IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1090/2010

1. Deepak Kumar S/o Parmeshwar Mishra,
aged 44 years, Occ: Service, R/o. Gondia.

2. ~~Keshav Kumar Parmeshwar Mishra~~, (Dead)
~~aged 35 years, Occ: Service~~.

L.Rs. of Appellant No.2.

2A Smt. Sangita Keshav Mishra,
aged 38 years, (Widow).

2B Ku. Ruchika Keshav Mishra,
aged 17 years, Occ. Student.

2C Ku. Ishika Keshav Mishra,
aged 13 years, Occ. Student.

All R/o C/o Shri D.N. Jha,
New Laxmi Nagar, Gondia.

3. Smt. Tripati w/o Ravindra Jha,
aged 38 years Occ: Household.

4. Smt. Trishna w/o Shashank Karmahe,
aged 30 years : Household,
R/o C.S.E.B. Colony, Korba.

5. Umashankar Parmeshwar Mishra,
aged 32 years, Occ: Service,
R/o. Gondia, Distt. Gondia.

6. Smt. Vineeta wd/o Parmeshwar Mishra,
aged 65 years, Occ: Household,
R/o. Gondia, Distt. Gondia. ...Appellants

- Versus -

1. State of Maharashtra,
through Collector, Gondia.

2. The Sub-Divisional Officer &
Special Land Acquisition Officer,
Deori, Tah. Deori, Distt. Gondia. ... Respondents

Mr. M.R. Joharapurkar, Advocate for the appellants.
Ms. H.S. Dhande, A.G.P. for the respondent Nos.1 and 2/State.

CORAM: VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 20.08.2025.
DATE OF PRONOUNCING THE JUDGMENT: 03.09.2025.

JUDGMENT

The present first appeal is being preferred against the judgment and order dated 28.10.2009 passed by the learned Civil Judge, Senior Division, Gondia in Land Acquisition Reference Case No.10/2009 with reference to the award passed by the respondent No.2-Special Land Acquisition Officer, Deori, Distt. Gondia in which the claimants (appellants herein) were awarded with meagre compensation at the instance of valuation of the suit land as calculated by the said respondent.

2. The appellants had filed an application for enhancement of the compensation under Section 18 of the Land Acquisition Act. It is their claim that the market value of the suit land requires to be upgraded by 10% to 15% per annum which is at present 5% p.a. considering the sale instance No.47 of 2005. It is pointed out that the suit land is 50 meters away from the existing Gaothan of village Katurli, Taluka-Amgaon, District Gondia and it's non-agricultural potential for residential purpose has remained unnoticed.

3. Learned Advocate for the appellants, Mr. Joharapurkar, submitted that the land in question having frontage of district road which was acquired by the respondents for the purpose of extension of Gaothan itself. Further, the failure on part of the respondents in consideration of non-agricultural potential of the

suit land while fixing the compensation has resulted in unrealistic and distorted valuation.

4. The learned Advocate further contended that the learned trial Court failed to appreciate that the sale instance at Serial No.47 of the adjacent land could not fix the parameters in determination of the valuation of this land as sale instance No.47 is in respect of land locked area, having no existing access or approach way and has only agricultural potential. Moreover, the sale instance No.33 which is of more suitable comparison ought to have been taken into account by the learned trial Court. Even if the same would have been considered, the up-gradation in market value by 15% rise per annum with annual compounding would have been worked out to Rs.263 per square metre. This rate is in consonance with rates notified by the State Government for the purpose of stamp duty for non-agricultural land i.e. Rs.280 per square metre. It is further submitted that taking into consideration the shape, size, situation, nature, road frontage,

access and non-agricultural potential, the valuation of suit land comes to Rs.35,19,200/- (as explained in paragraph No.9 of the reference application) and hence the appellants have challenged the award for enhancement of land value by Rs.20,05,944/-.

5. Learned A.G.P. Ms. Dhande vehemently opposed the arguments made on behalf of the appellants and relied upon the findings in the judgment delivered by the learned Civil Judge, Senior Division, Gondia. It is pointed out by the learned A.G.P that the sale instance of the land at Serial No.47 mentioned in the award relied upon by the appellants is regarding Gat No.22/3 admeasuring 0.53 H.R. sold for the consideration of Rs.75,000/- on 01.03.2005. The said land is sold at Rs.1,41,509 per hectare. The suit land bears Gat No.23 and it appears that it is adjacent to Gat No.22. On perusal of award it is seen that while awarding compensation the Special Land Acquisition Officer (S.L.A.O.) upgraded the market value by raising it by 5% considering the fact that Katurli is a small village situated at the distance of 12

kilometres away from Tahsil place i.e. Amgaon. There is no Railway Station, Post Office etc. at village Katurli. Considering these circumstances, the argument advanced by Mr. Joharapurkar, learned Advocate for appellants that market value should have been upgraded by 15% cannot be accepted. Therefore, the up-gradation of 5% appears to be correct. The S.L.A.O. has awarded compensation for one hector suit land at the rate of Rs.2,25.000/- and awarded compensation for the remaining 0.66 acres land at Rs. 1,50,000/-. The S.L.A.O. awarded compensation considering the fact that 0.66 acres land was shown unirrigated and one hector land was irrigated, but such a distinction cannot be made if the entire land is having non-agricultural potential and that too it is acquired by the State Government for same purpose.

"*66*" replaced by "*0.66*" as per Courts order in Dt.3.10.2025

6. Heard the learned Advocates for the parties and perused the record.

7. The Reference Court has relied on the chart/statement of the sale instances which are considered while

passing the award. The relevant entries of said chart/statement are as follows:-

अ. क्र.	भुमापन क्रमांक	खरेदी विक्रि जमीनीचे श्रेत्र हे. आर.	खरेदी जमीनीचा शेतसारा रु. पैसे	विक्रीची किमंत	दर हेक्टरी शेतसारा रु. पैसे	प्रति हेक्टरी किंमत	विक्रीची तारीख	भोग वट दार वर्ग	शेतसारा आकारणी गट	जमीनीचा प्रकार
1	2	3	4	5	6	7	8	9	10	11
1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
33.	600	0.02	0.15	40,000/-	7.50	2,00,000/-	13.4.04	1	IV	धा.बि.व. 1 फसल
47.	22/3	0.53	1.65	75,000/-	3.11	1,41,509/-	2	III		धा.बि.व. 1 फसल
60.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

8. From the chart it appears that the sale instance at serial No.47 dated 1.3.2005 is considered for granting compensation and Rs.1,41,509/- per hector is granted to the appellants. It reveals that award was passed on 18.03.2008. The sale instance which is considered by the Authority is of agricultural land having no access and situated at depth of 130 meters from the road. It does not have any agricultural potential and is further away from the Gaothan and though it is an abutted land it cannot be considered as relevant. The appellants have examined Valuer but his valuation report is not considered. The

appellants have took me through the map, it reveals that the land which is situated near the road and which is considered for calculating the compensation amount is at interior side. The appellants have placed reliance on the sale instance at serial No.33 which was executed on 13.4.2004. The price of said property is Rs.2,00,000/- per hector. On Considering the evidence of Valuer Reference Court ought to have fixed the compensation by considering the said sale instance.

9. For reference of Valuation Report and evidence, the reliance is placed by the learned A.G.P. on the judgment of the Hon'ble Apex Court in case of *Chimanlal Hargovinddas V/s. Special Land Acquisition Officer, Poona and anothe*r reported in **1988(3) SCC 751** wherein it is observed that "a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. It is merely an offer made by the Land Acquisition Officer and the

material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is adequate on the basis of material produced in the Court."

10. It appears from the record itself that that the Valuer has relied on the sale instances on which the Authority has relied and only clarification is made by the Valuer about the sale instances which are already on record. The sale instance on which the Authority has relied is at Serial No.47. According to the learned A.G.P. it is the nearest land and, therefore, it is considered. No doubt, said land is near to the land in question, however, it is required to be considered that the land which is acquired by the respondents for the extension of Gaothan limit whether is having non-agricultural potential. While passing the judgment and order, the Reference Court has stated that the claimants are claiming compensation per square meter and as the land is not a non-agricultural land, it cannot be granted. But

while considering the sale instance, the sale at Serial No.47 is considered which is of Gat No.22/3. The land in question is from Gat No.23. It is not sufficient to consider the sale instance of said land. It's non-agricultural potential is required to be considered.

11. The notification under Section 4 of the Act came to be published in newspaper on 12.3.2005. The sale instance at Serial No.33 which is of Khasra No.600 and the date of sale i.e. 13.4.2004 is also before the date of notification. Only because of the distance (away from) the Gat Number it is not proper to overlook the sale instance at Serial No.33. However, on perusal of the map which is produced by the Valuer, it appears that it is near to the road and, therefore, non-agricultural potential is equivalent to suit land. Therefore, the market value is to be upgraded by 15% if the potential of non-agricultural land in question is considered while considering the compensation amount as per the report of the Valuer.

12. The Hon'ble Apex Court in case of *Manohar and others V/s. State of Maharashtra and others* reported in **2025 SC OnLine 1519** in para 22 has held as under:-

> *"22. It can, therefore, be seen that the highest exemplar sale deed dated 31st March, 1990, showing market value of Rs.72,900/- per Acre, available at Sr. No.4 and relied upon by the claimants as a bona-fide sale instance was completely overlooked by the Reference Court. It would, however, have been a different matter if the Reference Court, for reasons to be recorded by it, came to a finding that the sale instance at Sr. No. 4 was not a bona-fide one or a sham/bogus one which could not be relied upon."*

13. The Reference Court has not considered the sale instance at Serial No.33 as the sale instance at Serial No.47 is found nearby to the proposed acquisition of land vide notification under Section 4 of the Land Acquisition Act.

14. In *Manohar and others* (supra) the Hon'ble Apex Court has also relied on the judgment in case of Nirmalsingh wherein it is held as under:-

> *"18. Keeping in mind the guidelines laid down by this Court in the catena of cases referred to supra, we are of the opinion* ***to determine just and reasonable compensation for the acquired land on the basis of the sale instances as submitted by the appellants by taking the average of the sale considerations*** *mentioned therein that are relevant to the date of*

issue of notification under Section 4 of the Act. However, the same is to be determined keeping in mind that developmental costs are higher for larger areas of land as compared to small portions of land. The rate of compensation must be subject to deductions towards developmental purpose that will have to be incurred by the respondent State."

(emphasis supplied)

15. The learned Advocate for the appellants had filed Civil Application (CAF) No.2654/2025 for grant of permission to produce additional evidence on record and filed on record the documents showing the price of said land after the same land is acquired by the respondent for development of Gaothan at the rate of Rs.3,24,000/- per hector by award and now plots are sold at the rate of about Rs.1,21,781/- per plot.

16. In *Manohar and others* (supra) the Hon'ble Apex Court has observed in paragraphs 40 and 41 as under:-

"40. It is well-settled that the compensation payable to the owner of the land is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser. It is further settled law that the land acquired has to be valued not only with reference to its condition at the time of notification under Section 4 of the LA Act but its potential value must be taken into account. In this respect, the sale deeds of lands situated in the vicinity

and the comparable benefits and advantages which they have, provide a ready method of computing the market value.

41. In the instant case, it is not in dispute that the land was acquired for public purpose for the establishment of Jintur Industrial Area. Further, the lands in question are situated at village Pungala, which is at a distance of 2 kilometres from Jintur, a taluka place and where the market committee, Wakhar Mahamandal, dairy business and other basic facilities are available. Not only that but the Courts below found that the lands acquired are situated near T-point of Nashik-Nirmal State Highway; that the acquired land has non-agricultural potential and that a percolation tank just opposite to the acquired lands, having sufficient water, could be found. It would also be relevant to note that the sale instances at Sr. Nos.1, 2 and 3 are of April/May of 1989 and the notice under Section 32(2) of the Act of 1961 was issued on 19th July 1990, as such, the sale exemplar at Sr. No.4 i.e., the sale instance dated 31st March 1990, is the most proximate to the date of transaction. Further, the sale instances at Sr. Nos.9 and 10, from Jintur, show that after the notice under the Act of 1961, there has been a very high rise in the prices of the land in the nearby areas. We are, therefore, of the considered opinion that the land of the Appellants was situated in a prime location and they deserve the benefit of the highest sale exemplar."

17. Considering the rates of the land acquired for Gaothan, and the guidelines of the Hon'ble Apex Court it appears

that after considering the non-agricultural potential of the land in question, its valuation comes to Rs.35,39,200/-.

18. For the aforesaid reasons, the appeal is allowed.

I. The impugned Judgment and award passed by the Reference Court is modified and it is held that, the appellants are entitled for additional enhanced compensation of Rs.35,39,200/- by up-gradation of 15% per annum along with solatium and component interest compensation granted by Reference Court as per law.

Corrected as per Courts order Dt.3.10.2025

II. The respondents to pay interest @ 9% p.a. on enhanced compensation, component and solatium for the first year from the date of award and @ 15% p.a. for subsequent year till the date of realization of entire amount. The award be complied with within period of two months from the date of this judgment.

Corrected as per Court order Dt.3.10.2025

The rest of the part of judgment of Reference Court is kept intact.

(MRS.VRUSHALI V. JOSHI, J.)

Tambaskar.