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

FIRST APPEAL NO. 666 OF 2009

Wasudeo Laxman Sawalakhe,
Age about 45 years, Occ. – Agriculture,
R/o Neharu Chowk, District Yavatmal. .... **APPELLANT**

VERSUS

1) The State of Maharashtra,
through the Collector, Yavatmal,
Tq. and District Yavatmal.

2) Special Land Agriculture Officer,
Minor Irrigation Works No.1,
Yavatmal, Tq. and Dist. Yavatmal.

3) The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. and District Yavatmal.

4) The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Yavatmal. Tq. and Dist. Yavatmal. .... **RESPONDENTS**

WITH

FIRST APPEAL NO. 1025 OF 2009

Rajendra Laxman Sawalakhe,
Age about 46 years, Occ. – Agriculture,
R/o Neharu Chowk, District Yavatmal. .... **APPELLANT**

VERSUS

1) The State of Maharashtra,
through Collector, Yavatmal,
Tq. and District Yavatmal.

2) Special Land Agriculture Officer,
Minor Irrigation Works No.1,
Yavatmal, Tq. and Dist. Yavatmal.

3) The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. and District Yavatmal.

4) The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Yavatmal. Tq. and Dist. Yavatmal. .... **RESPONDENTS**

WITH

FIRST APPEAL NO. 621 OF 2009

Narayan Laxman Sawalakhe,
Age about 49 years, Occ. – Agriculture,
R/o Neharu Chowk, District Yavatmal. .... **APPELLANT**

VERSUS

1) The State of Maharashtra,
through Collector, Yavatmal,
Tq. and District Yavatmal.

2) Special Land Agriculture Officer,
Minor Irrigation Works No.1,
Yavatmal, Tq. and Dist. Yavatmal.

3) The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. and District Yavatmal.

4) The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Yavatmal. Tq. and Dist. Yavatmal. .... **RESPONDENTS**

Mr. A.B. Nakshane, Advocate for the appellants,
Mr. M.A. Kadu, A.G.P. for respondent Nos. 1 and 2,
Mr. A.B. Patil, Advocate for respondent No. 3,
Mr. G.K. Bhusari, Advocate for respondent No. 4.

CORAM : ABHAY J. MANTRI, J.
DATE : 24-07-2025

ORAL JUDGMENT :

The learned Advocates for both parties have submitted that all three appeals arise from the land acquisition proceedings. The issues involved in all three appeals are identical, and the facts are also the same in each case, except Gat No. 4 and the area acquired by the Acquiring Body. The appellants in these three appeals were the owners of the lands, Survey Nos. 94, 95 and 96. All the lands are adjacent to each other. The Acquiring Body, by issuing a notification dated 19.03.1998 under Section 4 of the Land Acquisition Act, 1894 (for short, '***the Act***'), acquired all the lands. Therefore, all these appeals are required to be decided by this common judgment. For the sake of convenience, I would like to refer to the facts in First Appeal No. 666/2009.

2. The respondents No. 1 and 2 published a notification under Section 4 of the Act in the Government Gazette on 19.03.1998. Pursuant to the said notification, the respondents acquired the lands of the respective appellants. Accordingly, the Land Acquisition Officer (for short, "***LAO***") had passed an award on 24.09.1998 and awarded compensation to the appellants @ Rs. 3,09,500/- per hector. Being dissatisfied with the same, the appellants had preferred reference under Section 18 of the Act before the learned Reference Court. The learned Reference Court, after considering the evidence before it, has partly allowed the reference and

enhanced the compensation amount to the tune of Rs. 4,84,000/- per hector instead of Rs. 3,09,500/- per hector and granted other benefits also. Being dissatisfied with these judgments and awards, the appellants have preferred these appeals.

3. Heard the learned Advocates for the parties, perused the record and proceedings as well as the judgments relied upon by the parties. The learned Advocate for the parties has taken me through the award passed by the LAO. In view of the facts of the above, the following points arise for determination.

(i) Whether the appellants are entitled to claim enhanced compensation?;

(ii) Whether interference is required in the impugned judgment and order?

<u>Point Nos. (i) and (ii)</u> :

4. It is pertinent to note that the respondents have not challenged the impugned judgment and Award. Non-challenge of the same indicates that they have no grievance about the findings recorded by the learned Reference Court.

5. Mr. A.B. Nakshane, learned Advocate for the appellants in all three appeals, vehemently contended that the learned Reference Court has erred in not granting the rate as per the sale deed dated 06.01.1998, which was produced on record by the appellants. Though the learned

Reference Court has observed that the lands of the appellants had non-agricultural potential and the same is abutted to Yavatmal-Akola Bazaar Road, therefore, he has submitted that the learned Reference Court has to award the compensation @ Rs. 17,08,000/- per hector instead of Rs. 4,84,000/- per hector. He has taken me through the evidence adduced by the appellants as well as the findings recorded by the learned Reference Court that the lands in question are having non-agricultural potentiality and, therefore, argued that the learned Reference Court has erred in non considering the documentary as well as oral evidence on record in its proper perspective and awarded less compensation than what the appellants were entitled for and, therefore, he has urged for enhancing the compensation.

6. To substantiate his contention, he has mainly relied on the judgments in ***Kasturi and others v. State of Haryana, (2003) 1 SCC 354;*** and ***Horrmal (deceased) through his Lrs. and others v. State of Haryana and others, 2024, SCC OnLine SC 2990*** and submitted that in view of the observations in ***Kasturi and others***, the appellants are entitled to get compensation at the market rate after deducting 1/3rd (33%) of the same towards development charges. Similarly, relying upon the judgment in ***Horrmal and others***, he submitted that if the court comes to the conclusion that more deduction towards the development charges is required, then to maintain balance, at most, the rate of deduction may be considered between 46%

to 50% and, therefore, he urged to enhance the compensation. He further submitted that after referring to the judgment in ***Chandrashekar (D) by Lrs. and Others v Land Acquisition Officer and Another, AIR 2012 SC 446,*** the Hon'ble Apex Court has observed the above findings and, therefore, the appellants are entitled to get enhanced compensation in view of the mandate in ***Horrmal and others'*** case.

7. As against this, Mr. M.A. Kadu, learned Assistant Government Pleader for respondent Nos. 1 and 2, has relied upon the judgment of the Hon'ble Apex Court in ***Chandrashekar and others*** (supra) and submitted that in view of the mandate in the said judgment, the Court can deduct development charges between 20% to 75%. Having considered the two components as laid down in para 18 of the said judgment, he urged for a deduction of 75% towards development charges.

8. Mr. A.B. Patil, learned Advocate for respondent No. 3 acquiring body, has taken me through the evidence adduced by the appellants and submitted that the appellants have not produced any sale instance adjacent to the lands in question but he has produced one sale deed of the year 1998, which indicates that the said land was converted for non-agricultural purpose in the year 1967 and is located in "*Gaothan area*". He further submitted that the appellants failed to show where the said land is situated and how far away it is from the appellants' land;

therefore, the valuation given in the said sale deed is of hardly any assistance to the appellants. He further canvassed that the said land was a small plot area and the respondents have acquired a vast area of land, and, therefore, the valuation mentioned in the said sale deed is not of any assistance to the appellants in support of their submissions.

9. He has further taken me through the impugned judgment and pointed out that the appellants themselves produced a copy of judgment of Land Acquisition Case No. 31/2000 (*Haridas v. State of Maharashtra*) before the learned Reference Court in respect of acquisition of the land from village Bhosa for the purpose of resettlement of the project affected persons of village Chapdoh and after considering the said judgment the learned Reference Court has awarded the compensation. The appellants have not disputed the said fact and, therefore, submitted that the learned Reference Court has rightly considered the judgment in L.A.C. No. 31/2000 and awarded the compensation. He further propounded that though the learned Reference Court has observed that the land has non-agricultural potentiality, the said land is located 1½ km. away from the village and located near the water tank, and therefore, the appellants cannot claim the rate granted in the sale instance of the year 1998. Hence, he argued that the judgment passed by the learned Reference Court is just and proper, which requires no interference. In support of his

submissions, he has also relied on the judgment in ***Chandrashekar and others*** (supra).

10. Mr. G.K. Bhusari, learned Advocate for respondent No. 4, submitted that respondent No. 4 is not liable to pay compensation as the lands were acquired for the Municipal Council, Yavatmal, for the purpose of the Yavatmal Supply water scheme and, therefore, the Municipal Council, Yavatmal, is liable to pay compensation to the appellants. Further, the appellants have not made it a party, and, therefore, the appeals suffer from non-rejoinder of the necessary party. He further canvassed that during the pendency of the appeals, respondent No. 4 was made a party to the proceedings and, therefore, he did not get any opportunity before the learned Reference Court to resist the claim. Hence, he urged the dismissal of the appeals against respondent No. 4.

a) On the contrary, the learned Advocate for respondent No. 3 further submitted that by communication dated 25.10.2010, respondent No. 4 has admitted its liability to pay compensation and accordingly, made correspondence to them. Similarly, he has pointed out correspondence dated 24.12.2010 and 31.12.2010, and submitted that in view of the correspondence, respondent No. 4 is liable to pay the compensation to the appellants as awarded, if any.

11. I would like to deal with the submission of the learned Advocate for respondent No. 4 first, as he is denying the liability of respondent No.4 to pay the compensation. On perusal of record, it seems that after passing of award, respondent No. 3 handed over the project to respondent No. 4 and the communication dated 25.10.2010 indicates that respondent No. 4 accepted its liability to pay the compensation to the land losers and, therefore, respondent No. 4 stepped into the shoes of respondent No. 3 and as respondent No. 3 was already before the learned Reference Court, his contention that it did not get an opportunity to contest the matter, cannot be sustained in the eyes of law as it has stepped into the shoes of the respondent No. 3. After 2010, the project was handed over to it. Impugned judgment was passed on 11.04.2005; therefore, the question of impleading him as party respondent does not arise before the learned Reference Court. Having considered the same, I do not find substance in his contention.

12. *Besides,* on perusal of the communication dated 12.12.2024 addressed by respondent No. 1 to respondent No. 4, it is evident that respondent No. 4 submitted its proposal to the Urban Development Department for getting additional funds to pay the enhanced compensation, and, therefore, I do not find substance in his contention that respondent No. 4 has no concern with the payment of compensation.

13. On perusal of the impugned judgment, it appears that the learned Reference Court has relied on the certified copy of the judgment passed in L.A.C. No.31/2000 (*Haridas v. State of Maharashtra*), which was produced before the Court on 05-02-2005 wherein the land of village Bhosa was acquired for the purpose of resettlement of the project affected persons of Chapdoh land and the learned Reference Court has considered the rate granted in L.A.C. No. 31/2000 and awarded the compensation at the rate of Rs. 4,84,000/- per hectare. The fact itself shows that the judgment in the land acquisition case was produced by the appellants themselves before the Court, and relying on the judgment and submissions of the learned Advocate, the Reference Court has awarded the compensation. In the appeal, the appellants have neither challenged nor disputed the said fact. Thus, it appears that based on the judgment in the L.A.C. No. 31/2000, which the appellants produced before the Court, the Court has granted the compensation and, therefore, he has not challenged or disputed the same in appeal.

14. It further appears that the learned Reference Court in paragraph No. 8 observed as under :-

> *"I am of the opinion that the land of the applicant has non-agricultural potentiality and as such it ought to be valued by the L.A.O. considering it as non-agricultural land, in my view, Rs. 4,84,000/- per hector would be a reasonable and proper*

> *market value of the acquired land. It is not exorbitant, looking at the fact that, at the time of acquisition, it was agricultural land, and the applicant had not obtained permission for its conversion."*
>
> *(emphasis supplied)*

The said observations in the judgment indicate that the learned Reference Court, after considering the material produced before it, held that the land in question had non-agricultural potentiality and, therefore, enhanced the compensation.

15. The learned Reference Court while considering the sale-deed dated 06.01.1998 has relied on the ratio laid down in ***P. Rajan v. Kerala State Electricity Board, 1997 Supreme Appeal Reporter 193***, wherein it was held that "***the determination of the compensation when large extent of land has been acquired the determination of the compensation on the basis of sale consideration of cent, square, yard or square feet is wrong principle. The compensation should be fixed on acreage basis***" and considering the said observation, the learned Reference Court held that the land in question is a large extent of area and the sale instance which the appellant has produced is a small plot of 1500 square feet and, therefore, the ratio laid down in ***P. Rajan*** has not taken into consideration while determining the valuation of the land.

16. Thus, the issue that falls for my consideration in the present appeals falls within a narrow compass. As observed above, the acquisition of a large extent of land was acquired as compared to the acquired land in the exemplar sale-deed dated 06.01.1998, which reflects the sale of a mere piece of N.A. land admeasuring 1500 square feet (30 x 50), can be taken into consideration while determining the valuation of the land. While considering the question in dispute, I would like to refer to the mandate in ***Chandrashekar and others*** (supra)**.** In the said case, the Hon'ble Apex Court, after considering various judgments of the Hon'ble Apex Court in paragraph No. 16, has observed as under :

> *"16. Based on the precedents on the issue referred to above, it is seen that as the legal proposition on the point crystallised, this Court divided the quantum of deductions (to be made from the market value determined on the basis of the developed exemplar transaction) on account of development into two components.* ***Firstly****, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers, etc. Besides the aforesaid, land has also to be kept apart for parks, gardens, and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps, etc. This "first component" may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure.*
>
> ***Secondly,*** *deduction has to be made for the expenditure/ expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low-lying*

> *lands and ditches, plotting out smaller plots and the like. This "second component" may conveniently be referred to as deductions for developmental expenditure/expense.*

17. Similarly, in paragraph 14, after deliberations, the ***five inferences emerged*** for the determination of the valuation of the land;

> ***Firstly,*** *the acquired land is a large chunk of land measuring 144 acres.*
> ***Secondly****, the acquired land owned by the appellants was unirrigated agricultural land, surrounded by similar lands, and as such, unquestionably undeveloped land.*
> ***Thirdly****, the exemplar sale deed dated 30-12-1983, was in respect of a small piece of land measuring 2400 square feet (40' x 60' = 2400 square feet).*
> ***Fourthly,*** *the exemplar sale deed dated 30-12-1983, constituted the sale of a developed site.*
> ***And fifthly****, the exemplar sale deed dated 30-12-1983, was executed 1 year, 7 months and 17 days after the publication of the preliminary notification on 13-05-1982."*

18. A bare perusal of the observations in the said judgment, it is apparent that the Hon'ble Apex Court has held that "*this Court divided the quantum of deductions* ***into two components***". *"The* ***first component*** *under the head of 'development' wherein the deduction of 33-1/3rd per cent can be made. Likewise, for the* ***'second component'*** *under the head of 'development' a further deduction of 33-1/3 per cent can additionally be made*." Thus, under the head of 'development' the deduction can be made up to 67% and what is the criteria for consideration is given in the para 16 of the said judgment. It is further observed that *"the range for deductions, other than under the head 'development', would depend on the facts and*

circumstances of each case, that may be 8 per cent, or even the double thereof. Therefore, cumulatively all deductions put together do not exceed the upper benchmark of 75 per cent." It further observed that "deduction of 10 per cent on account of de-escalation, likewise deduction ranging between 7.5 per cent to 10 per cent per annum towards escalation of market value and also under the head of 'waiting period' deduction can be made up to 5 per cent.

19. It is to be noted that the appellants are relying on the judgment in ***Kasruti and others*** (supra), which is already considered by the Hon'ble Apex Court in ***Chandrashekar and others*** (supra). In Clause No. (v) of paragraph No. 15 of ***Chandrashekar and others,*** and after considering the same, laid down the above legal principles and, therefore, what has been held in ***Kasruti and others*** is hardly of any assistance to the appellants in support of their contentions.

20. In ***Horrmal and others*** (supra), he drew my attention to para Nos. 26, 27 and 30. He submitted that the Hon'ble Apex Court has considered the decision in ***Chandrashekar and others*** (supra), and accordingly, in para 33, observed as under:

> *"33. On the face of these distinctive factors lies the challenge of ascertaining the appropriate extent of deduction to be made. As already established, judicial precedents dictate that the amount of deduction to be applied towards developmental*

> *charges can range from anywhere between 20% to 75%. On the one hand, we must acknowledge and recognise the stark disparity between the size of the land covered by the sale exemplar and the acquired land. On the other hand, it is incumbent that we take note of the various advantageous factors associated with the acquired land at the time of issuance of the Section 4 notification. A balanced approach in adjudicating this particular issue is therefore necessary. Considering these militating aspects, we cannot justify applying deduction at either extreme end of the spectrum.* ***A prudent course of action might be to steer a middle path, aiming for a range approximately between 46% to 50%.*** "

21. A bare perusal of para. No. 33, the Hon'ble Apex Court has categorically observed that *"as already established, judicial precedents dictate that the amount of deduction to be applied towards developmental charges can range from anywhere between 20% to 75%. Considering these militating aspects, the court has observed that we cannot justify applying deduction at either extreme end of the spectrum. A prudent course of action might be to steer a middle path, aiming for a range approximately between 46% to 50%."*

22. It is pertinent to note that the land which was acquired in the case of ***Horrmal and others*** (supra) was located within the municipal limits of Tauru city and was surrounded by civic amenities such as a Bus Stand, a Hospital, a School, a College, a Power Station and Industrial as well as Residential establishments. However, the land in question is 100 meters away from Bhosa village and 3 km away from Yavatmal city. Therefore, while determining the valuation, it is

necessary to take into consideration whether amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers, etc. were available or not. The appellants failed to produce any evidence to demonstrate that the lands were located under the developed area or that the facilities of sewerage, electricity, and overhead tank are available in the area. However, the evidence only denotes that near the acquired lands, some layouts exist.

23. Consequently, at the outset, it appears that the appellants mainly relied on the sale-deed dated 06-01-1998 (Exhibit No.27) about the sale of the open plot in Survey No.71/1, area admeasuring 1500 square feet and surrounded by houses. The consideration of the said plot was Rs. 45,000/-. The said land was converted for non-agricultural purposes on 10.10.1967, and just two months later, the notification under Section 4 of the Act was issued. *Similarly*, the appellants have relied on the sale instance dated 13.02.1998 (Exhibit No. **28**) of the open plot in Survey No. 18/3 of village Umarsara, District Yavatmal. The plot was also surrounded by houses. The plot's area was 1023.5 square feet, and the consideration amount was Rs. 75,000/-. The third

sale instance relied on by the appellant is dated 16.01.1997 (Exhibit No. **29**) of agricultural land admeasuring 1.61 H.R. of village Lohara. The sale consideration of the said land was Rs. 8,00,000/-. Therefore, the appellants are claiming enhanced compensation. It is pertinent to note that during cross-examination, the appellants categorically admitted that village Lohara is about 5 to 6 km from Yavatmal Bus Stand and the said plot was converted for non-agricultural purposes. Likewise, he admitted that Umarsara is 6 km away from Bhosa village. Then again, he stated that it is 3 km. away. He further admitted that several houses have existed at Umarsara since 1967, and the said area has been developed over the last thirty years. He further categorically deposed that the land situated in Umarsara and Lohara has more value than the land at Bhosa and, therefore, two sale-deeds (Exhibit Nos. **28** and **29**) are not helpful for the appellants in support of their contentions to seek enhancement of the compensation. The only sale deed remains that of the village Bhosa of 1998 (Exhibit No. **27**).

24. It is worth noting that the area of the said sale deed was 1500 square feet, and it was converted into non-agricultural purposes in 1967 and surrounded by houses. Besides, the appellants failed to point out where and for how long the said plot is situated from the lands in question. During the argument, the learned Advocate for the

appellants tried to emphasise that the sale-deed dated 06.01.1998, was in respect of the small piece of land admeasuring 1500 square feet and ***the nature of the acquired lands of the appellants admeasuring 2.59 hectares***. However, during cross-examination, he admitted that ***till the acquisition of the lands in question, they were cultivating the same***. Similarly, ***till the acquisition of the lands, the appellants have not made any application for conversion of the same into non-agricultural purposes***.

25. Thus, having considered the evidence on record, it is apparent that the lands in question are 100 meters away from the Bhosa village abutting Akola-Yavatmal Bazaar Road. Some layouts exist around the said lands and, therefore, the LAO, as well as the learned Reference Court, has held that the lands in question have the non-agricultural potentiality.

26. The next question that arises is how much the valuation of the lands is, or how the valuation of the land is to be determined. They have produced only one sale instance, dated 06.01.1998; however, they failed to point out the location of the plot of land and its distance from the acquired lands. Even considering the said sale instance of Bhosa village, it appears that the developed land was sold for Rs. 45,000/- and the area of the plot admeasuring 1500 square feet only. Thus, it

seems that the said plot of land was sold at the rate of Rs. 30/- per square foot. The sale instance was executed two months before the issuance of the notification. It has also come to light that the Ring Road passes near the lands in question. Another factor was that the lands were acquired for rehabilitation of the project-affected persons of the Chapdoh Tank Project, which itself indicates that the lands were acquired for resettlement of the people, which also supports the contention of the learned Advocate for the appellants that the lands in question had non-agricultural potential.

27. Having considered the mandate in the cases of ***Chandrashekar and others*** (supra), it appears that deductions on account of development could vary between 20% to 75%. However, in ***Horrmal and others*** (supra), the Hon'ble Apex Court, after considering the above mandate, has held that to militate the aspect, it would not be proper to justify applying the deduction at either extreme end of the spectrum; however, it can be approximately between the range 46% to 50%. Having considered the above dictum, I am of the view that, considering the location of the lands in question, a deduction of 50% towards the development purposes and in addition to the above deduction of 5% towards the waiting period, is appropriate.

28. The upshot of the above discussion, I hold that appellants are entitled to compensation at the market value of Rs. 30/- per square foot after deduction of 55% towards development charges/purposes of the said lands. That being so, the appellants are entitled to compensation at the rate of Rs. 13,50,000/- per hector instead of Rs. 4,84,000/- per hector. Therefore, the impugned judgment is required to be modified to that extent. Hence, I answer point Nos. (i) and (ii) in the affirmative accordingly.

29. As a result, the appeal is partly allowed. The impugned judgments and orders dated 11-04-2005, 08-04-2005 and 12-04-2005 passed by the learned Reference Court in L.A.C. Nos. 29/2000, 30/2000 and 32/2000 are hereby modified to the extent of the rate of the land of Rs. 13,50,000/- per hector instead of Rs. 4,84,000/- per hector after deduction of 55% towards the development charges of the said lands. The rest of the order of the Reference Court remained intact. It is made clear that the appellants are entitled to all other benefits and interests, if any, applicable. All the respondents are jointly and severally liable to pay the compensation to the appellants. No order as to costs.

(ABHAY J. MANTRI, J.)

adgokar