

MHAU050025062010



Presented on :- 28-10-2010  
Registered on :- 28-10-2010  
Decided on :- 18-03-2026  
Duration :- Y. M. Ds.  
**07 01 16**

**IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,**  
**VAIJAPUR.**  
**(Presided over by A. B. Shaikh)**

**L.A.R. No.234/2010**

- 1) **Champalal s/o Motilala Kahate,**  
Age- 37 years, Occ. Agri.,
- 2) **Manik s/o Motilala Kahate,**  
Age- 50 years, Occ. Agri.,
- 3) **Shamlal s/o Motilala Kahate,**  
Age- 47 years, Occ. Agri.,
- 4) **Ramlal s/o Motilala Kahate,**  
Age- 42 years, Occ. Agri.,  
All R/o Bendwadi, Tq. Vaijapur,  
Dist. Aurangabad.

..... **Claimants.**

**- - Versus - -**

- 1) **The State of Maharashtra**  
through Collector Aurangabad.
- 2) **The Special Land Acquisition Officer,**  
**J.P. Aurangabad.**
- 3) **The Executive Engineer,**  
Nandur Madhmeshwar Canal, Vaijapur,  
Dist. Aurangabad.

... **Respondents.**

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**REFERENCE UNDER SECTION 18 OF THE LAND**  
**ACQUISITION ACT, 1894.**

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**Appearance :**

Shri. M. B. Ubale, Advocate for Claimants.

Shri. N. S. Jagtap, Advocate for respondent nos.1 and 2.

Ex-parte against respondent no.3.

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**JUDGMENT**

**( Delivered on 18<sup>th</sup> Day of April, 2025 )**

In accordance with the order passed by Hon'ble Bombay High Court, Bench at Aurangabad in Civil Writ Petition No.822/2019, this matter is designated as time-bound.

(2) Feeling aggrieved and dissatisfied with the award passed by Special Land Acquisition Officer, (for short 'SLAO'), Bor-Dahegaon Medium Project Vaijapur, in 2001/A/P/Aurangabad/BR-12/3 dated 21.03.2007, the claimants have filed present reference petition under Section 18 of Land Acquisition Act, 1894, (for short 'Act') for enhancement of compensation.

**Brief facts:-**

(3) Claimant nos.1 to 4 are owners of agricultural land in Gat no.68 situated at village Bendwadi, Tq. Vaijapur, Dist. Aurangabad. The respondents acquired 43R land belonging to the claimants in Gat no.68.

(4) The notification under section 4 of the Act was published on 25.08.2005 and thereby started the proceeding for acquisition of the land. The SLAO granted the price for the acquired land at the rate of Rs.820/- per R for land of the claimants and total compensation of Rs.52,537/- had been

granted to the claimants. According to the claimants, the market price of the acquired land at the time of notification under section 4 was not less than Rs.8,750/- per R and it was also demanded by them. Claimants also demanded compensation amount for 520 pomegranate trees in the acquired land, which was not paid by the S.L.A.O. So the claimants by this reference, claimed the price of acquired land at the rate of Rs.8,750/- per R and compensation for 520 pomegranate trees.

**(5) Grounds of objection :-**

According to the claimants, major grounds for claiming enhanced compensation are that :-

- a) The SLAO undervalued the market value of acquired land;
- b) The award does not disclose the dates considered by SLAO and the award has no presumptive value.
- c) The actual acquired area is 64 R but the SLAO had shown it in Award as 43 R.
- d) In the acquired land, there were 520 pomegranate trees and the SLAO had not paid compensation for the same.
- e) The land was acquired in the year 1985-86, Award is passed in 2007, but date of possession wrongly mentioned.
- f) The SLAO failed to conduct local inquiry regarding yield and income of acquired land.
- g) The SLAO has applied the wrong method for fixation of the price.
- h) The SLAO has failed to consider that land in question can be irrigated by well and its potentiality to yield agricultural produce.
- i) The SLAO has failed to consider new legislation and changing trends on the topic of land acquisition.

**(6) Written statement of the respondents :-**

Pursuant to service of notices, respondent nos.1 and 2 appeared and contested the present reference by filing written statement/reply (Ex.9). Respondent nos.1 and 2 have denied and disputed contents of the reference. Respondent nos.1 and 2 have contended that the SLAO has initiated the acquisition proceeding as per law and procedure. For ascertaining market value of the land, the SLAO has taken almost all precautions and for that purpose, he considered sale transactions and assessed market value of acquired land. While assessing the market value and awarding compensation, opportunity was given to the claimants to put their grievances. It is further contended that SLAO has correctly awarded the compensation to the claimants and all relevant factors are considered, while awarding said compensation. Lastly, respondent nos.1 and 2 have prayed to dismiss the reference petition with cost.

**(7)** After service of notice, respondent no.3 failed to appear and contest instant reference proceeding; therefore, matter has proceeded *ex-parte* against it.

**(8) Contentious issues :-**

In view of rival contentions of both parties, my Ld. Predecessor framed issues at Ex.13. I reproduce those issues alongwith my findings thereon for the reasons stated thereunder :-

<b>SR. NO.</b>	<b>ISSUES</b>	<b>FINDINGS</b>
<b>1.</b>	Do the claimants prove that compensation for acquired land awarded by SLAO is improper and inadequate?	.... In the affirmative.

2.	What was the market price of acquired land as on the date of notification U/sec.4 of the Land Acquisition Act?	.... Rs.8,00,000/- per hector.
3.	Whether reference is filed within limitation?	.... In the affirmative.
4.	Whether the claimants prove that they have accepted the compensation passed by S.L.A.O. under protest?	.... In the affirmative.
5.	Are the claimants entitled for enhanced compensation? If yes, at what rate?	.... In the affirmative, as per final order.
6.	What order and Award?	.... L.A.R. is allowed partly.

**(9) Evidence of the claimants :-**

In order to substantiate their claim, the claimants have examined Champalal Motilal Kahate (CW1, Ex.25) and relied upon some documents like 7/12 extract (Exh.27), notice under section 12(2) (Exh.28) of the Act, payment receipt (Exh.29), letter (Exh.30), Statement of Valuation of trees (Exh.31) and Sale Deed no.2926/1995 (Exh.32). The claimants have examined Dr.Vishnu Kashiram Patil (CW2, Exh.39) and relied upon some documents like Certificate issued by Income Tax Commissioner (Exh.41), Valuation Certificate (Exh.42), Ph.D. Certificate (Exh.43), Miram's Table (Exh.44), application for valuation of trees (Exh.45), Spot Inspect Panchanama (Exh.46), Report of Valuation for Horticultural Plants (Exh.47), Statement of Valuation for Horticultural Plants (Exh.48), Business Table issued by Aurangabad District Krushiutpanna Bazar Samiti (Exh.49), and Electricity Bill (Exh.55). Lastly, the claimants have examined Shamlal Ratansingh Chhanwal (CW3, Exh.70). They have closed

their evidence by filing pursis marked at Exh.71.

(10) **Evidence of the respondent nos.1 and 2 :-**

The respondent nos.1 and 2 have closed their evidence by filing pursis marked at Exh.72.

(11) **Undisputed facts :-**

- a. Agricultural land of the claimants was acquired and they are interested persons in said lands.
- b. Date of publication of notification under Section 4 of the Act is 25.08.2025.
- c. Award was passed on 21.03.2007.
- d. The date of reference to Collector is 13.12.2007.
- e. The date of forwarding of this reference to this court is 24.09.2009.

**REASONS**

(12) **As to issue no.3 :- [Limitation]**

In its written statement of defence, respondent nos.1 and 2 have raised issue of limitation. It is significant to note that in the instant matter, issue of limitation is crucial issue. As issue of limitation is legal issue and goes to the root of the matter; therefore, I deem it proper to consider it, before discussing other issues.

(13) In case of **Shankar S/o Govindrao Deulkar V/s. State of Maharashtra 2018 (1) Mh.L.J. 633**, the Hon'ble Bombay High Court has held thus :

*"Careful reading of the averments contained in paragraph 2 of the application filed by the applicant under Section 18(1) shows that the notice issued by the Collector under Section 12(2) was served upon him on 22.02.1985. Thereafter, his advocate obtained certified copy of the award and filed application dtd.*

*08/04/1985 for making a reference to the Court. This implies that copy of the award had not been sent to the appellant alongwith the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant alongwith the notice. Unfortunately, while deciding issue no.3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 08/04/1985 was beyond the time specified in Section 18(2)(b) of the Act."*

(14) In his evidence, CW1 Champalal has stated that the SLAO issued notices to the claimants under Section 12(2) of the Act. In said notices, the claimants were directed to appear. If record of notice (Exh.28) issued under Section 12 (2) of the Act is perused, then it is reflected that said notice was not accompanying copy of award dated 21.03.2007. Said notice was served on 05.11.2007. If endorsement on reference petition (Ex.01) is seen, then it is reflected that instant reference petition was filed on 13.12.2007. It shows that reference is filed within stipulated period from date of service of notices. It is imperative to note that contentions of the claimants regarding service of notices and filing of reference are not challenged during cross-examination of CW1 Champalal. It is not contention of the respondents that the claimants were present at the time of passing of award. Further, they have not adduced any evidence demonstrating that notices issued under Section 12 (2) of the Act were accompanying copies of award.

(15) In view of above discussion, it is apparent that the

claimants have filed present reference within the period of limitation. *Per-contra*, there is no iota of evidence to show that reference is not within limitation. In view of above observations in the light of law laid down in Shankar's case cited *supra*, I hold that this reference is filed within limitation.

**(16) As to issue no.4 :- [Protest]**

During the course of arguments, Ld. Advocate of respondent no.1 has submitted that the claimants accepted compensation awarded by the SLAO without any protest; therefore, they are not entitled to claim enhanced compensation. *Per-contra*, Ld. Advocate for the claimants has argued that the claimants raised oral as well as written protest; therefore, there is no question of absence of protest as alleged by respondents.

**(17)** In case of **Amol Rambhau Arjun V/s. State of Maharashtra and others 2000 (4) Mh. L.J. 302**, the Hon'ble Bombay High Court observed thus:

*“7. Proviso 2 to section 31 bars the person who has received the amount other than under protest from making any application of reference under section 18. The said provision does not lay down the mode and manner in which the protest is to be made while accepting the compensation. It does not say that the protest by the claimant must be necessarily in writing. The claimant may receive the amount of compensation under protest orally and the oral protest while receiving the compensation shall not disentitle the claimant from making any application for reference under section 18. The provision covers the protest either made in writing or orally. I am fortified in my view by the Judgment of the Gujrat High Court in Rabari Mahadev Amra vs. Prant Officer, Radhanpur, AIR 1979 Guj. 192 wherein A.M.Ahmedi, J. (as he then was) in*

*paragraph 4 of the report held thus : 4. The short question which arises for consideration is whether the protest to be lodged under the second proviso to section 3(2) must be in writing or can be an oral one also. The proviso merely states that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 of the Act. Even the first proviso which entitles a person admitted to be interested to receive the amount of compensation determined under the award under protest as to its sufficiency does not provide that the protest must be reduced to writing. There is nothing in the second proviso to section 31(2) that the person receiving the amount must receive the same under a written protest so as to be subsequently entitled to make a reference under section 18 of the Act on the question of sufficiency of the amount awarded in respect of the acquired land."*

(18) In case of **Jaysukh Raghla Patel V/s. Land Acquisition Officer 2012 (6) Mh. L.J. 560**, wherein the Hon'ble Apex Court held thus:

*"Going back to the decision of the Apex Court in case of Ashwani Kumar Dhingra, there is no absolute proposition of law laid down by the Apex Court that in every case where claimants accepts the compensation without recording a formal protest, he is disentitled to claim a reference under section 18. Even in the case of Special Land Acquisition Officer Vs. Shivabai and others, the issue which arises in the present appeal viz; the effect of immediately filing of an application for reference did not arise for consideration before the Apex Court. However, in the subsequent three decisions which we have referred above, the issue specifically arose before the Apex Court which has been answered by holding that even the fact that reference application is filed within limitation is sufficient to prove that the Award under section 11 has not been accepted."*

(19) In view of law laid down in above mentioned judicial pronouncements, it is clear that section 31 (2) of the Act does not provide for any specific mode of protest. Hence, even oral protest to the award would suffice the purpose. It has come in the oral evidence of the claimants that they raised protest while accepting compensation awarded by the SLAO. It is significant to note that no question was put to the witness suggesting that compensation was accepted without any protest. It is settled law that filing of reference itself implies a protest. There is no impediment in relying on contentions of the claimants. Therefore, it is held that the claimants had accepted amount of compensation under protest.

(20) **As to issue nos.1, 2 AND 5 :-**

As issue nos.1, 2 and 5 are inter-related and interconnected; therefore, these issues are discussed at once.

(21) In the instant matter, to prove entitlement for enhancement in compensation, the claimants have adduced both ocular as well as documentary evidence. In his evidence, CW1 Champalal stated that the SLAO acquired their land to the extent of 43R, but he granted very less compensation for the acquired land. The SLAO granted price to the acquired land in Gat no.68 of village Bendwadi, Tq. Vaijapur at the rate of Rs.820/- per R. According to this witness, market price of the lands at the time of notification under Section 4 of the Act was not less than Rs.9,000/- to Rs.10,000/- per R and they demanded compensation at the rate of Rs.10,000/- per R before the SLAO. But in award dated 21.03.2007, inadequate compensation was awarded to them. CW1 Champalal has further testified that procedure

adopted by the SLAO in awarding compensation is wrong and he wrongly applied method for fixation of the price. It has further come in the evidence of CW1 Champalal that village Bendwadi is adjacent to Vaijapur city. Main thrust of the claimants seems to be on the point that nature of acquired land was not considered by SLAO. Witness Champalal was cross examined by respondents at length, but failed to extract any relevant material, which can establish that his evidence is unworthy of reliance.

**(22)** In support of ocular evidence of witness Champalal, the claimants have filed 7/12 extract of land in Gat no.68 (Exh.27). Upon perusal of 7/12 extract, it discloses that acquired land was irrigated land. No cogent and concrete evidence is available on record to establish that acquired land was dry land or perennially irrigated land. Besides this, it must be mentioned that there are entries in cultivation column of 7/12 extract indicating that acquired land was cultivated for full agricultural year. There is no single instance showing that cash crops were not cultivated in acquired land. In acquired land crops like cotton, pomegranate, wheat, maize etc were taken.

**(23)** In view of above, it can be held that acquired land was irrigated land. Further, it has to be noted that there is no dispute about location of acquired land. There is ample evidence on record to show that acquired land is situated in irrigated area. Location of the acquired land and crops cultivated in it, are sufficient to establish that acquired land was irrigated land. So far as the nature of acquired land is concerned, I have no hesitation to hold that said land was irrigated land.

(24) Besides above oral and documentary evidence, the claimant has heavily relied upon judgment and award passed in L.A.R. no.264/2010 dated 28.01.2020. In said judgment, this Court granted compensation at the rate of Rs.8,000/- per R to acquired land situated in Gat no.78 at village Bendwadi. It is pertinent to note that acquired land in the instant matter and acquired land mentioned in said judgment were acquired under same notification and award. Both lands are situated at village Bendwadi, Tal. Vaijapur. Upon scrutiny and consideration, I do not find any reason for not considering said judgment in this matter. That apart, in view of various judgments of Hon'ble Supreme Court and Hon'ble Bombay High Court, judgment in L.A.R. no.129/2013 can be considered for fixing market value of acquired land and determining just compensation to the claimant.

(25) In case at hand, certified copy of Sale Deed (Ex.32) shows that Gat no.45 at village Bendwadi, Tq.Vaijapur was sold on 05.10.1995 for consideration of Rs.80,000/-. It means that it was sold at the rate of Rs.2,00,000/- per hectare. Said sale-deed was executed twelve years before publication of notification under section 4 of the Act. Said sale-deed was relating to the dry land. But another significant aspect deserves to be noted is that acquired land is irrigated land whereas land in Sale Deed was dry land. Said Sale Deed is comparable in this matter.

(26) Except above discussed documentary evidence, no other document has been produced on record in order to bring market value of acquired land on record on the date of notification under section 4. Hence, available evidence has to be

scrutinized for determining market value of acquired land. If award is perused, then it is apparent that acquired land was treated as irrigated (bagayat) land for determination of compensation and statutory benefits and compensation at the rate of Rs.8,00,000/- per hectare was awarded for bagayat land. Therefore, the claimants are entitled for compensation of irrigated land for their acquired land.

(27) Besides compensation for acquired land, the claimants have claimed enhanced compensation for fruit bearing trees situated in their acquired land. According to the claimants, in acquired land, there were total 520 pomegranate trees of age between 6 to 7 years. Land Acquisition Officer had not granted compensation for fruit bearing trees situated in their acquired land. Upon perusal of award, it is reflected that there were 520 pomegranate trees in acquired land. To prove valuation of said fruit bearing trees, the claimants examined CW2 Vishnu Kashiram Patil, who categorically deposed that he had taken education in horticulture and working as Valuer since so many years. He is approved Valuer of Central Government since 1995. It has further come in the evidence of CW2 Dr. Patil that claimant no.1 made application to him for making valuation of fruit bearing trees in acquired land; therefore he visited agricultural field of the claimants on 25.04.2007. At that time, he was accompanied by Sarpanch, Police Patil and adjacent landholders. After inspection, he prepared Valuation Report as per Miram's Table. In support of oral evidence, CW2 Dr. Patil has produced several documents, which are marked at Exh.41 to 49. As per valuation made by CW2 Dr. Patil, the

claimants are entitled for enhanced compensation of Rs.57,76,983/-. Ld. Adv. for respondents had conducted cross-examination of CW2 at length, but failed to extract any material which can suggest that evidence of CW2 is unworthy of reliance.

(28) To corroborate evidence of CW2 Dr. Patil, the claimants have also examined CW2 Shamlal Ratansingh Chhanwal, who at relevant time, was working as Taluka Agricultural Officer at Vaijapur. According to CW3 Shamlal, L.A.O. had given him letter for providing valuation of fruit bearing trees in land of the claimants. CW3 Shamlal has categorically deposed that officer namely Shri. Kuldharan had visited agricultural field of the claimants and prepared valuation (Exh.31). Like CW2 Dr. Patil, CW3 Shamlal has also faced cross-examination at length. But nothing has been disclosed which can demonstrate that his evidence lacks credibility.

(29) In the matter of **Narayan Yashwant Kapse Vs. State of Maharashtra and others, 2020(5) Mh.L.J. 391**, Hon'ble Bombay High Court has observed that in claim for compensation for fruit bearing trees, the claimants must adduce evidence of horticulturist, who is expert in the field of horticulture. In the instant matter, the claimants examined two experts i.e. CW2 Dr. Patil and CW3 Shamlal. In the case of **Chindha Fakira Patil (Deceased) through L.R's Vs. Special Land Acquisition Officer, 2012(2) Mh.L.J. (SC) 530**, Hon'ble Supreme Court determined marketvalue of fruit bearing trees at 80% of valuation made by the valuer. In the

instant matter, valuation report of CW2 Dr. Patil, the market value of acquired fruit bearing trees comes to Rs.57,76,983/- and 80% of said valuation accrued to Rs.46,21,586.4/- (Formula  $57,76,983 \times 0.80 = 46,21,586.4$ ).

(30) In view of above discussion, it has been surfaced on record that in the instant matter, the claimants have claimed enhanced compensation for both acquired land and fruit bearing trees situated in said land. It has also come on record that acquired land was irrigated land and it is entitled for enhanced compensation at the rate of Rs.8,00,000/- per hectare. It has also come on record that the claimants are entitled for enhanced compensation for fruit bearing trees to the tune of Rs.46,21,586.4/-. At this juncture, it must be mentioned that in the case of **Koyappathodi M. Ayisha Umma Vs. State of Kerala AIR 1991 SC 2027** and **State of Hariyana Vs. Gurucharansingh and Anr, AIR 1996 SC 106** that claimants are not entitled for enhanced compensation for irrigated land with fruit bearing trees. In the said judgments, Hon'ble Supreme Court observed that separate compensation for land and fruit bearing trees can not be awarded at the same time. Having regard to legal position stated above in respect of acquired land and fruit bearing trees, in the instant matter, the claimants are entitled for enhanced compensation for fruit bearing trees only.

(31) **Conclusion :**

In view of above discussion, it is proved that compensation awarded by the respondents to the claimants for

acquired land is inadequate. Therefore, the respondents are liable to pay enhanced compensation with statutory benefits to the claimants as per above discussion. Needless to say that, the claimants are entitled for statutory components i.e. 30% solatium and 12% additional component, since the date of notification under section 4 of the Act till the date of award. The claimants are also entitled for interest under sections 28 and 34 of the Act on enhanced amount. In this case, the claimants would be entitled to compensation as follow :-

<u>Acquired fruit bearing trees</u>	<u>Compensation Awarded by SLAO</u>	<u>Expert Valuer opinion</u>	<u>Compensation awarded by Court</u>
520 pomegranate trees aged between 6 to 7 years	SLAO did not award any compensation to fruit bearing trees.	Total valuation Rs.57,76,983/-	Rs.46,21,586.4/- (57,76,983x0.80 = 46,21,586.4)

**(32)** As cumulative effect of above discussion, issue nos.1 and 3 are answered accordingly. In the result, following order is inevitable:-

### ORDER

<b>1.</b>	L.A.R. No.234/2010 is partly allowed with proportionate cost.
<b>2.</b>	Respondent nos.1 and 2 do jointly and severally pay to the claimants enhanced compensation at the rate of Rs.46,21,586.4/- (Rs. Forty Six Lacs Twenty One Thousand Five Hundred Eighty Six and Four Paisa only) alongwith solatium at 30% on the said amount and additional component at 12% per annum.
<b>3.</b>	The respondents do jointly and severally pay interest on the enhanced compensation at the rate of 9% per annum for the period of one year from the date of

	possession and thereafter at the rate of 15% per annum only on the unpaid amount of compensation till its actual realization.
4.	The claimants are entitled to enhanced compensation after deducting the compensation already paid to them.
5.	Award and bill of cost be prepared on payment of deficit court fees,if any, as per rules within one month from the date of order.
6.	Letters be sent to Hon'ble Bombay High Court, Bench at Aurangabad and Hon'ble Principal District Judge, Aurangabad informing disposal of this time-bound matter.
	<i>(Dictated, corrected and pronounced in open Court).</i>

Date: 18.03.2026.

**[ A. B. Shaikh ]**  
Civil Judge Senior Division,  
Vaijapur.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of Judgment is same word to word as per the original Judgment.

Name of Stenographer : Anant V. Chopade,  
Stenographer Grade-II  
Court : (A. B. Shaikh), Civil Judge (S.D.),  
Vaijapur.  
Date : 18.03.2026.  
Judgment signed by the presiding officer on : 20.03.2026.  
Judgment uploaded on : 20.03.2026.

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