimants have also relied upon the award, E-statement at Exh.23.

17. Claimant/CW 1 Bhausaheb Rautrao adduced evidence by filing his affidavit in support of his claim at Exh.28 and reiterated the material contentions as per claim petition. The claimants have relied upon the receipt of payment made at Exh.57 and 58, the claimants have relied upon the receipt of payment of land revenue at Exh.48 to 59. They have also relied upon the certificate issued by the Executive Director of Manjara Shetkari Sahakari Sakhar Karkhana Limited and the details of the supply of the sugarcane at Exh.63 to 65, the letter issued to Bhausaheb Rautrao by the said sugar factory at Exh.66 and 67, the registration of sugarcane crop for Manjara Sugar Factory Exh.68, the bills for supply of sugarcane Exh.69 and 70, the bills of A.P.M.C. Latur Exh.71 to 76, copy of claim made by one Prabhawatibai Patil in L.A.R. office in L.A.R. proceeding of 2007L.A./Swarna/CR/14 at Exh.77, notice issued to Bhausaheb Rautrao by the acquisition authority under Section 9 of the LA Act 1894 at Exh.78, the communication for spot inspection along with its report is at Exh.79, copy of notice under Section 12(2) of the LA Act 1894 is at Exh.80, the papers of receiving of the amount of compensation at Exh.81 to 83, the sale deeds of the said property at Ex.84 to 86, the 7x12 extract of agriculture land of claimant

Bhausaheb Rautrao is at Exh.87, the 7x12 extract of Ramesh Jadhav and Dattatraya Jadhav is at Exh.88, the 7x12 extract of Prabhavatibai Patil Exh.89, the map of village Chikalthana district Latur is at Exh.90, the draft development map notified fringe area alongwith common measurement report is at Exh.91, the bills of M.S.E.B. Exh.95 to 97, the 7x12 extract of the land of claimant Bhausaheb Rautrao at Exh.98, Prabhavatibai Patil a Exh.99, Ramesh Jadhav and Dattatraya Jadhav Exh.100, the State Government relied upon the award, E statement alongwith the map of the Tahsil Latur showing names of village at Exh.104, copy of the order passed by the Land Reference court in LA Case No. 5 of 2012 at Exh.109, in which compensation of Rs.13610/- was granted by the said Court in L.A.R. No. 5 of 2012 etc. for the land acquired of the same village for submergence of Khulgapur Upper level dam.

18. The learned reference court in para 27 of the impugned judgment and award compared the sale deeds at Exh.84 to 86 as well as the award passed in Exh. 109 LAR No. 5/12 dated 18.9.2007 and concluded as per that judgment and award that the claimants are entitled for compensation of Rs.13,610/- per Are on the principle of parity.

19. The question before this court is that whether the agriculture land acquired by the respondents are irrigated or dry crop lands.

Whether the market price of the said lands considered and granted by the reference court in earlier Land Reference No.5 of 2012 etc. is correct or not ?

20. Mr. Arora, learned counsel for the acquiring body has relied upon the sale instance at Exh.85. The sale-deed of the land situated at village Chikalthana, Taluka and District Latur bearing block No.45 admeasuring 0.45 R land was sold for Rs.5,00,000/- i.e. @ Rs.13,610/- per R. It has also relied upon the judgment of the reference court of the same designation regarding same type of the property of the same village at Exh.109 in LAR No.5 of 2012 in which the sale-deed at Exh.85 was also considered and relied upon. On that basis, the market price of the acquired lands was finalized.

21. Mr. Arora, learned counsel for the acquiring body further submitted that the sale-deed may be relied upon, however, it has to be considered with the settled position of law, particularly, the judgment of the Honourable Supreme Court in the case of ***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another***, reported in, ***(2008) 14 Supreme Court Cases 745***, in which the Honourable Supreme Court held as under:-

> "***Whether the increase should be at a cumulative rate or***

a flat rate?

18. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs 10 per square metre):

Year	*By flat rate*	*increase method*	*By cumulative increase method*	
1987 (Base year)		10.00		10.00
1988	10 + 1 =	11.00	10.00 + 1.00 =	11.00
1989	11 + 1 =	12.00	11.00 + 1.10 =	12.10
1990	12 + 1 =	13.00	12.10 + 1.21 =	13.31
1991	13 + 1 =	14.00	13.31 + 1.33 =	14.64
1992	14 + 1 =	15.00	14.64 + 1.46 =	16.10

19. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs 10 per square metre, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs 12 per square metre, the flat rate increase will be Rs 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs 13 per square metre, then the flat rate increase will be Rs 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs 10 or Rs 12.10 or Rs 13.31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

For what period should the increase be calculated?

20. The Reference Court has stated that the gap between 6-1-1987 (the date of transaction covered by Ext. 15) and 15-9-1992 (the date of acquisition under consideration) was six-and-half years. It therefore calculated the increase for six-and-half years. This is obviously erroneous. The actual gap is five years and eight months and not six-and-half years. However, for the purpose of calculation, we have to exclude the year of the relied-upon transaction, which is the base year. If the year of relied-upon transaction is 1987, the increase is applied not from 1987 itself, but only from the next year which is 1988. If the rate was Rs 10 per square metre in 1987, and the cumulative rate of increase is 7.5% per year, the price will be Rs 10.75 in 1988, Rs 11.56 in 1989, Rs 12.42 in 1990, Rs 13.35 in 1991 and Rs 14.35 in 1992. Thus, the calculation of increase is only for five years and not for six-and-half years."

22. Mr. Arora, learned counsel for the acquiring body further relied upon the judgment of this Court delivered in ***State of Maharashtra Vs. Kailash Shiva Rangari****,* reported in, ***2016(3) Mh.L.J. 457****,* in

which this Court held as under:-

> "**32.** ….
>
> (i) ….
>
> (ii) The interest as provided under section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under section 17 of the said Act which would obviously be after issuance of notice under section 9(1) of the said Act. If the possession is taken under section 17, the interest payable under section 34 of the said Act shall start running from the date of possession and not from the date of award.
>
> "**33.** ….
>
> (a) If the possession is taken before the notification under section 4(1) of the Land Acquisition Act is published and/or before the award is passed, the landowner would be entitled for interest as per section 34 necessarily from the date of passing of the award under section 11 of the said Act, except in cases where the possession is taken in accordance with section 17 of the said Act, and in that situation only, the provision of section 34 of the said Act shall start operating from the date of possession."

23. Mr. Arora, learned counsel for the acquiring body submitted that the year of reckoning the amount of compensation is to be

calculated by excluding the year of the sale transaction and escalation is to be reckoned from the year subsequent to the date of that relied sale transaction.

24. In the case in hand, considering the ratio laid down in the above two authorities and the reasons given by the reference court, this court is of the view that the amount of compensation granted on the basis of sale-deed at Exh.85 must be deducted i.e. 10% for the year 2006-2007. Thus, if 20% amount is deducted from the said amount of Rs.13,610/- per R. that amount comes to Rs.13,334/- per R, which is proper and correct amount of compensation.

25. Mr. Arora, learned counsel for the acquiring body submitted that the statutory interest granted as per Section 28 of the Land Acquisition Act, is not properly and correctly granted. It has to be awarded from the date of award under Section 11 of the L.A. Act for the first year. He pointed out para 4 of final / operative order of the impugned order.

26. On perusal of the judgment of this court and the law laid down by this court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra), the payment of interest is to be computed from the date of taking of possession of acquired land and not from the date of

award. The said interest is to be granted from the date of award by the reference court, which is not legal and correct, in view of the law laid down in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra).

27. This court has re-appreciated entire evidence. After considering the grounds of objections raised in the appeals preferred by the claimants, this court do not find that all lands are irrigated lands. Therefore, the sale instance at Exh.85 relied upon by the learned reference court though found correct, it was not considered in view of the law laid down in the case of ***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another*** (supra) i.e. 10% deduction for two years, which remain to be corrected. The learned trial court thus, come to the right conclusion, except these two grounds discussed above. It has rightly disbelieved the sale instance at Exh.109.

28. The third important aspect Mr. Arora, learned counsel for the acquiring body pointed out that initially an amount of Rs.16,36,323/- was deposited by the acquiring body, which was withdrawn by the claimants. Thereafter, the claimants preferred special leave petition before the Honourable Supreme Court and the Honourable Supreme Court directed the acquiring body to deposit Rs.10,00,000/- more. It was deposited accordingly. It was also withdrawn by the claimants as

per the order passed by this Court in First Appeal No.3062 of 2019. He submits that there is excess payment of amount to the claimants, to which they are not entitled in view of the law laid down in the authority of ***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another*** (supra). It is submitted that while passing the final order, necessary directions are to be given to the claimants to repay the excess amount. On careful perusal of the order passed by the Honourable Supreme Court and as held above, the amount of compensation is to be reduced by 10% from the year 2006 and 2007. Therefore, after calculation of that amount and after considering the date of notification and rate of interest as per Section 28 of the LA Act, certain amount which is excessively withdrawn by the claimants, needs to be repaid to the acquiring body.

29. In view of the above reasons, this court is of the view that the learned trial court rightly decided the quantum of compensation on the market rate. It failed to deduct 10% amount for two years. Therefore, interference is partly warranted in the impugned common judgment and award.

30. There is no substance in the grounds of objections raised in the appeals preferred by the claimants and on re-appreciation of the evidence and the grounds of objections, this court is of the view that

there is no justifiable ground to enhance the amount of compensation. In view of the above, the appeals preferred by the claimants deserve to be dismissed, the appeals preferred by the acquiring authority deserve to be partly allowed and the impugned common judgment and award deserves to be partly set aside. Hence, point No.1 is answered partly in the affirmative.

31. In the result, the following order:-

<u>O R D E R</u>

I. The appeals preferred by the claimants are dismissed.

II. The appeals preferred by the acquiring authority are partly allowed and the impugned common judgment and award is partly set aside in respect of clause (2) and part of clause (5) of the final operative order. The same are corrected as follows:-

2) The enhanced market value of the acquired lands is fixed @ Rs.13,334/- per R. Accordingly, the Registry shall calculate the amount and pay it to the claimants. If the claimants have withdrawn excess amount, the difference amount be adjusted as paid and the excess/balance amount be paid to the appellant / acquiring authority.

5) Respondent / acquiring authority shall pay

interest @ 9% per annum to the claimants on the enhanced amount of compensation from the date of award under Section 11 of the Land Acquisition Act for the first year.

And at the rate of 15% per annum on the amount of compensation for the subsequent period till the date of deposit of enhanced amount of compensation in the Court under Section 28 of the Land Acquisition Act.

III. The claimant in First Appeal No.3062 of 2019 is directed to repay the excess amount withdrawn by him to the acquiring body within four months from today with interest @ 5% per annum as per the order of this Court dated 1st December, 2021 passed in Civil Application No.3776 of 2021. If it is not paid, it be recovered according to law.

IV. The bank guaranty submitted by the claimant in First Appeal No.3062 of 2019 is discharged on recovery of excess amount to be paid to the acquiring authority.

(SANJAY A. DESHMUKH, J.)

rlj/