Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 414 OF 2005
WITH
CROSS-OBJECTION (St.)NO. 1116 OF 2006

The State of Maharashtra
through Special Land Acquisition Officer,
Metro Centre No.3, Panvel ... Appellant
Vs.
Dharma Kana Katekar ... Respondent/ Cross-objector

Mr. A.R. Patil, AGP for the appellant/State.
Mr. A.A. Kumbhakoni a/w. Mr. R.S. Datar, Advocate for the respondent.

CORAM	:	**MRS.MRIDULA BHATKAR, J.**
RESERVED ON	:	**29th April, 2016.**
PRONOUNCED ON	**:**	**3rd May, 2016.**

JUDGMENT

The appellant/State of Maharashtra has filed this Appeal challenging the judgment and order dated 29th July, 2004 in Land Reference No. 36 of 2003 (Old Land Reference No. 51 of 1999) passed by Joint Civil Judge Senior Division, Raigad-Alibag thereby giving compensation of Rs.62,13,914/- with interest. The respondent/original claimant also filed the cross-objection and prayed for enhancement in the said amount of compensation, as he is not satisfied with the said amount. The original claimant is the owner of the land bearing Survey No. 57/1-C, 116/2-A, 113/13, 19/3-A, 70/3, 66/4B situated at Village Dapoli, Taluka Panvel, District Raigad. The State, by a notification under section 4 of the Land Acquisition Act dated 3rd February, 1970, acquired these lands and after 16 years, the Special Land Acquisition Officer passed an award under section 11 of the Land Acquisition Act on 4th July, 1986. The claimant did not made reference under section 18 of the Land Acquisition Act but filed reference under section 28-A of the Land Acquisition Act before the Special Land Acquisition Officer and on 7th March, 1998 the said reference was disposed of and hence this reference challenging the said order.

2. The Special Land Acquisition Officer has valued the land at Rs.60/- per sq. mtr. and claimant demanded the rate to be fixed at Rs.200/- per sq mtr. According to the claimant, the land was agricultural paddy land and fertility and quality of land was high , which was not considered by Special Land Acquisition Officer. The electricity and water is easily available near the land and the land is situated near Panvel Uran Road, i.e., near the industrial zone in Panvel so also Belapur industrial area is approximately 6 to 7 kms. away from the lands. The land situated near Navasheva Port is approximately 10 to 12 kms. away and thus, for adjacent lands much higher rate was given. Before the Special Land Acquisition Officer, while applying under section 28A(3), he has applied the rate of Rs.25/- per sq. mtr. Before the Reference Court, the respondent/State appeared and contested the application and denied all the contentions of the appellant/original claimant. The claimant has also pleaded that in all there

are 376 trees standing in the land and most of them are fruit bearing trees and therefore, he claimed compensation to the extent of Rs163 crores to the trees standing on the land. It was submitted that the demand of enhancement of compensation is excessive, not maintainable and is to be rejected. The original claimant stepped in the box and gave evidence on the point of enhancement of compensation. He also adduced evidence of Dharam Kana Katekar witness himself, Civil Engineer & Valuer Vikrant Manohar Vaidya, Valuer Shrinivas Vishwanath Godbole. The trial Court considered the oral as well as documentary evidence and partly allowed the reference. He fixed the rate of land at Rs.16/- per sq. mtr. He also gave compensation separately for growing trees, i.e., Alphonso mango trees, Raiwal mango trees and Jamun trees. The bifurcation of the compensation awarded for the trees by Reference Court is as follows:

91 Alphonso mango trees (Income of each Tree is Rs.2,500/- p.a.) Hence, 2,500 X 91 X 15 years life	Rs.34,12,500/-
26 Rival mango trees (Income for each tree is Rs.1,500/- p.a.) Hence, 1,500 X 26 X 15 years life	Rs.5,85,000/-
61 Jamun trees (Income of each tree Rs.500/- p.a.) Hence, 500 X 61 X 15 years life	Rs.4,57,000/-
202 non fruit growing trees Price of timber is considered Rs.1,000/- Hence, 202 X 1000	Rs.2,02,000/-
Total cost of trees	**Rs.46,56,500**
Market value of the land	**Rs. 2,98,320**

12% Addl. Under section 23(1-A)	**Rs. 5,87,918**
30% solatium	**Rs.14,86,446**
TOTAL AMOUNT	**Rs.70,28,864**
Less: Amount already paid by SLAO	**Rs. 8,14,950**
NET AMOUNT	**Rs.62,13,914 + interest**

However, this order was challenged in Appeal. It was challenged mainly on the ground that the rate of Rs.16/- which is fixed is on higher side and it should have been Rs.10/- per sq. mtr. Secondly, it is challenged on the ground that the learned Judge ought not to have given the compensation for the trees and so also the land at a time, but either compensation could have been given for the trees or for the land.

3. Learned AGP has submitted that the judgment and award passed by the Reference Court is against justice, equity and good conscience and is liable to be set aside. Mr. Patil argued that the Reference Court has applied a wrong method of valuation of land having trees on it. He submitted that the trial Court should have applied the method either accepting the market value of the land including value of the trees treating them as timber or annual net income of the fruit bearing trees which is multiplied by 8 years, however, the trial Court has erred in applying both the methods and gave excessive award. In support of his submissions, he relied on the following judgments:

(i) Koyappathodi M. Ayisha Umma vs. State of Kerala, reported in (1991) 4 SCC 8.

(ii) State of Haryana vs. Gurcharan Singh & Anr., reported in 1995-Supp(2) SCC 637.

(iii) State of Maharashtra vs. Tulshiram Krishna Mungaji & Ors. in F.A. No. 462 of 1990 with other connected matters passed by Division Bench of this Court by an order dated 18th July, 2001 on the point of fixing the market value of land from village Dapoli.

(iv) Ramgonda Layappa Birajdar & Ors. vs. Special Land Acquisition Officer No. 6, Sangli & Ors., reported in (2006) 2 MH. L.J. 436.

(v) Special Land Acquisition Officer M.I.W., Jalgaon vs. Chindha Fakira Patil (Decd.) & Ors., reported in (2007) 2 MH. L.J. 130.

(vi) Ambya Kalya Mhatre (Decd.) & Ors. vs. State of Maharashtra, reported in (2011) 9 SCC 325.

The learned AGP Mr. Patil referred the cross-examination of the claimant and expert Mr. Godbole and has submitted that the evidence of valuer Mr. Godbole is of no value, as he is neither a Government valuer nor he has special training in the field. He denied the contentions raised in the cross-examination. On the point of experts evidence, he relied on following judgments of the Hon'ble Supreme Court:

(i) State of H.P. vs. Jai Lal & Ors., reported in (1999) 7 SCC 280.

(ii) Chatt Ram vs. State of Haryana, reported in (1980) 1 SCC 460.

(iii) Nelson Fernandes & Ors. vs. Special Land Acquisition Officer, South Goa 7 Ors., reported in (2007) 9 SCC 447.

4. The learned senior counsel Mr. Kumbhakoni submitted that Special Land Acquisition Officer had passed two awards under section 11 of the Act on 4th July, 1986. He gave additional compensation of the trees on 21st October, 1986. He conceded that as per the judgment of the Division Bench in the case of **State of Maharashtra vs. Tulshiram Krishna Mungaji & Ors. dated 18th July, 2001**, the Division Bench of Bombay High Court has valued the land from Village Dapholi at Rs.10/- per sq. mtr. and he fairly conceded to it. However, he submitted that for trees, the trial Judge did not gave adequate compensation. He submitted that in all 376 trees were standing in the land and most of them were fruit bearing trees. He claimed that the compensation nearly to the extent of Rs.163 crores and odd should have been given, as all the trees were grown up trees. He relied on the evidence of valuer Shrinivas Godbole. The total area acquired was 21080 sq. mtrs., out of which 16200 sq. mtrs. is a land and other lands which are separate is of 4880 sq. mtrs. is with all standing trees. It is a

kind of forest and a good amount of income was yielded by this fruit bearing trees annually. He submitted that the view taken by Reference Court that separate valuation of one unit of land and separate valuation on the other land is permissible. Though the land is acquired for one project and under one notification under section 4, different valuation in respect of portion of land is permissible. Eg. If a particular valuation of land from total acquired land is arable land, a separate valuation is given and if some portion is dry land, then it is valued at lesser rate. Same analogy is applicable to a particular unit of land where only trees are standing and other portion of land which is vacant. So, these two units can be separately valued. However, these two units cannot be valued doubly, i.e., valuation which is fixed for vacant land and also for the trees. The portion where trees are standing if separable, then the compensation can be fixed on the basis of valuation of fruit bearing trees and not the land for that particular portion of land. In the present case, the award is given separately for the area of land admeasuring 4880 sq. mtrs. on the basis of valuation of fruit bearing trees. He has fixed the valuation for trees at Rs.3,52,58,530/-, however, the trial Court has erred in fixing the valuation of trees for Rs.46,56,500/-. He said that this valuation is incorrect. He argued that State of Maharashtra/respondent did not tender any evidence to dislodge the evidence of valuer Godbole. The learned senior counsel Mr. Kumbhakoni has relied on the ratio laid down by the Hon'ble Supreme Court in the case of **Ramanlal Deochand Shah vs. State of Maharashtra & Anr., reported in (2013) 14 SCC 50**. He submitted that in the year 1970 Alphonso mango was sold for Rs.200/- per dozen and approximately as per the valuer, each mango tree gives about 4000 fruit per year, i.e., approximately 300 dozen and the Court fixed the rate at Rs.200/- per dozen, therefore, it is equal to Rs.60,000/- per year. But the trial Court fixed the rate and brought down the earning from 60,000/- to Rs.2,500/- from each Alphonso mango tree without any reason. He submitted that for raiwal mangoes, valuation given is Rs.4,500/- per year which is brought down as Rs.1,500/- per year. For Jamun tree, valuation is given as Rs.4,500/- per year, which is also brought down to Rs.500/- per year. The income from other trees are considered for timber which is fixed at Rs.1,500/-, however, Rs.500/- is considered as salvation charges for each cutting and so compensation for 202 trees was fixed at Rs.1,000/-. He submitted that this calculation is entirely wrong and ought to have given the compensation of Rs.3 crores as demanded. Thus, cross-objection required to be allowed.

5. Before dealing with the main issue whether the valuation of the

agricultural land or barren land and the land where the trees are standing can be valued separately or not, it is necessary to fix the value of the agricultural land which is admittedly a large portion of the acquired land. The land is from village Dapholi, Tal. Panvel, District Raigad and earlier instances of the acquisition from the same village were decided by the Division Bench of this Court.

6. In the case of **Tulshiram Krishna Mungaji & Ors. in FA No. 462 of 1990 and in other connected matters**, the land was located in Village Dapholi, Taluka Panvel, District Raigad and the lands were acquired for the New Mumbai Project by notification under section 4 of Land Acquisition Act dated 3rd February, 1970. The Division Bench had discussed the placement and vicinity of the lands from Village Dapholi and held that market value of these lands should be Rs.10/- per sq. mtr.

7. The learned senior counsel for the original claimant did not challenge the said judgment by producing any other judgment of this Court showing that the lands of Dapholi were valued at higher rate and, therefore, he also fairly accepted the market value fixed for the suit lands at Rs.16/- per sq. mtr. is on higher side and it should have been granted for Rs.10/- per sq. mtr.

8. While adverting to the issue of fixing valuation of the trees and the land, it is useful to refer the law laid down in the rulings of the Hon'ble Supreme Court and High Courts on this issue.

9. In the case of **Koyappathodi M. Ayisha Umma** *(supra)*, the Hon'ble Supreme Court has held that “It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees, the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. The determination of the compensation of the land as well as the trees is illegal”

10. In the case of **State of Haryana vs. Gurcharan Singh** *(supra)*, the Hon'ble Supreme Court again held that under no circumstances, the Court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees.

11. In **Ramgonda Layappa Birajdar** *(supra),* the Division Bench of this Court has also accepted the view taken by the Hon'ble Supreme Court in the case of **Koyappathodi** that under no circumstances, the Court should allow the compensation on the basis of nature of the land as well as fruit bearing trees.

12. In the case of **Special Land Acquisition Officer M.I.W., Jalgaon** *(supra)***,** the dual calculation by market price and income yielded from fruit bearing trees is not permissible. The Special Land Acquisition Officer and Reference Court have granted the compensation to Shankar for 73 Ares and 49 Ares are considered to be under fruit garden of pomegranate for which separate compensation was awarded. The Division Bench has considered the evidence of land owner and held that from the entries of cultivation, it appears that the entire area of 122 R is shown under pomegranate garden and the view was taken that Shankar will have to be paid higher out of the two methods of calculation of compensation, i.e., either compensation of the land or compensation of fruit bearing trees. Keeping this on background, this situation if compared with the present case, there is a difference as to a major portion of the land was cultivated for paddy crops and vegetable , i.e., 1600 sq. mtrs. and some portion was occupied by 376 trees and therefore, the entire area was not under the fruit

bearing trees.

13. In the case of **Ambya Kalya Mhatre** *(supra)* while dealing with the similar issue of separate compensation, the Supreme Court held that:

> "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."

14. The decision of the Reference Court fixing the valuation of the entire land @ Rs.16/- per sq. mtr. is on the higher side in view of the ratio laid down in State of Maharashtra vs. Tulshiram Krishna Mungaji & Ors. dated 18^{th} July, 2001. The land in the Appeal is situated in Village Dapholi, Taluka Panvel, District Raigad and the Division Bench of Bombay High Court in the case of **Tulshiram Mungaji** has valued the land from village Dapholi @Rs.10/- per sq. mtr. Therefore, the judgment of the Reference Court requires modification to that extent and thus, instead of Rs.16/- per sq.m. the rate is to be reduced to Rs.10/- per sq. mtr.

15. The classification of the fruit bearing trees is mentioned above. Learned AGP has opposed to value fruit bearing trees separately when the valuation of the land is fixed. The submissions of learned AGP Mr. Patil is acceptable only to the extent that there should not be double valuation of the same land, however, when the acquired land can be classified in two categories according to the quality of the soil, then the classification on the basis of the land where only fruit bearing trees are standing also can be separately valued by using a different criteria. If the land acquired is divided into arable land and dry land, then higher valuation can be given to arable land and lesser valuation is given to the portion of dry land. Same analogy is applicable to a particular unit of land where only trees are standing and other portion of the land which is either vacant or which is used for cultivation of other crop. Only a double valuation of the same land is not permissible.

16. I place reliance on **Ambya Kalya Mhatre** where it is mentioned that if the sale statistics or compensation is award on the basis of nearby vacant land, then necessarily, the trees will have to be valued separately. In the present case, as per the decision of the Division Bench, the valuation of the entire land is fixed @Rs.10/- per sq.mtr. It is pointed out that the land admeasuring 4880 sq. mtrs. is a different portion of the land and that is not to be valued at Rs.10/- per sq. mtr. The area of 4880 sq. mtrs. is not to be

included while valuing the land @ Rs.10/- per sq. mtr. So, the double valuation of the same land is avoided. The valuation of this portion of land can be done on the basis of valuation of trees. The chart mentioned above gives the details of number of trees standing on this portion of land. Out of these trees, only fruit bearing trees can be given higher valuation and other trees can be given less valuation which can be used only for the purpose of fuel and timber.

17. In the case of **Ramanlal Deochand Shah** *(supra)*, the Hon'ble Supreme Court held that 'A reference under section 18 of the Land Acquisition Act is not an Appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. The award is merely an offer made by the Land Acquisition officer. The Court has to treat the Reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it". Therefore if the initial burden of proving that amount of compensation allowed in the award of Collector was inadequate, is not discharged, the award of the Collector which is made final and conclusive evidence under section 12 as regards matters contained therein will stand unaffected.

18. Though the Government has not examined an independent witnesses on the point of valuation of the trees to discard the evidence of Mr. Godbole, it is not necessary for the Court to accept the entire evidence of Mr. Godbole. The Court has to independently assess the credence of the witness on scrutiny of his examination-in-chief and the admissions elicited from him in the cross-examination. After going through the evidence of Mr. Godbole, it appears that the evidence tendered by him is one-sided. Though he has deposed that he is working as agricultural officer, he does not hold any degree in Science of Agriculture, so also, he is not a Government approved valuer, therefore, though the Government has not examined any other witnesses, I am not inclined to accept the valuation in the report (Exhibit 26) made by Mr. Godbole as a gospel truth. The valuation appears to be on a higher side. Under such circumstances, the valuation of mango and jamun trees can be decided by taking practical approach which is based on guess work, i.e., by taking the judicial note of the erstwhile market rate of mangoes and jamun. Mr. Patil has also pointed out that though the notification is of the year 1970, the possession was taken by the Government in the year 1986, thus for 16 years, the land and trees remained in possession of the claimant. However, the life of the mango and jamun trees is as an average 60 years, so the compensation for 15 years is to be given.

19. Mr. Kumbhakoni provided a chart for compensation of trees as per the demand of the appellant, which reproduced as follows:

COMPARATIVE CHART FOR COMPENSATION FOR TREES

(I) ALPHONSO MANGO TREES

Trees		Reference Ct.		
No. of trees	**Rate awarded by reference Court**	**Amt. Of compensation by Ref. Court (rate X 15 yrs.)**	**Claim for enhancement (rate increase at every 5 years)**	**Amt. Of compensation claimed**
91	2500	34,12,500.00	91 X 4000 X 2 X 5	36,40,000.00
			91 X 4000 X 4 X 5	72,80,000.00
			91 X 4000 X 8 X 5	1,45,60,000.00
			Total	2,54,80,000.00

(II) RAYWAL MANGO TREES

Trees		Reference Ct.		
Number of trees	**Rate awarded by reference Court**	**Amt. Of compensation by Ref. Court (rate X 15 yrs.)**	**Claim for enhancement (rate increase at every 5 years)**	**Amt. Of compensation claimed**
26	1500	5,85,000.00	26 X 6000 X 0.75 X 5	5,85,000.00
			26 X 6000 X 1.50 X 5	11,70,000.00
			26 X 6000 X 3.00 X 5	23,40,000.00
			Total	40,95,000.00

(III) JAMUN TREES

Trees		Reference Ct.		
Number of trees	**Rate awarded by reference Court**	**Amt. Of compensation by Ref. Court (rate X 15 yrs.)**	**Claim for enhancement (rate increase at every 5 years)**	**Amt. Of compensation claimed**
61	500	4,57,000.00	61 X 4000 X 5	12,20,000.00
			61 X 8000 X 5	24,40,000.00
			61 X 16000 X 5	48,80,000.00
			Total	85,40,000.00

20. The amount of compensation is based on the valuation given by Mr.

Godbole. Mr. Kumbhakoni, senior counsel has submitted that the life of trees if taken as 15 years, after every 5 years, the rate of fruits, i.e., mangoes and jamuns will not remain static but it will increase and therefore, it is to be considered double the rate then earlier one.

21. It is said that each mango tree will have 4000 fruits per year, i.e., approximately 333 dozens. I am not ready to accept that each tree will have 4000 fruits per year, as learned Judge has observed that the fruits depends on soil, climate, water, care and quality of trees. Thus, it will be appropriate to consider that each mango tree was giving 2000 fruits per year and price of one dozen in the year 1970 cannot be Rs.200/- or higher than that.

<u>ALPHONSO MANGO TREES</u>

Each mango tree gives 2000 fruits when blossom. However, it is to be noted that mango trees fructify alternate year. **(From 1986 to 1991).** Hence, 1000 fruits every year. Price of one mango is considered Re.1 Price of 91 mangoes trees For 5 years	1000 X 1 = Rs.1,000 1000 X 91= Rs.91,000 91,000 X 5	Rs.4,55,000
<u>From 1992 to 1997</u> Price of one mango is considered Rs.5 Price of 91 mangoes trees For 5 years	1000 X 5 = Rs.5,000 5000 X 91=4,55,000 (for one year) 4,55,000 X 5	Rs.22,75,000
<u>From 1998 to 2003</u> Price of one mango is considered Rs.10 Price of 91 mangoes trees For 5 years	1000 X 10 = Rs.10,000 10000 X 91=9,10,000 (for one year) Rs.9,10,000 X 5	Rs.45,50,000
TOTAL		Rs.72,80,000

RAYWAL MANGO TREES

1986-1991 Price of per tree Rs.700/- per year Price of 26 mangoes trees For 5 years	 700 X 26= Rs.18200 Rs.18,200 X 5	Rs.91,000
1992-1997 Price of per tree Rs.1,500/- Price of 26 mangoes trees For 5 years	 1500 X 26= Rs.39000 Rs.39000 X 5	Rs.1,95,000
1998-2003 Price of per tree Rs.2,500/- Price of 26 mangoes trees For 5 years	 2500 X 26= Rs.65000 Rs.65,000 X 5	Rs.3,25,000
TOTAL		Rs.6,11,000

JAMUN TREES

Price of per tree Rs.500/- Price of 61 jamun trees For 15 years	 500 X 61= Rs.30500 Rs.30500 X15	Rs.4,57,500
TOTAL	Rounding figure	Rs.5,00,000

NON-FRUIT GROWING TREES : 202 trees X Rs.1,000 =Rs.2,02,000/-

Alphonso Mango trees	72,80,000
Raywal Mango trees	6,11,000
Jamun trees	5,00,000
Non fruit growing trees	2,02,000
TOTAL	**Rs.85,93,000**

22. The valuation of the land other than the land used for trees is brought down from Rs.16/- to Rs.10/- as mentioned earlier. Accordingly,

the calculation is to be made and the amount of compensation is to be fixed. In respect of grant of solatium, interest and other benefits, the order passed by the Reference Court is maintained. However, the figures of the compensation may vary and to be calculated as per the increased valuation of the fruit bearing trees and the decreased valuation of the remaining portion of the land by the Reference Court.

23. As it is noted that the valuation of the larger portion of land is brought down from Rs.16/- to Rs.10/-, the complainant has received more compensation. However, the valuation of the trees is increased and therefore, he is entitled to receive more compensation. Therefore, it can be adjusted while giving the amount to the complainant.

24. First Appeal filed by the appellant/State is dismissed. Cross-objection filed by original claimant is partly allowed.

(MRIDULA BHATKAR, J.)