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Decided on : 30/06/2022

Duration : 10 YY. 2 MM. 6 DD.

CNR No. MHJG 2200 1093 2018

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, CHALISGAON.

(Presided over by N. K. Walke)

L.A.R. No.920/2012 **Exh.47**
(S.R.No.44/04)

Kalu Totaram Patil (dead through Lrs.),

1. Narayan Kalu Patil,
2. Uttam Kalu Patil,
3. Pramod Kalu Patil,
4. Vimalbai Gopichand Patil,
5. Indubai Abhimanyu Patil,
6. Yojana Devidas Patil

All R/o Patonda, Tal. Chalisgaon, Dist. Jalgaon. .. **Applicants**

Versus

1. The S.L.A.O., Minor Irrigation Division,
Jalgaon, Dist. Jalgaon,

2. The Executive Engineer, Minor Irrigation Division,
Jalgaon, Dist. Jalgaon,

3. The Collector, Jalgaon, Dist. Jalgaon,

4. The Executive Director,
Tapi Patbandhare Vikas Mahamandal, Jalgaon. .. **Respondents**

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

Appearance : Adv. R.D. Zhalte and Adv. Mrs. Chaurasia for the applicants.
Adv. R. T. Sonawane, the learned D.G.P. for opponent No.1 and 3.
Adv. R.P. Sonawane, the learned counsel for opponent No.2 and 4.

JUDGMENT

(Delivered on 30th June, 2022)

The reference is filed by the applicant/claimant under Section (for short '**u/s**') 18 of the Land Acquisition Act, 1894(for short '**the Act**') for enhancement of compensation awarded by the Special Land Acquisition Officer (for short **'the S.L.A.O.**') and the consequential benefits.

2. The reference in brief is that the deceased applicant was(now his legal heirs are) owner(s) of *Gat* No.169-area 0.95 H.R. and 0.02 H.R. *pot kharab* situated at *mauje* Patonda, Tal. Chalisgaon (for short '**the acquired land**'). It is acquired by the S.L.A.O. for Minor Irrigation Tank, Mundkheda/Patonda in LAQ.SR.44/04. Notifications u/s 4 published on 23.3.2006. The award u/s 11 passed on 29.6.2009. Notice u/s 12(2) of the Act issued on 04.12.2009. The applicant received compensation under protest. It is meagre. Hence he made application to the S.L.A.O. on 24.12.2009 who has not considered fertility of the land, expected income and sale instances properly. He classified the lands on the basis of land revenue. It is improper. His land is of a good quality. Its market value is Rs._12,00,000 per hectare for *bagayat* is not considered. Valuation of the fruit trees is not done properly. It is against the facts, equity and evidence. Hence this reference.

3. The opponents resisted the reference by filing written statements (Exh.4 and 6) contending that the S.L.A.O. has considered situation of the land, crops, comparable and genuine sale instances prior to the date of notification u/s 4 of the Act. He classified lands on the basis of revenue assessment, quality of soil and other sole factors i.e. well, trees and attachments of the land supported by sound and cogent reasons having presumptive value hence no need to interfere in the award. Valuation of fruit trees done by the Agriculture Officer considering age, quality of land, weather and deferred value as per the market rates after deducting costs and depreciation after balance study. Notifications u/s 4, 6 and 9 of the Act issued as per the legal procedure. Government rate applied to *pot kharab* land. Valuation of well and pipeline done as per inspection, its condition, construction, availability of water etc. Possession of the land was taken by private negotiations and not under the Act. He accepted the compensation without protest. It is quite adequate, reasonable, proper and legal. There is no cause of action. His claim is exorbitant, illegal and based on false grounds hence it may be rejected with costs.

4. The following issues(Exh.7) framed for determination and my findings against each of them with reasons to follow:

Sr.	ISSUES	FINDINGS
1	Does the petitioner proves that the market price determined by the S.L.A.O. is inadequate ?	**Yes**
2	Whether the petitioner is entitled for enhancement of compensation, as claimed ? At what rate ?	**Yes @ Rs.11,00,000, Rs.5,50,000 and Rs.2,75,000 P.H. for *Bagayat, Jirayat* and *pot kharab***
3	What order ?	**As per final order.**

REASONS

AS TO ISSUE NOS. 1 AND 2 :

5. Issue Nos.1 and 2 are interlinked hence discussed jointly for the sake of convenience. Applicant No.1A Narayan examined himself as A.W.1 (Exh.11) who deposed as per the application as stated in above Para 1 and 2 but it is not reproduced for the sake of brevity. The expert valuer Dr. Kamalnayan Uttamchand Sanghavi (Exh.16) is examined as A.W.2 who deposed about trees.

6. The applicant relied upon two sale deeds of 12.7.2005 and 05.9.2005 (Exh.14 to 15), valuation report (Exh.19), *panchanama* (Exh.20), A.P.M.C. rates (Exh.21) and certificate/degree of Dr.Sanghavi(Exh.22 and 23). He filed 7/12 extract of *Gat* No.169(vide Exh.28) but it was not got exhibited for the reason best known to him. It is a public document(Exh.42). He also relied upon the citations and other land acquisition references (for short '**LARs'**).

7. Adv. Chaurasiya, the learned counsel for the applicant filed written notes of arguments(Exh.45). Heard Adv. Sonawane, the learned counsel for the acquiring body. The learned counsel for the State did not argue despite giving opportunities hence placed for orders as the reference is about ten year old and needs to be disposed of expeditiously.

8. It is not disputed that the applicant's land is acquired for M.I.T. Mundkheda/Patonda Project for public purpose. Notification u/s 4 of the Act published on 23.3.2006. The award passed on 29.6.2009 u/s 11 of the Act. Notice u/s

12(2) of the Act is received by the applicant on 04.12.2009 and he made application on 24.12.2009. Thus, it is within limitation as per Section 18(2) of the Act hence the material before the Court needs to be analysed.

9. As far as loss is concerned, the applicant contends that the S.L.A.O. has taken possession of land prior to date of notification u/s 4 of the Act on private negotiations. He suffered loss of income of Rs.20,000 to Rs.30,000 per acre per year. He availed of loan on land, it is acquired and he paid interest of Rs.15,000 to Rs.20,000 hence he should be compensated as per section 28 and 34 of the Act. But he has not filed any documentary evidence in support of it hence it is not acceptable and also for the reason that he may move the S.L.A.O. as the issue is to be dealt with by him as held in ***'State of Maharashtra Vs. Maimuma Banu*, 2003 CJ (SC) 1377'** and '***Mahadu S/o Shivram Hirmale and others Vs. State of Maharashtra and others*, 2015 LAC 590(Bom.)'**.

10. Adv. Sonawane argued that the S.L.A.O. assessed the market value on the basis of sale instances. It is just and proper hence accepted it by the applicant without protest. No document of protest produced but he admitted the award and that he filed reference for extracting more money hence it be rejected.

11. A.W.1 Narayan admitted that he did not raise objection when the Government paid compensation. In my view, the State has every right of eminent domain to acquire land. It is the applicant's loss of not only land but also his livelihood. Compensation is a statutory right and not charity. It should be reasonable and just but cuts may be applied for plus minus factors. He made application to the Collector. It shows that he is not satisfied with it hence he accepted the compensation under protest as there can be oral protest as held in '***Amol Ramdhan Vs. State of Maharashtra*", 2001(1) MLR 360** and **AIR 1997 SC 2642**.

12. The applicant directly relied upon the judgments in other LARs on the ground of parity wherein compensation is awarded @ Rs.16,00,000, Rs.8,00,000 and Rs.4,00,000 per hectare for *bagayat*, *jirayat* and *pot kharab* lands. The first LAR No.447/2010 in LAQ.SR.No.44/04 is of the same project and its land is situated at Patonda and there were 500 lemon, 3 custard apple, 1 guava, 1 coconut and 1 *Ramphal* trees hence the land is treated as *bagayat*. The second LAR No.639/2011 in

SR.No.44/04 is also of the same project and its land is situated at Patonda and there were 2 mango, 28 guava, 26 *Bor*, 6 custard apple, 253 lemon, 18 *shevaga*, 2 teak wood and 2 Chandan trees hence the land is treated as *bagayat.* Its settlement took place in R.D.No.439/2019 on 20.4.2019 by which interest is given up w.e.f. 31.3.2018 and installments granted for payment of compensation. The third LAR No.674/2011 in SR.No.50/04 is of MIT Mundkheda. Its land is situated at Mundkheda**.** There were 5 mango, 1 guava, 20 *Bor*, 1 apple, 11 custard apple, 1 tamarind, 10 *Shevaga* and 3 *Ramphal* trees hence it is treated as *bagayat*. It is settled on 20.4.2019 on the above conditions in R.D.No.275/2019.

13. Adv. Chaurasiya argued that many lands from Chalisgaon *taluka* acquired for the same project. Chalisgaon and Jalgaon Courts decided LARs awarding compensation at the same rates. Settlements also took place in it. It is confirmed by the Hon'ble High Court. In '***Bayaji Tatya Kalunge Vs. State of Maharashtra,* 2007(2) ALL MR 316'**, it has been held that if the land is situated in the same village under the same project principle of parity may be applied hence compensation may be awarded at that rates. In ***'Chandrashekhar Vs. Additional Special Land Acquisition Officer,* AIR 2009 SC 3012 : 2009(14) SCC 441(Civil Appeal No.4163-4165 of 2009 decided on 08.7.2009)',** the Hon'ble Supreme Court held that the Court should accept the documents and affidavit of the farmers and allow the rate for *bagayat* land on acceptance of deficit court fees.

14. Adv. Chaurasia relied upon order of our Hon'ble High Court (Aurangabad Bench) dated 12.10.2015 passed in the '**First Appeal No.2211/2014 and 1287/ 2015 Prabhakar Poona Mali and Ors. Vs. The Collector and Ors.'**. It reveals that in that case the S.L.A.O. had considered 22 sale instances and granted less compensation but the sale instance/exemplar of the highest value has to be considered if it is *bona fide* and genuine as held in '***Anjani Molu Desai Vs State of Ga and Anr.,* 2010(13) SCC 710**' and '***Chindha Fakira Patil Vs. S.L.A.O., Jalgaon*, AIR 2012 SC 481'.** The S.L.A.O. had awarded compensation @ Rs.1,14,000 to Rs.1,37,000 P.H. The reference Court awarded Rs.3,00,000 P.H. for the land situated at Patonda/Mundkheda. The acquired land and the lands in the sale instances are not of small in size and reasons were not given for not accepting the rates in the sale instances hence compensation awarded @ Rs.8,00,000 P.H. for *jirayat* land.

15. Adv. Sonawane argued that the applicant's evidence is not cogent hence his claim is not acceptable. The judgments in LARs are part of record but not precedent and not binding. There is no law as such. Each land is different. Even there may be barren land adjacent to *bagayat* land. It is acceptable in view of the ratio laid down in **'*State of Kerala Vs. Electricity Co. Vs. C.P. Shivkrushnana Menon*, 2008(11) SCC 382', '*Airport Authority of India Vs. Satyagopal Roy*, 2002(3)SCC 527', '*State of Maharashtra Vs. Kailash Shiva Rangari*, First Appeal 751/2003 (Nagpur Bench) 2016 BCR 1' and '*The Executive Engineer, M.I.W. Vs. Vitthal Damodar Patil and Anr*, dated 01.7.2019 in SLP(Civil) No.11433 of 2019(SC)'** as argued by Adv. Sonawane.

16. The applicant relied upon the same sale instances of 12.7.2005 and 05.9.2005 in this LAR but no copy of judgment or award which was challenged in the First Appeal No.2211/2014 with 1287/ 2015 filed on record. But it is filed at the time of argument. Hence the opposite side did not get any chance to cross-examine the applicant on this point. I also find it difficult to compare and evaluate or consider its LAQ.SR.No., distance, remoteness from developed locality/village, quality/ fertility of land, its area/size, shape and situation, time angle, etc. Section 23(1) and 24 also provided the factors to be taken into consideration or neglected. It is well settled law that each land and each case is different hence it must be decided independently on merit on its own facts and material on record as there can not be a fixed rule. LAR has no binding force. It is relevant and only evidence for determination of compensation u/s 23 of the Act. The Court has discretion to rely upon it to do equity and fairness depending on the evidence and material on record. Thus, compensation can not be fixed blindly by following the previous LARs/Awards. There may be mistake which may cause injustice to any party as even a slight difference in situation can cause difference in value. There is too much distance from the acquired land and the lands in the sale instances. In view of this, the facts and material on record of this reference need to be considered independently.

17. A.W.1 Narayan also admitted that there are different lands in his village. It is not similar. Its quality is different. Hence it can not be applied directly but more cuts for plus minus factors require to be applied.

18. The first two LARs and its settlement reveal that they are from the same project but considering more number of fruit trees in these lands, they are of *bagayat* lands but there are only 1 *shevaga* and 21 *bor* trees in the applicant’s land and doubtful entries of other trees and well(s) in its 7/12 extract. These LARs also filed it directly after closing of evidence hence prejudice caused to the opponents and it can not be applied directly.

19. In the result, with due respect, I am of the view that the judgments of LARs and the citation(*supra*) are not applicable to the given facts and circumstances of the case at hand as held by the Hon’ble Apex Court in the case of ‘***Chimanlal Har Govinddas Vs. Special Land Acquisition Officer, Poona and Anr.*** **AIR 1988 SC 1652: (1988) 3 SCC 751**’ which has been followed in ‘***Manoj Kumar and Ors. Vs. State of Haryana and Ors.,*** **(2018) 13 SCC 96**’.

20. As per Section 19(5) of the Legal Services Authorities Act, 1987 a reference is made to the Lok Adalat or mediation and the award is passed u/s 21 of the said Act. Once a compromise or settlement is made into an award of the Lok Adalat. It is deemed to be a decree of a civil court. It is final and binding on all parties to the dispute and no appeal lie against it. But it does not amount to a determination by a Court. In view of this, compromise or settlements in other LARs are not binding and it can not be precedent as held by our Hon’ble High Court in ‘***Smt. Umadevi Rajkumar Jeure and Ors. Vs. The District Collector, Solaur and Ors.,*** **in Writ Petition No.3118 of 2016 decided on 24.6.2021’**. Hence, it can not be relied upon directly on the ground of parity. In the result, the arguments advanced on behalf of the applicant are not acceptable. Therefore, the sale instances on record are to be considered.

21. The award reveals that the S.L.A.O. grouped the lands on the basis of assessment of land revenue and fixed price. But it is determined by the State prior to more than 50 years for fiscal purpose but no process of re-assessment done thereafter. Quality of land cannot be determined in such manner in the era of science and technology as the farmers adopting scientific methods and advance technology to improve quality and fertility of the land but it is not considered by him hence his procedure is illegal as held in '***Jawajee Nagnathan Vs. Revenue Division Officer*, AIR 1994 S.C. 2852'** and **'*Krishi Utpanna Mandi Samiti, Sahaswan Vs. Bipinkumar & another*, AIR 2004 SC 2895'.**

22. As held in Chimanlal's case(*supra*), that the award passed by the S.L.A.O. is not a judgment and the reference petition is not a challenge to the award in appeal or revision etc. but it is a proposal. The award cannot be made basis for appreciation by the Court unless the material on which the award is passed is produced and proved. The opponents have not examined any witness and not filed any document or comparable sale instance. There is no evidence as to how the S.L.A.O. fixed the market price and compensation. Burden is on the opponents to prove the award but failed to discharge it. There is no defence evidence hence it would be just proper to peruse the award to consider all factors and the material before the Court to determine market price of the land afresh.

23. In *Chimanlal's* case(*supra*), the Hon'ble Apex Court issued the guidelines for determination of compensation on the basis of comparable sale instances. It is to be made as if the valuer is the hypothetical purchaser willing to purchase the land from open market and prepared to pay reasonable price on that date and the vendor is willing to sell the land at a reasonable price. The Court to has to consider only genuine sale instances and plus minus factors in terms of price variation as prudent purchaser would do. Hence, the matters provided u/s 23 of the Act i.e. market value and damages for standing crop or trees are to be considered and comparable terms i.e. identical nature, quality, distance in between the lands and period etc. require to be applied in a broader sense.

24. In '***State of Maharashtra Vs. Bhaskar Namdeo Wagh and others*, 2009(3) Mh.L.J. 299,** the Hon'ble High Court of Bombay observed that the transaction immediately preceding or succeeding is good guidance to determine the market value of the acquired land and in Bayaji's(*supra*) also held that 'if the lands situated in same village, acquired for the same purpose under same notification the claimants are entitled to compensation at the same rate on ground of parity. In '***Chindha Fakira Patil Vs. S.L.A.O., Jalgaon*, AIR 2012 SC 481'**, Chindha Patil was from Bhoras, Tah. Chalisgaon and the Hon'ble Apex Court awarded the said rate. Our

Hon'ble High Court in '***State of Maharashtra V. Hemaba Bhika,* 2007(6) ALL MR 215',** held that if the comparability, nature of the land, its potential and utility are similar then the sale instances of land of adjacent village can be relied upon. As per the award, rate of land is meagre. It should be doubled with increase of 10% per year.

25. A.W.1 Narayan deposed that the lands from Patonda, Mundkheda, Wakadi and Waghadu villages were acquired for the project but no sale transaction of land taken place in these villages due to Government circular. Hence market price is to be determined on the basis of the sale instances (Exh.14 and 15) filed by the applicant. They are admissible in evidence without examining its parties as held by the Apex Court in '***S.L.A.O. Vs. Narasaiah,* AIR 2001 SC 1117'**.

26. Adv. Chaurasiya submitted that these cases are of the same village Mundkheda-Patonda situated near one another hence it may be accepted. On the contrary, Adv. Sonawane submitted that all lands in a village and its rates are different. The applicant admitted that his land is at a long distance from these lands hence his claim is not acceptable. I have perused the sale instances.

27. The first sale instance is of 12.7.2005 (Exh.14) by which 0.82 H.R. *jirayat* land of *Gat* No.22/1/2B situated at *mauje* Mundkheda sold to Sunita Kishor Patil by Shantaram Baliram Patil for Rs.7,00,000 just prior to one year before the date of notification u/s 4 of the Act.

28. The second sale instance is of 05.9.2005(Exh.15) by which 1.20 H.R. *jirayat* land of *Gat* No.273 situated at *mauje* Patonda sold to Nimba Tukaram Patil by Dattatraya Dashrath Bhavsar for Rs.10,00,000. Its price comes to Rs.8,33,333 per hectare at that time. It is just one year before the date of notification u/s 4 of the Act hence it can be considered as comparable sale instance by giving 10% increase for one year as held in '***State of Maharashtra Vs. Baliram Girdhar Patil,* 2006 LAC 375 Bom'**. Thus, its rate comes to Rs.9,16,668 per hectare for *jirayat* land. But it can not be applied directly without considering material on record such as distance between these lands and probable cuts for plus minus factors.

29. As far as distance is concerned, A.W.1 Narayan deposed that these lands are at a distance of 4-5 furlong(1 furlong =0.201 km) i.e.1 km from his land. Its quality is better than these lands hence he should get good market rate. But it is crystal clear that these lands are *bagayat* considering large number of fruit trees while there are only 1 mango and 12 *Bor* common trees in the applicant's land as per entry in 7/12 extract hence his contention is not acceptable.

30. The applicant also claimed for enhanced compensation of fruit trees being *bagayat* land hence it is to be adjudicated upon, whether the acquired land is *bagayat* or *jirayat*. A.W.1 Narayan deposed that the award is prepared by capitalisation method but less income is considered in it. His land is *bagayat*. There are 1 *shevaga* and 21 *bor* trees as per joint measurement and the award. The District Agricultural Officer submitted his valuation report of trees for 1999 to 2006 through the expert and it will be filed. It shows that the report is not ready with him but awaited or it is still with the expert. It creates doubt hence evidence of A.W.2 Dr. Sangahvi needs to be scrutinised carefully.

31. Testimony of A.W.2 Dr. Sanghavi reveals that he is an expert valuer of fruit trees, a professor and principal of college, recipient of many awards and published books and articles. On request of the farmers from Mundkheda, he visited *Gat* No.169 of the applicant every time since 1999 to 2005 and he planted fruit trees under his guidance. Respected persons from the village, adjoining farmers and land owners were present at the time of inspection and prepared report by scientific Miran's table method after valuation on considering quality of land, its cultivation, height, width, spread and size of trees, water level, expected income and costs. He considered rates of APMC Jalgaon for 2005-2006 based on his education and experience of fruit valuation as per the scientific method prescribed by the Government by calculating average hence compensation of fruit trees may be awarded as per his report. Thus, he claimed his land as *bagayat*.

32. But in cross-examination A.W.2 Dr. Sanghavi admitted that he did job and research work in Agricultural Department/University. He knows about fruit trees, orchard, all types of fruit trees and National *Falbag* Board of the Maharashtra; the documents filed by him pertains to his qualification but not as a fruit trees expert hence his experience and qualification cannot be sole ground to accept his report as he is not authorised by the Government.

33. A.W.2 Dr. Sanghavi also admitted that he charged specific fees of

Rs.500 to one farmer but does not give its receipt though he visits there for any number of time. He has given age of the trees as an expert/valuer but can not state its basis; he calculated average income from the date of visit to the land till date of the report but can not state its reason; he asked the farmers about receipts of their income of fruit trees but not considered and not filed it; no representative of any public authority was with him when he had been to the field for valuation; he has not told any public authority; no notice given to *Talathi* or other officers; he is not public valuer or expert; he has not applied for it; the Government prepared rules for valuation of fruit trees and does not know whether the circular published in 1990 but admitted that valuation of fruit trees is to be done as per the circular; the District Agriculture Officer, Deputy Forest Conservator and Forest Officers are competent for valuation of fruit trees, they used to draw *panchanama,* submit report, the S.L.A.O. prepares the award but he has not filed Miran's table along with the report. These material admissions created doubts about authenticity of his report as he has not called any public authority or *panch* or any person from the village at the time of joint measurement, he has not followed Rules and the circular dated 27.12.1990 hence his report is not reliable as argued by Adv. Sonawane.

34. Adv. Sonawane argued that the applicant has not filed 7/12 extract showing his land as *bagayat* with trees, receipt of sale of fruit produce in A.P.M.C., rates and income. He prepared bogus documents for enhanced compensation but failed to prove it. A.W.2 Dr. Sanghavi admitted that the S.L.A.O., *Talathi,* Police Patil, *Sarpanch* and adjacent land holders were not present at the time of inspection as held by the Hon'ble Apex Court in '***Executive Engineer Minor Irrigation Department Vs Vitthal Damodar Patil, First Appeal No.2536/2015 Vitthal Damodar Patil Vs. SLAO, MIW Jalgaon and others,*** **First Appeal 331 of 1993(High Court of Bombay)**'. So also, there is no reliable evidence of trees.

35. A.W.2 Dr. Sanghavi admitted that if the specific method of planting fruit trees is not followed, it affects its produce; he has not collected evidence as to purchase of plants for determining age of the fruit trees; fruit bearing capacity of each tree is different and it remains for specific period depending on nature and age. Income of trees may be more or less but depends on quality of soil and its proper cultivation. Hence it creates doubt about rates and income from the fruit trees.

36. So far as A.P.M.C. rates are concerned, A.W.2 Dr.Sanghavi admitted that he has considered rates of APMC Jalgaon for 15 to 20 years for valuation but not filed any relevant document in this respect. He considered rates of 2005-06. Each APMC has different market rates. There is APMC in each *taluka*. It functions as per the rules. There is APMC in Chalisgaon, Malegaon and Dhule(close to Chalisgaon than Jalgaon). He can not state as to why he has not used APMC rate table of Chalisgaon APMC though it was convenient for the farmer to sell fruit produce there. He does not know whether the farmers had been to Jalgaon A.P.M.C. to sell their fruit produce. He has taken base of rates of APMC Jalgaon and made application for getting its rates but not filed its copy; the trees were of different age but he mentioned its average age, he has not collected evidence about purchase of plants for determining age; average rates of fruits changes as per its supply hence there can not be same rate in APMCs. In view of these admissions, his report can not be relied upon as it creates doubt about plantation fruit tress under his guidance.

37. So far as plantation of fruit trees is concerned, A.W.2 Dr. Sanghavi admitted that he has not advised the farmer as to which type of fruit trees are to be planted and he has not filed bills towards its purchase as he would have suggested good type of *Bor* trees for plantation. It creates doubt whether plantation of trees is done under his guidance and he visited his land due to less number of *Bor* trees. There is no evidence as to area occupied by the trees, as to how and where he had planted *Bor* trees hence probability of its natural growth on the boundaries of his land can not be ruled out because they appear to be not planted with a view to obtain substantial and regular income and as per his 7/12 extract, there is entry of only 12 *Bor* trees but he claimed compensation for 21 *Bor* trees. Hence, I am not inclined to grant enhanced compensation for them and the compensation given by S.L.A.O. is confirmed as the revenue authority has no reason to make false entry in 7/12 extract. Thus, his evidence is shattered in cross-examination hence it is not worthy of credit. There is discrepancy in number of trees stated by him and the entries in 7/12 extract which he had filed but not got exhibited which creates doubt about his intention, expert’s report and the applicant’s claim.

38. In these circumstances, though A.W.2 Dr. Sanghavi denied that the applicant had been to him and asked for preparing report; he had given false report directly without visiting land for getting more compensation and he used to charge more fees as per amount of report vide agreement but its probability can not be ruled out in view of the above admissions given by him. Hence his report is not reliable and, therefore, the applicant’s contention is also not acceptable.

39. 7/12 extract of *Gat* No.169(Exh.42) reveals that there are entries of 12 *Bor* trees from 1999 to 2011 (but no numbers mentioned since 2011-12) and 1 mango tree from 1998 to 2006 but no entry since 2006-07. But he claimed compensation for 21 *Bor* trees and not for mango tree. The main application and the award show 1 *chandan* and 1 mango tree but he not stated anything about it, no explanation given and concealed it(**emphasis supplied**). Thus, there is discrepancy in number of fruit trees. There is no consistency and corroborative documentary evidence on record. It creates doubt as it *prima facie* shows that the applicants documents are not reliable due to doubtful entries of trees.

40. The applicant claimed 1 *shevaga* tree and it is consistent as per the award. But considering its one number, it appears that it may not be planted for the purpose of income but it might have grown up naturally on the *bandh* of the land. Hence the compensation granted by the S.L.A.O. for the trees is maintained. Therefore, the applicant is not entitled for enhanced compensation for the trees.

41. So far as well is concerned, A.W.1 Narayan deposed that there was one *pucca* well, electric motor and pipeline and he was watering his fruit trees by modern irrigation system. But it is pertinent to note that in ‘remarks’ column of 7/12 extract, there is entry of one/two well(with gap) though specific column is provided for it i.e.1 well from 1998 to 2006 and 2 wells since 2006-07 to 2013-14 but there is no entry of well in 2012-13 but again in 2013-14, there is entry of two wells. It is significant to note that the land is acquired and its possession is taken in 2006, still there are entries of same number of *Bor* trees in its 7/12 extract (**emphasis supplied**). Thus, there is discrepancy in number of well(s). It creates doubt about the applicant’s claim that his land is *bagayat*. In view of this, evidence of both the witnesses can not be relied upon due to inconsistency in the applicant’s pleading and evidence (oral and documentary).

It *prima facie* shows that he has not come before the Court with clean hands hence the material on record needs to be scrutinised with care and more cuts need to be applied and to rely upon the award.

42. Adv. Chaurasiya submitted that in the case of '***Chindha Fakira Vs. S.L.A.O.'*** the Hon'ble Supreme Court held that entry of well in 7/12 extract is sufficient to hold that the land is *bagayat* though there is no orchard or irrigated crop hence, the applicant may be awarded its rate. 80% rate of fruit trees allowed by the Courts in other LARs by accepting his report. There are only a few trees in the land hence it be considered. But in view of the above reasons and admissions given by the expert in his cross-examination, it is not acceptable especially due to doubtful entry of well and trees hence his report is also not acceptable.

43. So far as the report is concerned, A.W.2 Dr. Sanghavi admitted that he can not state as to whose signatures are there on the *panchanama* filed with the report. He prepared report on computer but not prepared it personally as he can not use it. Rough/*kachhe tipans*/notes are not kept. No certificate as per Section 65B of the Evidence Act is produced on record. Hence the report is not acceptable.

44. The applicant's claim is based on report of the expert but there is discrepancy in number of trees and well. His evidence is not worthy of credit being inconsistent with entries in 7/12 extract which is a public document. It raises doubt about valuation done by A.W.2 Dr. Sanghavi. In the award, his *Gat* No.169 is shown as *jirayat* and there is no reliable entry of well in it. There is no corroborative evidence on record to rely upon the testimony of the expert in respect of the annual average yield as it materially differs from average yield determined by the Maharashtra Government by notification. Thus, evidence of the two witnesses is not cogent, reliable, sufficient and not worthy of credit as it is shattered in cross-examination. Thus, he failed to prove contents of the *panchanama* (Exh.20), A.P.M.C. rates (Exh.21) and valuation report (Exh.19) hence the applicant's contention and his report can not be relied upon being unreliable but it appears that he has not come before the Court with clean hands.

45. As per the award, the applicant's land is *jirayat.* But it is pertinent to note that the S.L.A.O. fixed and paid compensation for the well, pipeline etc. It is well settled law that the Court can not go beyond the award. There is no evidence in defence, hence I have no alternative but to accept that there is well and trees as per the award and hence I hold that the applicant's land is *bagayat* as held in '***Chindha Fakira Patil Vs. S.L.A.O. Jalgaon,* AIR 2012 SC 481'**.

46. Adv. Sonawane submitted that the expert admitted that there should be standard distance of 6 mtr. between two trees for good production. It also depends on the nature and rate but not acceptable in view of the above admissions and I have no alternative but to take help of the award prepared by the public servant u/s 114(e) of the Evidence Act, or to apply principles of good conscience, equity and justice or to go for guess work to arrive at a logical conclusion that market value has to be determined by inference and rational work.

47. In a catena of decisions, the principle is laid down that the market value of the land cannot be determined both on the basis of sale instance as also on capitalisation method keeping in view the fact that it had fruit bearing trees. But in this case, the applicant has not stated anything about the area of land occupied by it. Similar position might be before the S.L.A.O. or the concerned officer of the State. But the legal principles governing valuation as laid down in ***'Navnath Vs. State of Maharashtra,* AIR 2009 SC (Supp) 1540'** and **'*Ambya Kalya Mhatra Vs. State of Maharashtra*, 2011 AIRSCW 5749'**, that if the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But, if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard i.e. the land with fruit bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalising the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. Thus, it is made clear that if the acquired portion of any applicant is divided into two categories i.e. portion occupied under fruit bearing trees and portion of vacant land, market value of both different portions needs to be determined independently and when the compensation is awarded for fruit bearing trees, the applicant is not entitled to claim separate compensation in respect of the land occupied by the fruit trees.

48. The applicant claims compensation for 1 *shevaga* and 21 *bor* trees. There are recitals of 1 *shevaga*, 1 *chandan* and 21 *bor* trees in the award. Therefore, I take into consideration 1 *shevaga* and 21 *bor* trees and accept its compensation awarded by the S.L.A.O. hence the applicant is not entitled for enhanced compensation for fruit trees. Total number of trees are 22 and total area of *jirayat* land 0.95 H.R. and *pot kharab* 0.02 H.R. It is well settled that 6 trees can be planted in 1 R approx. Accordingly, 4 R land is required for 22 trees. But as per the award, valuation of fruit trees is calculated as Rs.41,333 but it is less than the valuation of the land hence the applicant is entitled for enhanced compensation for 0.95 R *bagayat* and 0.02 H.R. *pot kharab* land on considering plus minus factors.

49. As far as rates are concerned, A.W.1 Narayan deposed (vide affidavit Exh.11)) that his land is *bagayat* and at the time of notification u/s 4 of the Act, price of the acquired land was Rs.8,00,000 and Rs.4,00,000 per hectare for *bagayat* and *jirayat*. The award shows that his land is *jirayat*. As per the application dated 24.12.2009(Exh.1), he claimed it @ Rs.12,00,000 and Rs.6,00,000 for *bagayat* and *jirayat*. But filed LARs claiming the rate of Rs.16,00,000, Rs.8,00,000 and Rs.4,00,000 per hectare for *bagayat*, *jirayat* and *pot kharab* lands. It is exorbitant as it is in excess of his pleadings and prayer as per the defence and these rates are not acceptable as these lands are different but his claim can not be rejected on this ground in view of nature of the reference and the opponents have not adduced any evidence. A.W.1 Narayan admitted that his land was *jirayat* but again voluntarily stated that there were trees but denied that the Government has paid compensation to him at the proper market rate at the time of acquisition of land as per the rules. Thus, there is no consistency in his claim, pleadings and evidence. He claimed exorbitant rate by not bringing comparable sale instances on record as contended by the opponents and evidence of both the witnesses is not cogent and trustworthy but his right can not be denied due to these admissions to do equity on the ground of parity. But material on record needs to be analysed carefully as the applicant has not come before the Court with clean hands as discussed above.

50. As held in ***'Ram Piari and another v. Land Acquisition Collector, Solan and others,*** **(1996) 8 SCC 338**' the Court cannot award less compensation than awarded by the Collector as provided u/s 25 and the matters provided u/s 24 of the Act shall not be taken into consideration in determining compensation.

51. It is well settled law that the compensation should not be less than that in the award, the applicant can pay deficit court fee but can not go beyond pleading. As per the award Rs.1,08,870, Rs.7,090 and Rs.41,333 (valued but not paid) given for the acquired land, well and fruits trees. But in ***'Bhimasha Vs. Special Land Acquisition Officer,* 2008 10 SCC 797',** the Hon'ble Apex Court held that considering yield notification and price list and also average price of the crop compensation can be granted more than the amount prayed for in the plaint subject to payment of proportionate court fees. As held above, his land is *bagayat* hence he is entitled to compensation at the more rate than prayed but more cuts need to be applied to that extent.

52. The applicant's land is from Patonda and the land mentioned in the second sale deed dated 05.9.2005(Exh.15) is also from the same village hence needs to be considered as a comparable sale instance(**emphasis supplied**). Its rate comes to Rs.9,16,668 per hectare for *jirayat* land. But A.W.1 Narayan admitted that his land is at a distance of 10 to 15 Km. from these lands; there were sale transactions of the land in the village before 3 to 4 years of acquisition of his land, he knows its vendors and purchasers who registered the sale-deeds mutually so that he should get its benefit. It shows that he has not come before the Court with clean hands hence it can not be applied directly as comparable sale instance but more cuts need to be applied for this reason for determining market rate. In the given circumstances, I am of the view that it would be just, proper and fair to deduct 40% of the amount from the rate of sale deed of village Patonda in terms of price variation to fix the price of the acquired land. Accordingly, I fix the market price of the acquired land at the rate of Rs.11,00,000 P.H. as it is not meagre or excessive but fair for *bagaayat* land hence it would suffice the purpose.

53. As held by our Hon'ble High Court in the case of '***Special Land Acquisition Officer (III) Jalgaon and another Vs. Bhagwat Vithal Sonawane,* 2009(4) Mh.L.J. 308',** that the price of *bagayat* land double the value of *jirayat* land and the price of *pot kharab* land 50% of the market value of *jirayat* land requires to be fixed. In view of this, the market price of the acquired land on the date of notification u/s 4 of the Act, is fixed at the rate of Rs.11,00,000, Rs.5,50,000 and Rs.2,75,000 P.H. for *bagayat, jirayat* and *pot kharab* land respectively. In the light of the above discussion and reasons, the applicant's contentions and the arguments advanced on his behalf are acceptable partly and I hold that the compensation awarded by the S.L.A.O. is inadequate hence he is entitled for enhanced compensation for *bagayat, jirayat* and *pot kharab* land at the rate of Rs.11,00,000, Rs.5,50,000 and Rs.2,75,000 per hectare respectively subject to payment of deficit court fees and the application deserves to be allowed partly. In the result, I answer Issue No.1 in the affirmative and Issue No.2 accordingly and pass following order in answer to Issue No.3.

O R D E R

1. The reference is partly allowed with proportionate costs.

2. The opponents do pay enhanced compensation to the claimants at the rate of Rs.11,00,000 per hectare for 0.95 H.R. *bagayat* land and @ Rs.2,75,000 per hectare for 0.02 H.R. *pot kharab* land of *Gat* No.169 situated at *mauje* Patonda, Tal. Chalisgaon.

3. The compensation paid by the S.L.A.O. to the claimants for fruit trees is maintained.

4. The compensation paid by the S.L.A.O. to the claimants be deducted.

5. The opponents do pay to the claimants interest at the rate of 9% per annum for the first year from the date of notification u/s 4 of the Land Acquisition Act, 1894 i.e. from 09.6.2005 and, thereafter, at the rate of 15% per annum till the realisation of the entire amount u/s 28 of the Land Acquisition Act, 1894.

6. The claimants are entitled to 12% component and 30% solatium u/s 23(1A) and (2) of the Land Acquisition Act, 1894.

7. The claimants do pay requisite deficit court fees.

8. The Award and bill of costs be prepared accordingly.

(Dictated and pronounced in open Court)

NARESH KESHAORAO WALKE

Digitally signed by NARESH KESHAORAO WALKE
Date: 2022.07.04 17:14:22 +0530

(N. K. Walke)

Date : 30.06.2022. **Civil Judge Senior Division, Chalisgaon.**