

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3448 OF 2016

1. Shamrao Raosaheb Bade,
Age : 65 years, Occu.: Agriculture,
2. Dinkar s/o Raosaheb Bade,
Age : 66 years, Occu.: Agriculture
3. Navnath Narayan Bade,
since dead, through legal representative.
- 3A) Sheshrao s/o Navnath Bade,
Age : 45 years, Occu.: Agriculture
- 3B) Balasaheb s/o Navnath Bade,
Age : 43 years, Occu.: Agriculture
- 3C) Annasaheb s/o Navnath Bade,
Age : 40 years, Occu.: Agriculture
- 3D) Kausyalbai Navnath Bade,
Age : 65 years, Occu.: Agriculture,
- 3E) Sangita Balasaheb Ambekar,
Age : 37 years, Occu.: Agriculture
- 4) Babasaheb s/o Narayan Bade,
Age : 45 years, Occu.: Agril.,
- 5) Dagadu s/o Paraji Bade,
Age : 78 years, Occu.: Agril.,

6) Rajendra Navnath Bade,
Age : 33 years, Occu.: Agril.,

All R/o.: Chinchpur (Pangul),
Tq. Pathardi,
Dist. Ahmednagar.

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

VERSUS

The State of Maharashtra.

.... **Respondent**
(Ori. Defendant)

...
Advocate for Appellants : Shri. K. D. Bade Patil
AGP for State : Shri. C. V. Dharurkar
...

CORAM : P. R. BORA, J.
DATE : 01.08.2017.

ORAL JUDGMENT :

1) The appellants have filed the present appeal seeking enhancement in the amount of compensation as awarded by the Court of 3rd Jt. Civil Judge Senior Division, Ahmednagar (hereinafter referred to as Reference Court) in Land Reference Application No. 271/1996 decided on 16th September, 2010.

2) The appellants who are hereinafter referred to as 'the claimants' had filed the aforesaid Reference Application under Section 18 of the Land Acquisition Act (hereinafter referred to as the Act) for enhancement in the amount of compensation as awarded by the Special

Land Acquisition Officer.

3) Heard Shri K. D. Bade Patil, learned Counsel appearing for the appellants and Shri C. V. Dharurkar, learned AGP for the State. Perused the impugned judgment, the evidence on record and the other material placed on record.

4) It is not in dispute that two lands owned by the appellants, first Gut no. 72/2 (old Survey No. 358/2) and other Gut No. 343/1 (old Survey No. 296/1) were acquired for submergence of backwater of Belpara Project. The impugned award is challenged by the appellants on two grounds. Their first grievance is that the Reference Court has not awarded any compensation towards the 22 Are Pot-Kharab land and the second that the Reference Court has not awarded any compensation towards the fruit bearing trees which were standing in the acquired lands when the possession of the said lands were taken by the Government.

5) The learned Counsel submitted that the Reference Court has incorrectly stated that the land admeasuring 2 Hector 20 Are was acquired from Gut no. 72/2. The learned Counsel submitted that the whole of the said Gut No. 72/2 was acquired which was admeasuring 2 Hectors 20 Are plus 22 Are Pot-Kharab land. The learned counsel

brought to my notice E-statement which is part of the record of the Reference Court. The E-statement clearly demonstrates that the Gut No. 72/2 was admeasuring 2 hectors 20 Are plus 20 Are Pot-Kharab in total 2 Hectors 42 Are and entire said survey number was acquired. The impugned judgment and award shows that the Reference Court has not awarded any enhancement in the amount of compensation as was awarded by the S.L.A.O. towards Pot-Kharab land.

6) In the award under Section 11 of the Act the S.L.A.O. had offered the compensation for the 22 Are Pot-Kharab land at the rate of Rs.200/- per Hector. From the record, it is quite evident that though the 22 Are Pot-Kharab land out of Gut No. 72/2 was also acquired and though the S.L.A.O. had offered compensation for the said land at the rate of Rs.200/- per hector, Reference Court has not awarded any enhancement in the amount of compensation so far as the said 22 Are Pot-Kharab land is concerned.

7) The learned AGP after having gone through the record conceded that no enhancement seems to have been given by the Reference Court for the Pot-Kharab land. In the impugned judgment and award the Reference Court has determined the market value of the acquired land at the rate of Rs.1,00,000/- per Hector for irrigated land. Adopting the said rate, the Pot-Kharab land must have been awarded the

compensation at the rate of Rs.25,000/- per Hectar and to that extent the amount of compensation must have been enhanced by the Reference Court.

8) The Reference Court has admittedly not enhanced the compensation in so far as 22 Are Pot-Kharab land is concerned as is revealing from the impugned judgment and award. Considering the facts and evidence on record, I hold the appellants entitled for the enhancement in the amount of compensation for the said 22 Are Pot-Kharab land at the rate of Rs.25,000/- per Hectar. It need not be stated that the amount as has been awarded by S.L.A.O. at the rate of Rs.200/- per hector would liable to be deducted from the said compensation.

9) The second objection which has been raised by the appellants is in respect of non-grant of any enhancement in the amount of compensation for the fruit bearing trees standing in the acquired lands at the time of their acquisition. The learned Counsel submitted that in Gut no. 72/2 (Old Survey no. 358/2) there was one Jambul, one Mango and twenty six Bor trees were standing when the said land was acquired, whereas in Gut No. 343/1 (Old Survey No. 296/1) one Mango and nine Bor trees were existing at the time of acquisition. The learned Counsel submitted that when the earlier award was published, the trees were very well shown in the said award. However, in the subsequent

award the said trees were not shown and only six trees were shown to be existing in Gut No. 72/2 i.e. one Jambul and five Bor and in Gut No. 343/1 (Survey No. 296/1) one Mango and one Bor trees were shown.

10) The learned Counsel further submitted that at the time of passing of the subsequent award, the land had already gone under submergence and the trees were also cut and as such their existence was not shown. The learned Counsel submitted that however, other sufficient material was placed on record to show the existence of said trees on the date of taking possession of the said land by the Government. The learned Counsel invited my attention to the 7/12 extract of the concerned land as well as the earlier report of the horticulturist and the panchanama prepared by the Government Authorities before acquisition of the land.

11) I have carefully perused the aforesaid documents. Perusal of the said documents reveal that in Gut No. 72/2 there was one Jambul, one Mango and twenty six Bor trees, whereas in Gut No. 343/1 (Survey No. 296/1) there was one Mango & nine Bor trees. On perusal of the record, the learned AGP also accepted that the record shows the existence of the said trees and therefore, prayed for appropriate orders.

12) The learned counsel for the appellants brought to me notice

that in Reference Application No. 272/1996 arising out of the same acquisition, the Reference Court has determined the compensation to be paid for Mango and Bor trees and prayed for awarding the enhancement on similar lines as has been awarded in the said judgment. In so far as Jambul trees is concerned, the learned Counsel invited my attention to valuation made by the expert which indicates two rates for the Jambul trees Rs. 4,537/- and Rs.3897/-. The material on record sufficiently shows the existence of aforesaid trees in the acquired lands at the time of their acquisition. The appellants are, therefore, certainly entitled for the compensation towards the said trees. Reference Court has not discussed as to why it has not granted any compensation towards the said trees though sufficient evidence was available on record.

13) In the Reference Application No. 272/1996 arising out of the same acquisition, the Reference Court has determined the market value of the Mango and Bor trees. I deem it appropriate to rely on the market value determined by the Reference Court in the said matter for Mango trees and for Bor trees. In the said matter, the Reference Court has valued the Mango tree at the rate of Rs.6,702/- per tree. I hold the appellants entitled for the compensation for their two Mango trees at the said rate. Similarly, for Bor trees the Reference Court has determined the value at Rs.1,623/- per Bor tree. Appellants are entitled to receive the same price for the total thirty five Bor trees. So far as Jambul trees

is concerned, as mentioned herein before, two rates are prescribed and as such I find it appropriate to fix the value of the Jambul tree at the rate of Rs.4,000/- and held the appellants entitled for the said amount towards the enhanced compensation for the said tree.

14) The third objection which has been raised by the appellants is that no interest i.e. benefit of Section 34 has been given by the Reference Court. It need not be stated that appellants are entitled for the benefit of Section 34 of the Act as provided in the said Section. Hence, the following order.

ORDER

1. The appellants are held entitled for the enhanced compensation at the rate of Rs.24,800/- per Hecter for their 22 Are Pot-Kharab land with statutory benefits and interest under the provisions of the Act.
2. The appellants are held entitled for the enhanced compensation towards the two Mango trees at the rate of Rs.6,702/- each, for 35 Bor trees at the rate of Rs.1,623/- each and for one Jambul tree at the rate of Rs.4,000/-.
3. The appellants are also held entitled to the benefit of Section 34 of the Act on the enhanced

amount of compensation as provided under the said section.

4. The award be accordingly modified.
5. The appeal stands allowed in the aforesaid term.

(P. R. BORA)
JUDGE