IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1600 OF 2003
IN
LAND ACQUISITION REFERENCE NO.271 OF 1999

The State of Maharashtra
Through the Special Land
Acquisition Officer, Scarcity-I,
Nashik ...Appellant
(Org. Opponent)

V/s.

1. Smt.Nababai Devchand Shinde,
70 yrs.
2. Popatrao Devchand Shinde,
35 yrs.
3. Daulat Devchand Shinde,
45 yrs.
4. Bapu Devchand Shinde,
21 yrs. ..Respondents
(Org. Claimants)

WITH
FIRST APPEAL NO.1601 OF 2003
IN
LAND ACQUISITION REFERENCE NO.272 OF 1999

1. The State of Maharashtra
(Through the Special Land
Acquisition Officer, Scarcity-I,
Nashik)
2. The Executive Engineer,
Environmental Engineering Division,
Malegaon, District : Nashik. ...Appellants
(Org. Opponents)

V/s.

Smt.Sitabai Tulshiram Sansare,
50 yrs., Agriculturist,
R/o.Belgaonpada, Tal.Malegaon,
District : Nashik ..Respondents
(Org. Claimants)

WITH
FIRST APPEAL NO.1602 OF 2003
IN
LAND ACQUISITION REFERENCE NO.273 OF 1999

1. The State of Maharashtra
(Through the Special Land
Acquisition Officer, Scarcity-I,
Nashik)
2. The Executive Engineer,
Environmental Engineering Division,
Malegaon, District : Nashik. ...Appellants
(Org. Opponents)

V/s.

Shri Nana Babaji Sonawane,
70 yrs., Agriculturists,
R/o.Belgaonpada, Tal.Malegaon,
District : Nashik ..Respondents
(Org. Claimants)

Mrs.Ashwini Takalkar, AGP for Appellants in above 3 F.A.
Mr.Milind Deshmukh for Respondent Nos.1 to 4 in F.A. No.1600/03.
None for Respondents in F.A. No.1601/03 and F.A. No.1602/03.
AGP for Respondent Nos.

CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.

DATE : AUGUST 14, 2017
(IN CHAMBER
AT 2.45 P.M.)

COMMON JUDGMENT (Per : B.R.GAVAI, J.):

1. The Appellant/State has approached this Court being aggrieved by the judgment and order passed by the learned Joint District Judge, Nashik, in Land Acquisition Reference No.271 of 1999 with Land Acquisition Reference Nos. 272 of 1999 and 273 of 1999, thereby allowing the references of the respondents/claimants and enhancing the compensation which was awarded to the respondents/claimants.

2. The facts in brief giving rise to the present appeals are as under:-

3. The State Government has issued notification dated 29th March 1997 under Section 4 of the Land Acquisition Act (hereinafter referred to as the "said Act", for brevity), thereby expressing its intention to acquire the land owned by the respondents. The land is situated at Village Belgaonpada and is acquired by the Government for water supply scheme of Village Dabhadi. The details of the land are as under:-

L.R. No.	G.No.	Area Acquired
L.R. No.271/99	G.No.4	2 H-44R + 2H-72 R PK
L.R. No.272/99	G.No.11	0-36 R + 0-02 R PK
L.R. No.273/99	G.No.5	0-67 R + 0-35 R PK

4. After issuance of notification under Section 6 and after hearing the claimants, the Special Land Acquisition Officer

(hereinafter referred to as the "SLAO" for brevity) passed an award on 19th March 1997. The SLAO awarded the compensation as under:-

LR No.271/1999 : G.No.4		
Rs.	1,06,140.00	For the cultivable land
Rs.	4,080.00	For PK land
Rs.	27,440.00	Deferred value
Rs.	14,92,972.00	For trees
Rs.	89,640.00	For Wells
Rs.	81,176.00	For structure
Rs.	5,40,434.00	30% solatium
Rs.	4,32,348.00	24% component
Rs.	**27,74,230.00**	**Total amount awarded by the SLAO**

LR No.272/1999 : G.No.11		
Rs.	18,180.00	For cultivable land
Rs.	30.00	For PK land
Rs.	5,463.00	30% solatium
Rs.	4,370.00	24% component
Rs.	**28,043.00**	**Total amount awarded by the SLAO**

LR No.273/1999 : G.No.5		
Rs.	29,145.00	For cultivable land
Rs.	525.00	For PK land
Rs.	2,967.00	Deductions towards new tenure
Rs.	8,011.00	30% solatium

Rs. 6,409.00	24% component
Rs. 41,123.00	**Total amount awarded by the SLAO**

5. Being aggrieved thereby, the claimants made an application to the Collector under Section 18 of the said Act for reference to the learned Trial Judge. Accordingly, the matter was referred to the learned District Judge, Nashik. It was the contention of the claimants that the compensation awarded by the SLAO was grossly inadequate. It was submitted that the compensation awarded at the rate of Rs.43,500/- and Rs.50,500/- treating the land as Jirait land was totally inadequate. It was also contended that the land in adjoining area was getting price of Rs.2,50,000/- per hectare. It was further submitted that while determining the compensation, the SLAO has failed to take into consideration the compensation to be awarded towards loss of income on account of trees which were standing on the agriculture lands at the time of possession of the lands being taken. As such, the claimants claimed the compensation as under:-

Land Reference No.271/1999	
Rs. 11,10,000.00	For 4H-44R land @ Rs.2,50,000/- p.h.
Rs. 2,04,000.00	For 2H-72 R PK @ Rs.75,000/- p.h.
Rs. 2,50,000.00	For three wells
Rs. 3,00,000.00	For House
Rs. 1,36,97,400.00	For trees
Rs. 1,55,11,400.00	Total
Rs. 27,74,230.00	Amount awarded by the SLAO
Rs. 1,27,37,170.00	Additional compensation claimed

Land Reference No.272/1999	
Rs. 90,000.00	For 0-36R land @ Rs.2,50,000/- p.h.
Rs. 1,500.00	For 0-02R Pk land @ Rs.75,000/- p.h.
Rs. 91,500.00	Total
Rs. 28,043.00	Amount awarded by the SLAO
Rs. 63,457.00	Additional compensation claimed

Land Reference No.273/1999	
Rs. 1,67,500.00	For 0-67R land @ Rs.2,50,000/- p.h.
Rs. 26,250.00	For 0-35R Pk land @ Rs.75,000/- p.h.
Rs. 1,93,750.00	Total
Rs. 41,123.00	Amount awarded by the SLAO
Rs. 1,52,627.00	Additional compensation claimed

6. The learned Reference Court held that the claimants were entitled to get higher compensation than the one which was awarded by the SLAO. The learned Reference Court held that in so far as the Land Reference No.271 of 1999 is concerned, the claimant therein was entitled to much higher compensation towards loss of income from trees and as such, allowed the reference and held that the claimants were entitled to following award:-

Land Reference No.271/1999

1. Land G.No.4
2. Area acquired : 2H – 44R

   \- 2H – 00 differed area

   \-------------------

   0H – 44R Bagait-I + 2H-72 R Pk

3. Rate awarded by the Court : Rs.3,00,000/- P.h. for B – I
Rs.1,00,000/- P.h. for Pk

4. Land valuation comes to Rs.18,559,042.00

Rs.	132,000.00	For land
Rs.	272,000.00	For Pk
Rs.	27,440.00	Def. Value
Rs.	17,956,786.00	For trees
Rs.	89,640.00	For wells
Rs.	81,176.00	For structure

Rs. 18,559,042.00

5.	Solatium @ 30% on the land value	Rs. 5,567,713.00
6.	Component @ 12% p.a. on the land value from 05.01.1995 to 19.03.1997 i.e. for 26 months	Rs. 4,825,351.00
7.	Total enhanced compensation (4+5+6)	Rs.28,952,106.00
8.	Amount awarded by the SLAO	Rs. 2,774,230.00
9.	Total amount due (7 minus 8)	Rs.26,177.876.00

Land Reference No.272/1999

1. Land G.No.11
2. Area acquired : 0-36 R J-II + 0-02 R Pk
3. Rate awarded by the Court : Rs.207,000/- P.h. J-I
Rs.100,000/- P.h. Pk

4. Land value comes to Rs. 76,520.00

Rs.	74,520.00	For land
Rs.	2,000.00	Pk land

Rs. 76,520.00

5.	Solatium @ 30% on the land value	Rs. 22,956.00
6.	Component @ 12% p.a. on the land value from 05.01.1995 to 19.03.1997 i.e. for 26 months	Rs. 19,895.00
7.	Total enhanced compensation (4+5+6)	Rs. 119,371.00
8.	Amount awarded by the SLAO	Rs. 28,043.00
9.	Total amount due (7 minus 8)	Rs. 91,328.00

<u>Land Reference No.273/1999</u>

1. Land G.No.5
2. Area acquired : 0.67 Jir-I + 0-35 Pk
3. Rate awarded by the Court : Rs. 200,000/- P.h.
   Rs. 100,000/- P.h. for Pk
4. Land value comes to Rs. 169,000.00
   Rs. 134,000.00
   Rs. 35,000.00

   Rs. 169,000.00

5.	Solatium @ 30% on the land value	Rs. 50,700.00
6.	Component @ 17% p.a. on the land value from 05.01.1995 to 19.03.1997 i.e. for 26 months	Rs. 43,940.00
7.	Total enhanced compensation (4+5+6)	Rs. 263,640.00
8.	Amount awarded by the SLAO	Rs. 41,123.00
9.	Total amount due (7 minus 8)	Rs. 222,517.00

7. Being aggrieved by the award passed by the learned Reference Court, the appellants have approached this Court. The learned AGP appearing on behalf of the appellant/State, submits that the learned Reference Court has grossly erred in awarding the compensation for loss of income from trees, which is 12 times that of the one granted by the SLAO. It is submitted that the reasonings given by the learned Reference Court while granting such enormous hike are not sustainable in law. The learned AGP submits that as a matter of fact, the learned Reference Court has awarded the compensation which is not even asked for by the claimants. The learned AGP further submits that the Reference Court has grossly erred in granting enormous hike towards compensation on account of loss of income from trees only on the basis of evidence of PW-2 Ravindra Chaudhari. The learned AGP submits that the said witness was an interested witness in as much as he was the witness brought by the claimants themselves. It is submitted that when there is an independent report of valuation by the Officer of the Agriculture Department, the learned Trial Judge ought not to have ignored the same. It is further submitted that even the increased compensation towards the value of the land is also granted without taking into consideration the factors, which are relevant in view of the provisions of Section 23 of the said Act. It is, therefore, submitted that the award passed by the learned Reference Court needs to be set aside and the award passed by the SLAO needs to be maintained.

8. The learned AGP relied on the following judgments of the Apex court:-

(i) **Koyappathodi M. Ayisha Umma, Appellant v. State of Kerala, Respondent** reported in **AIR 1991 SUPREME COURT 2027**,

(ii) **State Of Bihar, Appellant; Versus Ratanlal Sahu And Others, Respondents** reported in **(1996) 10 Supreme Court Cases 635**,

The learned AGP also relied on the judgment of the Division Bench of this Court in case of **The State of Maharashtra – Appellant Vs. Damu Shankar Gorade and Smt. Sitabai Shankar Gorade – Respondent** and another of the learned Single Judge of this Court in the case of **Collector, Nagpur – Appellant Vs. Sheikh Semiulla Badulla and Others – Respondent.**

9. Per contra, Mr.Deshmukh, the learned Counsel appearing for respondents, submits that the learned Trial Judge while awarding the compensation, has taken into consideration the comparable sale deeds of the adjoining lands. He further submits that the land in question was situated at main road and that too near Rawalgaon Factory and as such, the higher compensation granted was in accordance with law. The learned Counsel submits that in the totality of the circumstances, the factors, which are taken into consideration by the learned Reference Court, are referable to the provisions of Section 23 of the said Act and as such, no interference is warranted in the present appeals.

10. The learned Counsel relied on the judgment of the Apex Court in case of **Chandrashekhar & Ors. - Appellants versus Additional Special Land Acquisition Officer – Respondents in Civil Appeal Nos.4163-4165 of 2009** and in case of **Shri Ambya Kalya Mhatre (d) through legal heirs and Ors. Vs. The State of Maharashtra** reported in **MANU/SC/1068/2011**.

11. For considering the present appeals, we will have to deal with the compensation awarded in respect of the valuation of the land and the compensation awarded on account of loss of income from trees separately.

12. At the outset, we may state that in so far the contention of the learned AGP that the learned Reference Court ought not to have awarded the compensation higher than the one which is claimed by the appellants, the issue is no more *res-intigra*. It is the settled law that there is no bar in awarding the compensation more than the one which is claimed by the appellants. There are various judgments of the Apex Court taking the said view. Reference in this respect can be made to the judgment of the Apex Court in the case of **Shri Ambya Kalya Mhatre** (cited supra). In that view of the matter, we reject the contention of the State in that regard.

13. We will first deal with the compensation which has been determined by the learned Reference Court with respect to the valuation of the lands. The learned Trial Judge has found that the

compensation awarded by the SLAO at the rate of Rs.43,500/- per hectare to the land Gat No.5 and at the rate of Rs.50,500/- per hectare for the land Gat No.11 is much less and has held that the claimants were entitled for compensation at the rate of Rs.2 Lakhs per hectare. He has further held that the claimants are entitled to get enhanced compensation at the rate of Rs.3 Lakhs per hectare by considering the same to be Bagayat (irrigated land). He has further held that the rate for compensation for acquisition of pot-kharab land will be Rs.1 Lakh.

14. While allowing the said compensation, the learned Judge relied on the evidence of PW-1 Popatrao Shinde wherein he has deposed that market rate of Jirayat land was Rs.130,000/- to Rs.140,000/- per acre. Though it was contended by the claimants that the land was situated on Satana-Nashik Road, the learned Trial Judge did not accept the said contention on the ground that no evidence in that respect was led by the claimants. However, the learned Trial Judge has taken into consideration a comparable sale deed of 9th February 1994. The said sale deed was for the land admeasuring 53 acres i.e. Rs.1,33,000/-. The learned Trial Judge found that as such, the rate of the said sale instance would be Rs.3,33,000/- per hectare. Though it was sought to be contended on behalf of the State that since the said land was not situated in the village of Belgaonpada, the same could not be taken into consideration. However, relying on the judgment of the Apex Court in the case of **Kanwar Singh V/s. Union of India** reported in **1998(II) Land Acquisition & Compensation Cases 1 (SC)**, the learned Reference Court came to the conclusion that though two

lands are situated in two different villages, but since then are in close vicinity, they may have similar potentialities and the same should be taken into consideration for determining the land value. The learned Reference Court found that as a matter of fact, the land belonging to the appellants was being acquired for construction of water supply scheme for village Dabhadi and the land in respect of which the sale instance was considered, was also from village Dabhadi. In that view of the matter, we find that no error could be found with the Reference Court relying on the said sale deed. The learned Judge found that the valuation of the land which is acquired should be taken into consideration as 40% of the approved sale deed. As such, the leaned Trial Judge held that the compensation at the rate of Rs.2 Lakhs per hectare was just and proper.

15. In so far as the land Gat No.4 is concerned, the learned Trial Judge has found that since the said land was bagayat land, the rate of Rs.3 Lakhs i.e. Rs.1 Lakh more than the Jirayat land was just and proper. For coming to the conclusion that the said land was bagayat land, the learned Judge relied on the joint measurement report which shows that the land was having many trees and wells. In that view of the matter, we find that no interference is warranted with the finding of the learned Trial Judge in so far as determination of the value of the land acquired is concerned. We find that the valuation of Rs.2 Lakhs per hectare for Jirayat land, Rs.1 Lakh per hectare for potkharab land and Rs.3 Lakhs per hectare for bagayat land cannot be said to be unjust or improper.

16. It is to be noted that only in Land Reference No.271 of 1999, the question of compensation in respect of loss of income from trees arises. In the other two references, there are no trees and as such, that question would not arise in those appeals.

17. In so far as the compensation or amount of loss of income from trees is concerned, the claimants had claimed a compensation to the tune of Rs.1,36,97,400/-, however, the learned Reference Court has granted Rs.1,79,56,786/-. No doubt that in view of the legal position that has been discussed by us hereinabove, the Reference Court would be justified in granting higher compensation than the one claimed by the claimants. If we, therefore, arrive at a finding that the valuation of loss of income from trees has been done in a correct manner, then only on this ground, an interference in the impugned order would not be warranted.

18. As such, we would be required to consider as to whether the compensation as determined by the Reference Court on account of loss of income from trees, has been done in a correct manner or not. For arriving at the valuation of loss of income from trees, income capitalization method has to be adopted. It would be seen from the record that in the joint measurements carried out by the SLAO, the number of trees have been counted and recorded. As such, there should be no dispute with regard to the existence of the trees. There are three inspection reports on record. Exh.27 is the report prepared by the Deputy Director of Agriculture, the State of Maharashtra, Nashik. Exh.28 is another report prepared by the

State Government authority. Third report at Exh.31 is prepared by the PW-2 Ravindra Chaudhari who is the valuer whose services were engaged by the claimants.

19. The perusal of the judgment of the learned Reference Court would reveal that the learned Reference Court has also found that the PW-2 is an interested witness as he is called by the claimants. The learned Trial Judge has further found that the wholesale rates of the fruits which are given by the PW-2 are also same as given by the Government expert vide Exh.25. It will be relevant to refer to the following observations of the learned Trial Judge:-

> "No evidence of any expert is adduced by the Govt. to compare or otherwise to diminish the valuation prepared by witness – 2 Chaudhari. The only point that strikes to my mind is that he is an interested witness as he was called and employed by the claimants. Therefore, he must have given the valuation on higher side. It is true that he has given almost same rates of the fruits which were given by the Govt. experts vide Exh.25. In fact, Shri.Chaudhari had quoted little less rates than the rates quoted by Govt. officer. Hence, I have no reason to disbelieve the evidence of Chaudhari in respect of the rates of fruits prevailing at that time. However, there is no criteria before me to decide the productivity of the trees. Hence, being interested witness, I decrease the valuation by 25%."

20. The perusal of the report which is at Exh.31 would reveal that the valuation that has been done by PW-2 Chaudhari is of Rs.2,39,42,382/-. The learned Trial Judge has accepted this as *ipse-dixit*. He has only granted deduction of 25% on the ground that the said witness is an interested witness. However, the perusal

of the evidence of PW-2 Chaudhari read with the report prepared by him below Exh.31 would not reveal as to how he has arrived at the valuation given by him. It is further to be noted that no detailed working is placed on record as to why the PW-2 Chaudhari has arrived at such a finding. As against this, when we compare the joint measurement report which is at Exh.25, the panchanama which is at Exh.26 and the valuation report below Exh.27, it would reveal that the Deputy Director of the Agriculture Department has done a detailed working on the valuation that has been arrived at. It appears that the learned Judge has been confused on account of there being two reports given by the Government valuers. However, it appears that the report below Exh.27 was initially prepared on the basis of applying Income Capitalization Method. However, it appears that the subsequent report has been prepared only in order to decrease the valuation of the compensation. The perusal of Exh.27 would reveal that the Deputy Director, Agriculture, after doing the complete exercise by taking into consideration the various factors like -

(i) present age of the trees,

(ii) future age of the trees,

(iii) annual fruit production of tree at early bearing and at full bearing,

(iv) annual food production,

(v) wholesale market rate,

(vi) estimated gross annual income from fruit in so far as early bearing and full bearing trees and various other factors,

(vii) deduction cultivator's profit (for orchard only),

(viii) deduction towards cost of cultivation,

(ix) net annual income from fruit bearing trees,

(x) yearly profit for future like at 8% & 4% (Factor),

(xi) capitalized value of fruit bearing trees by multiplying the net annual income from fruit bearing trees into yearly profit for future life,

(xii) present fuel value,

has arrived at the compensation payable per tree and thereafter has multiplied the same with the number of trees.

21. We find that the learned Reference Court has erred in discarding the report at Exh.27, which was prepared by applying Income Capitalization Method. While doing so, the Deputy Director of the Agriculture had undertaken a complete exercise.

22. It is further to be noted that the learned Trial Judge has himself come to a conclusion that, there was no difference in the wholesale rates mentioned in the report of the Deputy Director, Agriculture, and that of PW-2 Ravindra Chaudhari. As a matter of fact, the learned Judge has himself observed that the rate which was quoted by the PW-2 in some cases was less than the one quoted by the Deputy Director in his report. In that view of the matter, we find that the learned Trial Judge has erred in totally relying on the report of the PW-2 and totally ignoring the report of the Deputy Director which was arrived at by applying Income Capitalization Method and undertaking the entire exercise prior to arriving at the valuation. In that view of the matter, we find that there is no justification in refusing to accept the valuation as has been done by the Deputy Director, Agriculture. We find that when

a detailed exercise was undertaken by the Deputy Director while arriving at a compensation payable on account of loss of income from trees, the learned Trial Judge ought to have relied on the same, rather than accepting the word of PW-2 whose report does not show any working out as is done in Exh.27.

23. In so far as the award of compensation with regard to well and structures is concerned, we find that no interference would be warranted with regard to the same. In the result, we find that no interference is warranted in the appeals bearing No.1601 of 2003 and 1602 of 2003 arising out of the Land Reference No.272 of 1999 and Land Reference No.273 of 1999. The said appeals are liable to be dismissed.

24. In so far as Appeal No.1600 of 2003 arising out of Land Reference No.271 of 1999 is concerned, we find that the compensation granted of Rs.1,79,56,786/- is not sustainable in law. We find that the appellants would be entitled to compensation of Rs.68,44,449/- as per valuation report below Exh.27.

25. Before parting with the judgment, we may mention that in the reference, the case on behalf of the State was not properly contested. The State ought to have examined relevant witnesses which could have thrown more light on the factual aspect.

26. Hence, the following order:-

ORDER

(i) Appeal No.1601 of 2003 and Appeal No.1602 of 2003 arising out of the Land Reference No.272 of 1999 and Land Reference No.273 of 1999 are dismissed;

(ii) In so far as Appeal No.1600 of 2003 arising out of the Land Reference No.271 of 1999 is concerned, we direct that the award in so far as compensation for trees is concerned, the same is modified from Rs.1,79,56,786/- to Rs.68,44,449/-;

(iii) Rest of the award is maintained.

(iv) Needless to state that the appellants would also be entitled to all the other statutory benefits as awarded by the Reference Court.

(v) The modified decree be drawn accordingly.

(vi) No order as to costs in all the First Appeals.

[RIYAZ I. CHAGLA J.] **[B.R. GAVAI, J.]**