



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 236 OF 2016

The Executive Engineer
Minor Irrigation Division No.1,
Aurangabad.

.....APPELLANT
(Org. resp. No.2)

VERSUS

1. Bansi S/o Keru Jadhav
Age 47 years. Occu. Agri.
R/o. Gajgaon
Tq. Gangapur, Dist. Jalna

(Org. Petitioner)

2. The State of Maharashtra
Through G.P. High Court,
Aurangabad.

.....RESPONDENTS
(Org. Respondent no.1)

Mr. A. M. Gaikwad, Advocate for Appellant
Mr. S. A. Gaikwad, AGP for Respondent-State
Mr. D. A. Bide, Advocate for Respondent

WITH
FIRST APPEAL NO. 256 OF 2012

Bansi S/o Keru Jadhav
Age 47 years. Occu. Agri.
R/o. Gajgaon
Tq. Gangapur, Dist. Jalna

.....APPELLANT
(Org. Claimant)

VERSUS

1. The State of Maharashtra
Through The Special Land Acquisition Officer,
Minor Irrigation, Aurangabad,
Tq. & Dist. Aurangabad.

2. The Executive Engineer
Minor Irrigation Division No.1,
Aurangabad.

.....RESPONDENTS

Mr. D. A. Bide h/f Mr. A. R. Borulkar & Mr. C. K. Sonawane, Advocate
for Appellant

Mr. S. A. Gaikwad, AGP for Respondent-State

CORAM : SANJAY A. DESHMUKH, J.

DATED : 24th DECEMBER, 2025

ORAL JUDGMENT :-

1. These appeals are preferred by the claimant as well as by the Acquiring Body against the judgment and award passed by the learned Land Reference Court, Vaijapur, Dist. Aurangabad in Land Acquisition Reference No.750 of 2010, dated 11.10.2011.

2. Agricultural land of the claimant bearing block no.138 admeasuring 46 R situated in the village Gajgaon, Tq. Gangapur, Dist. Aurangabad was acquired by the Acquiring Body for the construction of 'the Palasgaon Minor Irrigation Canal Tank'. The Land Acquisition Officer awarded compensation for the acquired agricultural land of the claimants. However, being dissatisfied with the compensation granted by the Land Acquisition Officer, the appellant/claimant has preferred a Land Acquisition Reference No.750 of 2010, which was

partly allowed and the amount of compensation for the acquired agricultural land was enhanced. However, compensation for the total 245 Mosambi trees planted on the said land was not awarded by the learned Reference Court.

3. The learned Advocate Mr. D. A. Bide, for the appellant/claimant in First Appeal No.256 of 2012 pointed out the pleadings and evidence. He submitted that agricultural land of the claimant was irrigated and therefore Mosambi trees planted on it. He further submitted that the sale exemplar at Exhibit 31, dated 06.08.1984 was not considered while awarding enhanced amount of compensation. The notification under Section 4 of the Land Acquisition Act was issued on 03.03.1994. The sale exemplar at Exhibit 31 is registered prior to the said notification. He submitted that there was no justifiable reason to disbelieve the said sale exemplar Exhibit 31. He further submitted that the claimant is entitled to compensation for the acquired land and also entitled to compensation for 245 Mosambi trees, which were 10 years old at the time of acquisition of the land of the claimant.

4. The learned Advocate for the appellant/claimant submitted that the claimant is entitled to compensation @Rs.1,250/- per Are, amounting to a total of Rs.57,500/- for the 46 R land, as per the sale

exemplar at Exhibit 31. He further submitted that the claimant is entitled to compensation of Rs.2744/- per Mosambi tree total of Rs.6,72,280/- for 245 trees. However, it was not awarded by the learned Reference Court. He lastly prayed to set aside the impugned judgment and award and to allow the appeal filed by the claimant by enhancing the amount of compensation.

5. Learned Advocate Mr. A. M. Gaikwad, appearing for appellant/Acquiring Body in First Appeal No.236 of 2016, submitted that a exorbitant amount of compensation was awarded by the learned Reference Court. He submitted that the claimant cannot claim compensation under two separate heads/captions, i.e. for acquired land as well as for orchard of the Mosambi Trees. He submitted that the learned Reference Court has rightly declined to award separate compensation for the acquired agricultural land when the compensation for the Mosambi trees orchard has been awarded. The claimant has to claim compensation either for the land or for the orchard. He submitted that there is no substance in the grounds of objections of appeal. In respect of the appeal filed by the Acquiring Body, he submits that in paragraph no.27 of the impugned judgment, the learned Reference Court erred and exorbitant amount of compensation was awarded without considering award passed by the

Special Land Acquisition Officer. The reference was not filed within limitation, but wrong finding is given on issue number five. He prayed to dismiss the appeal filed by the claimant.

6. Perused the Record and Proceedings, particularly the impugned judgment and award and the evidence adduced by the claimant in support of the contentions raised by them. On re-appreciation of the evidence of the claimant, it is not shaken in cross-examination.

7. A Valuer Dr. Vishnu Kashiram Patil deposed that he is M.Sc. (Agriculture) degree holder and has also completed Ph.D in Horticulture. He also obtained the degrees in the discipline of Horticulture. According to him, he visited the acquired land on 10.04.1994, and he noticed that in block no.138 of village Gajegaon, Tq. Gangapur, Dist. Aurangabad, there were 245 Mosambi trees. He drawn up the valuation report at Exhibit 33, wherein he stated that the orchard consisted of 245 Mosambi plants of the Nucellar variety were in the fruit bearing phase. He valued Rs.2744/- for each tree. He followed the method of A. E. Miram's Real Property Tables Method for estimation of the price at Exhibit 33. He had considered the height, girth, spread, present age, future age, etc. of trees and after considering the average of all these factors, he had drawn up the said

valuation report of trees at the time of said acquisition.

8. The 7/12 extract of the acquired land block no.138 shows that the land was irrigated by well water and in the year 1994-95, there were trees in the 60 R land. As far as the number of trees is concerned, not only the valuer's report, but other documentary evidences is also produced on record. The Executive Engineer Minor Irrigation Division-1, who upon disputing the number of Mosambi trees, visited the said property and noted that there were 245 Mosambi trees, which fact is established from that report at Exhibit-28. Not only this report, but even in the award, while calculating the number of trees, the Land Acquisition Officer observed that, in view of the circular of the State Government and the directions of the Agricultural Department, a maximum of 277 trees can be planted per hectare. Therefore by considering that circular proportion/scale of plantation, the existing number of Mosambi trees on the acquired land was not properly considered by the Reference Court.

9. If the evidence of the expert and the Executive Engineer, who visited the acquired property alongwith the 7/12 extract at Exhibit 23 and complaint of the claimant at Exhibit 28 are considered together, then it is clearly established that on the 40 R land of the claimant, in block no.138, he had planted 245 trees, and therefore, he

is entitled to compensation for those trees. The valuer's report at Exhibit 33 was not shaken in the cross-examination with regard to the number of trees as well as the valuation arrived at by him after considering height, girth, spread, age, future age and fruit-yielding capacity of the Mosambi trees. He has rightly arrived to the conclusion about the value of trees i.e. Rs.2744/- per tree.

10. However, for the human error, Rs.244/- per tree must be deducted out of price of each tree as suggested by the valuer. The claimant is therefore entitled to Rs.2500/- per Mosambi Tree. If it is multiplied by 245, then it comes to Rs.6,12,500/-. The learned Reference Court erred in this regard as held above, and therefore the reasons and findings of the learned Reference Court are not legal, correct and sustainable.

11. During the argument, learned Advocate for the appellant/claimant Mr. D. A. Bide fairly conceded that when the amount of compensation is awarded for the orchard, the claimant is certainly entitled for it as it is higher amount than the market value of the acquired land.

12. Considering all these aspects, it is found that the learned Reference Court erred in calculating the number of trees and also in

not believing the report of Valuer. The claimant is thus entitled to enhanced amount of compensation for the 245 Mosambi trees only as held above.

13. The argument of the learned Advocate Mr. A. M. Gaikwad, for acquiring body cannot be accepted that the learned Reference Court was incorrect and erred while enhancing the amount of compensation for the Mosambi trees and that the Special Land Acquisition Officer was correct in ascertaining value of the said trees. His argument is also not acceptable that to not to rely upon the report of valuer Dr. Vishnu Patil.

14. As far as finding of the Reference Court as to filing of reference within limitation is concerned, the Acquiring Body or the Special Land Acquisition Officer has not adduced any evidence to show that when notice under Section 12(2) of the Land Acquisition Act is served upon the claimant. The reasons and findings of the learned Reference Court are legal and correct and no interference is warranted in it. There is no scope for allowing the First Appeal No.236 of 2016 as there is no substance in the grounds of objections of it. In respect of First Appeal No.256 of 2012, as held above, the claimant's claim for enhancing the amount of compensation for the 245 Mosambi trees deserves to be allowed. The impugned judgment

and award deserve to be partly set aside. The appeal of the claimant deserves to be allowed. The appeal of the Acquiring Body bearing First Appeal No.236 of 2016 deserves to be dismissed. Hence, the following order:

ORDER

- a. First Appeal No.256 of 2012 is allowed. First Appeal No.236 of 2016 is dismissed with no orders as to costs.
- b. Impugned judgment and award is partly set aside and modified as under:
- c. Claimant is entitled for compensation @Rs.2500/- per tree for 245 trees, amounting to a total Rs.6,12,500/- with all the statutory benefits i.e. component, solatium and interest as per the Land Acquisition Act, 1984.
- d. The Acquiring Body is directed to deposit the enhanced amount of compensation in this Court within 12 weeks.
- e. After depositing the same by the Acquiring Body, claimant is permitted to withdraw the enhanced amount of compensation from the Registry of this Court.
- f. Civil Applications, if any, is disposed of.

(SANJAY A. DESHMUKH, J.)