

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 483 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

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Approved for Reporting	Yes	No
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SHARDULBHAI UNADBHAI & ORS.**Versus****STATE OF GUJARAT**

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Appearance:

MR. HEMAL SHAH(6960) for the Appellant(s) No. 1,1.1,1.2,1.3,2,3
 MS. SURBHI S. BHATI, AGP for the Defendant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 03/08/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. The present appeal has been preferred by the appellant-claimant challenging the legality, validity, and propriety of the judgment and award dated 30/12/2014 passed by the learned 5th Additional Senior Civil Judge, Amreli in Land Reference Case No. 34 of 2001. By the impugned judgment and award, the learned Reference Court partly allowed the reference case, fixing the compensation for the acquired land at the rate of Rs. 10.00 per sq. mtr. by categorizing the land as Jirayat land, instead of treating it as Bagayat land, which would have otherwise fetched compensation at the rate of Rs. 13.05 per sq. mtr. (Rs. 11.25 + Rs.

1.80).

2. The brief facts leading to the present appeal are that the State Government initiated land acquisition proceedings for public purpose, acquiring land situated in the sim of village Zampodar, Taluka Rajula, District Amreli. The notification under Section 4 of the Land Acquisition Act, 1894 was published on 28/10/1991, followed by the notification under Section 6 of the Act published on 08/10/1992. The Special Land Acquisition Officer passed an award under Section 11(1) of the Act on 21/10/1994 in LAQ Case No. 46 of 1989, awarding compensation at the rate of Rs. 568.50 per acre for Bagayat land and Rs. 284.25 per acre for Jirayat land. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the appellant preferred a reference under Section 18 of the Act, which was numbered as Land Reference Case No. 34 of 2001 before the Reference Court, and the learned judge, after hearing the parties, has partly allowed the reference; hence, the present appeal has been filed.

3. The moot question as surfaced from the material in question is the issue with regard to the claim of the appellant herein, which wholly rests on to consider the land in question as a Bagayat land instead thereof a Jirayat land. The fundamental premise of the appellant's appeal lies in seeking reclassification of the subject of land for the purpose of claiming higher market value, the nature of the land whether Bagayat or Jirayat is a question that this fact cannot be determined on flimsy or unverified claims. The burden lies squarely on the claimant to produce cogent and contemporaneous documentary and oral evidence demonstrating the actual presence and operation of irrigation facilities as on the crucial date of the Section 4 notification of land Acquisition Act.

4. Though the efforts have been made by the appellant while referring to the documents placed for consideration, particularly documents at Exh. 41, to demonstrate that a well was in existence and that they were lifting water for irrigation purposes, however, the said documents seem to be of 11/07/2005, whereas the question land was acquired in the year 1991. Thus, by citing the aforesaid document, the appellant has made an effort to show that the well was in existence and that they were lifting water, and thus the land is to be described as a Bagayat land instead of Jirayat Land. This Court cannot accept post-facto documentation created long after the relevant date of acquisition to give retrospective effect to a claim for higher compensation.

5. At this juncture, to deal with the issue in precise, the relevant portion which deals with the issue on hand as dealt with by the Reference Court is required to be reproduced herewith. The learned 5th Additional Senior Civil Judge, while discarding the aforesaid claim, has concluded that not only in view of the aforesaid documents which appear to be of a subsequent date as such, even at the date of notification under Section 4, nothing short of any such material was produced to establish the prevailing situation of the land in question which may constrain the Court to consider that the well in question was existent. In land acquisition jurisprudence, the crucial date for assessing the nature, character, and market value of the land is the date of publication of the Section 4 notification, and any improvement claimed subsequently without contemporaneous evidentiary support must be rejected.

5.1 Furthermore, while dispatching the aforesaid claim, the learned 5th Additional Senior Civil Judge in Paragraph 13 has observed and concluded as under:

"....Now if we look to the document Exh. 51, the Reference Court has at page 7 of the judgment considered the notification published u/s. 4 of the Act dt. 31/3/90 as base and considering the price fixed by Hon'ble High Court and the relevant date of notification u/s. 4 under that acquisition i.e. 28/10/91, calculated the difference of one year & seven months between two notifications and accordingly provided rise in price at rate of 10% per year and accordingly the price fixed by Hon'ble High Court was increased proportionately to Rs. 11.25 + Rs. 1.80 = Rs. 13.05 Ps. for Bagayat land and Rs. 8.50 + Rs. 1.36 = Rs. 9.86 Ps. which is rounded to Rs. 10/- per Sqr. Mtr. for Jirayat land. Also the contention of the Ld. Advocate for applicant that the land should be treated as of Bagayat nature has as per discussion at Para 10 is being negated, and hence the same is not repeated...."

6. It further transpires from the material placed for consideration revenue record wherefrom it suggests that the applicant used to take only one crop during the year, and two Kharif crop. More so, column No. 11 of the revenue record lacks any entry showing the availability of irrigation facilities, and nothing short of any such entry seems to be surfaced to establish the factum of availability of the facility of irrigation. And therefore, in absence of the aforesaid, the conclusion arrived at by the learned judge that the land in question is of Jirayat nature, which is being cultivated purely on rainfall during the rainfall / monsoon, and cannot be considered as a Bagayat land, is unassailable and fully justified on facts as well as in law.

7. Though the efforts also have been made by the appellant while taking us to the deposition and cross-examination of the witness, namely Yashvinikumar Dayashankar Shrivastav, examined at Exh. 59, however, while perusing the same also, nothing sort of any such material surfaced to come to the rescue of the claim of

the appellant herein. The witness examined by the opponent side clearly maintained that no documentary proof regarding active irrigation or market value was produced during the Section 9 proceedings, and either in the cross-examination failed to elicit any admission that could establish the existence of an operational well on the date of notification.

8. In context to the issue with regard to the type of land, whether a Jirayat or Bagayat land, the learned judge has aptly considered or discussed in detail while considering the entire material in the form of oral as well as documentary evidence, and summed up its conclusion while holding that the land in question is of Jirayat. The Reference Court has painstakingly evaluated the revenue entries, crop patterns, and witness statements before rejecting the appellant's claim for Bagayat classification, and this Court finds no legal or factual infirmity in the reasoning adopted by the Learned Trial judge.

9. At this juncture, it would be apt to refer to the relevant portions of the questioned order pertaining to the issuance of the notifications and the reference as to the order passed by this Court in First Appeal No. 1504 of 2001, while passing the award with regard to the different kinds of land, say for example Jirayat, Bagayat, and other lands situated in the same village Zampodar. The judicial determination of market value in comparable acquisition proceedings of the same locality serves as a reliable benchmark for fixing just compensation.

10. In view of the order passed by the Hon'ble High Court in First Appeal No. 1504 of 2001, the same has been considered by

the reference court, where prevailing price of the Zampodar village is Rs. 11.25 for Bagayat and Rs. 8.50 for Jirayat, the learned Reference Court rightly adopted the said base rates to maintain consistency in judicial awards concerning the same geographical area.

11. A round up of 10% per annum escalation is taken considering the time gap between the notifications. For Bagayat land, Rs. 11.25 plus Rs. 1.80 comes to Rs. 13.05 for Bagayat land, and for Jirayat land, Rs. 8.50 plus Rs. 1.36 comes to Rs. 9.86, which is rounded off to Rs. 10.00 for Jirayat land. Since the appellant failed to establish the Bagayat character of the land, the learned Reference Court rightly awarded compensation at the rate of Rs. 10.00 per sq. mtr. applicable to Jirayat land.

12. In view of the above detailed discussion, this Court finds no substance in the present appeal. Accordingly, the appeal stands dismissed while confirming the judgment and order passed by the Trial court. Interim relief, if any, stands vacated. Interim application, if any, stands disposed of. Record and Proceedings, if any, be sent back to the trial court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KAUSHAL MAHESHBHAI RATHOD(HCD0078), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 03/08/2026 15:12:34