

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 357 OF 2012

1]Kaushalya Govind Shete
2] Khandu S/o Govind Shete
3] Ganpat S/o Govind Shete

Versus

1]The State of Maharashtra,
Through the Collector, Ahmednagar

2] The Executive Engineer,
Minor irrigation (Local Sector), Divn.No.1
Ahmednagar, Dist.Ahmednagar

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Advocate for Appellants : Mr.Bhore K.S.

AGP for Respondents: Mr.D.V.Tele

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CORAM : S.V.GANGAPURWALA,J.

DATED : 7TH OCTOBER, 2015

ORDER :-

The present appellant being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer filed Reference u/s 18 of the Land Acquisition Act. The Reference Court partly allowed the said Reference. The present appeal is filed for further enhancement.

2] Mr.Bhore, learned counsel for the appellant submits that the Reference Court had come to the conclusion that pomegranate trees were standing in the land of the petitioner which is acquired by the respondents. 98 Aar land from Gat No.1335 of village Chafewadi, Jeur Bayjabaiche,Tq.& Dist.Ahmednagar is acquired. 700 pomegranate trees were standing. Though the possession was taken by the respondents on 1/6/1988, the Notification u/s 4 of the

Land Acquisition Act was issued on 6/6/1991. According to the learned counsel, the age of the trees as on the date of Notification u/s 4 is required to be considered. The learned counsel submits that an expert valuer had also inspected the said trees and had submitted the valuation report. The said valuer Mr. Bhujbal is also examined by the claimant. It is shown in the said report that 630 pomegranate trees are in good condition. He has submitted the report scientifically making calculations. According to the said report, each tree would be worth Rs.6233/- and for 630 pomegranate trees amount would come to Rs.39,26,790/-. The learned counsel submits that there was no impediment for the Reference Court to rely on the said report when the Reference Court has come to the conclusion that these pomegranate trees were standing on the land of the petitioner at the time of Notification u/s 4 of the Land Acquisition Act and so also the evidence of the expert valuer Mr. Bhujbal is not shattered in cross examination. The learned counsel submits that even as per the diary published by Mahatma Phule Agricultural University in 1 hectare of land about 700 trees can be planted. The land acquired is almost 1 hectare i.e. 98 Aar land 2 Aar land less for 1 Hectare. The Court ought to have accepted report of the valuer and awarded compensation as per report of the valuer more particularly when the respondents have not led any evidence of any expert. According to the learned counsel the appellant would be entitled for the compensation of the pomegranate trees and also the land and the well situated in the said land.

3] The learned AGP submits that the Reference court has come to the conclusion that in 1985-86 said pomegranate trees are planted, they were too small when the possession was taken, as such, the amount towards the pomegranate trees is rightly not awarded. The amount as per the valuation of the land has been awarded, the same would be sufficient compensation for the

appellant. According to the learned counsel, though the fact and situation existing as on the date of Notification u/s 4 of the Land Acquisition Act, is to be considered, still considering that the possession was taken earlier, the compensation is rightly not awarded for pomegranate trees. Even in the award passed by S.L.A.O. there is no mention of pomegranate trees.

4] With the assistance of learned counsel, I have gone through judgment so also record and proceeding. As far as the existence of pomegranate trees is concerned, Reference Court considered the panchanama, the revenue record, the evidence and the valuation report to come to the conclusion that as on the date when the possession of the land was taken, the pomegranate trees were existing and standing on the land. The panchanama i.e. the spot inspection report Exh.64 which is done by the respondent it is shown that there are some Orange trees and pomegranate trees were standing. Exh.65 is also the same report. The 7/12 extract for the year 1986-87 and 1987-88 shows crop of pomegranate trees in 1 hectare 20 Aar land of the appellant. The Reference Court has not granted compensation in respect of pomegranate trees only on the ground that at the relevant time, all the trees were not fruit bearing trees.

5] The following observation of the Reference Court shows that the pomegranate trees were planted by the appellant and were standing.

“43] Considering the arguments advanced from both the sides, it would be proper to verify the documents at Exh.Nos.60 to 66. The document at Exh.60 shows that 1 hectare 31 Aar land was acquired by the non-applicant. This is undisputed

fact. Exh.no.61 is a complaint made by applicant no.1 Kaushalya to S.L.A.O. mentioning that she is the owner of Gat No.1335. Area admeasuring 3 H – 14 Are out of that 1 H – 20 Are land was acquired by the non applicant. In the acquired portion, 700 pomegranate trees were standing. Those trees were referred in the panchanama, drawn by SLAO but subsequently, those trees were deleted from second panchanama. The construction work of dam was started prior to 2½ years before this complaint and she claiming the compensation for standing trees. Exh.62 is also complaint made by applicant no.1 to SLAO. Contents are same, which are referred in Exh.61. After these two complaints, the SDO called the applicant and recorded her statement. In her statement, she made a complaint that at the time of acquisition, 700 pomegranate trees were standing in the acquired portion of land. SLAO draw the panchanama but deleted the number of trees from the said panchanama. She further deposed that possession was taken in the year 1988. The construction work was started two years prior to taking possession and she claiming the compensation. The applicants are relied upon Exh.64. This is spot inspection report. In the said report, one well is shown, some orange trees were standing and pomegranate trees were standing. Exh.65 is also same report. Exh.66 is one receipt which shows that Govind Gangaram Shete sold some pomegranate fruits in the market for amount of Rs.2940.00 in the year 1985. These are documents relied by the applicants and on the strength of these documents, applicants are claiming compensation for pomegranate trees. The learned advocate for the applicants submitted that all these documents at Exh. 60 to 66 are in consonance with the documents i.e. 7/12 extract which shows that for the year 1986-87, 1 H- 20 are land and for the year 1987-88 1 H- 20 Are land shown for crop of pomegranate. After the year 1988 there is no documents produced by applicants to show that pomegranate trees were standing. As per the statement of applicants before SDO which is produced at Exh.63 she admits that she was planted the pomegranate trees in the year 1985-86. She was planted 700 plants. In her self statement, she further stated that the possession

was taken 2½ years prior to her statement. This statement on recorded on 10/5/1993. Possession was taken in the year 1988. "Award" passed in the year 1992. She further stated, at the time of construction work all the trees were cut by concerned authorities. Her statement clearly indicate that after taking possession, all the standing trees were cut down by non applicants for construction work, it means, in the year 1988-89 not a single tree was standing in the acquired portion of land. According to the applicants, she was planted the pomegranate trees in the year 1985-86, possession was taking the year 1988, it means, at the time of taking possession according to the applicants the age of pomegranate trees was only two years. The payment receipt is dated 20/08/1985. In the year 1985, the trees were not planted therefore, it is unbelievable in the year 1985, the applicants have sold the fruits of pomegranate trees. After plantation it requires minimum 5 to 6 years for fruits flourishing. However, the applicants have produced the receipt for the year 1985, it means, the receipt is false or the statement made by the applicants is false. At Exh.64, it is mentioned that some orange trees and pomegranate trees were standing but all the pomegranate trees were dry. The applicants in land reference appln or anywhere have not made any reference of orange trees and she claiming the compensation only for pomegranate trees. It means, at the time of panchanama, the pomegranate trees were not standing, therefore, these documents exh.60 to 66 and 69 are contrary to the report submitted by Mr.Bhujbal which is at Exh.78 therefore, it is very difficult to rely upon the report submitted by Shri Bhujbal and his visit is found to be doubtful. According to him, he visited village Chafephewadi on 10th June, 1988, possession was taken on 01/06/1988. as per the statement of applicant possession was taken prior to 2½ years and non applicant was cut down all the trees, it shows that statement of Mr.Bhujbal is false or the statement of applicant is false. Therefore, there is no any cogent and reliable evidence adduced by the applicants that 700 pomegranate trees were standing at the time of acquisition and all the trees were fruit bearing trees. However, one fact

is very clear that the 7/12 extract exh.55 shows that the applicants were planted pomegranate plants in the year 1985-86 and 1986-87 in the area admeasuring 1 H-20 Are. This statement made by the applicants are not denied by the non applicants. They only denied regarding the standing of trees but they have not denied the plantation of it. The statement made by applicant no.1 before various authorities that she had planted 700 pomegranate plants in the acquired portion of land, and this evidence is sufficient to held that she was planted the pomegranate trees she was maintained pomegranate orchard but age of plants was only two years. As per the statement of applicant no.1 all the trees were cut down by the non applicant at the time of construction of dam. Therefore, in my view, the applicants are entitled to claim the compensation for expenditure incurred for plantation of pomegranate trees. Therefore, in my view, if we consider the price of one plantation and its maintenance, according to my calculation applicants are entitled for Rs.50,000=00 for plantation of pomegranate plants in 1 acre. Total area acquired is 98 Are. Therefore, the applicants are entitled for Rs.122,500=00 compensation for plantation of pomegranate plants in the acquired portion of land.”

6] Considering above, there would not be any impediment to award compensation for the pomegranate trees. 630 pomegranate trees were in good condition as per the report of the valuer who inspected it on 10/6/1981 and so also subsequently in 1991. Probably in 1991, the trees may not be standing however, he has also visited on 10/6/1988 has considered the existence of the pomegranate trees thereafter has given the report calculating the probable age, the life of the trees, its fruit bearing capacity and considered the price of Rs.6233/- for each pomegranate tree and has valued 630 pomegranate trees at Rs.39,26,790/-. The Reference Court has further observed that the evidence of said expert Bhujbal who is examined by the claimant to prove valuation report has not been shattered in the cross examination. Considering the aforesaid

aspect of the matter, I do not see any impediment to allow the compensation in respect of pomegranate trees.

7] When the pomegranate trees were planted in the entire area of the land acquired, and the same would be considered as Orchard then certainly compensation would not be payable in respect of the land and the other appurtenants as such while granting compensation for pomegranate trees as a Orchard I would set aside order granting compensation in respect of land and other things. As per valuer's report, the compensation would come to Rs.39,26,790/- I would deduct 10% of the amount towards margin of error, the amount would come to Rs.35,34,111/-. Considering above, I pass following order :

The award passed by Reference Court is modified. It is held that the appellant is entitled for compensation of Rs.35,34,111/-. The respondent shall pay the said amount of compensation to the appellant. The other statutory benefits as granted by the Reference Court in paragraph no.3 of the operative part of the order is upheld and maintained. First Appeal accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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