

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

FIRST APPEAL NO. 659 of 2004

Annasaheb S/o. Sambhajirao Deshmukh
Age 48 years, Occ. Agri.,
R/o. leet, Tq. Bhoom,
Dist. Osmanabad.

...APPELLANT
Original claimant

versus

- 1] The State of Maharashtra
through Collector, Osmanabad.
- 2] The Executive Engineer,
Irrigation Department, Osmanabad,

...RESPONDENTS
original respondents.

.....

Mr. V.M. Humbe, Advocate for appellant.
Mr. B.V. Virdhe, AGP for respondent State.

With

FIRST APPEAL NO. 1258 OF 2004

- 1] The State of Maharashtra
through The Collector,
Osmanabad.
- 2] The Executive Engineer,
Irrigation Department (Medium Project)
Osmanabad.

...APPELLANTS.
Original respondents.

VERSUS

Annasaheb Sambhajirao Deshmukh
Age 45 years, Occ. Agriculture
R/o. leet, Tq. Bhoom, Dist. Osmanabad.

.. RESPONDENT.
Original claimant.

.....

Mr. B.V. Virdhe, APP for appellant No.1.
Mr. Ruturaj Patil, Advocate for appellant No.2.
Mr. V.M. Humbe, Advocate for respondent.

CORAM : K.K. SONAWANE, J.

DATE : 18th January, 2018.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] The points of controversy in both these appeals are centered on the question of valuation of land under acquisition. There are counter allegations relating to quantum of compensation amount determined by the Reference Court. Therefore, these two allied appeals are dealt with together for its adjudication on merit by this common judgment.

2] The land in question, bearing Survey No. 513 admeasuring 4 Hectare 07 R situated at village leet, Taluka Bhoom, District Osmanabad was put under acquisition for “Upper Manjra Medium Project” at village leet, Taluka Bhoom. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “Act 1894”) was published on 5.4.1990. After compliance of procedural formalities, the Special Land Acquisition Officer determined the compensation amount of acquired land and declared the award on 31.12.1994 under Section 11 of the Act, 1894. The market

price for land under acquisition of the claimant was calculated @ Rs.37,000/- per Hectare. The compensation amount of Rs. 38,229/- for 10 mango trees, Rs. 8,04,263/- for 660 pomegranate trees and Rs.32,786/- for improvement in the field, were also awarded by the Special Land Acquisition Officer. But, the claimant/appellant did not satisfy with the quantum of compensation amount determined by the Land Acquisition Officer. Therefore, Reference Application was made under Section 18 of the Act, 1894. The claimant asked for enhancement of compensation amount for his acquired land as well as for fruit bearing trees, well, bund (Tal) etc. in the field. The Reference Court considered the evidence adduced on record and fixed the market price of the land under acquisition @ Rs. 50,000/- per acre. The Reference Court also granted compensation of Rs. 18 Lakhs for 1200 pomegranate trees @ Rs. 1500 per tree, Rs. 18 Lakhs for 300 tamarind trees @ Rs. 6,000/- per tree; Rs. 48,000/- for 10 mango trees @ Rs. 4800/- per tree and Rs. 1,62,800/- for well and bund constructed in the field. However, both the appellant/original claimant as well as respondent - Acquiring Body i.e. State of Maharashtra found reluctant to accept the findings of the Reference Court relating to quantum of enhanced compensation amount awarded under Section 18 of the Act, 1894. The appellant/original claimant cast allegations that the meager enhancement of compensation is granted by the Reference Court, whereas, the Acquiring Body assailed that exorbitant and excessive amount came to be awarded by way of enhancement under Section 18 of the Act, 1894. These counter allegations against the findings of the Reference Court give rise to these appeals for consideration before

this court.

3] The learned counsel for the appellant/original claimant vehemently submits that the impugned findings of the Reference Court are erroneous, imperfect and not justifiable one. The Reference Court did not appreciate the evidence on record in its proper perspective and committed error in awarding meager amount of compensation for acquired land as well as for fruit bearing trees. The evidence of expert was also not considered in proper manner. The Reference Court failed to appreciate the circumstances that the land under acquisition was rich, fertile and black cotton soil, having ample source of water for irrigation purpose. The comparable sale instance produced on record was not taken into consideration properly by the Reference Court to calculate the correct market value of the acquired land. The learned counsel for the appellant explained the circumstances on record in detail and claimed more enhancement of compensation amount for the land under acquisition as well as fruit bearing trees and improvement carried out in the land including well, bund (Tal) etc.

4] The learned AGP and learned counsel Shri R.C. Patil for acquiring body assailed that the valuation determined by the Reference Court is totally erroneous, illegal and without any substance. The Land Acquisition Officer has correctly appreciated the facts and circumstances and calculated the compensation amount. The Reference Court without any cogent evidence awarded excessive compensation amount by way of

enhancement, which is not permissible under the law. The learned counsel for acquiring body in support of his claim relied upon the ratio laid down in the case of *Chimanlal Hargovinddas vs. Special Land Acquisition Officer*, Poona reported in **AIR 1988 SC 1652**. According to learned counsel for acquiring body the Reference Court unnecessarily gave much more importance to the report of Expert/Valuer produced on record. The Land Acquisition Officer after taking into consideration the report of the Horticulture and PWD Departments for valuation of fruit bearing trees as well as improvements in the acquired land, determined the compensation of trees and improvements like well, band (Tal) etc. But, the Reference court failed to appreciate all these circumstances and committed wrong by granting exorbitant and excessive compensation amount in favour of appellant/original claimant.

5] Admittedly, the market value of the acquired land as well as valuation of fruit bearing trees and improvement carried out in the land i.e. Band (Tal), well etc, determined by the Reference Court, are all put into controversy in these appeals. While fixing the quantum of compensation for land, trees and improvement, the Reference Court preferred the comparable sale method , as well as relied upon the report of Expert.

6] There is no doubt that the market value means the price which the purchaser is willing to pay for similar land to a willing seller. The price fetched by similar land with similar advantages and potentialities under

bonafide transaction of sale at or about the time of the preliminary notification under Section 4 of the Act, 1894 would be usually and indeed the best evidence of market value. There cannot be any hard and fast or rigid rule to arrive at the correct market value. But, common sense is the best and most reliable guide for the same. Time and again, it has been held that the amount of compensation cannot be ascertained with mathematical accuracy. The evaluation of surrounding circumstances and some guess work is permissible while calculating the compensation amount of the acquired land. However, it is to be borne in mind that valuation of acquired land should be assessed in proper manner so that there would neither unjust enrichment of acquiring agency nor undue deprivation on the part of owner.

7] In addition to aforesaid principles of law, it would also apposite to look into the general guidelines prescribed in regard to the mode and manner as well as methodology for dealing with the reference petition to determine the compensation amount for the land under acquisition. Their Lordships of Apex Court in the case of ***“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poone and another and Vijay Singh Liladhar vs. Special Land Acquisition Officer and Nathumal Rajmal Baldota vs. Special Land Acquisition Officer “ reported in AIR 1988 SC 1652***, observed in para.4 as below :-

4. The following factors must be etched on the mental screen : -

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the

material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) XXX XXX XXX XXX
XXX XXX XXX XXX”

8] It is evident from the aforesaid judicial pronouncement that the Reference under Section 18 is not an appeal against the award passed by the Land Acquisition Officer. The reference cannot be treated as a judgment of the trial court open or exposed to agitate it before the court hearing the reference. The Reference Court has to deal with it as an independent and separate original proceeding filed before it. The position of the claimant before the Reference Court is alike plaintiff in the civil suit and he has to prove that price offered for his land by the Land Acquisition Officer in his

award is inadequate. The claimant has to establish his case on the basis of material produced in the court. Moreover, the material produced and proved on behalf of other side is also essential to be taken into consideration while calculating the market value of the acquired land. But, the material relied upon by the Land Acquisition Officer in his award cannot be taken into consideration unless same is produced and proved before the Reference Court.

9] In such backdrop, it would be justifiable to proceed further for evaluation of evidence on record to ascertain the just and reasonable amount of compensation for the acquired land, trees and well etc. of the appellant/original claimant. In order to establish the claim for enhancement, the claimant Annasaheb Deshmukh stepped into the witness box and adduced his evidence (Exh.20). He has also produced the relevant documents of 7 x 12 extract (Exh.24 and 25), the extract of Index-II register (Exh.26), Certified copy of comparable sale instances (Exh.27) and copy of report of joint measurement survey (Exh.28). The claimant also examined PW-2 Shri Ambadas Deshmukh (Exh.32). He was the vendor of comparable sale instances of land Survey No. 10/D of village leet as shown in document Index-II register (Exh.26). The evidence of Expert PW-3 Shri Ramhandra Baraskar (Exh.33) Approved Valuer for civil work of well, Bund (Tal) etc. and evidence of PW-4 Shri Nandkumar Patil (Exh.35) Horticulturist is available on record to fortify the contentions propounded on behalf of claimant.

10] In refutal, the respondent/State of Maharashtra adduced the evidence of DW-1 Mukund Pandav (Exh.45). He produced the document of valuation of Bund (Tal) (Exh.43) on record. The evidence of Special Land Acquisition Officer, DW-2 Krishna Nandanwar (Exh.51) and Surveyor, DW-3 Mr. Syed. Yusuf (Exh.55), who carried out the joint measurement survey of acquired land (Exh.51) also came to be recorded on behalf of respondent. Both these witnesses produced the documents of Index II Register (Exh.52) and chart of sale statistics on record.

[A] **Valuation of the land under acquisition :-**

11] As referred supra, the appellant/original claimant adduced his evidence on oath before the reference court at (Exh.20). He deposed that his acquired land Gat No.513 admeasuring 4.07 R was irrigated land having ample source of water from the well. It was an black cotton soil. The village leet of acquired land was located on the bank of river "Manjra". All the basic amenities were available in the village leet. According to claimant, his acquired land had an value of potentiality. He produced the certified copy of comparable sale instance (Exh.27) and extract of Index-II Register (Exh.26) on record. The claimant testified that the land under sale deed (Exh.27) was located nearer to his acquired land just crossing the geographical boundary of Districts Beed and Osmanabad. The claimant claimed enhancement of compensation amount on the basis of document of comparable sale instances (Exh.27 and Exh. 26).

12] The claimant examined vendor PW-2 Ambadas Deshmukh (Exh.32) of the sale instance shown in the document of Index-II Register (Exh.26). The PW-2 Ambadas Deshmukh deposed that he was the owner of land Survey No.10/D. He sold the part of land Survey No. 10/D admeasuring 0.08R for a consideration of Rs. 12000/-. His land under sale was located at a distance after 5/6 lands from the acquired land of the claimant. PW-2 Ambadas stated that the acquired land of claimant was irrigated and more fertile land. The respondent/State also examined DW-2 Shri Nandanwar (Exh.51). He produced the document of Index-II register (Exh.52) and chart of sale statistic of comparable sale instances (Exh.53).

13] In view of ratio laid down in Chimanlal's case (referred supra), the materials produced and proved before the Reference Court are only required to be considered for valuation of the acquired land. The scrutiny of aforesaid oral and documentary evidence led by the claimant as well as respondent/ State would demonstrate that the enhancement of compensation was solely claimed by the claimant on the basis of two documents i.e. Certified copy of comparable sale deed (Exh.27) and extract of Index-II Register (Exh.26). The respondent State also attempted to resist the claim of the claimant for enhancement of compensation on the basis of two documents i.e. extract of index II register (Exh.52) and chart of sale statistics (Exh.53).

14] It is a settled rule of law that in order to enable the parties to place reliance upon the documents like sale deed or award of any other properties for the purpose to justify the enhancement of compensation, it is absolutely necessary to establish the issue of comparability in between the land under acquisition and the lands which were subject matter of such documents. In absence of comparability being established mere production of document relating to any other property in the form of sale deed cannot be of any help. (Emphasis supplied on the exposition of law in the case of *Pannalal Ghosh and others vs. Land Acquisition Collector and others reported in AIR 2004 SCW 66* and *Vilubea Jhalejar Contractor (Dead) by LRs. vs. State of Gujarat reported in (2005) 4 SCC 789*).

15] The respondent State examined the Special Land Acquisition Officer DW-2 K.N. Nandanwar. He produced the document Index II register (Exh.52) and chart of sale statistics (Exh.55). The mode and tenor of evidence of Shri Nandanwar reflects that he had no occasion to deal with the present acquisition proceedings as a Special Land Acquisition Officer. He adduced the evidence before the Reference Court being a custodian of the original record of present matter. Be that as it may, he produced Index II register (Exh.52) and chart of sale statistics (Exh. 53) to ascertain the market value of the acquired land. The document of chart of sale statistics appears to be of no avail as the material i.e. sale instances referred in the chart were not produced and proved in this matter. Therefore, mere producing document of list of sale transactions would not sub-serve the

purpose to ascertain the market value of the acquired land. Another document of Index II register (Exh.52) is relating to the sale transaction of land Survey No. 597/A and 497/A. The DW-2 Shri Nandanwar categorically stated before the Reference Court that the sale instances from the Index II register were considered by the Land Acquisition Officer while determining the market value of the acquired land under his award. He added that the land survey No. 597A under sale was located nearer to the acquired land of the claimant. But, he did not unfurl the relevant factor of comparability of land survey No. 597A with the land under acquisition of claimant except its proximity. The DW-2 Shri Nandanwar did not make reference of another land survey No. 497/A or any other sale instances, in his evidence to establish the comparability with the acquired land. Therefore, the sale transaction of land survey No. 497/A referred in the document Index II register (Exh.52) could not be taken into consideration as useful guide to determine the market value of the acquired land.

16] It is worth to mention that after perusal of the valuation column scribed in the impugned award of the Land Acquisition Officer , it reveals that the Land Acquisition Officer did not consider the valuation of land survey No. 597/A or 497/A, as mentioned in the document index-II register (Exh.52). In contrast, the concerned LAO has considered another sale instance of land Survey No. 96 admeasuring 0.36R out of total area of 1.66 R of village leet, sold for a consideration of Rs. 12,000/-. The relevant portion of the Valuation Column from award is essential to be reproduced

here :-

“For fixation of fair and reasonable valuation we have considered sale transactions collected from Tahsildar Bhoom out of sale transactions Sr. No. 1 to 7 are from Group No.I and sale transactions from Sr. Nos. 8 to 18 are from Group No.II. From Group No.1 sale transaction at Sr.No.7 in respect of Survey Nos. 117/2A and 117/2-B seems to be reasonable for fixation of price of the acquired land from Group No. I comparatively with the sale transactions at Sr.Nos. 1 to 6. Hence, the reasonable price of the acquired land from Group No.I is fixed at Rs.32,000/- per hector.

From perusal of the transactions from Group No. II i.e. from Sr.Nos. 8 to 18 the rate Rs.33,333 comes from the sale transactions of Survey No. 96 at Sr.No.14 is seems to be fair and reasonable for fixation of price of acquired land of group No. II. This sale transaction took place in 1989 i.e. approximately two years prior to date of publication of notification under section 4 of the Land Acquisition Act. Taking into consideration this fact and also day to day increase in the price of the land as well as considering the land rate of acquired land from Group No.I, the reasonable land rate from group II is fixed at Rs.37,000/- per hector.”

17] The aforesaid factual aspect demonstrate that the LAO has not considered the sale instances of land Survey No. 597/A or 497/A as referred in the document of index II register (Exh.52) but he relied upon the sale transaction of land Survey No. 96. The circumstances belies the evidence of DW-2 Nandanwar that the sale instances referred in the Index II register (Exh.52) i.e. Survey No.597/a and 497/A being comparable sale deeds, were taken into consideration by the LAO for determining the market value of acquired land. Therefore, once the Land Acquisition Officer has discarded the sale instances of land Survey No. 597/A as well as 497/A, there is no propriety to take into account the market price reflects in Index-II register

(Exh.52) meant for land Survey No. 597/a and 497/A. It is to be noted that The Land Acquisition Officer considered the sale deed of land Survey No. 96 but the respondent State did not take effort to produce the sale transaction of Survey No. 96 which was the sole basis for awarding market value @ Rs.37,000/- Per Hectare for the acquired land from Group II by the Land Acquisition Officer. Therefore, there was no reliable documentary evidence available on record on the behalf of respondent/State to provide the basis for calculation of market value of the land under acquisition.

18] Now, turning to the evidence of claimant adduced before the Reference Court for valuation of acquired land, the claimant solely relied upon the two sale instances referred in the documents (Exh.26 and 27) produced and proved before the Reference Court . The claimant produced the certified copy of sale transaction of land survey No.99/1 admeasuring 0.40 R of village Wadwana, taluka and District Beed. The land was sold for a consideration of Rs.40,000/- in the year 1989. No doubt, as per Section 51-A of the Act, 1894, the certified copy of sale transaction registered under the Registration Act, 1908, has to be accepted as evidence of transaction recorded in such documents. Therefore, there is no impediment to appreciate the certified copy of sale deed (Exh.27) produced on record as part of evidence in this case. After appreciating the surrounding circumstances of the land under alleged sale transaction, it appears that It could not be considered as a comparable sale instance for basis to calculate the just and proper market value of the acquired land. The land under sale

was found located in the territorial area of another District Beed, having distinct potentialities and advantages. Moreover, the land under sale was appears to be a dry land located far away from the land under acquisition.

19] In addition to the aforesaid sale transaction (Exh.27), the claimant produced, document of Index II register (Exh-26) for the sale transaction of land survey No. 10-D located at village leet, nearby the land of the claimant under acquisition. The claimant also examined vendor Ambadas Deshmukh (Exh.32) to establish comparability and genuineness of sale transaction. He stated that the land Survey No. 10-D was located at a distance of 5-6 lands from acquired land of the claimants. He sold the portion of land admeasuring 0.8R on 10.3.1989 for a consideration of Rs.12,000/-. The vendor PW-2 Ambadas stated that the land Survey No.513 of the claimant under acquisition was more fertile and irrigated land.

20] It has been alleged that the sale instance of land survey No. 10-D from the Index II register (Exh.52) was a sale deed of small area and, therefore, it cannot be considered as a comparable sale instance for assessment of market value of large area of land under acquisition. In this context, it would be profitable to refer to the observations of Their Lordships of Hon'ble Apex Court in the matter of *Ravinder Narain and another vs. Union of India*, reported in AIR 2003 SC 1987, in para.6 and 7 it has been elucidated as under :-

“6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in *The Collector of Lakhimpur vs. Bhuban Chandra Dutta* (AIR 1971 SC 2015). *Prithvi Raj Taneja (dead) by LRs vs. The State of Madhya Pradesh and another* (AIR 1988 SC 1560) and *Smt. Kausalya Devo Bogra and others etc. Vs. Land Acquisition Officer, Aurangabad and another* (AIR 1984 SC 892).

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots can not be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices”.

21] In the light of aforesaid observations of Their Lordships, there is no impediment to consider the sale instance of land survey No. 10-D for computing the market value of the acquired land, subject to some sort of deduction in price money. The land under sale was located within the vicinity of land under acquisition. The vendor PW-2 Ambadas stated about the genuineness of the transaction as well as comparability of land under sale with the acquired land of the claimant. It was a sale transaction within reasonable time of notification under section 4(1) of the Act, 1894 and appears to be a bonafide transaction of land having similar advantages. Therefore, the sale transaction would provide useful guide for determining the market value of the acquired land. It would be reiterated that the land under sale was of a small area admeasuring 0.8R sold for a consideration @ Rs. 12,000/- i.e. Rs. 15,00/- per R. As mentioned above, there has to be

some deduction on account of large size of the acquired land. After deducting 20 % amount from the cost of Rs. 15,00/- per R of the land under sale (Exh.52), it would accrue to Rs.1200/- per R (i.e. Rs.1500 - 300 =1200) and consequently, the acquired land of claimant would fetch market price of Rs. 48,000/- per acre. The Reference Court considered all these factual aspects and calculated the market value of the acquired land @ Rs. 50,000/- per acre, which appears to be reasonable and fair market value for the land under acquisition. Therefore, there would not be any enhancement of compensation of acquired land at the behest of appellant/claimant nor it can be considered that the Reference Court granted exorbitant and excessive compensation by way of enhancement under section 18 of the Act, 1894. In contrast, the market value @ Rs. 50,000/- per acre determined by the Reference Court appears to be most reasonable, appropriate and justifiable one. Therefore, the findings of the Reference Court relating to valuation of acquired land @ Rs.50,000/- per acre, needs no interference and deserves to be upheld.

(B) **Valuation of Fruit Bearing Trees :-**

22] The appellant claimant also claimed enhancement of compensation for his acquired fruit bearing trees. The learned counsel for the appellant/claimant submits that the Reference Court did not consider the report of the horticulturist in proper manner. The more compensation amount for 1200 pomegranate trees 300 tamarind trees and 10 mango trees

ought to have been awarded by the Reference Court. The appellant claimant examined PW-4 Nandkumar Patil - Horticulturist for assessment of value of fruit bearing trees acquired by the respondent State. According to PW-4 Nandkumar Patil, being Horticulturist, he had visited to the land of the claimant under acquisition and after due inspection, he prepared the valuation report of fruit bearing trees (Exh.36 to 38). The claimant produced the document of joint measurement survey (Exh.28) on record. During the course of joint measurement survey of the acquired land, the Government personnel came across with 1200 pomegranate trees, 300 tamarind trees in the acquired land. The LAO awarded compensation to the claimant only for 10 mango trees and 660 pomegranate trees. Admittedly, the Joint Measurement Survey Report (Exh.28) shows the existence of 1200 pomegranate trees and 300 tamarind trees in the acquired land. It was also confronted with the Special Land Acquisition Officer, DW-2 Shri Nandanwar and DW-3 Mr. Sayyad Yusuf, surveyor of joint measurement report (Exh.28). These circumstances are sufficient to perceive that the appellant/claimant was entitled to get reasonable compensation for all these fruit bearing trees found in existence in the acquired land.

23] The Reference Court considered the report of the Horticulturist PW-4 Shri Patil and after adopting some sort of practical approach, determined the value of fruit bearing trees under acquisition. The findings in regard to valuation of fruit bearing trees calculated by the Reference Court cannot be faulted being a meager or inappropriate one. Moreover,

the findings also cannot be assailed on the ground of exorbitant and excessive amount of compensation granted by the Reference Court for the fruit bearing trees of the claimant from land under acquisition. Therefore, the contention put forth on behalf of appellant/claimant as well as respondent State appears to be unsustainable and incomprehensible one. The Special LAO DW-2 Nandanwar in his evidence before the Reference Court ventured to produce the report of horticulturist (Exh.54). It was the report of the fruit bearing trees under acquisition. But, there was no endeavour to cross-examine the concern horticulturist who prepared the valuation report to prove its contents. Obviously, mere production of valuation report of horticulturist would not itself sufficient to rely upon the same for calculating the price of 10 mango and 660 pomegranate fruit bearing trees. There was no opportunity to examine the concern horticulturist who prepared the valuation report (Exh.54) on the material aspect of number of trees found in existence in the acquired land as well as its age, fruit bearing capacity, yield etc. In such circumstances, the evidence of PW-4 Shri Patil is required to be taken into consideration. The report of the horticulturist produced on record on behalf of appellant/claimant would required to be appreciated for valuation of trees. Therefore, there is no propriety to cause any interference in the conclusions drawn by the Reference Court in regard to valuation of fruit bearing trees from the land under acquisition. The arguments canvassed on behalf of both sides on this aspect requires to be turned down and discarded.

[C] Valuation of improvements including Well, Bund (Tal) etc.:-

24] It is to be noted that the appellant./claimant adduced evidence of valuer PW-3 Shri Ramchandra Bawaskar (Exh.33). He produced the valuation report prepared by him on record (Exh. 34). The respondent State also examined the Government Valuer DW-1 Mukund Pandav (Exh.45). He produced the valuation report (Exh.46) on record. But the evidence of DW-1 Mr. Pandav appears to be cryptic and slender in nature. He had not visited to the concerned site at any point of time nor taken any measurement for calculation of its valuation. But, he prepared the valuation report in the Draft Format on the basis of measurements taken by the Sectional Engineer Shri Kittod. These details can be seen from the title clause of the valuation report (Exh.46). However, the Sectional Engineer, Shri Kittod, who had taken the measurement after actual visit to the concerned site, did not come forward for evidence before the Reference Court. In such circumstances, it is unsafe to place implicit reliance on the valuation report (Exh.46) prepared by DW-1 Shri Pandav. The circumstances also created doubt about the genuineness of the report, therefore, It would unjust and improper to act upon such report. The Reference Court relied upon the report of valuer of claimant Shri bawaskar to determine the valuation of improvements carried out in the field. In absence of any cogent evidence on the part of respondent/State. It can be concluded that there was no error on the part of Reference Court to grant enhancement of compensation for improvement in the field on the basis of valuation report (Exh.34) scribed by

the PW-3 Shri Bawaskar.

25] In view of aforesaid discussion, there is no impediment to arrive at the conclusion that the findings of the Reference Court for awarding enhancement of compensation to the appellant/claimant under Section 18 of the Act 1894 appears to be reasonable and justifiable in all circumstances mentioned above. There are no errors or infirmities in the mode and manner in which the Reference Court determined the market value of the land and trees under acquisition. The allegations about excessive and exorbitant amount awarded under section 18 of Act 1894 by way of enhancement found not sustainable and acceptable one. Moreover, it can not be said that the inappropriate and meager amount of compensation was granted to the claimant by the Reference Court. The exercise of Reference Court while appreciating the circumstances for enhancement of compensation in this case cannot be faulted. In contrast, the Reference Court adopted the practical approach and determined the compensation amount, and, therefore, findings are essential to be made confirmed. Hence, both the appeals being devoid of merit deserve to be dismissed. In sequel, both the appeals stand dismissed. No orders as to costs.

As both the appeals are disposed of on merit, Civil Applications No. 3691 of 2005 and 4321 of 2017 in First Appeal No. 1258 of 2004 also stand allowed and disposed of. The appellant/original claimant in F.A. No. 659 of 2004 is hereby allowed to withdraw the decretal amount deposited in

F.A. No. 1258 of 2004 with interest accrued thereon, subject to condition that the appellant/original claimant shall furnish an undertaking before Registrar (Judicial) of this Court that in case any contingency arises, he would refund the entire enhanced compensation amount received to him, forthwith as per the direction of this court.

Accordingly, both the appeals and civil applications No. 3691 of 2005 and 4321 of 2017 stand disposed of.

[K.K.SONAWANE]
JUDGE

grt/-