

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO.4201 OF 2016

IN

FIRST APPAL NO.13 OF 2016

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation,
Pune,
- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Datatrya Maruti Mane,
Age-55 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4164 OF 2016
IN
FIRST APPAL NO.19 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Rajendra Gopal Shelke,
Age-55 years, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4166 OF 2016
IN
FIRST APPAL NO.21 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,

- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Fulchand Bhimrao Ghotale,
Age-59 years, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4168 OF 2016
IN
FIRST APPAL NO.17 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Tanaji Rangrao Waddare
Through LR's.

- 1] Jayashree Tanaji Waddare,
Age-55 yrs, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
Dist-Osmanabad.

- 2] Ullas Tanaji Waddare
Age-34 yrs, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
Dist-Osmanabad.
- 3] Vilas llas Tanaji Waddare
Age-32 yrs, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
Dist-Osmanabad.
- 4] Nandabai Tanaji Waddare,
Age-39 yrs, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
Dist-Osmanabad.
- 5] Ashabai Tanaji Waddare,
Age-38 yrs, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
Dist-Osmanabad.

...RESPONDENTS

WITH

**CIVIL APPLICATION NO.4170 OF 2016
IN
FIRST APPAL NO.18 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Rashikabai Fulchand Ghotale,
Age-55 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT**WITH**

CIVIL APPLICATION NO.4171 OF 2016
IN
FIRST APPAL NO.20 OF 2016

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS**VERSUS**

Mangalbai Shivaji Waddare,
Age-59 years, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT**WITH**

**CIVIL APPLICATION NO.4174 OF 2016
IN
FIRST APPAL NO.10 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation, Pune,
- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Mangalbai Baburao Kadam,
Age-55 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4176 OF 2016
IN
FIRST APPAL NO.15 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation, Pune,

- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS**VERSUS**

Baburao Gyanba Kadam
Through LRs.

- 1] Mangalbai Baburao Kadam
Age-57 years, Occ:Agri. & H.H.,
R/o-Guruwadi, Tq-Omerga,
District-Osmanabad,
- 2] Shila Venkar Pawar
Age-35 years, Occ:Agri. & H.H.,
R/o-Guruwadi, Tq-Omerga,
District-Osmanabad,
- 3] Mahesh Baburao Kadam,
Age-30 years, Occ:Education
R/o-Guruwadi, Tq-Omerga,
District-Osmanabad,
- 4] Sarika Balasaheb Birajdar
Age-28 years, Occ:Agri. & H.H.,
R/o-Guruwadi, Tq-Omerga,
District-Osmanabad,
- 5] Ramesh Baburao Kadam
Age-26 years, Occ:Education
R/o-Guruwadi, Tq-Omerga,
District-Osmanabad.

...RESPONDENTS**WITH**

**CIVIL APPLICATION NO.4178 OF 2016
IN
FIRST APPAL NO.14 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation, Pune,
- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Rangrao Nagorao Waddare
Through LRs.

- 1] Shivaji Rangrao Waddare
Age-65 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad,
- 2] Nagesh Rangrao Waddare
Age-59 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad,
- 3] Rukminbai Rangrao Waddare
Age-90 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad,

- 4] Rasikabai Fulchand Ghotale
Age-58 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad,
- 5] Mangalbai Babourao Kadam
Age-52 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad,
- 6] Kamalbai Dattatraya Mane
Age-51 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENTS

WITH

CIVIL APPLICATION NO.4182 OF 2016

IN

FIRST APPAL NO.16 OF 2016

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga,
- 2) The State of Maharashtra
Through : The Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Nagesh Rangrao Waddare
Age-59 years, Occ:Agriculturist,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4186 OF 2016
IN
FIRST APPAL NO.11 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation, Pune,
- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS

VERSUS

Kamalbai Datatrya Mane
Age-49 years, Occ:Agriculture,
R/o-Karali, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

WITH

**CIVIL APPLICATION NO.4188 OF 2016
IN
FIRST APPAL NO.12 OF 2016**

- 1) Executive Engineer,
Irrigation Project Majbutikaran
Division, Omerga, through,
Maharashtra Krishna Valley
Development Corporation, Pune,

- 2) The State of Maharashtra
Through District Collector,
Osmanabad,
- 3) The Special Land Acquisition
Officer, Krishna Khore Vikas,
Mahamandal, Osmanabad.

...APPLICANTS**VERSUS**

Kunti Chandrakant Birajdar
Age-43 years, Occ:Agriculture,
R/o-Omerga, Tq-Omerga,
District-Osmanabad.

...RESPONDENT

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Mr. Umakant K. Patil, Advocate for Applicants
in all the Applications.

Mr. A.B. Kale, Advocate for Respondent/s-
claimant/s in all the Applications.

Mr. V.M. Kagane, A.P.P. for State.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 16TH SEPTEMBER, 2016

ORDER [PER A.I.S. CHEEMA, J.] :

1. Heard counsel for the Applicants and
learned counsel for the Respondents - claimants.
These Appeals have been filed by the Applicants
against the enhanced compensation ordered by the

Reference Court in favour of the Respondents - original claimants. The Appeals filed have already been admitted. In these matters the Applicants had moved stay applications. Counsel for both sides were heard. Learned counsel for the original claimants contended that the lands were taken in possession in 1999 and the agriculturists had taken loan for planting trees but the land acquisition officer granted meagre compensation which was enhanced by the Reference Court by Judgment and Order dated 21st February 2014. The Reference Court did not award anything towards the value of land but granted compensation for the trees and other developments. The counsel contended that existence of trees had not been disputed by the Respondents. In view of the submissions made, this Court had directed the Applicants - Appellants to deposit 50% of the amount of compensation directed by the Reference Court.

2. The present Applications have been filed for modification of the said order. The Applicants have also filed separately Applications to bring on record additional evidence.

3. In these Applications for modification, it is contended and the counsel for the Applicants has argued that the Reference Court while deciding the Reference, considered report of private valuer, which report was not having any legal basis and exorbitant compensation for the so-called trees was granted. The total cost of the project itself was Rs.23,99,00,000/- however the Reference Court granted enhanced compensation in group of 12 matters to the extent of Rs.7,76,27,178/-. With interest and other consequential benefits 50% itself would come to Rs.31,02,44,220/-. It is stated that the additional evidence tendered clearly shows that the Reference Court was not justified in granting such exorbitant amounts for so-called trees which

were not in existence in the acquired land at the time of acquisition for which compensation is awarded and even if some plants were shown, they would not fetch such values. It is stated that the documents produced on record by way of additional evidence show that the Respondent/ claimants have played fraud to claim enhanced amount of compensation and in the clear facts and circumstances it is in the interest of justice to modify the orders passed.

3. Learned counsel for the Applicants referred to Civil Applications filed tendering additional evidence. Reference is made to the charts and copies of sale deeds tendered and it is stated that in this matter the acquiring body had mutually taken possession of the lands on 1st April 1999. The original owners soon thereafter in July/August 1999 sold off the lands to the new claimants before Section-4 notification got issued on 17th February 2000. The award came to be passed

on 12th May 2006. It is stated that chart Exhibit A-1 filed with the Application for additional evidence clearly shows that for meagre amounts the sale deeds were got executed. For instance, reference is made to the purchase made by claimant Dattatraya Maruti Mane where two sale deeds were executed from the original owners Subhash and Rajendra Suryawanshi on 23rd August 1999 in the sum of Rs.31,000/- and Rs.30,000/- for 3.57 Hecter land of Gut No.101. The State acquired only 1.81 Hecter land. It is stated that now if the order of the Reference Court is perused, for so said trees exorbitant compensation had been directed to be paid. It is stated that the State was not earlier aware of execution of such sale deeds and thus they could not be produced. It is stated by the learned counsel for the Applicants that the sale deeds would show that no such trees as had been tried to be shown in the Reference Court were in existence. It is argued that the land acquisition officer had got prepared statement and panchnama

drawn on 2nd April 2000, copy of which is tendered as Annexure A-3 of the Application for additional documents which shows that in the fields concerned what were then existing, were small plants and they were not trees as claimed by the Respondents in the Reference Court. It is stated that if 7 X 12 extracts of before 1997-98 are seen, there were absolutely no such trees shown in the records and the Reference Court on the basis of so-called valuation by private valuer could not have granted such exorbitant compensation. Even the mutation entries got done were of January 2000.

4. It is stated on behalf of the Applicants that the amounts as ordered in the award have been deposited and withdrawn by the claimants. On behalf of the acquiring body, it is stated that at present stage of the matter, they are making following three alternative offers:-

"I] The Acquiring Body is ready

to deposit double the amount of registered sale deeds executed in favour of complainants in the year, 1999 with statutory benefits from Notification U/s. 4 to till the date of deposit of an amount in this Hon'ble Court.

II] The Acquiring Body is ready to deposit amount to the extent of Four times of ready reckoner of the year, 1999 without statutory benefits or two times of ready reckoner of the year 2000 with statutory benefits.

III] The Acquiring Body is ready to deposit two times of ready reckoner of the year, 2016 of the acquired land without statutory benefits."

. The Applicants have filed written memo making these alternative offers as deposit of interim amount subject to final out-come of the Appeals.

5. Against this, the learned counsel for the original claimants has submitted that the trial Court has not given compensation on the basis of the value of the land but on the basis of compensation for the trees. According to him the concerned agriculturists had taken loan for planting the trees and they were in debt. Reference Court properly appreciated the evidence brought and gave compensation for the trees which were standing on the lands acquired. According to him, the agriculturists are in debt and if they do not get the amount of compensation they would be in difficulties. On behalf of the claimants, Respondent Dattatray Maruti Mane has filed affidavit dated 15th June, 2016. Reference is made to the developments in the matter and it is claimed that inspite of orders of this Court, the acquiring body has not deposited the amount. The documents which are now being produced were never produced before the Reference Court and were not part of the proceedings neither they were

exhibited. According to the Respondents-claimants those documents can not be now relied on and the Application is not maintainable. The documents are of time before Notification under Section-4 and can not be relied on. There was no dispute raised before the Collector or the Reference Court about existence of the things attached to the land i.e. trees, structure, pipeline etc. Even all the facts are reflected in joint measurement report from S.L.A.O. The lands were purchased before Notification under Section-4 and the possession was handed over prior to the date of sale deed. According to the Respondents merely submitting some documents and creating doubts and avoiding payment would not be proper. The learned counsel has supported the Judgment of the Reference Court and according to him no modification in the orders which have been passed is required to be made.

6. We will be making reference to documents and Applications from First Appeal No.13 of 2016,

taking the same as lead case. Having gone through the material available and the rival claims of both the parties, there are certain facts which need reference. There is no dispute regarding the fact that the acquiring body took possession of the lands before Section-4 Notification dated 17th February, 2000. The possession appears to have been taken on 1st April, 1999. Counsel for the Applicants has, with the Application for modification, filed chart A-1 showing the names of the original agriculturists, and the extent of their land, from whom possession was taken on 1st April, 1999. Reference is made to the different sale deeds of July-August, 1999 entered in to by the Respondent-claimants and the amounts paid as costs of the fields. The dates of the sale deeds show that the fields were purchased after acquiring body took possessions in April 1999. The amounts paid as the value of the property when compared to what has been now granted by the Reference Court, does raise surprise. If there

were really such trees with such value, prima facie it is difficult to accept that the vendors would have sold their fields for such low prices.

7. We have gone through the Record and Proceedings with reference to L.A.R. No.152 of 2011. It shows claimant Dattatraya Maruti Mane in 2006 making claim only for Rs. 5,00,000/- although, he referred to various trees and the reference claimed that Respondents had deliberately shown Sagwan trees as saplings. Subsequently, however the Reference was amended in 2012 to calculate a claim of Rs.35,00,000/-. At the time of evidence the original claimant appeared to have relied on inspection said to have been made by agricultural consultant and valuer Shri Nandkumar Patil for the trees and one Baraskar regarding the structures. The said inspections are claimed to have been done in March and May of 2001. Before this, it appears from record that a Mutation Entry was got done on the

motion of Dattatraya Maruti Mane vide Mutation Entry No.692 certified on 4th January, 2000. There is no dispute regarding the fact that earlier entries regarding such trees were not there as were got done in Mutation Entry in the year 2000. Thus, although the acquiring body had taken possession of the lands on 1st April, 1999 Mutation Entries were subsequently got done regarding alleged trees. The Mutation Entries recorded entry of Gotha, Paul, Mango Trees etc.

8. It is argued by the learned counsel for the Respondents-claimants that there was no dispute regarding existence of trees. But, the cross-examination of the claimants and their consultants and valuers shows that disputes were indeed raised. The cross-examination of the claimant Dattatraya Maruti Mane shows that he accepted that the entries regarding the trees were taken in the year 2000. This lecturer of Ahamadpur College admitted further that revenue records

showed that crops like Jawar, Toor, Sunflower were being taken, and this can be seen from the record of rights. He admitted that he was knowing regarding the visit of Nandakumar Patil and Baraskar but still the facts were not relied on in the Reference when it was filed. The evidence of consultant Nandkumar Patil shows that he recorded presence of 240 Sagwan Trees, 220 Mango Trees, 120 Custard Apples and 520 Nilgiri Trees in the land of Dattatraya Maruti Mane. In the land of Claimant Rangrao Waddare in addition to other various trees 2000 Sagwan Trees were shown. This valuer admitted in the cross-examination that he had not annexed A.P.M.C. rate list. It was suggested to him that the trees mentioned by him in his report would not fit in the square area of the land acquired. He denied the suggestion but had to accept that it was correct that as per Government standard rules as regards distance between two trees, the trees as shown would not fit in to the acquired land. It is difficult to accept how crops were also shown

as taken and how so many big trees could be said to fit in the areas stated.

9. Keeping such evidence in view, we have further seen the award which was passed. It referred to joint measurement dated 25th October, 1999 and letter dated 7th April, 2004 of Assistant Engineer, Irrigation and the fact that where saplings of Mangoes were there, they had been shown as Mango Trees and valued accordingly. The award referred to re-inspection directed to be done by Sub-Divisional Agricultural Officer, Osmanabad and the report of District Superintending Agricultural Officer dated 25th October, 2004 which showed that various alleged Mango Trees were not available on the spot. The Reference Court while passing impugned Order does not appear to have gone into all this and simply accepted the report of the valuers brought by the claimants who had not even given notice to the Government Authorities or even the local Talathi

before alleged inspections in March and May of 2001, although possession had already been taken over by the acquiring authority.

10. Our attention has also been drawn by the applicants to Panchnama dated 2nd April, 2000 filed with annexure A-3 of the Application for permission to lead further evidence which also shows presence of only saplings and not trees as such. The document contains signatures and thumb impressions of some of the agricultural land holders and as such can not be simply ignored.

11. Looking to the above factors as available in this record, we find it appropriate to reconsider our directions regarding deposit of 50% of the compensation as directed by the Reference Court. The arguments being raised by the learned counsel for the Applicants - appellants are required to be considered. It does appear that the appellants have an arguable case and that all the

things are not above board.

12. We modify our Orders dated 11th December, 2015 and instead of directing the Appellants/acquiring body to deposit 50% amount of the compensation as directed by the Reference Court, by way of interim directions, we direct the Appellants/acquiring body to deposit amounts to the extent of two times of Ready Reckoner of the year 2016 of the acquired lands without statutory benefits, at present.

13. Our observations in this order shall be treated as prima facie and are not to affect the final out-come of the Appeals which shall be decided on their own merits.

14. Civil Applications are disposed of accordingly.

15. These Appeals are expedited and be listed for hearing finally after four weeks.

[A.I.S.CHEEMA, J.]

[R.M. BORDE, J.]