

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

FIRST APPEAL NO.3694 OF 2016

1. Prahlad s/o Vithalrao Zungure,
Age 60 years, Occ: Agriculture
R/o Ukhanda, Tq. Patoda,
Dist.Beed.
2. Kalabai d/o Namdeo Thosar,
Age 70 years, Occ: Agri. & Household,
R/o Ukhanda, Tq. Patoda,
Dist.Beed.

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through: Its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 32
2. The Collector, Beed.
3. The Special Land Acquisition Officer
(M.I.), at Beed, Dist. Beed.
4. Godavari Khore Development Corporation,
Through: The Executive Engineer,
JRR Division, Beed,
Dist. Beed.

...RESPONDENTS

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Mr. R.R.Mantri, Advocate, h/f Mr. C.V.Thombre, Advocate,
for appellant.

Mr. S.P.Sonpawale, AGP for respondent nos. 1 to 3.

Mr. B.R.Surwase, Advocate, for respondent no.4.

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CORAM: P.R. BORA, J.

DATE : August 7th, 2017

Date of reserving the judgment:13/06/2017

Date of pronouncing the judgment:07/08/2017

JUDGMENT:

1. The appellants have filed the present appeal seeking enhancement in the amount of compensation as awarded by the Court of Civil Judge, Senior Division, at Beed, hereinafter referred to as the Reference Court in LAR No.448/1994 decided by the said Court on 27th of June, 2016.

2. The lands which are subject matter of the present appeal were acquired for for the purpose of Domri Irrigation Project, at village Ukhanda, taluka Patoda, district Beed. Notification under Section 4 of the Land Acquisition Act, 1894, hereinafter referred to as the said Act, in that regard was published in the official gazette on 23rd February, 1989. The possession of the acquired land was taken prior to that on 1.5.1987. The award under Section 11 was passed on 23rd of August, 1992. The Special Land Acquisition Officer had offered the compensation for the acquired lands at the rate of

Rs.130/- to Rs.210/- per Are as per the categorization made of the lands by the said Special Land Acquisition Officer. Dissatisfied with the amount of compensation so offered, the claimants preferred an application under Section 18 of the Act which was adjudicated by the Reference Court and the judgment and award was initially passed by the Reference Court on 20th of August, 2005. The Reference Court determined the market value of the acquired lands at the rate of Rs.540/- per Are for Jirayat land and Rs.1078/- per Are for Bagayat lands and accordingly, enhanced the amount of compensation.

3. The present appellants, who are hereinafter referred to as the claimants, did not prefer any appeal against the judgment and award so passed by the Reference Court on 20th of August, 2005. However, in the year 2012, the acquiring body preferred appeal bearing First Appeal Stamp No.2324/2012 before the High Court, challenging the said judgment and award dated 20th of August, 2005 which came to be allowed along with other three appeals by this Court (Coram: S.V.Gangapurwala, J.), vide order passed on 23rd of

October, 2015. This Court remitted the matters back to the Reference Court since the acquiring body was not made party to the original Reference Application with a direction that the acquiring body shall be added as party respondent and be given an opportunity of filing written statement and resisting the application.

4. After remand of the matter, the acquiring body filed its written statement denying the claim of the claimants. The claimants then adduced evidence in support of their claim. The acquiring body or the State did not adduce any oral or documentary evidence. Learned Reference Court, vide the judgment and order passed on 27th of June, 2016, partly allowed the application. The Reference Court has held the claimants entitled for the enhanced compensation at the rate of Rs.540/- per Are for the Jirayat lands and Rs.1078/- per Are for Bagayat lands. The Reference Court has also awarded a sum of Rs.31,410/- towards the enhanced compensation for acquisition of wells as well as for the trees. Dissatisfied with the amount of compensation so awarded, the original claimants have preferred the present

appeal.

5. Shri R.R.Mantri, learned Counsel holding for Shri C.V.Thombre, learned Counsel appearing for the appellants, assailed the impugned judgment and award on various grounds. Learned Counsel submitted that the Reference Court has utterly failed in appreciating the evidence brought on record by the claimants in the form of sale instances for determination of the market value of the acquired lands on the basis of the said sale instances which, according to the claimants, were of comparable lands. Learned Counsel submitted that, in fact, the Reference Court has completely ignored and kept out of consideration the fresh evidence adduced on record by the claimants and has mechanically confirmed the market value as was determined in the previous judgment by the Reference Court delivered on 20th of August, 2005. Learned Counsel submitted that the method adopted by the Reference Court in determining the market value of the acquired lands was incorrect and wrong and against the principles laid down by the Honourable Apex Court in the judgments on the issue. Learned Counsel further

submitted that the Reference Court has also grossly erred in not appropriately considering the evidence adduced by the claimants as about the fruit bearing trees standing in the acquired lands when the same was taken in possession by the State for irrigation project at Ukhanda. Learned Counsel submitted that sufficient evidence was placed on record by the claimants as about the fruit bearing trees. Learned Counsel submitted that two experts were examined by the claimants in order to substantiate the claim of compensation towards acquisition of fruit bearing trees as well as the wells and the Bandhs. Learned Counsel submitted that the entire said evidence has been discarded by the Reference Court without assigning any cogent and sufficient reason therefor. Learned Counsel submitted that whatever compensation has been enhanced by the Reference Court towards the fruit bearing trees is wholly unjust and inadequate.

6. Relying on the judgment of the Honourable Apex Court in the case of Mahesh Tirthankar Vs. State (2009 SAR Civil 465), the learned Counsel submitted that the burden of proving the true market value of the

acquired property is, in fact, always on the State Government and that the expert evidence adduced, if any, by the claimants, based on the physical inspection carried out by the expert, has to be given credence. Learned Counsel further relied upon judgment of the Honourable Apex Court in the case of Meharwal Vs. State (2012 SAR Civil 465) to urge that the sale deed representing highest value is to be taken as a base for determining the market value of the acquired land. Referring to another judgment in the case of Chindha Fakira Vs. Special L.A.O. (2012 LACC 412), learned Counsel submitted that the evidence of the expert about the value of the fruit bearing trees cannot be ordinarily rejected unless there is any contrary evidence therefor. Referring to and relying upon the judgment of the Kerala High Court in the case of Jacob Vs. State of Kerala (1998 (1) LA Laws 292), learned Counsel submitted that for determination of the market value of the acquired lands, the sale instances executed in the post notification period can also be considered and relied upon. Learned Counsel, therefore, prayed for appropriate enhancement in the amount of compensation as awarded by the Reference Court.

7. Shri Sonpawale, learned A.G.P. appearing for the State and Shri Surwase, learned Counsel appearing for the acquiring body i.e. respondent no.4, supported the impugned judgment and award. Learned Counsel submitted that the Reference Court has correctly and validly determined the market value of the acquired land at the rate of Rs.540/- per Are for Jirayat land and Rs.1178/- per Are for the Bagayat land. Learned A.G.P. submitted that, in fact, the earlier judgment delivered by the Reference Court on 20th August, 2005, was in all sense, accepted by the claimants and hence no appeal was filed by the claimants. Learned A.G.P. further submitted that it was the acquiring body which came in appeal and the matter was remitted back for the reason that the acquiring body was not party before the Reference Court and no opportunity was given to the acquiring body to resist the claim raised by the claimants.

8. Learned A.G.P. further submitted that the judgment and award dated 20th August, 2005 was passed by the Reference Court relying on the market value determined in LAR No.272/1996 which was relied upon by

the claimants themselves. Learned Counsel submitted that when the claimants themselves had relied upon the judgment in LAR No. 272/1996 and when the market value was determined and the amount of compensation was accordingly enhanced, the claimants were estopped from raising any objection to the said judgment and award.

9. Learned A.G.P. submitted that though the claimants have claimed huge enhancement in the amount of compensation for acquisition of the trees, the claimants have failed in bringing on record any clinching evidence showing existence of the fruit bearing trees in the acquired lands at the time of its acquisition. Learned A.G.P. further submitted that the evidence was adduced by the claimants of the private valuers who have prepared the said valuation without giving any due notice to the concerned Government authorities. Learned A.G.P. therefore, prayed for dismissal of the appeal.

10. I have carefully considered the submissions advanced by the learned Counsel appearing for the parties. I have perused the impugned judgment, the earlier

judgment dated 20th of August, 2005, the judgment in LAR No.272/1996 and the evidence adduced before the Reference Court in the matter.

11. It is undisputed that the claimants did not challenge the judgment and award passed on 20th of August, 2005, by filing any appeal before this Court. The material on record reveals that in 2012 i.e. after long lapse of about seven years, the acquiring body preferred appeal against the said judgment and award on the ground that it was not made party in the Reference application and on the said sole ground the matter was remitted back to the Reference Court for deciding it afresh, by giving due opportunity of filing written statement and hearing to the acquiring body. Non filing of any appeal against the judgment and award dated 20th of August, 2005, by the claimants leads to the reasonable inference that the claimants had accepted the said judgment and award. Nothing has been brought on record and no such case is even made out by the claimants that they were intending to file an appeal against the said judgment and award but were prevented from filing the same for certain reasons

beyond their control. There is, therefore, substance in the argument advanced by the learned A.G.P. that had the acquiring body not filed the appeal, the judgment dated 20th August, 2005, had attained finality.

12. It, however cannot be ignored that this Court (Coram: S.V.Gangapurwala, J.) in an order passed on 23rd of October, 2015, in First Appeal Stamp No.23248/2012 with connected other appeals, while remanding the matter to the Reference Court, has categorically said that the Reference Court shall give opportunity to all the parties to adduce the evidence. As such, the evidence adduced by the claimants after remand has to be simultaneously considered along with the evidence adduced by them previously.

13. In the earlier round the claimants had relied upon two sale instances; one, dated 21.11.1989 and another dated 4th of August, 1988, respectively, marked at Exh. 27 and Exh. 39. The land which was the subject matter of Exh.27 was admeasuring 10 Are situate at village Shirapur Dhumal, taluka Patoda, district Beed, and

was sold by registered sale deed executed on 21st of November, 1989, for consideration of Rs.15,000/- i.e. at the rate of Rs.1500/- per Are. The land which was involved in the sale deed at Exh.39 was admeasuring 9 Are from village Charhata and was sold by registered sale deed executed on 4th of August, 1988 for consideration of Rs.10,000/- i.e. at the rate of Rs.1111/- per Are. The material on record reveals that the petitioners had also filed on record the certified copy of the judgment delivered in Land Acquisition Reference No.272/1996 with the connected Land Acquisition References decided on 4th of December, 2004 by the Ad hoc Additional District Judge, Beed.

14. The discussion made by the Reference Court in the judgment dated 20th of August, 2005, reveals that it has given due consideration to the sale deeds at Exh.27 and Exh.39 but has ultimately preferred to rely upon the market value as determined by the Reference Court in the judgment delivered in the matter of LAR No.272/1996 observing that the lands which were the subject matter in Land Acquisition Reference No.272/1996 with the other

Reference Applications were also acquired for the irrigation project at village Ukhanda vide the same notification issued on 23rd February, 1989, and the said lands were also acquired from village Ukhanda. The judgment in LAR No.272/1996 reveals that in the said matter also, the sale deed in respect of the land situate at village Charhata admeasuring 9 Are sold for consideration of Rs.10,000/- on 4.8.1988 was considered by the said Court along with other sale instances. While deciding LAR No.448/1994 thus there were two sale instances and one earlier judgment delivered in LAR No.272/1996 available for consideration of the Reference Court before passing the judgment dated 20th of August, 2005.

15. As has been observed by the Reference Court in paragraph nos. 31 and 32, of the judgment in LAR No. 272/1996, the claimants in the said matter had relied upon the earlier judgment delivered in LAR No.127/1995 with five connected matters on 1.12.2004 arising out of the same acquisition proceedings wherein the market value was determined at the rate of Rs.1078/- per Are for Bagayat land and Rs.540/- per Are for Jirayat land.

Thus, while passing the award dated 20th of August, 2005, two judgments; one, in LAR No.272/1996 and in LAR No.127/1995 were available for the said Court arising out of the same acquisition proceedings. It seems that the Reference Court preferred to take the same view and accordingly determined the market value of the subject lands on the similar lines as was determined in said LARs. It, therefore, does not appear to me that the Reference Court which decided the Reference Applications earlier vide judgment dated 20th August, 2005, had committed any error in determining the market value of the acquired lands; however, as I noted earlier, since this Court has given an opportunity to all the parties to adduce evidence in the matter after remand and availing the said opportunity when the claimants did place on record the sale instances at Exh.85 to Exh.90, i.e. total 6 sale instances in number, the same will have to be given due consideration. The learned Reference Court in the impugned judgment, however, has declined to rely upon the fresh sale instances brought on record by the claimants and has preferred to hold the market value as determined in LAR No.272/1996 to be the real market

value of the acquired lands.

16. I have perused the sale instances at Exh.85 to Exh.90. The sale deeds which are at Exh.85,86,87 and 90 all are executed on one and the same date i.e. 22nd of September, 1989 whereas the sale deed at Exh.88 is of the date 2nd of May, 1989 and the sale deed at Exh.89 is dated 21.11.1989. It is, thus, evident that all the aforesaid sale instances are of the post notification period. As noted earlier, the subject lands were acquired vide notification under Section 4 issued on 23rd February, 1989. It, therefore, does not appear to me that the Reference Court has committed any error in not relying upon the said sale instances. Though it was sought to be canvassed by the learned Counsel for the claimants, relying upon the judgment of the Honourable Kerala High Court, that for determination of the market value the sale instances post notification period also can be considered, after having gone through the text of the said judgment, it does not appear to me that the view as has been taken by the Kerala High Court would have any application in the facts of the present case. As has come on record, for

the other lands acquired for the same project, vide the same notification, in Reference Application No.272/1996 and prior to that in LAR No.127/1995, the market value was determined at the rate of Rs.540/- per Are for Jirayat land and Rs.1178/- for Bagayat land. Nothing has been brought on record by the claimants to show that in any of the said matter, the market value has been increased by any higher Court. It is also matter of record that even the claimants did not prefer any appeal at least till 2012 though the Reference Court has decided the Reference Application in 2005, challenging the market value as was determined by the Reference Court at the rate of Rs.540/- per Are for Jirayat and Rs.1178/- per Are for Bagayat land. After having considered the aforesaid circumstances, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands at the rate of Rs.540/- per Are for Jirayat land and Rs.1178/- per Are for Bagayat land. Thus, in so far as the objection raised by the appellants claimants as about the market value of the acquired lands determined by the Reference Court, I do not see any reason to cause any interference.

17. The next question which falls for my consideration is whether the compensation as has been enhanced by the Reference Court for fruit bearing trees, wells and BANDHS is unjust and inadequate as has been alleged by the appellants claimants. As was argued by the learned Counsel for the appellants, the Reference Court has completely ignored the evidence of the experts adduced on behalf of the claimants as about valuation of the fruit bearing trees, wells and the stone Bandhs. Per contra, it has been argued by the learned A.G.P. and the learned Counsel appearing for the acquiring body, the compensation as has been enhanced by the Reference Court for acquisition of fruit bearing trees, wells and Bandhs is just and appropriate and no interference is required in the compensation so awaited by the Reference Court.

18. The claimants had examined one Vyankat Manikrao Ghogare to substantiate their claim as about the compensation for fruit bearing trees in the acquired lands. Earlier also the evidence of the said witness was recorded. One Balbhim Laxman Jaher Patil was also examined by the

claimants to prove their claim as about the wells and Bandhs in the acquired lands. In his testimony before the Court, PW 2 Vyankat Manikrao Ghogare has deposed that he had inspected the fruit bearing trees in Gat No.3, 6, 9 and 181 belonging to the claimants and, at the relevant time, in Gat No.3 there was 1 Mango, 5 Bor, 20 Sitaphal, 20 Coconut and 75 Mosambi trees were existing whereas in Gat No.6, there was 1 Mango, 15 Bor, 20 Sitaphal, 24 Coconut and 60 Orange trees were standing; in Gat no.9, there were 1 Mango, 15 Bor, 28 Sitaphal, 21 Coconut and 81 Mosambi trees and in Gat No.181, 15 Bor, 25 Sitaphal, 61 Coconut and 90 Mosambi trees were standing and he has carried out panchnama in that regard on 17th of May, 1989. In his evidence before the Court, PW No.3 Balbhim Jaher Patil has elaborately deposed about the wells and Bandhs existing in the acquired lands.

19. In the light of the evidence of the aforesaid two witnesses coupled with the testimony of the claimants who deposed before the Court, when I perused the discussion made by the Reference Court in regard to the said evidence, in para nos. 23 to 26 of the impugned judgment,

it is apparently revealed that the discussion made by the Reference Court is too cryptic. As has been stated in para no.26 of the impugned judgment, the valuation report as about the fruit bearing trees are at Exh.43 and Exh.45 whereas the report as about the wells and BANDHS are at Exh.102 to Exh.114. I deem it appropriate to reproduce the entire said discussion made by the Reference Court in paragraph no.26 of the impugned judgment which reads thus:

"26. Hence, considering the rival pleadings about compensation of fruit bearing trees, pipelines, stone-bunds and Wells, it is necessary to decide whether the compensation awarded by the respondents to the acquired properties other than the landed properties, is meager and inadequate as well as whether the petitioners are entitled to get enhance compensation of that properties. In this case expert valuer adduced their oral evidence in support of their report and panchnama vide Exhs.43, 45 and 102 to 114 respectively. It is well settled principle of law that, evidence of an expert witnesses to fix market value of fruit bearing trees, pipelines, stone-bunds and Wells be considered by the Court. Thus, I have relied upon the same and partly accepted report of expert valuers, on the basis of guess and enhance compensation in respect of fruit bearing trees, pipelines, stone-bunds and Wells accordingly:

following details in tabular form will suggest the entitlement of petitioners in this reference petition in respect of acquired fruit bearing trees, Wells, pipelines and stone-bunds:

I) **IN L.A.R.NO.448/1994**

Sur./Gut No.	Acquired property	Rate awarded by LAO	Relief granted by the Court	Diff.Comp. Rs.
3	Well-01	2,048/-	4,048/-	2,000/-
6	Well-01	577/-	1,577/-	1,000/-
181	Well-02	6,481/-	7,481/-	1,000/-
181	Bund-01	4,032/-	5,032/-	1,000/-
181	Bund-01	1,528/-	1628	100/-
181	Bund-01	9,660/-	9,770/-	110/-
3	Lemon tree-1	1,192/-	1,292/-	100/-
	Mango	1,470/-	2470	1,000/-
	Bore	11,586/-	13,586/-	2,000/-
	Sitaphal	2,856/-	2,956/-	100/-
	Coconut	5,040/-	7,040/-	2,000/-
	Mosambi	1,45,879/-	1,65,879/-	20,000/-
	Orange	1,902/-	2,902/-	1,000/-
			Total	31,410/-

... .."

20. The valuation report in respect of the open well in Gat No.3 demonstrates that the valuer has valued the said well to be worth Rs.42,684/- and share of the appellant namely, Pralhad Vitthalrao Zingure is shown to the extent of Rs.7114/-. The Reference Court has determined the value of the said well to the extent of the share of claimant Pralhad Vithalrao Zingure at Rs.4,048/-.

Similarly, though the valuer has valued the share of the claimant in the well in Gat No.6 to the tune of Rs.4,326/-, the Reference Court has determined the same to Rs.1577/-. Similarly, for the well in Gat No.181, the valuer has valued the share of the claimant at the rate of Rs.9056/- and the Reference Court has determined the same to the tune of Rs.7481/-. What was the criteria applied by the Reference Court in determining the compensation to be paid towards the wells in the aforesaid lands has not at all been discussed by the Reference Court.

21. Same is the scenario in so far as the compensation determined by the Reference Court for the Bandhs and the trees allegedly existing in the acquired lands. From the particulars given by the Reference Court in tabular format below paragraph no.26, it is revealed that it has enhanced the compensation for the lemon tree from Rs.1192/- to Rs.1292/-, for Mango trees from Rs.1470/- to Rs.2470/-, for Bor trees from Rs.11586/- to Rs.13586/-, for Sitaphal trees, from Rs.2856/- to Rs.2956/-, for Coconut trees, from Rs.5040/- to Rs.7040/-, for Mosambi trees, from Rs.1,45,879/- to Rs.1,65,879/-,

for orange trees, from Rs.1902/- to Rs.2902/-.

22. As has been testified by PW 2, Vyankat Ghogare, the trees which were existing at the relevant time in Gat No.3,6,9 and 181 were as below:

Mango	3
Bor	50
Sitaphal	93
Coconut	126
Mosambi	246
Orange	60

Total	- 578

23. In the impugned judgment, the Reference Court has not made any discussion whether it accepts the evidence of the said witness as about existence of the aforesaid number of trees as has been deposed by him and certified in the report submitted by him. If the Reference Court was to reject or disagree with the number of the trees as are mentioned in the valuation report submitted by Shri Ghogare and accordingly the facts testified by him in the evidence before the Reference Court, the Reference Court must have assigned cogent and sufficient reasons therefor. The impugned judgment is totally silent on this aspect.

24. From the particulars as are provided by the Reference Court in the tabular format below para 26 of the impugned judgment, nothing can be gathered as to the amount which has been mentioned in column no.3 of the said table, whether it pertains to one tree or more than one tree. Similarly, the said table does not provide any information as regards to the quantity of Mango, Bor, Sitaphal, Coconut and Orange trees. Though in column no.3 the compensation awarded by the Land Acquisition Officer for Bor trees is stated to be Rs.11,586/- and same is stated to have been enhanced to Rs.13,586/-, it is not understood as to the value of Rs.11,586/- or Rs.13,586/- is determined for how many Bor trees. According to the report of the valuer there were 50 Bor trees.

25. The Valuer has valued the Bor tree at the rate of Rs.3200/- each and, accordingly certified the market value of the 50 Bor trees to the tune of Rs.1,60,000/-. As against it, as noted hereinabove, the Reference court had awarded compensation to the tune of Rs.13,586/- by way of enhancement. The Reference Court has nowhere discussed whether it has accepted the contention of the

claimant that there were 50 Bor trees in the acquired lands. If it is to be assumed that the amount of Rs.13,586/- as has been awarded by the Reference Court is for acquisition of 50 Bor trees, it would lead to an inference that the Reference Court has determined the market value of each Bor tree at Rs.271.72, which cannot be accepted. Moreover, then the Reference Court must have made some discussion as to when the Valuer has valued the Bor tree at Rs.3200/- each, for what reasons the said valuation has not been accepted by it and then on what basis it has determined the market value of the Bor tree at the rate of Rs.271.72 each.

26. Towards Mango trees, the Reference Court has awarded compensation to the tune of Rs.2470.00. As per the report of the Valuer, there were three Mango trees in the acquired lands. The amount of compensation as offered by the Reference Court if is, therefore, divided by three, the value of each Mango tree comes to Rs.823.33. It, in no case, can be accepted. The valuer has valued each Mango tree at the rate of Rs.36,000/-. In this regard also, there is absolutely no discussion in the

impugned judgment. As I noted hereinabove, the same scenario exists so far as Sitaphal, Coconut and Orange trees are concerned. As per the Valuer's report, there were total 126 Coconut trees. The Reference Court has awarded compensation of Rs.7,040/- for the Coconut trees i.e. Rs.55.87 for each Coconut tree. This is also wholly unacceptable. The Valuer has valued the Coconut trees at the rate of Rs.8,550/- each.

27. I reiterate that from the impugned judgment, it is too difficult to understand as to for how many trees, the Reference Court has awarded the enhanced compensation and at what rate. It has to be stated that a huge amount more than Rs.26,00,000/- (Rs. Twenty Six Lakh) is claimed by the appellants towards the acquisition of the trees. As per the particulars provided by the appellants, there were 575 trees in the acquired lands. As against it, as has been argued by the learned A.G.P., there were no such number of trees in the acquired lands and, according to him, that was the reason that the appellants did not file any appeal even after lapse of seven years against the award initially passed in LAR No.448/1994 on 20th of

August, 2005.

28. After having considered the facts as aforesaid, it is evident that the Reference Court has not appropriately dealt with the claim raised by the claimants in regard to the acquisition of fruit bearing trees, wells and Bandhs. The Reference Court though has enhanced the amount of compensation to the tune of Rs.31,410/- towards wells, Bandhs and fruit bearing trees, as elaborately discussed by me hereinabove, the Reference Court has not provided the very basic and material particulars thereof. The evidence in this regard has also not been properly appreciated by the Reference Court. In view of the contention of the State and the acquiring body that no such number of trees as are claimed by the claimants were in existence, the Reference Court was expected to record a clear finding on the issue. The same has not been recorded. The Reference Court also has not recorded any finding as about the quantity of the fruit bearing trees which could be held to be in existence on the basis of evidence on record. Which method has been used or what was the criteria applied by the Reference Court in

assessing the compensation to be paid for the trees, wells and Bandhs also cannot be gathered from the impugned judgment since no such discussion is made by the Reference Court.

29. For the aforesaid reasons, I am constrained to observe that the Reference Court has failed in proper adjudication of the claim in respect of the wells, Bandhs and fruit bearing trees allegedly acquired by the State.

30. In the circumstances, there is no other option except to remit back the matter to the Reference Court for re-consideration of the aforesaid claims on the basis of the available evidence on record.

31. As I have held hereinabove, the impugned award so far as it relates to determination of the market value of the of the acquired lands and enhancement in the amount of compensation accordingly awarded by the Reference Court does not require any interference.

32. For the reasons stated above, the following

order is passed:

ORDER

1. The impugned judgment and award, so far as it relates to the compensation as awarded by the Reference Court for the wells, trees and Bandhs stands set aside and the matter is remitted back to the Reference Court for reconsideration of the claim in that regard. It is clarified that the evidence recorded during the original trial shall, subject to all just exceptions, be the evidence during the trial after remand.

2. The impugned judgment and award so far as it relates to determination of the market value of the acquired lands and the enhancement in the amount of compensation accordingly awarded by the Reference Court stands confirmed.

3. The Appeal is partly allowed in above terms.

(P.R.BORA)
JUDGE

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AGP/3694-16fa