S.R.No.22/2008.

Received on	:	09/12/2013
Registered on	:	10/01/2014
Decided on	:	22/06/2019.
Duration	:	06Y05M.12D.

IN THE COURT OF JT. CIVIL JUDGE, SENIOR DIVISION, JALGAON.

(Presided over by Smt. N. K. Patil)

L.A.R.No.75/2014. **Exhibit No.24.**
C.N.R.NO.MHJG050002042014.

Purushottam Ramdas Bhangale, (Died), }
Through his Legal Heirs, }

i) Harshal Purushottam Bhangale, }
Age - Major, Occu. - Agri, }
ii) Rahul Purushottam Bhangale, }
Age - Major, Occu. - Agri, }
iii) Latika Purushottam Bhangale, }
Age - Major, Occu. - Agri, }
iv) Chitra Purushottam Bhangale, }
Age - Major, Occu. - Agri, }
R/o Kanalada, Tq. & Dist. Jalgaon. } **Applicants**.

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L.A.R.No.76/2014. **Exhibit No.18.**
C.N.R.NO.MHJG050002052014

i) Vijay Rupchand Rane, }
Age - Major, Occu - Agri, }
ii) Chandrakant Rupchand Rane, }
Age- Major, Occ. Agri. }
R/o Kanalada, Tq. & Dist. Jalgaon. } **Applicants**.

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L.A.R.No.98/2014. **Exhibit No.18.**
C.N.R.NO.MHJG050002472014

i) Arun Ramkrishna Rane, }
Age - Major, Occu - Agri, }

ii)	Anant Ramkrishna Rane,	}	
	Age- Major, Occ. Agri.	}	
iii)	Anil Ramkrishna Rane,	}	
	Age-Major, Occ. Agree.	}	
	R/o Kanalada, Tq. & Dist. Jalgaon.	}	**Applicants**.

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L.A.R.No.102/2014. **Exhibit No.19.**
C.N.R.NO.MHJG05000251214

i)	Vimal Wamanrao Bhangale,	}	
	Age - Major, Occu - Agri,	}	
	R/o Kanalada, Tq. & Dist. Jalgaon.	}	**Applicant**.

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L.A.R.No.104/2014. **Exhibit No.21.**
C.N.R.NO.MHJG050002532014

i)	Ashok Bhagirath Chavan,	}	
	Age - Major, Occu - Agri,	}	
ii)	Sanjiwani Ashok Chavan,	}	
	Age- Major, Occ. Agri.	}	
	R/o Kanalada, Tq. & Dist. Jalgaon.	}	**Applicants**.

:: versus ::

1]	The State of Maharashtra	}	
	Through :- Collector, Jalgaon.	}	
2]	Superintendent Engineer,	}	
	Tapi Vikas Mahamandal, Jalgaon.	}	
3]	The Special Land Acquisition Officer,	}	
	Appar Tapi Prakalpa, (Hatnoor),	}	
	Jalgaon.	}	
4]	The Executive Engineer,	}	
	WAghur Dharan Vibhag, Jalgaon.	}	....**Opponents.**

REFERENCES U/S 18 OF THE LAND ACQUISITION ACT, 1894.

Adv. Shri. Kishor B. Patil for the applicants.
Shri. K. J. Dhake, D.G.P. for respondent Nos.1 & 3.
Adv. Shri. D. S. Patil for the respondent No.2 & 4.

:: COMMON JUDGMENTS ::

(Delivered on 22th June, 2020.)

1) These reference applications have been filed by applicants as per Section 18 of Land Acquisition Act (here-in-after referred to as the 'Act') for getting enhancement in compensation awarded by Special Land Acquisition Officer (here-in-after referred to as the 'S.L.A.O.').

2) Brief facts of these reference applications are as under :

In these reference applications lands mentioned therein from village Kanalada, Tq. and Dist. Jalgaon have been acquired by S.L.A.O. in the proceeding bearing SR-No.22/2008 for Asoda Branch No.01 of Waghur Project. Applicants are owners and possessors of said acquired lands. The notification under Section 4 of the Act was published on 31/10/2009 in the Government Gazette. Notice under Section 6 of the Act was published on 30/10/2010. Notice under Section 9(3)(4) of the Act was published on 18.09.2010. After final notification, the award has been declared by S.L.A.O. on 30/04/2012. The S.L.A.O. has issued notice under Section 12(2) of The Act on 06/11/2012. Accordingly, payment towards compensation of acquired lands was made on 07/11/2012 and 08/11/2012 and it was received by applicants under protest reserving their rights to prefer these references.

The description of acquired lands are as under :-

Sr. Nos.	L.A.R. Nos.	Name of the village	Gut Nos.	Acquired area (H-Ares)
1)	75/2014	Kanalada	786	00H 46R
2)	76/2014	Kanalada	993	00H 59R
3)	98/2014	Kanalada	252	00H 30R
4)	102/2014	Kanalada	248	00H 40R
5)	104/2014	Kanalada	644	00H 24R
			650	00H 18R

3) Applicants being dissatisfied with the quantum of compensation awarded by the S.L.A.O. They have preferred these reference applications u/s.18 of the Act for enhancement of compensation. According to applicants, the S.L.A.O has not taken into consideration the sale instances properly & correctly. The S.L.A.O. has not awarded compensation on the basis of income expected from said lands. The award of S.L.A.O. is against the facts, equity and evidence. The S.L.A.O. has ignored the fertility of lands. The amount of compensation is very meager, insufficiently, inadequate considering the quality of lands, prominent and advantageous situation. So applicants are claiming enhanced compensation for acquired lands at the rate of Rs. 30,00,000/- for dry land and Rs.60,00,000/- per hectare for irrigated land and also claiming consequential benefits.

4) Respondents have resisted reference applications by filing their written statements and thereby denied the claim of applicants. According to them, the S.L.A.O. has considered the situation of lands under acquisition and also taken into consideration all other factors while assessing the market price on the date of notification u/s.4 of the Act. The S.L.A.O. has classified lands on the basis of its quality of soil, assessment and other sole factors. The S.L.A.O. has considered genuine sale instances for determination of price of lands. The award passed by the S.L.A.O. is supported by sound and cogent reasons. The amount of compensation awarded by S.L.A.O. for acquired lands are quite, adequate. So the claim of applicants is exorbitant, based on false and imaginary grounds. So prayed to reject applications.

5) On going through rival contentions of the parties, issues are framed in respective L.A.R. Same are reproduced hereunder & I have given findings thereon for reasons given below :-

	ISSUES		FINDINGS
1)	Whether the claimants prove that they had raised protest while accepting the amount of compensation ?		Affirmative.
2)	Whether the claimant further prove that compensation awarded by S.L.A.O. is inadequate ?		Affirmative.
3)	What was the market value of the acquired lands on the date of notification under section 4 of the Land Acquisition Act ?		@ Rs. 16,00,000/- P.H. for irrigated land & Rs.8,00,000/- P.H. for dry land.
4)	Are the claimants entitled for enhancement in compensation ?		Affirmative, as per final order.
5)	What Order ?		As per final order.

:: R E A S O N S ::

6) In support of claim, applicants have examined themselves. Besides this, applicants have filed verified copy of sale-deed bearing No.2707/2008, verified copy of sale-deed bearing No.145/2008 and 7/12 extracts of the acquired lands in L.A.R.Nos.76/2014, 98/2014, 102/2014 and 104/2014. In L.A.R. No.75/2014, the applicants have filed pursis vide Exh.19 in which they submitted that the documents filed in L.A.R.No.67/2014 be read in said reference. The applicants have also filed 7/12 extract of acquired land in said reference.

7) Applicants have filed close evidence puris in their respective applications and respondents have filed close evidence pursis.

8) Heard Adv. Shri. Kishor B. Patil for applicants, Shri K. J. Dhake, D.G.P. for respondent Nos.1 and 3 and Adv. Shr. D. S. Patil for respondent No.2 & 4.

9) Evidence on all issues is interwoven, hence, they are discussed together for a sake of brevity.

AS TO ISSUE NOS. 1 TO 5 :-

10) Applicants are coming with a case that the compensation awarded by the SLAO is inadequate & they are entitled for the enhanced compensation. Hence, the burden lies upon applicants to prove their case.

11) From the award, it is seen that lands of the village Kanalada, Tq. and Dist. Jalgaon have been acquired by S.L.A.O. in the proceeding bearing S.R.No.22/2008 for Asoda Branch No.01 of Waghur Project. The learned counsel for applicants has submitted that the compensation awarded by the S.L.A.O. is without adverting to the provisions of section 23 of the Act. He has not considered the nature, fertility of lands. Village Kanalada situated at 10 Km. from Jalgaon. There is Grampanchayat, primary health center and facility of S.T. bus. The railway station is 10 Km. away from village Kanalada. Therefore, acquired lands are expensive. Therefore, the compensation of Rs. 2,10,000/- granted by the S.L.A.O. is insufficient & inadequate.

12) On the other hand, learned Counsel for respondents have supported the award passed by the SLAO. They have submitted that no satisfactory and justifiable evidence brought on record by applicants. The award passed by SLAO speaks lot. No evidence has been brought on record to show that acquired lands are having more value. The SLAO has considered highest exemplar. The SLAO has granted adequate compensation. Hence prayed that applications be rejected.

13) On perusal of the award, it appears that the S.L.A.O., while determining the market value, considered sale-deed dated 13/11/2006 which was just prior to the date of notification u/s 4 of the Act. Besides this aspect,

it seems that the S.L.A.O. determined different value of each of lands acquired under the project on the basis of grouping lands. The S.L.A.O. made grouping of the acquired lands on the basis of assessment of land revenue and determined the market value on the basis of grouping lands. It also appears that S.L.A.O. made ready reckoner as basis of determination of market value of acquired lands. However, the determination of market value on the basis of assessment of land revenue and grouping lands is not acceptable and approved by the Hon'ble Apex Court while deciding the case of **Jawajee Nagnathan Vs. Revenue Division Officer (AIR 1994 S.C. 2852):(1994) 4SCC595)** and in the case of **The Special Land Acquisition Officer Vs. Jasti Rohini (1995 AIR SCW. 823).**

> In these cases, the Hon'ble Apex court held that: "*Value of land mentioned in the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty since lacks value of the land acquired under the L.A.Act*."

14) So, above referred Judgments of Hon'ble Apex Court clearly show that the classification of lands made by S.L.A.O. on the basis of assessment of lands for the purpose of determination of market value by grouping lands such as Group-I to Group-V for assessment of land is not proper. So, assessment of land revenue and grouping of lands for determination of market value of land is not proper method for determination of price of land. Apart from the above factors, the S.L.A.O., in award, mentioned about sale instances. These sale instances were examined by the S.L.A.O. and were prior to the date of notification u/s 4 of the Act and thereafter grouped land in different classes and awarded compensation at the rate of Rs. 1,43,500/- per hectare depending upon the base of land revenue assessment. The Hon'ble Bombay High Court in the case of **State of Maharashtra Vs. Baliram Ghirdhar Patil (2006 LAC 375 (Bombay)** took the view that:

> *"Assessment done cannot be made basis for classification of agricultural land and held that grouping of lands made by the S.L.A.O. on the basis of assessment and accepted by the Reference Court is not legal, proper and in accordance with the provisions of law"*.

15) So, the market value of agricultural land can be considered on the basis of land whether irrigated or dry and on the basis of its quality, productivity and fertility. So far as fertility, productivity and quality is concerned, the land may be classified as Pot-kharab and cultivable land. The above classification of land can be considered by the S.L.A.O. while determining the market value of land concerned. For classification, the quality, fertility with other factors of dry or irrigated land can be considered. However, in the instant cases, it does not appear as to how assessment of land was made by the S.L.A.O. In the case in hand, the S.L.A.O. has considered the assessment of land and thereby made grouping of land on its base.

16) So, in view of the observations made by the Hon'ble High Court in the case of **State of Maharashtra and another Vs. Baliram Girdhar Patil (cited supra)**, I am of the firm view that classification of agricultural land on the basis of assessment in award is not legal, proper and in accordance with the provisions of law. So, respondents requires to prove that the market value of land acquired by them for which the State may have to depend upon the price of land which is similar situated, which were transacted or sold in recent past at the time of notification u/s 4 of the Act but respondents failed to produce documentary evidence in this regard i.e. sale instances which relied upon by the S.L.A.O. while determining market value of land acquired in award in question. Respondents have not produced any document to show that the market value of acquired land is just and proper. Therefore, the material considered in award cannot be used by this court unless it is produced and proved before the court. Therefore, the court requires to

determine the market value afresh pertaining to land acquired on the basis of material produced by the applicant.

17) Applicants have stated in their evidence that village Kanalada is situated at 10 kilometers from Jalgaon. There is Grampanchayat, Primary and secondary school, College, Post office, Krishi Utpanna Bajar Samittee, telephone office, primary health center, national bank, crops protection society, routine transportation and S.T. bus facility. Therefore, acquired lands are expensive. Acquired lands are of good quality and of class 3 to 6. At the time of section 4 notification the prevailing market rate of dry lands was Rs.11,00,000/- per hectare, Rs.22,00,000/- per hectare for irrigated land and Rs.5,50,000/- per hector for potkharab land.

18) Further it is seen from the evidence on record village Kanalada having population of more than 25000. There is Grampanchayat, secondary school, primary health center, railway station at Jalgaon, national bank, crops protection society, routine transportation and S.T. bus facility. This village is on main road. There is no rebuttal evidence brought on record by the respondents to rebut the contentions of the applicant.

19) Admittedly there is no straight jacket formula in order to arrive at a proper market value of lands in question at the relevant date and time. All the things required to be considered by the Court on the basis of oral & documentary evidence adduced by the parties. In this regard certain guidelines and principles laid down by the Hon'ble Apex Court in the case of The Hon'ble Apex Court in the case of ***Koyappathodi M. Ayisha Umma Vs. State of Kerala*** reported in ***1991(4) SCC 8*** has laid down the directions as to how to fix a market value of a land. The Hon'ble Supreme Court held that, ***the different methods of valuation to be adopted to ascertain the market value***

of the land on the date of notification are 1) Opinion of Experts. 2) The price paid within a reasonable time in bonafide transactions of the adjacent land possessing similar advantages i.e. Comparative method. 3) The number of years purchase of actual or immediately prospective profits of lands acquired by the appropriate capitalization method.

20) Considering the principles laid down by the Hon'ble Apex Court the material which has been placed & proved by the applicant can be taken into account while assessing the market value of the acquired land.

21) Applicants claimed enhanced compensation at the rate of Rs.11,00,000/- per hectare for their dry lands and Rs.22,00,000/- per hector for irrigated land. The learned counsel for applicants has relied upon comparable sale instances.

1) Sale-deed No.2707/2008, dated 16.08.2008 executed between Lakshmi Kotecs Pvt. Ltd. Avhane and Prakash Ananda Kanrkhede of land bearing Gut No.725 of 00.81R for Rs.12,00,000/- of village Avhane, Tal. & Dist. Jalgaon. The rate of the said land comes to Rs. 14,81,481/-.

2) Sale-deed bearing no.145/2008, dated 14/01/2008 executed between Hemant Pralhad Narkhede and Vijaya Durgadas Bhole of Gut No.1944 of 00H 46R + 00H 03R Potkharaba land for Rs.4,50,000/- of village Asoda. The rate of the said land comes to Rs.9,57,446/-

22) Comparable sale instance method is one of the best method to determine the market value of the acquired land. As per section 51-A of the Act certified copies of the sale deeds registered under the Registration Act can be accepted as evidence. Hence, the verified copies of the sale deeds are admissible.

23) Applicants have filed sale-deed of Asoda and Avhane village bearing no.2707/2008 and 145/2008. Notice under Section 4 of the Act was published on 31.10.2009. These said instances are not of Kanalada village. Therefore, the rate cannot be applied as it is.

24) The sale instances of villages Avhane and Asoda are of the year 2008 i.e. prior to one year of publication of notice under Section 4 of the Act. Therefore, the sale instances of Avhane and Asoda village are considered as a comparable sale instance.

25) In the award it is mentioned that the village Kanalda it is situated at 10 kilometers from Jalgaon and railway station at 10 kilometer away from it. The land is acquired under compulsory acquisition. Now a days, the rates of lands are on hike. Applicants have deprived their earning source permanently. Therefore, they should be compensated with reasonable price, so that, they could purchase the other land for their livelihood, in a given amount.

26) It is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on facts and circumstances of the case, we have to take recourse to some guess work while determining the fair market value of the land. Guess means, an estimate without any specific information. **Guesstimate** is an estimate based on mixture of guess work and calculations and it is a process in itself. It cannot be equated with the word conjecture. Conjecture is made with a very slight amount of knowledge which is sufficient to incline the scale of probability. **Guesstimate** is with higher certainty than mere guess or a conjecture per-se. The advocate of the applicants submitted that the rate for Asoda village for the same project is given Rs.10,00,000/- per hector for dry land. But, the land of Asoda and Kanalada cannot be of same quality. Hence, this rate cannot be applied as it is.

27) Hence, considering the plus minus factors and the guess work, I think that, the market value of the acquired land to the tune of Rs.8,00,000/- per hectare for dry land would be reasonable market value.

28) Considering the evidence available on record, the rate of compensation awarded by SLAO appears inadequate & meager. Hence, in the light of evidence brought on record, I fix the compensation @ Rs.8,00,000/- per hectare for the dry acquired land. Hence, considering the reasons above, the market price of the acquired land on the date of notification u/s.4 of the Act, fixed rate @ Rs.8,00,000/- per hectare for the dry acquired land. It is settled position that the market value of irrigated land is double of market value of dry land and therefore, market rate of irrigated land is fixed at Rs.16,00,000/- per hector and market value of the Potkharab land is half of market value of dry land and therefore, market rate of Potkharab land is fixed at Rs.4,00,000/- per hector.

29) The applicants have filed 7/12 extracts on record which shows that Gut No.786, Gut No.650, Gut No. 252, Gut No.993 are having Well and Tube-well. Therefore, they are treated as irrigated lands and entitled for Rs.16,00,000/- per hector for irrigated land. But Gut No.644 and 248 do not have Well. Hence, considered as dry land and entitled for Rs.8,00,000/- P.H..

30) Accordingly applicants have discharged the burden about showing the compensation granted by the SLAO for lands is inadequate. Now the burden shifts upon respondents to prove that the compensation granted by them to applicants is sufficient and just. However in order to discharge the said burden, the SLAO or the acquisition body has not produced any evidence on record in order to show that the award passed is just, proper and the compensation granted is sufficient.

31) In view of the above discussion and the prices arrived at, it is clear that the compensation awarded by SLAO was inadequate and the applicant is entitled to get enhanced compensation. The applicant is entitled to get other statutory benefits like Solatium and Component. I, therefore, answer the issues accordingly and pass the following order.

:: O R D E R ::

1) References are partly allowed with proportionate costs.

2) Respondents shall pay to applicants enhanced compensation for their acquired lands as under :-

Sr. No.	L.A.R. Nos.	Name of the Village	Gut Nos.	Acquired Area (H-Ares)	Type of land.	Rate Per hectare/are
1)	75/2014	Kanalada	786	00H 46R	Irrigated.	Rs.16,00,000/- per hector
2)	76/2014	Kanalada	993	00H 59R	Irrigated.	Rs.16,00,000/- per hector
3)	98/2014	Kanalada	252	00H 30R	Irrigated.	Rs.16,00,000/- per hector
4)	102/2014	Kanalada	248	00H 40R	Dry.	Rs.8,00,000/- per hector
5)	104/2014	Kanalada	644	00H 24R	Dry.	Rs.8,00,000/-
			650	00H 18R	Irrigated.	Rs.16,00,000/- per hector

3) The compensation paid by Special Land Acquisition Officer for acquired lands be deducted.

4) Respondents shall pay to applicants, component on the enhanced market value of land @ of 12% per annum from the date of notification u/s.4 of the Act i.e. from 31/10/2009 till the date of declaration of award i.e. 30/04/2012 as per section 23(1-A) of the Act.

5) Respondents shall pay to applicants 30% Solatium on the enhanced market value of land as per section 23(2) of the Act.

6) Respondents shall pay to applicants interest u/s.28 of the Act @ of 9 % per annum for the first year from the date of award i.e. 30/04/2012 and thereafter @ of 15% per annum till realization of the entire amount.

7) Applicants do pay requisite court-fees, if any.

8) Bill of costs be prepared accordingly.

9) The original copy of the judgment be kept in L.A.R. No.75/2014 and it's copy be kept in other L.A.R.Nos.76/2014, 98/2014, 102/2014 & 104/2014.

(Dictated and pronounced in the open Court.)

Sd/-
(Smt. N. K. Patil)
Jt. Civil Judge S.D.Jalgaon.

Date :- 22th June, 2020.