



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 4213 OF 2017

Vasant s/o Vishwanath Dhopare  
Age 58 years, Occ. Agriculture  
R/o. Umardara, Tq. Shirur-Anantpal  
District Latur

...Appellant

Versus

1. The State of Maharashtra  
Through, the Collector,  
Latur
2. The Special Land Acquisition Officer  
P.T. and I.T. Collector office  
Latur
3. The Executive Engineer,  
Minor Irrigation (Local Sector),  
Adm. Building, Latur  
Tq. And District Latur

...Respondents

AND

FIRST APPEAL NO. 4214 OF 2017

Jabbarkhan s/o Pachulkhan Pathan (Died)  
Through Legal representatives

1. Rukiyabi w/o Jabbarkhan Pathan  
Age 65 years, Occ. Housewife & Agri.
2. Chandpasha s/o Jabbarkhan Pathan  
Age 35 years, Occ. Agriculture
3. Mubarak s/o Jabbarkhan Pathan  
Age 33 years, Occ. Agriculture
4. Rabbanbi w/o Hiralal Shaikh  
Age 38 years, Occ. Housewife & Agri.

All R/o. Umardara, Tq. Shirur-Anantpal  
District Latur

...Appellants

Versus

1. The State of Maharashtra  
Through, the Collector,  
Latur
  2. The Special Land Acquisition Officer  
and Sub-Divisional Officer, P.T.I.T.  
(Delegated P.T.I.T. Latur)  
Sub-Division Office, Nilanga  
District Latur
  3. The Executive Engineer,  
Minor Irrigation Local Sector, Latur  
Tq. And District Latur
- ...Respondents

AND

FIRST APPEAL NO. 4215 OF 2017

Rashid Abdul Shaikh  
Age 65 years, Occ. Agriculture  
R/o. Umardara, Tq. Shirur-Anantpal  
District Latur

...Appellant

Versus

1. The State of Maharashtra  
Through, the Collector,  
Latur
  2. The Special Land Acquisition Officer  
P.T. and I.T. Collector Office  
Latur
  3. The Executive Engineer,  
Minor Irrigation (Local Sector),  
Adm. Building, Latur  
Tq. and District Latur
- ...Respondents

.....  
Mr. N.D. Kendre, advocate for the appellant  
Mr. D.J. Patil, A.G.P. for respondents  
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**CORAM : SANJAY A. DESHMUKH, J.**  
**DATE OF RESERVING : 24.01.2025**  
**THE ORDER**  
**DATE OF PRONOUNCING : 09.04.2025**  
**ORDER**

**JUDGMENT:-**

1. These three appeals are preferred against the common judgment and award dated 24.01.2017, passed by the learned Reference Court i.e. Civil Judge, Senior Division, Nilanga, District Latur in L.A.R. Nos. 21 of 2012, 17 of 2014 and 22 of 2012, arising out of one and the same award, passed by the Special Land Acquisition Officer, Latur.

2. The agricultural lands of the appellants in these appeals have been acquired for construction of minor irrigation tank at Umardara, Tq. Shirur Anantpal, District Latur, which are as follows :-

| <b>Sr. No.</b> | <b>LAR No.</b> | <b>Survey/Gat No.</b> | <b>Area in Hector</b> |
|----------------|----------------|-----------------------|-----------------------|
| 1              | 21 of 2012     | 24/1, 39/1            | 0.82, 1.05            |
| 2              | 22 of 2012     | 32/4                  | 0.83                  |
| 3              | 17 of 2014     | 31/B, 31/C, 31/D      | 1.58                  |

3. The appellants-claimants were owners and possessors of the said lands, respectively. The compensation was granted at Rs.1,75,000/- per hectare. The Land Acquisition Award No.

2007/LNQ/Cr-05 dated 11.12.2009 was passed by the land acquisition authority accordingly. The amount of compensation was inadequately granted to the appellants. Therefore, L.A.R. Nos. 21 of 2012, 17 of 2014 and 22 of 2012, were preferred by the claimants.

4. The appellants contended that the compensation amount was not carved out properly and it was inadequate. Though those lands were purchased by private negotiations on 30.5.2008, the rental compensation was not paid to the claimants.

5. The appellants further contended that after receiving the notices under Section 9 of the Land Acquisition Act, they had raised their objections alongwith the evidence of sale deed, tax receipts and other record of their irrigated lands. However, those documents were not properly considered. The award is passed on the basis of 100 years old assessment of land, which is contrary to the provisions of law, by treating the lands as dry lands. It is further contended that these lands are situated at Umardara adjacent to Latur-Kamblga, Shirur-Udgir road. The Anant Pal Shirur is about 5 kilometers away from village Umardara. The population of village Umardara was 3000 at the time of acquisition of said lands. There are several facilities, such as roads, education, electricity, telephone, etc.. The claimants were cultivating the commercial crops such as sugarcane,

chilly, potato, Toor, Jawar, wheat, gram, sunflower etc. The claimants have raised their objections while drawing panchnamas in respect of common water well, pipeline, cow pen, stone-Bund, etc. situated in the said lands. In a joint measurement report, fruit bearing trees and other trees are mentioned, however, those were not considered properly. The claimants claimed enhanced amount of compensation @ Rs.11,00,000/- per acre for the acquired lands and also for trees and stone-Bunds, etc.

6. The respondents objected the claim petitions and denied the material contentions raised in it. It is their contention that there is no permanent source of water to cultivate the acquired agricultural lands in question. The claimants were cultivating the lands only in one season i.e. Kharip season, depending upon the rainfall. The claimants have not produced any documentary evidence regarding the quality, fertility and productivity of the acquired lands and the periphery. The map showing that the acquired lands are adjacent to Latur-Kamblga, Shirur-Udgir road is not produced. The vicinity and locality of the acquired land is verified by the Land Acquisition Officer and upon considering the productivity of the acquired land, reasonable amount of compensation was awarded to the claimants. The prevailing market rates were properly considered for determining the value of the said lands. The claimants have not raised any

objection about the award within limitation. They are not entitled to claim any interest prior to issuance of notification under Section 4 of the Land Acquisition Act. They have not produced any sale instance of the same village or surrounding villages for enhancement of compensation. It is lastly prayed to dismiss the reference petitions.

7. The learned Reference Court by framing three issues in all these cases held that the claimants are entitled for Rs.3,50,000/- per hectare for dry land/non irrigated land and Rs.7,00,000/- per hectare for irrigated land. The claim petitions of the claimants were partly allowed. All these first appeals are filed by the claimants for enhancement of compensation of land, trees and stone-Bunds.

8. Learned advocate for the appellants during the course of argument pointed out the grounds of objections of these appeals and submitted that the judgments and awards passed by the reference court are against the evidence on record and provisions of law. The judgment and award is based on surmises, conjecture and assumptions which are not sustainable. The learned reference court ignored the fact that the acquired land was situated in developed area, which is close to Latur in Shirur Anantpal Tahsil, District Latur. The other amenities available in that area are not considered. The market value of the acquired land was not properly drawn up and

decided. Though the commercial crops were being taken from those lands, those were not considered by the authority. The reliance placed by the appellants on the decisions of the Hon'ble Supreme Court as well as this Court, were not properly considered and applied. The evidence regarding the trees, water way, bore well, pipeline, stone-Bund and cow pen were not properly appreciated. It is lastly prayed to allow the appeals by re-appreciating the evidence.

9. The learned AGP for the State argued that the evidence adduced by the claimant is properly considered by the learned Reference Court in its proper prospective. They have not proved the values of trees properly. He prayed to dismiss the appeal as there is no ground to interfere in it.

10. The following point emerged for consideration.

- I. Was the compensation amount awarded by the Special Land Acquisition Officer and the Reference Court proper, legal and correct?
- II. Are the appellants entitled for enhanced amount of compensation?
- III. Are the impugned common judgment and award illegal, incorrect and requires interference?

11. Learned advocate for the appellants have pointed out the following oral as well as documentary evidence adduced by both the sides before the reference court.

12. The claimants have examined Bharatbai Shivaji Kale (CW5) Exh.88, to prove the sale instance. She deposed that she produced a sale deed Exh.69, area 9 Are land situated at Dongargaon which is 4 kilometers away from the acquired land. It was purchased from Rama Ananda Kale for Rs.69,000/- by sale deed dated 23.05.2001. The valuation reports are at Exh.92, 93 and 94. Copy of the deposition of Nandkumar Patil (CW2) is at Exh.66. The oral evidence of Anil Phulari (CW3) is at Exh.81 and the copy of judgment delivered by the reference court, Nilanga, District Latur in Land Acquisition Reference No.141 of 2010 and others dated 26.11.2013 are at Exh.108.

13. The claimants have also adduced the evidence of Chand Pasha Pathan (CW4) vide Exh.114. He has deposed for his claim and for other claimants in claim No. 17 of 2014. The extract of index-II of sale instance of land is at Exh.131. A copy of sale deed is at Exh.132. A copy of judgment in writ petition No. 5956 of 2010 is at Exh.136. Additional documentary evidence is produced at Exh.90 is the village map.

14. In land reference Case No. 21 of 2012, the claimant Vasant Dhopare (CW1) adduced his evidence by filing an affidavit of examination in chief at Exh.60, and reiterated the material contentions raised in the application. The details about the water well, bore well, trees are also stated in it. He had relied upon the receipts of payment of agricultural products sold in A.P.M.C. Latur at Exh.62 to 65. The claimants have examined Nandkumar Patil (CW2), a valuer, who has deposed that he went to the spot i.e. lands for its inspection and took the note of the trees. He valued the trees on the basis of age and size of the trees. He gave chart alongwith the descriptions, numbers and valuation of the trees. His additional /supplementary evidence is recorded at Exh.66. He deposed that he had produced a certificate obtained from Agro Services training center. The sale instances are filed by the claimants at Exh.68 to 70. The valuation report of the fruit bearing trees is at Exh.75 and 77. The claimants examined Anil Phulari (CW3), who is another valuer, at Exh.81. He valued the bore well, stone-Bund and cow pen as per his report Exh.92 and 93.

15. The respondents did not adduce any evidence.

16. On perusal of the entire evidence and considering arguments of both sides, particularly, the judgment of the Reference

Court in L.A.R. No. 141 of 2010 (Maheboob Hakkani Sayyad vs. The State of Maharashtra and another), dated 26.11.2013, this Court is of the view that principle of parity should have been followed by the Reference Court while deciding claims of the appellants. The impugned judgment and award, therefore, required to be interfered with. It is because in the first appeal No. 4213 of 2017 and 4214 of 2017, the valuation of trees was determined by the private valuer. The said valuation report was not accepted by the Reference Court on the ground that the notice was not sent to the respondents by the valuer or claimants/appellants prior to determining value and there are no such entries in 7x12 extract of the acquired land. But in the joint measurement report, Exh.137 and 140, there is a description of trees, etc. in the acquired land. The report is not disproved by the respondents. The report at Exh.34 and 35 were not properly considered by the reference court. No plausible reasons are assigned for it. In this respect, this court in the case of ***Pandhari and others vs. The State of Maharashtra and others, MANU/MH/2645/2019***, in para 9 and 10 held as under:-

*“9. Thus this Court consistently held that, when the evidence of the expert valuer has been adduced and the contents of the valuation reports have been explained as well as proved then there was no reason to discard such evidence. This Court on the basis of such report of valuer has then enhanced the compensation.*

*10. The objection regarding acceptance of valuation report cannot be taken on the ground that prior notice was not given by the valuer to the respondents before taking inspection is concerned. It will have to be observed that, the said expert was not a Court Commissioner nor he was under direction by any competent authority to value the land. Question of giving notice to the other side would then only arise but when he was engaged by the claimants to value their land/property, he was under no obligation to issue prior notice to the respondents. Evidence has not been led by the respondents to disprove the said valuation reports, and therefore, no hurdle to accept those reports."*

17. The notice was not given by Nandkumar Patil (AW2) the valuator to the respondents which is admitted by him in his cross-examination. However, in view of the above reasons and ratio laid down by this Court in the case of ***Pandhari and others vs. The State of Maharashtra and others (supra)*** the interference is warranted in the impugned judgment and award. Thus, the valuation report was not properly appreciated by the reference Court and the respondents have not disproved the same. Therefore, the evidence of Nandkumar Patil (AW2) Exh.66 is reliable and acceptable. However, the learned Reference Court erred in not relying upon it.

18. The compensation amount was not properly carved out in the award, about the bore-well, common well, cattle shed, stone-bund and pipeline. In the joint measurement Exh.34 and 35, there is

a reference of cattle shed, bore-well and super structure. The Land Acquisition Officer as well as the Reference court both did not consider this evidence in its proper perspectives. As per the report of valuer PW-3, Anil Phulari, at Exh.81, of the super structure installed in block Nos.24/1 and 39/1, the valuation of the bore-well and the common well is Rs.5,31,355.00 and the valuation of cattle shed, pipeline and stone-Bund is carved out only at Rs.2,55,000/-. The learned A.G.P. for the State/acquiring authorities objected that the pipeline is not pointed out by the claimants at the time of joint measurement. But there is no reason to disbelieve the said evidence. Though he submitted that the notice was not issued to the State Government or acquiring authority while witness Anil Phulari (CW3) visited and surveyed the superstructure, the acquiring body or the State Government did not disprove it. Hence, it is a reliable evidence as held in the case of ***Pandhari and others vs. The State of Maharashtra and others, (supra)*** the said evidence is not disproved by the respondents. Therefore, by applying the principle of parity, as held in the case of ***Maheboob Sayyad (supra)*** in L.A.R.No. 141 of 2010, the claimants are entitled for enhanced amount of compensation for their acquired lands. In First Appeal No.4213 of 2024, the claimant had proved the value of trees by the valuator/expert opinion as follows :-

| Sr. No. | Block No. | Particulars of tree | No of trees | Valuation (Rs.) |
|---------|-----------|---------------------|-------------|-----------------|
| 1       | 24/1      | Mango               | 03          | 1,28,391.00     |
| 2       | 39/1      | Mango               | 03          | 1,28,391.00     |
| 3       | 24/1      | Bori                | 33          | 1,03,785.00     |
| 4       | 39/1      | Bori                |             | 97,680.00       |
| 5       | 39/1      | Tamarind            | 03          | 82,895.00       |
| 6       | 39/1      | Jambhul             | 04          | 25,116.00       |
| 7       | 24/1      | Sandal wood         | 164         | 4,59,250.00     |
| 8       | 39/1      | Sandal wood         |             | 12,52,500.00    |
|         |           | Total               |             | 22,78,008.00    |

19. In First Appeal No. 4214 of 2017, the claimant had proved by the evidence of valuator before the reference court. The value of trees and super structures standing in the acquired lands is as follows :-

| Sr. No. | Block No. | Particulars of tree | No of trees | Valuation (Rs.) |
|---------|-----------|---------------------|-------------|-----------------|
| 1       | 31/B      | Mango               | 100         | 22,20,400.00    |
| 2       | 39/C      | Tamarind            | 25          | 07,13,475.00    |
| 3       | 31/D      | Jambhul             | 15          | 50,355.00       |
| 4       | 31/D      | Pomegranate         | 25          | 1,34,400.00     |
| 5       | 31/D      | Bori                | 19          | 1,03,835.00     |
| 6       | 31/D      | Umbar               | 04          | 03,797.00       |
| 7       | 31/D      | Sandal wood         | 28          | 5,02,938.00     |
|         |           | Total               |             | 37,29,200.00    |

20. Insofar as the first appeal No. 4215 of 2017 is concerned, only stone-Bund in S. No.31 has been considered and compensation of Rs.1,83,909/- was awarded. As per the valuation report Exh.94, it is proved that valuation of stone-Bund at Rs.49,815/- was determined properly. Therefore, the petitioners are entitled for additional compensation as per the report of valuator Anil Phulari (CW3).

21. Considering all the aspects and after re-appreciating the evidence, these appeals deserve to be partly allowed. However, in view of the judgment of Hon'ble Supreme Court in the case of ***Ambya Kalya Mhatra (D) By Lrs. & Ors vs State Of Maharashtra, (2011) 9 SCC 325***, relied upon by learned A.G.P. the appellants/claimants have opted for the compensation either of the land or the trees and superstructure etc. During the course of arguments, Mr. Kendre, learned advocate for the claimants submitted that the claimants are ready to accept the compensation of trees, stone-Bunds and superstructure and not the compensation of acquired land. He further submits that the enhanced amount of compensation of agriculture land shall be added towards the amount of trees and superstructure and stone-Bund, etc. This argument is acceptable.

22. Learned advocate for the appellants/claimants further submitted that the appellants/claimants have not received any amount of compensation granted by the reference Court. Therefore, it is necessary to give directions to the acquiring body to deposit the said amount within six months. If said amount is already deposited, it is necessary to give directions to the Registry to pay the amount to the claimants.

23. There is substance in the grounds of the objections of these appeals. Considering the above reasons, impugned judgments are illegal and therefore, interference is warranted in it. The appellants are entitled for enhanced amount of compensation as held above. Therefore, point Nos. I to III are answered in the affirmative. The appeals deserve to be partly allowed. The impugned judgment and award deserves to be partly set aside. Hence, the following order:-

#### O R D E R

- I. The First appeal Nos. 4213 of 2017, 4214 of 2017 and 4215 of 2017 are partly allowed.
- II. The impugned judgment and award are partly set aside and the claimants are entitled for enhanced amount of compensation, as follows :-
  - a) In first appeal No. 4213 of 2017, the claimants are entitled for compensation at Rs.22,78,008.00 and in first appeal No. 4214 of 2017, the claimants are entitled for Rs.37,29,200.00, with interest as per Sections 23(1)(A), 28 and 34 of the Land Acquisition Act, 1894.
  - b) In first appeal No.4215 of 2017, the claimant is entitled for enhanced additional compensation amount of Rs.49,815/-

towards the additional compensation of stone-Bund with interest as per Sections 23(1)(A), 28 and 34 of the Land Acquisition Act, 1894.

- c) The acquiring body is directed to deposit the remaining amount alongwith accrued interest thereon, within six months from today in this Court.
  - d) It is clarified that the amount of compensation of agricultural lands granted to the claimants as per the impugned judgment and award passed in L.A.R. Nos.21 of 2012 and 17 of 2014 shall be added and it be paid to the claimants alongwith statutory interest as directed by the Reference court in clauses 3 and 4 of the operative part of the impugned judgment and award.
- III. The rest of the judgment and award is maintained.
- IV. Award be drawn up accordingly. The Record and proceedings be sent back to the trial court.
- V. All first appeals are accordingly disposed of.

**(SANJAY A. DESHMUKH, J.)**