

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3661 OF 2016

1. Radhakishan S/o. Punjaram Ardad,
Age: 42 years, Occ: Agril.,
R/o. Bolegaon, Tq. Ghansawangi,
Dist. Jalna = **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra
Through the Collector,
Jalna, Dist. Jalna
2. The Special land Acquisition Officer,
Collector Office, Jalna (E & D)
Jalna
3. The Executive Engineer,
Minor Irrigation Department,
Zilla Parishad, Jalna = **RESPONDENTS**
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Mr. Babashaeb A. Dhengle, Advocate for Appellant;
Mr. S.M. Ganachari, AGP for Respondent/State
Mr. S.S. Tope, Advocate for Respondent No.3

CORAM : P.R.BORA, J.

DATE : 18th July, 2017

ORAL JUDGMENT:

- 1) Shri Tope, learned Counsel appearing for respondent no.3 Zilla Parishad submits that Zilla Parishad, Jalna, is noway concerned with the acquisition which is the

subject matter of the present appeal. Learned Counsel for the appellant also agrees with the fact so stated by Shri Tope that there is no concern of the Zilla Parishad, Jalna. Shri Tope, learned Counsel, has tendered across the Bar a letter received to him from the Executive Engineer, Minor Irrigation, Zilla Parishad, Jalna, dated 10th April, 2017. The same is taken on record. In the said letter it is clarified that the Zilla Parishad, Jalna, is noway concerned with the subject acquisition. In view of the submission so made, the name of respondent no.3 stands deleted from the array of the respondents.

2. Heard finally with the consent of the learned Counsel for the appellant and learned A.G.P. appearing for respondent nos. 1 and 2. The main grievance of the appellant in the present appeal is that while deciding the Reference application, the Reference Court has not awarded any compensation towards 200 Mosambi trees alleged to be standing in the acquired land. Learned Counsel invited my attention to paragraph No.13 of the judgment wherein a reference has come that, in joint measurement of the subject land, 200 Mosambi trees were shown to be standing in the acquired land. Learned Counsel submitted that it was

throughout the case of the present appellant that there are around 200 Mosambi trees in his land and he is entitled for compensation towards the said trees.

3. I have perused the impugned judgment and the other material placed on record. In the Reference Application under Section 18 of the Act preferred by the appellant, claiming enhancement in the amount of compensation as awarded by the Land Acquisition Officer, the appellant had specifically mentioned that 200 Mosambi trees were standing in his land along with other fruit bearing trees and he had claimed the enhancement in the compensation awarded by the Land Acquisition Officer towards the said trees. In paragraph No.13 of the impugned judgment also, it is stated that in the joint measurement report of the subject land, 200 Mosambi trees were shown to be standing in the field of the appellant along with other fruit bearing trees. However, in the further part of the judgment though the Reference Court has discussed the evidence in regard to other trees standing in the subject land, has not made any discussion about the Mosambi trees and obviously, therefore, no compensation has been enhanced in so far as Mosambi trees are concerned though in respect of other trees, the Reference Court has enhanced the amount of

compensation. When in the Reference Application there was mention of 200 Mosambi trees standing in the subject land and when even in joint measurement statement there was reference of 200 Mosambi trees, there must have been some discussion in the judgment of the Reference Court, either accepting the request of the claimant to enhance the amount of compensation for said Mosambi trees or rejecting the prayer so made by assigning reasons therefor. However, there is absolutely no discussion in the impugned judgment about the said Mosambi trees.

4. In the above circumstances, I deem it appropriate to remit back the matter to the Reference Court to consider and decide the alleged claim of the appellant / claimant in respect of enhancement in the amount of compensation towards 200 Mosambi trees alleged to be standing in his subject land on the basis of the evidence available on record as expeditiously as possible and preferably within a period of six months.

The First Appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

AGP/3661-16fa