This judgment is corrected in view of the speaking to minutes order dated 25.09.2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1252 OF 2017

1. Bhagwanrao Gangaram Gite,
Age : 72 years, Occu : Nil,

2. Narhari Gangaram Gite,
Age : 76 years, Occu : Nil,

3. Vyankatrao Gangaram Gite,
Age : 70 Years, Occu : Agril.,

4. Sau. Vijayabai Nathrao Gite,
Age : 60 years, Occu : Agril.,

5. Nathrao Gangaram Gite,
Age : 70 years, Occu : Agril.,

6. Gangaram Gitte
Since deceased through his
Legal heirs.
Anantrao Gangaram Gite,
Age : 62 years, Occu : Agril.,

All R/o. Talni,
Tq. Ambajogai, District Beed. … Appellants
[Orig. Claimants]

Versus

1. The State of Maharashtra,
Through Collector, Beed.

2. The Executive Engineer,
(M.I.) E.G.S. Beed. … Respondents

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Mr. S. V. Mundhe, Advocate for the Appellants.
Mrs. D. S. Jape, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.08.2025
Pronounced on : 24.09.2025

JUDGMENT :

1. Original claimants who are owners of lands situated in gat no. 39 of village Poos are primarily dissatisfied by quantum of compensation awarded by judgment and order passed by learned 3rd Ad hoc District Judge, Ambajogai dated 15.04.2008 in Land Reference No. 177 of 1999 awarding compensation @ Rs.850/- per Are and also awarding compensation for mango fruit bearing trees.

2. Basic facts giving rise to present appeal are that, on behalf of respondent authority issued notification under Section 4 of Land Acquisition Act (for short, “the Act”) regarding acquisition of lands for percolation tank at village Poos. After notice under Section 4 followed by notice under Section 6, lands of several land-owners came to be acquired on 10.07.1992 and this was followed by passing of award under Section 11 by the Special Land Acquisition Officer (SLAO) awarding compensation @ Rs.375 per Are. Dissatisfied by the same, present appellants preferred above Land Acquisition Reference and sought enhanced compensation i.e. @ Rs2250/- per Are and sought compensation for trees @ Rs.1000/-. Respondent acquiring body

appeared and resisted the above Reference and thereby justified the rate applied by SLAO and sought to dismiss the Reference. After appreciating the oral and documentary evidence adduced by the parties, learned Reference Court reached to a finding that compensation awarded by SLAO is indeed inadequate and thereby awarded enhanced rate of compensation @ Rs.850/- per Are and Rs.1700/- for mango trees i.e. vide judgment dated 15.04.2008.

3. Feeling aggrieved by the above judgment, appellants have preferred instant appeal seeking further enhancement by pressing into service following grounds ;

Firstly, trial court failed to consider and appreciate the correct and existing market value of the land acquired. Secondly, learned trial court failed to consider existence of well in the acquired land and land to be thus irrigated one. Thirdly, in spite of availability of comparable sale instances and in spite of settled law being that, highest exemplar be considered and applied in cases of compulsory acquisition, learned Reference Court failed to apply settled law and finally meager amount has been granted towards compensation for mango trees in the acquired land.

4. Apart from keeping written notes of arguments on record, learned counsel would submit that learned Reference Court has failed to appreciate the pleadings and documentary evidence in the form of sale instances. He pointed out that the land acquired was in the vicinity of area which had high potential and high market value. Moreover, according to him, there was Revenue record in the form of 7/12 extract showing existence of well in the gat owned by appellant, thus, demonstrating that land was irrigated one. That, amongst several sale instances, unfortunately there is non consideration of sale instance which was in proximity to the notification under Section 4 of the Act. Even permissible rise per year since date of sale instance till acquisition has also not been considered. Learned counsel seeks reliance on the judgment of Hon'ble Apex Court in the case of ***Meharawal Khewaji Trust (Registered) Faridkot and others v. State of Punjab*** AIR 2012 SC 2721 and seeks enhancement @ Rs.2250/- per Are.

5. In answer to above, learned APP has also, apart from placing written notes of arguments, made submissions that learned Reference Court has correctly appreciated the available sale instances Exhibits 27 and 28. That, claimants had failed to lead positive evidence to claim parity and benefits with other adjoining lands. She would point

out that sale instance placed on record was of 1991 and hence it was not comparable one. According to her, there was record before Reference Court suggesting market value of lands ranging from Rs.1000/- to Rs.2000/- per Are and moreover, lands under sale instances were small piece of land and therefore, Reference Court was justified in applying arms chair Rule to ascertain market value which came to around Rs.850/- par Are. She also supported the observations of Hon'ble trial court in para 6 of the judgment and also justified compensation awarded for trees and finally prayed to dismiss the appeal.

6. Heard both sides to their satisfaction. Studied their written notes of arguments. As stated above, claimants are primarily dissatisfied by non-consideration of existence of well and resultantly, non-consideration of acquired land to be irrigated and secondly, non-consideration of sale instances in proximity both, in time and place. As stated above, heavy reliance is placed on Exhibit 28 dated 28.07.1993; 21.07.1994 and 28.08.1995 and Exhibit 27 dated 08.02.1991. In the written notes of arguments, calculations of area, price and approximate market value has been reflected.

7. Before touching the merits of above claim, it would be appropriate to discuss settled legal position as regards to determination of market value for awarding compensation. By series of judgments, Hon'ble Apex Court time and again has held that reliance on comparable sale instances is the best method. Market price, is considered as the rate which a willing buyer is ready to purchase from the vendor. In the judgment of ***Viluben Jhalejar Contractor (D) by LRs v. State of Gujarat*** ; MANU/SC/0286/2005 : AIR 2005 SCC 2214, wherein it has been observed as under

> *"18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of the informed buyer to offer the price there for. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in cases where the owner is in possession and enjoyment of the property and in the cases wherein he is not.*
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> *19. xxx*
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> *20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having*

regard to various positive and negative factors viz a viz the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	Negative factors
i) smallnes of size	i) largeness of area
ii) proximity to a road	ii) situation in the interior at a distance from the road
iii) frontage on a road	iii) narrow strip of land with very small frontage compared to depth
iv) nearness to developed area portion	iv) lower level requiring the depressed to be filled up
v) regular shape developed	v) remoteness from locality
vi) level vix-a-vis land under acquisition	vi) some special disadvantageous factors which would deter a purchaser
vii) special value for an owner of an adjoining property to whom it may have some very special advantage	

The above positive and negative factors are reflected in Section 23 and 24 of the Land Acquisition Act and Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act i.e. dealt and produced in the above judgment of the Hon'ble Apex Court in ***Viluben***.

8. Again, there are catena of judgments wherein it is held that while applying comparable sales method, which is generally preferred over other methods, certain factors are required to be fulfilled and only on fulfillment of those factors, the compensation can be awarded, according to the value of the land reflected in the sales. The factors which require consideration are as under :

1. Sale must be a genuine transaction.
2. Sale deed must be executed at the time proximate to the date of issuance of Notification under Section 4 of the Act.
3. The land covered by the sale must be in the vicinity of the acquired land.
4. The land covered by the sale must be similar to the acquired land and lastly,
5. The size of the plot of land covered by the sales must be comparable to the land acquired.

If above factors are satisfied, then there is no reason why sale value of the land covered by the sales be not given for the acquired land.

It is also further settled position that it is open to the 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.

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Above position has been clarified in the judgment of Hon'ble Apex Court in the case of ***Shaji Kuria Kose and another v. Indian Oil Corporation Ltd. And others*** reported in AIR 2001 SC 3341.

9. Bearing above settled position in mind, case in hand is dealt and decided.

10. Here admittedly, appellant's land which is acquired by the respondent State admeasures 617 R. Learned Reference Court has awarded compensation for land at the rate of 850/- per R. Therefore, when said area is placed in juxtaposition to the sale instances Exhibit 28 and Exhibit 27, it is apparent that there is difference between size of the land acquired by the State and the size of land reflected in the sale instance. On going through sale instance Exhibit 28 dated 28.07.1993, therein area admeasuring 5 Are seems to have been sold; in sale instance dated 21.07.1994 area sold and transacted is 5½ Are and in sale instance dated 28.09.1995 land transacted is 4 Are. According to learned counsel for the appellant, for 5 Are, price fetched was 3000/- per Are i.e. Rs.1,20,000/- per acre, for land admeasuring 4 R price fetched was 3,800/- per R i.e. 1,52,000/- per acre and for 5 R, price fetched was 6,250/- R i.e. Rs.2,50,000/- per acre. Amongst the above sale instances, sale instance dated

28.09.1995 is pressed into service on the ground that it is the most proximate to the date of Notification of acquisition and hence, said rate is pressed into service.

11. After going through the above sale instances, there is no manner of doubt that said instances are of same village Poos wherein land in question of the appellants was also located and has been acquired. However, it is conspicuous and pertinent that the sizes/area of land sold in those sale instances are not comparable to the size of present appellant's land acquired. As stated above, area in above sale instances is 5 Are and 4 Are respectively, whereas, area acquired of appellant's land is 617 Are (6 Hectare 17 Are). Going by such figures, in view of one of the essential factors which prevail in determination i.e. "**size**", the same cannot be said to be comparable one. Exhibit 27, which is of 08.02.1991 and is also relied as a comparable sale instance, admeasures 1 Hectare and in alleged sale transaction, price fetched was said to be Rs.1,000/- per Are i.e. Rs.40,000/- per Acre. Therefore, going by the standards reflected in above rulings to be followed and taking same into account while applying comparable sale instance, sizes do not match.

12. Learned Reference Court in para 6 has observed that, there is no positive evidence on behalf of claimants that land acquired has

similar benefits, location and quality, which are other factors also to be borne in mind while ascertaining the market value. It is further observed and held that sale instance dated 08.02.1991 is also not comparable, but why, has not been elaborated. It is further observed that it appears from record that from the year 1991 to year 1993-94, the market value of lands at village Poos was ranging between Rs.1000/- to Rs.2000/- per Are. But, considering the small pieces of land under sale deeds and by applying Arms Chair rule, the market value of acquired land on the date of Notification is held to be around Rs.800/- to Rs.850/- per Are.

In same paragraph, again learned Reference Court has also held that lands in all the references are *bagayat* lands as well is situated, and then market value of *bagayat* land is held to be Rs.850/- per Are.

13. In the judgment of ***Dollar Company, Madras v. Collector of Madras*** AIR 1975 SC 1670, it has been observed that, appellate court interferes not when the judgment under appeal is not right, but only when it is shown to be wrong. It is further held that appellate courts should interfere only when wrong principles are applied or if authorities have omitted to take into consideration important points affecting valuation.

14. Going by above law, here, as stated above, sizes of the area of lands in sale instances relied before Reference Court as well as this Court are not comparable. It is found to be almost more than 100 times. Considering the very observations of learned Reference Court about record showing market price from 1991 to 1993-94 in village Poos to be somewhat between Rs.1000/- to Rs.2000/- per R, applying the standard of consideration of highest rate, in the considered opinion of this Court, rate awarded ought to have been at least Rs.2000/- per Are which seems to be just and proper. Hence, it would be desirable to consider price of the land at the rate of Rs.2000/- per Are.

15. Learned counsel for appellants has sought reliance on judgment of Hon'ble Apex Court in the case of ***Mehrawal Khewaji Trust (Regd.) Faridkot and others v. State of Punjab and others*** AIR 2012 SC 2721 (supra), but in said case, there was material suggesting lands to be having greater potential and being strategically located at a commercial hub abutting to the main road surrounded by commercial area and other infrastructures. Here, there is nothing to indicate why sale instance dated 28.09.1995, which is pressed into service for considering rate of Rs.6,250/- Are be considered and accordingly compensation be granted.

16. In view of the above discussion, compensation is required to be assessed at Rs.2,000/- per Are which was also demanded by the appellants before the Reference Court. Reference Court has erred in awarding compensation to the appellants @ Rs.850/- per Are. Hence claimants are entitled for enhanced compensation at Rs.1,150/- per Are. In appeal, appellants have not questioned the rate awarded per tree by the Reference Court and therefore, the same is not disturbed. In the result, following order is passed :

ORDER

I. The First Appeal is partly allowed with proportionate costs.

II. The judgment and award passed by the Reference Court is modified to the effect that claimants shall be paid enhanced compensation at the rate of Rs.1,150/- per Are along with statutory benefits on enhanced compensation.

III. Respondents to pay interest to the claimants on enhanced compensation from the date of claim petition till realization, **excluding** the period of delay caused in filing this First Appeal, as per the provisions of the Land Acquisition Act.

IV. The First Appeal is disposed off in view of above terms.

[ABHAY S. WAGHWASE, J.]

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