

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

FIRST APPEAL NO.1169 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad.

...Appellant

versus

1. Shivaji s/o Shankar Shinde,
Age: 65 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.

2. The State of Maharashtra,
through the Collector,
Osmanabad.

3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad.

...Respondents

WITH

FIRST APPEAL NO.1173 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad.

...Appellant

versus

1. Balaji s/o Premnath Chire,
Age: 42 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.

2. The State of Maharashtra,
through the Collector,
Osmanabad.

3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad.

...Respondents

WITH

FIRST APPEAL NO.1172 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad.

...Appellant

versus

1. Ankush s/o Premnath Chire,
Age: 45 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.

2. The State of Maharashtra,
through the Collector,
Osmanabad.

3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad.

...Respondents

WITH

FIRST APPEAL NO.1167 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad.

...Appellant

versus

1. Babruwan s/o Maruti Chire,
Age: 60 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.

2. The State of Maharashtra,
through the Collector,
Osmanabad.

3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad.

...Respondents

WITH

FIRST APPEAL NO.1168 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad.

...Appellant

versus

1. Pundlik s/o Ramrao Chire,
Age: 55 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.
2. The State of Maharashtra,
through the Collector,
Osmanabad.
3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad. ...Respondents

WITH

FIRST APPEAL NO.1170 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad. ...Appellant

versus

1. Netaji s/o Madhukar Waghmode,
Age: 30 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.
2. Tanaji s/o Madhukar Waghmode,
Age: 35 years, Occ: Agri.,
R/o.As above.
3. Balu s/o Madhukar Waghmode,
Age: 20 years,Occ: Agri.,
R/o. As above.
4. The State of Maharashtra,
through the Collector,
Osmanabad.
5. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad. ...Respondents

WITH

FIRST APPEAL NO.1171 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Osmanabad. ...Appellant

versus

1. Sau. Bhagirathibai w/o Pundlik Chire,
Age: 45 years, Occ: Agri.,
R/o. Chirewadi, Tq. Omerga,
Dist. Osmanabad.
2. The State of Maharashtra,
through the Collector,
Osmanabad.
3. The Special Land Acquisition Officer,
Manjra Project Office, Osmanabad. ...Respondents

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Mr. K.J. Ghute Patil , Advocate for appellant
Mr. L.C. Patil, Advocate for respondent-claimant
Mr. D.R. Korde, A.G.P. respondent-State
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CORAM : N.W. SAMBRE, J.

DATE : 3rd AUGUST, 2015

ORAL ORDER :

Heard Mr. K.J. Ghute Patil, learned Counsel for the appellant-acquiring body.

2. Pursuant to the notification under Section 4 of the Land Acquisition Act, the land of the respondents-claimants was acquired to the irrigation project and having noticed that the compensation awarded by Land Acquisition Officer was inadequate sought enhancement. The Reference Court enhanced compensation on 10/07/2013. As such, present appeals.

3. Learned Counsel for the appellant made two-fold contentions; (a) that the compensation awarded is exorbitant and (b) separate compensation is awarded for fruit bearing trees.

4. So as to analyze the submissions of the present appellant, I have perused the judgment delivered by the Reference Court and it is noticed that the Reference Court has awarded enhanced compensation based on sale deed at Exhibit-15A wherein the land was sold for Rs.3050/- per Are which was jirayat. In the present case, it was established that the land that was sold was bagayat. Reference Court having regard to notification issued under Section 4 of the Act in 2005 fixed the value of the land @ Rs. 7620/- per Are relying upon the judgment of the Apex Court.

5. In my opinion, the enhancement as is ordered based on the sale instance at Exhibit-15A which is appropriately appreciated. As such, no interference is called for.

6. The second contention about awarding of enhanced compensation for fruit bearing trees is concerned, once sale deed at Exhibit-15A is taken into account for dry crop land, it is admitted position that the said valuation was without having orchard that was

standing on the land of claimant. Appropriate support can be drawn from the judgment of the Apex Court in the matter of Shri. Ambya Kalya Mhatre (d) through legal heirs & ors vs. The State of Maharashtra delivered in Civil Appeal No. 7784 of 2011 decided on 12/09/2011, particularly paragraphs-22 and 23, which reads thus :

“22. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. 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, that is 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 capitalizing 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. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land.

A suggestion to the State Government

23. In all other States, ad valorem court-fee is payable only when an appeal is filed against the award of the Reference Court, seeking higher compensation and not in regard to applications for reference under section 18 of LA Act. Only in Maharashtra and Gujarat, the land losers are required to pay half of the ad valorem court-fee while seeking reference to the civil court. Most of the land-losers are agriculturists. For many of them, the only source of livelihood is taken away by acquisition of their lands. Though, the Collector is expected to award compensation based on the market value, quite often, it is seen that in actual practice, the compensation offered by the Collector is far less than the actual market value, thereby forcing the land-losers to seek references to civil court. In such cases, the amount awarded by the Collector being comparatively small, the requirement to pay ad-valorem court-fee on the application for reference causes irreparable hardship, forcing the land loser to seek a lesser increase than what is warranted. The State Government may therefore consider giving appropriate relief to the land losers by providing for a nominal fixed court-fee, on the application for reference, instead of ad valorem court fee.”

7. In view of observations, the fact remains that while granting enhanced compensation for orchard, which was standing in the acquired land was not taken into account and as such, the claimant was entitled for separate compensation for trees.

8. In view of above, no case for interference is made out.
The appeals fail, stand dismissed.

[N.W. SAMBRE, J.]