



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 795 OF 2005
WITH
CIVIL APPLICATION NO. 2624 OF 2026
IN
FIRST APPEAL NO. 795 OF 2005

- 1) Sow. Muktabai w/o. Gangadhar Surwase,
Age: 53 years, Occ: Agri.,
R/o: Waki, now at Sailu, Tq. Sailu,
Dist. Parbhani.
- 2) Radhakishan S/o Gangadharrao Surwase
(died) Through Legal Heirs,
- 2-A) Sharda W/ o Radhakishan Surwase
Age.-43 yrs. Occu. Household
- 2-B) Ravikumar @ Ravi S/o Radhakishan Surwase
Age-24 yrs. Occu.-Education.
- 2-C) Avinash S/o Radhakishan Surwase
Age-22 yrs. Occu.-Education
- 2-D) Muktabai W/o Gangadharrao Surwase
Age.-65 yrs. Occu. Agril.

All R/o Phule Nagar, Sailu,
Tq. Sailu, Dist. Parbhani.

- 3) Sow. Shardhabai w/o. Radhakishan Surwase,
Age: 30 years, Occ: Agri.,
R/o: As above.

... Appellants

Versus

- 1) The State of Maharashtra
Through Collector, Parbhani.
- 2) The Executive Engineer,
Lower Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani.

... Respondents

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Mr. Rajhans P. Survase, Advocate for Appellants / Claimants.

Mr. D. J. Patil, AGP for Respondent No.1 / State.

Mr. Ruturaj C. Patil, Advocate for Respondent No.2 / Acquiring Authority.

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CORAM : **SANJAY A. DESHMUKH, J.**
RESERVED ON : 13th March, 2026.
PRONOUNCED ON : 08th May, 2026.

J U D G M E N T :

1 This first appeal has been preferred by the Claimants for enhancement of compensation of the acquired land against the judgment and award dated 18th February, 2005, passed by the learned Land Reference Court, District Parbhani, in LAR No.49 of 1997.

2 The claimants' agricultural land bearing Block No.46, admeasuring 7 H 33 R, situated at village Waki, Sailu, and District Parbhani, was acquired for the purpose of rehabilitation of project affected people of village Karajkheda, as per the notification issued and published under Section 4 of the Land Acquisition Act, 1894 (for short, "the L.A. Act"), dated 29th June, 1995. Thereafter, possession of acquired land was taken on 18th September, 1995. The Land

Acquisition Officer (for short, "the LAO") passed the final award dated 26th March, 1997 and awarded the compensation @ Rs.460/- per R. The learned Reference Court enhanced and awarded the compensation @ Rs.650/- per R by holding that it is non-irrigated land.

3 The learned Advocate for the claimants pointed out the pleadings, the evidence, the grounds of objections of the appeal and the reasons and findings in the impugned judgment. He submitted that claimants' land is having N.A. and commercial potentiality. He further submitted that 33 KV power station is situated within one kilometer from the acquired land. In adjacent Survey No.48, there is N.A. plotting of the said land. The Government has acquired land near about two kilometers away from acquired land for M.I.D.C. Jaikwadi colony is situated within two kilometers from the said land. Bayeshwari Co-operative Sugar Factory is situated to the west side within five kilometers. The Aurangabad-Partur, Sailu-Nanded Highway is at a distance of one kilometer from the acquired land. The South Central broad gauge railway line at Sailu town is adjacent to the acquired land. The claimants were cultivating the acquired land with the help of water supply from stream / brooklet. The comparable sale exemplar was not properly appreciated, but the aggregate /

guesswork method was adopted by the learned Reference Court, which is not legal.

4 The learned Advocate for the claimants pointed out Civil Application No.2624 of 2026 filed for seeking permission for production of additional evidence of six sale exemplars. He pointed out that the sale exemplar dated 12th October, 1994, is of highest sale consideration of the same vicinity. He submitted that the other sale exemplars are of the plots of small size. However, the sale exemplar dated 12th October, 1994, for 450 square meters land was sold for a consideration of Rs.15,000/-. He submitted that even if 1/3rd amount is deducted, the claimants would be entitled to compensation as per the market value of the acquired land. He, therefore, submitted to deduct 1/3rd amount and award a reasonable amount of compensation accordingly. He lastly prayed to allow the application filed for production of additional evidence as well as to the appeal by enhancing the amount of compensation.

5 The learned AGP for the State and the learned Advocate for the Acquiring Authority strongly opposed the appeal as well as the civil application for adducing additional evidence and submitted that, as per the ambit and scope of Order XLI Rule 27 of the Code of Civil

Procedure, 1908 (for short, “the CPC”), this Court cannot permit additional evidence unless it is pointed out that, despite due diligence, such documentary evidence was not produced on record or it was not known. He, therefore, strongly opposed to take such document on record and rely upon it. It is submitted that the sale exemplar at Exhibit-36 was properly and rightly appreciated by the learned Reference Court after considering the matter before it and awarded the compensation @ Rs.65,000/- per Hectare. There is no scope for interference in the impugned judgment and award. The reasons and findings are legal and correct. It is submitted that the application for adducing additional evidence cannot be considered and the sale exemplars relied upon by the appellants / claimants are not reliable and comparable sale exemplars. It is lastly prayed to reject the application for additional evidence as well as to dismiss appeal, as there is no substance in the grounds of the objections of it.

6 Perused the record and proceedings, particularly, the reasons and findings in the impugned judgment alongwith the additional evidence produced on record vide Civil Application No.2624 of 2026. No doubt, the sale exemplar at Exhibit-36 was relied upon by the learned Reference Court, however, finally, the learned Reference Court proceeded to determine the market value of the

acquired land by adopting the guesswork method. The sale exemplar at Exhibit-36 was not fully relied upon.

7 As far as the nature of the claimants' land is concerned, admittedly, the 7/12 extract shows that it is an agricultural land. The claimant adduced oral evidence at Exhibit-39 and pointed out that the land was seasonally irrigated through the stream / brooklet flowing by the side of the acquired land. He deposed that Nanded-Aurangabad Highway which is situated adjacent to the acquired land. Exhibit-29 is the certified copy of information issued by the Sub-Divisional Engineer shows that there are M.I.D.C., 33 KV power station, Jayakwadi colony, Tahsil office, railway-line, Nutan College, Saraswati Ginning Factory. The adjacent lands are converted into non-agricultural use bearing Survey No.227 at Exhibit-30. The claimant also deposed that he has produced the copies of the sale exemplars at Exhibits 36 and 37 and also the judgment in LAR No.48 of 1997 at Exhibit-38, in which same nature of land was acquired for rehabilitation of village Karajkheda. During the cross-examination of claimant, the existence of of Nanded-Aurangabad Highway is not disputed. The claimant's documentary evidence of the maps of said land at Exhibits 33 and 34, shows the topography of the acquired land. The N.A. potentiality of the claimants' acquired land is proved by the claimant as his evidence

is not shaken in the cross-examination. Further the land is acquired for construction of houses for the rehabilitated people, which is sufficient to establish its N.A. potentiality.

8 In the judgment in LAR No.48 of 1997 at Exhibit-38, the learned Reference Court awarded compensation @ Rs.1,50,000/- per Hectare for irrigated land, however, the said judgment was not considered by the learned Reference Court.

9 As far as production of additional evidence of sale exemplars is concerned, the law is well settled that if the Court deems it fit for the just decision of the case, it may permit adducing of additional evidence. No doubt, there are certain statutory requirements under Order XLI Rule 27 of the Code of Civil Procedure, 1908, however, sub-clause (b) of clause (1) of Rule 27 of Order XLI of the CPC, empowers the Court to exercise judicial discretion, to allow additional evidence in the interest of justice for just decision of the case. Therefore, this Court is of the view that the additional evidence is necessary for deciding the matter effectively. It is because mostly the claimants being farmers are weaker section of society, except the exceptions. They are not getting proper legal advice and also the advice regarding production of necessary evidence in the Trial Court /

Reference Court. Some times budding junior lawyers practicing in mofussil courts are unable to advise claimants properly for adducing evidence etc. and if additional evidence is found to be reliable and relevant comparable sale exemplar, such evidence deserves to be admitted for the just decision of the case. The need of justice will prevail over procedural mandates of law to defeat injustice. Therefore, the production of additional evidence is necessary in the interest of justice, particularly, in respect of the sale exemplar dated 12th October, 1994, for just decision of case, which is of highest sale consideration.

10 For the following reasons, it is not necessary to remand the matter to the Trial Court / Reference Court for the proof of contents and admissibility of the said sale exemplar. As per Section 51-A of the L.A. Act, the claimant can adduce evidence of sale exemplar and its admissibility is dispensed with. Further, as per Section 59 of the Indian Evidence Act, 1872, now Section 54 of the Bharatiya Sakshya Adhiniyam, 2023, the proof of contents of document is dispensed with. The sale exemplar dated 12th October, 1994, is a certified copy of the sale-deed to which the claimant is not a party. Considering the above provisions of law, formal proof of the contents of the said document is dispensed with by Section 59 of the

Indian Evidence Act, 1872, now Section 54 of the Bharatiya Sakshya Adhiniyam, 2023. Thus, the said sale exemplar dated 12th October, 1994 is reliable piece of evidence, which is necessary document to determine market value of the acquired land. Therefore, the argument of the learned AGP and the learned Advocate for the Acquiring Authority is not acceptable in this regard.

11 The claimants' land has N.A. potentiality proved by claimant's evidence, which is not shaken in the cross-examination. The sale exemplar dated 12th October, 1994 pertains to a non-agricultural plot of 450 square meters out of Survey No.230, which was sold for a consideration of Rs.15,000/- i.e. @ Rs.33.33 per square meter. However, the area of the said plot is only 450 square meters, whereas the area of the claimant's acquired land is 7 H 33 R. The said sale exemplar is of highest sale consideration. For development of non-agricultural plot, 1/3rd area is required for roads, garden, open space, etc. If these aspects are considered together with the matter before this Court and circumstances of the case, if 60% amount is deducted towards development charges as well as for big size of the claimant's land and small size of the land under the sale exemplar dated 12th October, 1994 i.e. Rs.9000/-, which comes to Rs.6000/- i.e. Rs.13.33 per square meter, for which the claimants

are entitled to compensation, which is the market value of the acquired land on the day of issuance and publication of the notification under Section 4 of the L.A. Act, dated 29th June, 1995.

12 For the reasons discussed above and considering the additional evidence adduced by the claimants, the application and the appeal deserve to be allowed. The impugned judgment and award deserves to be partly set aside. Hence, the following order:-

ORDER

- I. Civil Application No.2624 of 2026 is allowed.
- II. The First Appeal filed by the Claimants is allowed.
- III. The impugned judgment and award is partly set aside and modified as under:-
 - a) The claimants are entitled to compensation @ Rs.13.33 per square meter, alongwith statutory benefits i.e. solatium, interest and components as per the provisions of the Land Acquisition Act, 1894.
 - b) Rest of the judgment and award is confirmed.

- IV. The claimants are not entitled to interest for the delayed period, if any, condoned by this Court.
- V. The enhanced amount of compensation with statutory interest etc. shall be deposited in this Court within a period of six months from today.
- VI. The claimants shall deposit the deficit court fees, if any. On deposit of deficit court fees, if any, the amount of compensation be paid to claimants.
- VII. Award be drawn up accordingly.
- VIII. Pending civil applications, if any, are disposed of.
- IX. Record and proceedings be sent back.

[SANJAY A. DESHMUKH, J.]