

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 165 OF 1997

- 01 Dattatraya Genba Darekar,
Age 27 Years, Occ. Agri.
- 02 Shahaji Genba Darekar,
Age 19 Years, Occ. Agri.
- 03 Bhiva Bolhu Darekar,
Age 43 Years, Occ. Agri.
- 04 Tukaram Appaji Darekar,
Age 39 Years, Occ. Agri.
- 05 Dnyandeo Appaji Darekar,
Age 35 Years, Occ. Agri./Service,
- 06 Sampat Appaji Darekar,
Age 30 Years, Occ. Agri.
- 07 Sahadu Kondiba Darekar,
Age 36 Years, Occ. Agri.
- 08 Jagesh Kondiba Darekar,
Age 32 Years, Occ. Agri./Service,
- 09 Ashok Kondiba Darekar,
Age 29 Years, Occ. Agri.
- 10 Vasant Haribhau Darekar,
Age 26 Years, Occ. Agri.
- 11 Dilip Haribhau Darekar,
Age 24 Years, Occ. Agri.
- 12 Sharad Haribhau Darekar,
Age 24 Years.

- 13 Ankush Haribhau Darekar,
Age 18 Years.
- 14 Mina Bhivsen Darekar,
Age 18 Years.
- 15 Kum. Asha Bhivsen Darekar,
Her M/G. Bhiva Bolhu Darekar,
Age 14 Years.
- 16 Kum. Usha Bhivsen Darekar,
Her M/G. Bhiva Bolhu Darekar,
Age 12 Years.
- 17 Sau. Nirmala Dattatraya Darekar,
Age 20 Years.
- 18 Laxmibai Genba Darekar,
Since deceased
Through Legal heirs.
(Applicant Nos.1, 2 & 20 are sons already on record)
- 18-A] Shakuntala Gitaram Gunaware,
Age: 55 years, Occu. Household,
R/o Hiradgaon, Tq. Shrigonda,
Dist. Ahmednagar.
- 18-B] Indubai Vitthal Nawale,
Age: 50 years, Occu. Household,
R/o Bhangaon, Tq. Shrigonda,
Dist. Ahmednagar.
- 18-C] Sindhubai Dnyandeo Gunaware,
Age: 45 years, Occu. Household,
R/o Hiradgaon, Tq. Shrigonda,
Dist. Ahmednagar.
- 19 Appa Bolhu Darekar,
Since deceased
Through Legal Heirs.
(Applicant Nos.4 to 6 & 22 are sons already on record)

19-A] Babaibai Appa Darekar,
Age: 95 years, Occu. Household,
R/o Hiradgaon, Tq. Shrigonda,
Dist. Ahmednagar.

19-B] Dwarkabai Kisan Gunaware,
Age: 68 years, Occu. Household,
R/o Hiradgaon, Tq. Shrigonda,
Dist. Ahmednagar.

19-C] Nandini Ramchandra Damgude,
Age: 52 years, Occu. Household,
R/o Hiradgaon, Tq. Shrigonda,
Dist. Ahmednagar.

20 Genba Bholu Darekar,
Age 52 Years.

21 Vitthal Kondiba Darekar,
Age 40 Years.

22 Zumbar Appaji Darekar,
Age 32 Years.

Nos.21 and 22 are the General Mukhtyar
of the Appellant Nos.1 to 20 and Occu.
of all is Agriculturists and all R/o. Hiradgaon,
Tal. Shrigonda, District : Ahmednagar.

... **APPELLANTS**
(Ori. Claimants)

VERSUS

01 The State of Maharashtra
[Summons to be served on the
G.P., Mumbai High Court,
Bench at Aurangabad]

02 Shri Udhav Alias Manohar Bhivsen
Darekar, Aged 26 years, Occ. Agri.,
R/o Hiradgaon, Tal. Shrigonda,
District Ahmednagar.

... **RESPONDENTS**
(Ori. Respondents)

...

Mr. R. R. Karpe, Advocate for the Appellants.

Mr. B. V. Virde, A.G.P. for Respondent No.1 / State.

Mr. V. P. Latange, Advocate for Respondent No.2.

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CORAM : **V. K. JADHAV, J.**

RESERVED ON : 2nd August, 2017.

PRONOUNCED ON : 7th September, 2017.

JUDGMENT:

. Being aggrieved by the judgment and award passed by Joint Civil Judge Senior Division, Ahmednagar dated 9th August, 1996 in Land Reference Application No.23 of 1990, the original Claimants have preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

- a) The Claimants are the residents of village Hiradgaon, Taluka Shrigonda, District Ahmednagar.

The Respondent / State has acquired the lands of the Claimants for construction of percolation tank at village Hiradgaon. Section 4 notification in respect of the acquired lands was published on 5th June,

1986. The lands admeasuring 47 Ares out of Gat No.324, 3 Hectare 88 Ares out of Gat No.326, 27 Ares out of Gat No.340 and 6 Hectare 35 Ares out of Gat No.339 situated at village Hiradgaon were acquired by the Respondent / State. The Special Land Acquisition Officer has declared the award vide LAQ.S.R. No.29 of 1985 on 25th February, 1988 and awarded the compensation of Rs.95,233/- as a total compensation for the acquired lands.

- b) Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimants have preferred the aforesaid land acquisition reference petition for grant of compensation at the enhanced rate. It has been contended by the Claimants that the Special Land Acquisition Officer has treated the acquired lands as Jirayat land even though the acquired lands are Bagayat land on the water of well. It has also been contended that the Special Land Acquisition Officer has collected the sale instances

of Jirayat land for the low price and awarded very meager amount of compensation. It has been contended that the Special Land Acquisition Officer has not awarded the compensation for 1000 K-Lime trees, 15 Babul trees, for well, Tal and levelling, which are in existence at the time of acquisition. Thus, the Claimants have claimed the compensation at the rate of Rs.50,000/- per Acre for Bagayat land, Rs.25,000/- for well, Rs.5,30,000/- for lemon trees and Babul trees and Rs.70,000/- for Tal and levelling. It has been contended that one CASA Sanstha, a social institution had shown its willingness to construct a percolation tank in the acquired land in the year 1975 and requested the Zilla Parishad, Ahmednagar to prepare a plan and estimate for the same. The said CASA Sanstha has taken over the possession of the suit land and even the officer of Zilla Parishad and Panchayat Samiti have given outline for the construction work of percolation tank. However, the said CASA

Sanstha could not complete the work of construction of the said percolation tank, Hiradgaon and as such, the construction work remained incomplete. Thereafter, the Collector, Ahmednagar gave a technical sanction for completion of the work of the said percolation tank and accordingly the work of the said percolation tank completed by the Zilla Parishad and the State. According to the Claimants, even though no acquisition proceedings initiated technically in the year 1975, they are entitled for the benefits as per the provisions of the Land Acquisition Act while awarding the compensation and interest from the date of possession.

- c) The Respondent / State has strongly resisted the claim petition by filing the written statement. It has been contended that the reference petition is not filed within the period of limitation and as such, liable to be dismissed on this count alone. It has been also contended that the Special Land

Acquisition Officer has personally visited the acquired lands, recorded the measurement, verified the quality and also collected the sale instances from the same village while awarding the compensation. Since no Bagayat crops were found in the acquired portion, the Special Land Acquisition Officer has classified the acquired lands as Jirayat land and awarded the compensation as per the market rate prevailing at the time of Section 4 notification.

- d) Thus, considering the rival pleadings of the parties, the Reference Court has framed the issues. The Claimants have examined in all eight witnesses to substantiate their contention before the Reference Court and the Respondent / State has examined two witnesses to substantiate its contention.
- e) The learned Joint Civil Judge Senior Division, Ahmednagar vide its impugned judgment and award dated 9th August, 1996, has awarded the

compensation for the agricultural land at the rate of Rs.40,000/- per Hectare by treating the acquired lands as Bagayat land. However, rejected the claim of the Claimants to the extent of lemon trees, Babul trees, well, Tal and levelling. Being aggrieved by the same, the Claimants have preferred this appeal.

3 The learned counsel for Appellants / Claimants submits that the CASA Sanstha, a social institution, took the possession of the acquired lands owned by the Appellants / original Claimants on 1st December, 1975 and the work of construction of the percolation tank was started by the said CASA Sanstha on that day itself. The said CASA Sanstha has informed the Tahsildar, Shrigonda about starting of the work of percolation tank in the acquired lands at village Hiradgaon and accordingly, the Tahsildar and Talathi have visited the acquired lands and prepared Panchanama regarding the existence of standing crops and trees in the acquired lands on 25th November, 1975. The learned counsel submits that the Zilla Parishad, Ahmednagar and its officers have prepared a plan, estimate of the said percolation tank, called as “Hiradgaon Percolation Tank”, which

has been produced before the Reference Court marked as Exhibit 61. However, the Reference Court neither considered the said Panchanama Exhibit 31 nor considered the date of possession of the acquired lands as on 25th November, 1975. The Reference Court has committed grave mistake in holding that the possession of the acquired lands has been taken on 21st November, 1988. The Reference Court has wrongly observed that the liabilities of the said CASA Sanstha cannot be thrust upon the Government with respect to the payment of interest from the date of possession. The Reference Court ought to have held that the possession of the acquired lands was taken in the year 1975. The learned counsel submits that even though no land acquisition proceedings came to be initiated in the year 1975, the Claimants are entitled for the benefits as per the provisions of the Land Acquisition Act while awarding the compensation and interest from the date of possession. The learned counsel submits that the Tahsildar and Talathi have visited the acquired lands and prepared Panchanama regarding the existence of standing crops and trees on 25th November, 1975. They have visited the lands bearing Gat Nos.324, 326, 339 and 340 of village Hiradgaon and prepared Panchanama, which is marked as Exhibit 31. The

Panchanama Exhibit 31 unmistakably point out the existence of K-Lime trees in the acquired lands alongwith well, Tal and other developments. However, the Reference Court has not considered this important document and on the other hand, observed that the said Panchanama has been prepared only with the intention to create evidence in support of the claim of K-Lime trees. The learned counsel submits that on the point of compensation for trees, the Claimants have examined PW-1 Zumber Appaji Darekar and PW-6 Pandharinath Laxman Bhujbal and they have deposed on the point of transportation of the K-Lime plants. PW-1 in his evidence has given details about the K-Lime trees in the acquired lands and PW-6 has stated on oath about issuing of receipts for transportation charges dated 14th May, 1970. The Claimants have also examined PW-7 Gyanba Dinkar Mhaske, who is a person selling the sugarcane juice in the surrounding area. He has issued the receipts for purchasing the lime fruits and the same are marked as Exhibits 71 and 72. He has purchased K-Lime fruits at the rate of Rs.40/- per hundred to Rs.50/- per hundred. The Claimants have also examined PW-8 Dr.Mukund Ramrao Gaikwad, a Horticulturist. He has submitted his valuation of the said trees in the acquired lands on the basis of the

documents. However, the Reference Court has not considered the above mentioned oral evidence and discarded the claim of the Claimants in respect of the trees etc. erroneously. Even the Reference Court has not considered the receipts Exhibits 32 to 35. The said receipts speak about the construction of Tal in the acquired lands and also levelling. However, the Reference Court has not considered the said evidence only on the ground that while filing the objections before the Special Land Acquisition Officer, the Claimants have not claimed the compensation for levelling etc. and they did not produce any documentary evidence before the Special Land Acquisition Officer. The learned counsel submits that on the point of market rate, the Claimants have examined PW-4 Sitaram Eknath Nawale and proved the contents of sale-deed Exhibit 12. As per the sale-deed Exhibit 12, the land admeasuring 12 Gunthas has been sold for a consideration of Rs.10,000/-. However, the Reference Court has not considered the said sale instance for the reason that the same pertains to small portion of land, different village and further relied upon the judgment and award passed in earlier LAR No.49 of 1988 wherein the compensation at the rate of Rs.20,000/- per Hectare for Jirayat land has been awarded. The learned counsel submits that

the Reference Court has not considered the market value of the acquired lands as on the date of Section 4 notification in respect of the acquired lands and ignoring the sale instance Exhibit 12 when admittedly no sale instance was available of village Hiradgaon, awarded the compensation at the very meager rate of enhancement.

4 The learned AGP submits that though the said CASA Sanstha had started the work initially, it is a matter of record that the work could not be completed due to one or other reason. Subsequently, the work of percolation tank was completed by the Government. Accordingly, Section 4 notification was published in respect of the acquired lands on 5th June, 1986 and the possession of the acquired lands was taken on 21st November, 1988 by the Government for construction of the said percolation tank. There is no question of granting the interest from the date on which the said CASA Sanstha had taken the possession of the acquired lands as alleged. There is no evidence to the effect that said CASA Sanstha had carried out the said work of construction of percolation tank at village Hiradgaon in the acquired lands under the supervision of the Government authorities. Since the said work remained incomplete, at

the request of the social worker of Shrigonda Taluka, the Government has decided to complete the said work and accordingly, the acquisition proceedings came to be initiated. The learned Judge of the Reference Court has therefore, rightly observed that the liabilities of the said CASA Sanstha cannot be thrust upon the Government so far as the payment of interest from the date of possession from the year 1975 is concerned. The learned AGP submits that Panchanama Exhibit 31 is a highly suspicious document. There are erasers and scoring on the Panchanama Exhibit 31. It has been prepared in order to manipulate the number of K-Lime trees. It is also significant that near about 10 Panch Witnesses including the interested persons have signed the Panchanama and even the Police Patil, who has signed the Panchanama, is also a nearest relative of the Claimants. The Reference Court has therefore, rightly observed that the Panchanama Exhibit 31 has been prepared only in order to support the claim regarding the compensation for K-Lime trees. The learned AGP submits that vide document Exhibit 96, the Claimants have unequivocally admitted that there are no trees, houses and Vasti in the acquired portion. Furthermore, the general power of attorney of the Claimants have filed applications before the Special Land

Acquisition Officer on 22nd July, 1987 regarding compensation for well and those applications are marked as Exhibits 100 and 101 respectively. The Claimants have claimed the compensation only for 15 Babul trees and there is no reference to K-Lime trees in the application Exhibit 101. Though PW-1 general power of attorney has denied the contents of the application as well as his signatures below the applications, the Reference Court has compared his admitted signature with those signatures and observed that both the signatures are belonging to one and the same person. The learned AGP submits that so far as the oral evidence adduced by the Claimants is concerned, the Reference Court has rightly observed that the Claimants had prepared a scheme for getting more and more compensation and in pursuance of the same, created the documentary evidence in support thereof. The learned AGP submits that PW-7 is a got up witness. There is no reason for a person selling sugarcane juice in the various villages to issue receipts Exhibits 71 and 72 pertaining to the garden of K-Lime fruits. The Reference Court has therefore, rightly disbelieved the oral evidence led by the Claimants in this regard. The learned AGP submits that so far as the oral evidence of PW-8 Dr. Mukund Gaikwad is concerned, admittedly,

at the time of his visit, no K-Lime trees were in existence and he has worked out his valuation report on the basis of certain information supplied to him by the interested Claimants. The learned AGP submits that there is no reference of fruit bearing trees in the award. There is no evidence about construction of Tal and levelling. It is highly unlikely on the part of the Claimants to spend huge amount for construction of Tal and levelling though as per their case, the said CASA Sanstha had started the work of construction of percolation tank in the acquired lands way back in the year 1975. The Claimants have also not claimed any compensation for construction of Tal and levelling before the Special Land Acquisition Officer. The learned AGP submits that the Claimants have relied upon sale-deed Exhibit 12, which pertains to alienation of the small portion of the land from different village. Even on relying upon the said sale instance in LAR No.49 of 1988, the Reference Court has awarded the compensation at the rate of Rs.20,000/- per Hectare for Jirayat land. Thus, the Reference Court has rightly considered the market value of the acquired lands at the rate of Rs.40,000/- per Hectare. There is no substance in the appeal and the appeal is thus, liable to be dismissed.

5 The learned AGP in order to substantiate his contention placed his reliance on the following cases:

- a) **Chimanlal Hargovindas Vs. Special Land Acquisition Officer, Poona**, reported in, **1988 (3) SCC 751**,
- b) **State of Haryana Vs. Gurcharan Singh**, reported in, **1995 (Supp.2) SCC 637**.

6 So far as the cost of acquired lands is concerned, land admeasuring 0.47 Ares out of the land Gat No.324, land 3 Hectare 88 Ares out of the land Gat No.326, land 0.27 Ares out of the land Gat No.340 and land 6 Hectare 35 Ares out of the land Gat No.339 total into 10 Hectare 97 Ares came to be acquired for the aforesaid project from village Hiradgaon, Taluka Shrigonda, District Ahmednagar and the Appellants / Claimants are claiming the compensation for the acquired lands at the rate of Rs.1,25,000/- per Hectare corresponds to Rs.1,250/- per Are. The Appellants / Claimants in order to substantiate their claim for the enhanced compensation towards the costs of land, mainly relied upon the sale-deed Exhibit 12. Sale-deed Exhibit 12 pertains to a small portion of agricultural land admeasuring 12 Ares situated at village Takali Kadewali. The land under sale-deed

Exhibit 12, admeasuring 12 Ares sold for a consideration of Rs.10,000/-. The Appellants / Claimants have examined PW-4 Sitaram Eknath Nawale to prove the contents of sale-deed Exhibit 12. Witness Sitaram Nawale has stated about the distance between village Hiradgaon and Takali Kadewali is about 2.5 kilometers. He has admitted in his cross-examination that he has not come across with the sale instances for the lands at village Hiradgaon at the rate at which sale instance Exhibit 12 took place. He has also admitted that he has neither purchased or sold land at village Hiradgaon. Though he is having 20 Acres of land, he has no occasion to cultivate the land at village Hiradgaon. According to him, he cannot say that if the lands at village Takali Kadewali and Hiradgaon differs in price and quality. In view of the above, it is difficult to consider the sale-deed Exhibit 12 as a comparable sale instance to determine the market value of the acquired lands, which is 10 Hectare and 97 Ares in total. It appears that Bagayat land admeasuring 12 Ares was sold for a consideration of Rs.10,000/- vide sale-deed Exhibit 12 and as per the consideration shown in the sale-deed Exhibit 12, the price of the agricultural Bagayat land comes at the rate of Rs.83,333/- per Hectare corresponds to Rs.833/- per Are. The learned Judge of the Reference

Court has therefore, placed its reliance upon the judgment and award passed in LAR No.49 of 1988 wherein the Reference Court had an occasion to deal with the same sale-deed to determine the compensation at the enhanced rate for the acquired land at village Hiradgaon itself. On perusal of the judgment and award passed in LAR No.49 of 1988, it appears that the notification under Section 4 was published in the same year of 1986. The notification under Section 4 in LAR No.49 of 1988 was published on 23rd January, 1986 whereas in the present case, Section 4 notification was published on 5th June, 1986. In said LAR No.49 of 1988, which has now attained the finality, the Reference Court has awarded the compensation at the enhanced rate of Rs.20,000/- per Hectare for Jirayat land. In the instant case, the Reference Court has rightly considered the acquired lands as Bagayat land and accordingly awarded the compensation at the enhanced rate of Rs.40,000/- per Hectare i.e. double the costs of the Jirayat land.

7 I do not find any fault in the judgment and award passed by the Reference Court so far as the compensation granted for the land at the enhanced rate is concerned.

8 The Appellants / Claimants have claimed the compensation for K-Lime trees 1000 in number and 15 Babul trees. The Appellants / Claimants are mostly relying upon the Panchanama Exhibit 31 and the 7/12 extracts Exhibit 19 to Exhibit 22 respectively. According to the Claimants, initially, the work of the percolation tank at village Hiradgaon was undertaken and started by one CASA Sanstha in the year 1975 under the supervision of the Government authorities such as Panchayat Samiti and Zilla Parishad. Said CASA Sanstha was providing the edible oil and wheat to the labours engaged in the construction work of the said Sanstha in lieu of wages. Such work was also undertaken by said CASA Sanstha at villages Sandgaon, Ghodegaon, Tandali, Dumala and Dhorje. According to the Appellants / Claimants said CASA Sanstha had obtained the consent from the Government to carry out the said work. At the instance of said CASA Sanstha, the Tahsildar and Talathi visited the site and also carried out the inspection with regard to the existence of the standing crops, trees etc. According to the Appellants / Claimants, on 25th November, 1975, the Talathi has visited the acquired lands and carried out the Panchanama, which is marked as Exhibit 31. The Appellants / Claimants state in their oral evidence that during the site

visit, existence of 1055 K-Lime trees in land Gat No.339 are mentioned in said Panchanama Exhibit 31 and also the well. Existence of 15 Babul trees situated over the Bandh in between land Gat No.326 and Gat No.324 also noted in the said Panchanama.

9 The Appellants / Claimants have examined witness No.3 Baban Dhondiba Gavane to substantiate their contentions that said CASA Sanstha though undertaken the construction of percolation tank, the construction of the percolation tank at village Hiradgaon was being carried out under the supervision of Panchayat Samiti and Zilla Parishad and as such, Panchanama Exhibit 31 drawn by the authorities, is a document unmistakably pointing out the existence of K-Lime trees, Babul trees in the acquired lands. Though the Appellants / Claimants have examined witness No.3 Baban Gavane and produced on record the abstract (Sub-Estimate No.1) Exhibit 61, the power of attorney of the Appellants / Claimants PW-1 Zumber Appaji Darekar, has admitted in para 15 of his cross-examination that except Panchanama Exhibit 31, he has no other document to show that the work of construction of the said percolation tank at village Hiradgaon was carried out by said CASA Sanstha with consent of the

Government. The abstract Exhibit 61 also discloses the work done by CASA Sanstha for the year 1975-76 and the document Exhibit 61 hardly speaks about the consent of the Government obtained for the said work undertaken by said CASA Sanstha. In the backdrop of these, the Panchanama Exhibit 31, which not only bears the signatures of the Appellants / Claimants but the Police Patil, is highly suspicious document. Though this Panchanama has been obtained from the Tahsil office, however, except the signature of the Talathi alongwith those persons, there is nothing in the contents of the Panchanama indicating that the Talathi of the said Sajja has drawn the said Panchanama under the orders from the superior authority. There are also scoring and erasers, which do not bear the signatures of the said witnesses in the Panchanama Exhibit 31. The learned Judge of the Reference Court has therefore, rightly observed that Panchanama Exhibit 31 has been prepared only in order to support the claim regarding the compensation for trees.

10 There are two more documents Exhibit 96 and Exhibit 101 respectively. The power of attorney PW-1 has deposed that Appaji Bolhaji Darekar is his father and he has four brothers by name

Gondaji, Kondiba, Genba Haribhau Bhivsen Bolhaji. He has further given genealogy of these four brothers and deposed that the reference petition is filed by all the above persons and he has been appointed as power of attorney as per the documents Exhibits 13 to 16. Exhibit 96 is an application signed by one of the brother Kondiba wherein he has given the reference to the well acquired by the Government from the acquired land Gat No.339 and further stated in the said application that except the well, there are no houses, trees etc. in the said land Gat No.339. So far as the document Exhibit 101 is concerned, though it is signed by the power of attorney Zumber Darekar, witness Zumber Darekar has denied his signature on it. Said document application Exhibit 101 was submitted before the authority on 7th August, 1987 signed by the power of attorney of the Appellants / Claimants wherein there is a reference about 15 Babul trees and there is absolutely no reference about the K-Lime trees. So far as the 7/12 extracts Exhibits 19 to 22 are concerned, on a separate sheet attached to Gat No.339 Exhibit 22, the K-Lime trees are shown. However, in the 7/12 extracts produced by the Special Land Acquisition Officer Exhibits 101 to 105 respectively, there is no entry about K-Lime trees in the acquired land Gat No.339. It is

pertinent that the same 7/12 extracts in respect of the acquired lands produced by the authorities are silent about the existence of K-Lime trees in the land Gat No.339. I do not find any substance in the claim of the Appellants / Claimants about the K-Lime trees. The Reference Court has rightly rejected the claim pertains to K-Lime trees. The Respondent / State has also examined witness No.1 Bhanuds Bhausahab Supekar. He was working as a surveyor in Land Record Department since 1976. In the month of January 1986, he was attached to the office of Additional D.I.L.R. No.2, Ahmednagar. He had carried out joint measurement of the acquired lands. In the month of January 1986, he has visited the lands. He has prepared a map. The same is produced on record and marked as Exhibit 87. He has deposed that while carrying out the joint measurement, there were no fruit bearing trees in the acquired portion. There is nothing in the cross-examination of this witness to disbelieve his evidence and even there is no reason to discard the evidence of the surveyor who has measured the lands as per the directions given to him by his superiors. There is no reference of fruit bearing trees in the award. The Appellants / Claimants have not objected for the same during the acquisition proceedings. There is no reason to discuss the evidence

about the market rate of the fruits of the trees and also about the evidence of the private valuer. Admittedly, said private valuer witness No.8 Mukund Gaikwad has no occasion to inspect the K-Lime trees and he has made the valuation only on the basis of the documents. It is a meaningless exercise and the Reference Court has therefore, rightly discarded the same.

11 I do not find any substance in the submissions made on behalf of the Appellants / Claimants that the Government has acquired the lands in the year 1975. It appears from the admission given by witness No.1 for the Appellants / Claimants that the Appellants / Claimants owned and possessed the total land about 200 Acres. Said CASA Sanstha was a foreign country institute. It further appears that the agriculturists from the said area have decided to construct the percolation tank with the help of said CASA Sanstha. Needless to say that the Appellants / Claimants and other agriculturists in the surrounding area would have been the benefited persons if said CASA Sanstha would have completed the work. It further appears from the record that the Government has come in picture with regard to the acquisition of these lands for the first time

on 22nd May, 1986 i.e. by publication of the notification under Section 4 and possession of the acquired lands has been taken on 21st November, 1988. The Appellants / Claimants have also executed the possession receipts of handing over the possession to the Government. The Respondent / State has also examined witness No.2 Vijaykumar Prabhakar Tirodka to substantiate the same. By any stretch of imagination, it cannot be said that said CASA Sanstha had undertaken the said construction work of percolation tank in the acquired land with the consent of the Government and in fact the Panchayat Samiti and Zilla Parishad of the area was supervising the said construction work.

12 So far as the claim of the Appellants / Claimants in respect of leveling and bunding of the acquired lands are concerned, I agree with the observations made by the Reference Court that there was no reason for the Appellants / Claimants to incur huge expenses for leveling and bunding of the lands on which said CASA Sanstha has proposed to construct the percolation tank and as such, it is an afterthought story of the Appellants / Claimants for claiming the compensation for leveling and construction of Tal.

13 In the light of the above discussion, I do not find any substance in the appeal and the appeal is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed. In the circumstances, there shall be no order as to the costs.
- II. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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