IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 876 OF 2017

1] Bhagwat s/o Subrao Sable,
age 51 years, occ. Agriculture,
R/o Domgaon, Tq. Paranda,
District Osmanabad,

2] Hambirrao s/o Subrao Sabale,
age 58 years, occ. Agriculture,
R/o Domgaon, Tq. Paranda,
District Osmanabad,

3] Shahaji s/o Subrao Sabale,
age 42 years, occ. Agriculture,
R/o Domgaon, Tq. Paranda,
District Osmanabad ...Appellants
[Orig.Claimants]

VERSUS

1] The State of Maharashtra
through the Collector,
Osmanabad, Dist.Osmanabad,

2] The Special Land Acquisition
Officer, (MIW) Osmanabad
at Paranda, Dist. Osmanabad,

3] The Executive Engineer,
Sina Kolegaon Project Division,
Taluka Paranda,
District Osmanabad ...Respondents

...

Shri A.R.Devakate, advocate for Appellants
Shri S.B.Narwade, AGP for Respondent nos. 1 and 2
Shri S.G.Karlekar, Advocate for Respondent no. 3

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 12.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 23.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Civil Judge, Senior Division, Paranda, District Osmanabad, in Land Acquisition Reference No. 19 of 2013, seeking enhancement of compensation for acquisition of land Survey No.125, admeasuring 2 Hectare and 18 Are, situated at village Domgaon, Taluka Paranda, District Osmanabad, for Sina Kolegaon Project and to grant compensation for trees.

2. Undisputedly, the claimants and his brother are the owners of acquired land. Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as, "the Act"), was published on 6.2.1997 in Government gazette. The award was declared on 23.3.2002. However, after service of notice under Section 12 (2) of the Act, the claimants being dissatisfied

with the offer made under the award passed by the Collector, made application to the Collector, and therefore, the Collector, Osmanabad made Land Reference to the Civil Judge, Senior Division, Paranda.

3. After considering the evidence placed on record by the claimants and acquiring body, the Reference Court enhanced the compensation for the acquired land at the rate of Rs.70000/- per acre, with all statutory benefits. The Reference Court held that the acquired land was irrigated agricultural land. No enhanced compensation was awarded for the trees in the acquiring land and the Reference Court confirmed the compensation offered by the Collector for the standing trees as shown in "E" statement. Hence this appeal.

4. Heard Shri A.R.Devakate, learned counsel for the appellants, Shri S.B.Narwade, learned AGP for respondent nos. 1 and 2 and Shri S.G.Karlekar, learned counsel for respondent no.3 acquiring body.

5. Learned counsel for the appellants submits that in the 'E' statement prepared by the Land Acquisition Officer, 629 plus 200 pomegranate trees are only shown. However, remaining 671 pomegranate trees are not at all shown in the 'E' statement. He submits that by examining the expert valuer (PW 2) the claimants have also proved the valuation report (Exh.25). However, the Reference Court rejected that evidence of expert valuer without assigning any reason. He submits that expert valuer has assessed valuation of pomegranate trees at the rate of Rs.4350/- per tree. He points out that the joint measurement report also shows existence of 1500 pomegranate trees. However, the Land Acquisition Officer has not taken cognizance of this joint measurement report and erroneously ignored 671 pomegranate trees, which existed in the acquired land. He submits that compensation at the rate of Rs.4350/- per tree deserves to be awarded, on the basis of the evidence of expert valuer and the valuation report (Ex.29).

Next submission of learned counsel for the appellants is that the Reference Court awarded the compensation of acquired land at the rate of Rs.70000/- blindly relying on the award passed by that Court in another Land Acquisition matter of the land situated in the same village. He submits that as per the market value of the acquired land on the date of notification under Section 4(1) of the Act, the acquired land can be valued at the rate of Rs.72000/- per acre, on the basis of comparable sale instance (Exh.13), dated 8.11.1994. Accordingly, learned counsel for the appellant prays for enhancement of the compensation for the acquired land as well as grant of separate compensation for 1500 pomegranate trees. He placed reliance on **"Ambya Kalya Mhatre (dead) through L.Rs. vs State of Maharashtra" [2012 (1) Mh.L.J. (S.C.) 9].**

6. In reply, learned AGP for respondent nos. 1 and 2 supports the judgment passed by the Reference Court.

7. Learned counsel for respondent no.3 has also supported the judgment passed by the Reference Court, on the ground that the expert valuer (PW 3) examined by the claimants is not a person appointed by the Court or by acquiring body. He assailed the valuation report on the ground that it was prepared without notice to any Government Officer or acquiring body.

Next objection of the learned counsel for respondent no.3 is that the receipt, dated 17.8.1994 (Exh.20) shows that pomegranate saplings were purchased on 17.8.1994. The possession of the acquired land was taken by the acquiring body on 17.8.1996. The date of notification under Section 4(1) of the Act is 6.2.1997. Therefore, the age of pomegranate trees cannot be more than three years on the date of taking possession of the acquired land or on the date of notification under Section 4(1) of the Act. Therefore, those trees cannot be valued as fruit bearing trees.

Next objection raised by the learned counsel for respondent no.3 is that as per the report of expert valuer, the pomegranate trees were planted at the distance of 3 meter x 3 meter. However, standard for plantation of pomegranate trees prescribed by the Horticulture Department provides this distance as 5 meter x 5 meter. As per norms for plantation only 400 pomegranate trees can be planted in one Hector land. Therefore, 1500 saplings cannot be planted in 91 Are area as shown in 7/12 extract of acquired land. He has placed on record the Government Corrigendum, dated 11.1.1991 to Circular, dated 27.12.1990, issued by the Agriculture and Animal Husbandry, Dairy Development and Fisheries Department of State of Maharashtra as well as prescribed norms of plantation.

Regarding joint measurement report, learned counsel for respondent no.3 submits that the witness Raju Talpe (PW 4) examined by the claimants to prove the joint measurement report, has admitted the scratching in joint measurement report, where at the place of number of Pomegranate trees there is some overwriting. According to learned counsel for respondent no.3, therefore, the joint measurement report was rightly discarded by the Reference Court. He placed reliance on the judgment of Single Judge of this Court in "**Harish Ratanlal Bhansali vs State of Maharashtra and another**" [**2018 (5) Mh.L.J. 182**].

8. Initially, I prefer to consider market price of the acquired land. Undisputedly, the notification under Section 4 of the Land Acquisition Act, was published on 6.2.1997, possession of the acquired land was taken by the respondents on 17.8.1996 and award was passed on 29.3.2001. While deciding the land reference, though Reference Court held that the acquired land i.e. Gat No. 125 is irrigated land, instead of considering the sale instance placed on record by the claimants, the Reference Court awarded compensation at the rate of Rs.70000/- per acre relying on the judgment delivered by that Court in Land Acquisition Reference No. 519 of 2012.

9. In fact, when the award passed in Land Acquisition Reference No. 519 of 2012 is not placed on record in the present matter, the Court suo motu

cannot take judicial note of rate awarded in that Land Reference. There may be difference in advantages and disadvantages of location regarding land which was subject matter in Land Acquisition Reference No. 519 of 2012 and the present matter. Only because land in Land Acquisition Reference No. 519 of 2012 is irrigated, the Court cannot jump to the conclusion that the quality of that land and advantageous factors annexed to that land are exactly similar to the quality and advantageous factors annexed to the land, which is subject matter of the present Land Reference. In absence of the judgment of Land Acquisition Reference No. 519 of 2012 on record, I cannot consider, in what manner the market price of the acquired land was determined at the rate of Rs.70000/- per acre. Therefore, I prefer to assess the market value of the land acquired in the present matter independently.

10. Regarding land acquisition matters, guiding principles are settled by the Apex Court in **"Chimanlal Hargovinddas vs Special Land Acquisition**

Officer, Poona and another" [AIR 1988 SC 1652], as follows :

> " (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 535 it. It is not the function of the Court to suit 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.
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> (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (some times instances are rigged up in anticipation of acquisition of land).

(9) Even post notification instances can be taken into account.(1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,
ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under

> acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.
>
> | Plus factors | Minus factors |
> |---|---|
> | 1. smallness of size. | 1. largeness of area. |
> | 2. proximity to a road. ` | 2. situation in the interior at a distances from the Road. |
> | 3. frontage on a road. | 3. narrow strip of land with very small frontage compared to death. |
> | 4. nearness to developed area | 4. lower level requiring the depressed portion to be filled up. |
> | 5. regular shape. | 5. remoteness from developed locality. |
> | 6. level vis-a-vis land under acquisition. | 6. some special disadvantageous factor which would deter a purchaser. |
> | 7. special value for an owner of an adjoining property to whom it may have some very special advantage. " | |

11. Thus, it is evident that the award passed by the Collector cannot be taken into consideration while determining market value of the acquired land. The Court has to determine the market price on the basis of material produced before it. The

Court can consider only genuine sale instances executed prior to notification under Section 4 of the Act. Even post notification instance can be taken into account, if they are very proximate and genuine and the acquisition itself is not motivated the purchaser to pay higher price, on account of resultant improvement in development prospects. The comparable sale instance, out of genuine instances, has to be identified on the basis of proximity from time angle and proximity from situation angle. The Court has to sit in the chair of hypothetical purchaser willing to purchase from the open market and prepare to pay a reasonable price on the date of notification under Section 4 of the Act. The Court can also consider the plus and minus factors, as specified in the judgment (cited supra).

12. In the case at hand, only one sale instance (Exh.13) is placed on record. The certified copy of sale deed executed on 8.11.1994 by vendor in favour of Sou. Usha Ramchandra Bachate indicates that 2 acres irrigated agricultural land

was sold out for the total consideration of Rs.1,20,000/-. The land under sale instance is from the same village Domgaon where the acquired land is situated. Crop statement of acquired land indicates that irrigated crops are taken from the acquired land. Therefore, conclusion can be drawn that the acquired land is also irrigated land. Thus, only one conclusion is to be drawn that considering the quality, location and proximity in between execution of sale instance and publication of notification two years after the execution of sale deed, the sale instance (Exh.13) is most comparable sale instance and it is genuine one. Only because, attesting witness Laxman Sarwade (PW 2) has admitted that purchaser Usha Bachate is the daughter of vendor, the genuineness of sale instance cannot be doubted, as it is much prior to the date of notification under Section 4 of the Act. Thus, I hold that the sale instance (Exh.13) is ideal sale instance to determine the market value of the acquired land.

13. For determining the market value of the

acquired land on the date of notification under Section 4 (1) of the Act, the Court has to take into consideration the time gap in between date of execution of sale deed and the date of publication of notification under Section 4(1) of the Act. The sale instance was executed on 8.11.1994 and notification was published on 6.2.1997. Therefore, there is approximately two years time gap in between the date of notification and execution of the sale deed. Thus, there shall be escalation of ten per cent for each year in the market value of land under the sale instance. In view of "**Valliyammal vs Special Tahsildar (Land Acquisition)" [AIR 2011 SC 2937]**, annual increase of 10 per cent in the market value can be allowed. Thus, for gap of two years there may be 20 per cent increase in the market value of land under sale instance. Therefore, approximate market value of the acquired land, on the date of notification under Section 4 of the Act is assessed as Rs.72,000/-. I find no reason to make any deduction in the market value of the acquired land on the date of notification, as done by the

Reference Court. Therefore, I hold that on the date of notification under Section 4 (1) of the Act, the market value of the acquired land is Rs.72,000/- per acre. Therefore, award passed by the Reference Court in Land Acquisition Reference No. 19 of 2013 deserves to be modified to enhance the compensation for acquired land to the extent of Rs.72,000/- per acre. Claimants are also entitled to statutory benefits under Section 23 (1A) and 23 (2) of the Land Acquisition Act and interest in accordance with Section 28 of the Act.

14. Now, turning towards compensation for 1500 pomegranate trees, 25 tamarind trees and 25 mango trees, as claimed by the claimants. After going through the written statements (Exh.7) and Exh.18, it is evident that the respondents have specifically denied the existence of 1500 pomegranate trees, 25 tamarind trees and 25 mango trees in the acquired land. Therefore, heavy burden lies on the claimants to prove the existence of these trees in the acquired land.

15. On behalf of the claimants, Hambirrao Sabale (PW 1) stepped in witness box and deposed that 1500 pomegranate trees, 25 tamarind and 25 mango trees have been planted in the acquired land. However, Hambirrao (PW 1) has not made it clear as to exactly in which year those trees were planted by him. He only claims that on the date of notification under Section 4 of the Act the age of the pomegranate trees was 3 years. It is to be noted that in the entire examination-in-chief the claimant has not whispered a word regarding the age of tamarind and mango trees. Even no documentary evidence in the form of entries record of rights of acquired land for last 30 years, is placed on record to prove that 25 Tamarind and 25 Mango trees were planted prior to 30 years from the date of notification. Only in the 7/12 extract of the acquired land, in other rights column, there is entry of newly planted 1500 pomegranate trees, 25 ber trees and 25 mango trees. This entry is recorded under mutation entry no. 748. Mutation entry no. 748 is not placed on record to show, in which year the above said entry is recorded in

record of rights. Therefore, on the basis of such stray entry in the record of rights, claimants cannot prove existence of 1500 pomegranate trees, 25 mango and 25 tamarind trees. In fact, in 7/12 extract, there is no reference of 25 tamarind trees.

16. To prove the existence of 1500 pomegranate trees and other trees, the claimants have heavily placed reliance on one joint measurement report (Exh.35). To prove this report, the claimants have examined the Deputy Superintendent, T.I.L.R. Office, Paranda Shri Raju Talpe (PW 4). Raju Talpe (PW 4) deposed before the Court that he has brought the joint measurement report in respect of Sina Kolegaon project pertaining to acquired land (Exh.34). However, from the examination-in-chief itself, it emerges that he is not the officer, who prepared the joint measurement report. Even Raju Talpe (PW 4) cannot tell the name of Taluka Inspector of Land Records, who prepared the joint measurement report (Exh.35). He has also admitted that there are scratches in

respect of number of pomegranate trees and by scratching digit 7, digit 5 is written in the joint measurement report. He also admits that before the digit 5, digit 1 is inserted. He also admits that in column no.11 of the report, figure of tamarind trees was shown as (-) and before it digit 4 has been added. The tampering of entries in joint measurement report regarding number of pomegranate trees and tamarind trees is visible by naked eyes even in the copy of the joint measurement report (Exh.35). Even from the joint measurement report, the date of joint measurement cannot be determined. Witness Raju Talpe (PW 4) also cannot tell the name of the officer, who prepared the joint measurement report and the date of measurement. This witness cannot even tell whether there were previous two joint measurement reports and re-joint measurement for Sina Kolegaon project. Thus, obviously the evidence of Raju Talpe (PW 4) is of no help to the claimants to prove the preparation and correctness of joint measurement report (Exh.35). On the other hand, after going through the tampering of digits by scratching digits and by inserting digits in the said report, I am fully satisfied that it is not at all reliable document to establish the existence of 1500 pomegranate trees and 4 tamarind trees in the acquired land. It is also to be noted that existence of mango trees is not at all mentioned in this joint measurement report. Therefore, I have no hesitation to hold that the Reference Court has rightly rejected the joint measurement report (Exh.35) regarding existence of 1500 pomegranate trees in the acquired land.

17. The claimants have also placed on record cash memo (Exh.20) to prove that on 17.8.1994, 1500 sapples of pomegranate trees were purchased for Rs.9,000/-.

18. Claimant Hambirrao (PW 1), though deposed that he purchased 1500 pomegranate sapplings from Rjendra Nursary and produced cash memo of purchase (Exh.20). It shows that as a purchaser it is not signed by Hambirrao (PW 1), but it is signed by Subrao and Bhagwat Subarao Sabale. Even the proprietor of Rajendra Nursary is not examined by

the claimants to prove the purchase of 1500 saplings of pomegranate trees on 17.8.1994 by claimants. In the circumstances, cash memo (Exh.20) being not proved, is of no help to the claimants to prove that on 17.8.1994 total 1500 saplings of pomegranate trees were purchased by the claimants for its plantation in the acquired land.

19. Even assuming for the sake of discussion that the claimants purchased 1500 sapplings on 17.8.1994, however, the date of notification under Section 4 (1) of the Act is 6.2.1997. Therefore, otherwise also, on the date of notification under Section 4 of the Act, the age of the so called 1500 pomegranate trees cannot be of 3 years to hold that on the date of notification, those pomegranate trees were fruit bearing trees. In any case, on the basis of above discussed evidence, the claimants cannot prove that on the date of notification, 1500 pomegranate fruit bearing trees were in existence in the acquired land.

20. Claimants have heavily placed reliance on

the evidence of so called private expert valuer in horticulture, Vinayak Manikrao Ghogare (PW 3). According to Vinayak Ghogare (PW 3), as per request of claimants on 26.7.1997, he paid visit to Gat No. 125 and noticed 1500 pomegranate trees of the age of 3 years in the said land. According to this witness, those trees were planted at the distance of 10 x 10 ft. and its future age is 27 years. He evaluated the total income from those pomegranate trees as Rs.65,25,000/-. He has proved the panchanama (Exh.25) and expert valuation report (Exhs. 27 and 29).

21. The authenticity of this expert valuation report and evidence of valuer (PW 3) is assailed on the ground that since inception it is unreliable report as it is not in accordance with the norms prescribed under the science of horticulture. Most important factor to be noted is that admittedly the possession of acquired land was taken by the acquiring body on 17.8.1996. However, according to valuer (PW 3), he paid visit to the acquired land on 26.7.1997 and counted the trees and its

condition. It is hard to digest that when possession of the acquired land was with the acquiring body since 17.8.1996, how the valuer and claimants can pay visit to the acquired land on 26.7.1997 i.e. without notice to the acquiring body or any Government Officer. Undisputedly, no written notice is served to the acquiring body or to any of the Officer of the State Government prior to visit of the valuer. In cross-examination, valuer (PW 3) admits that he had issued notice only to the claimants and claimants were directed to intimate the acquiring body. Undisputedly, neither Talathi nor any Government Officer was present at the time of visit of valuer to the acquired land. These circumstances on record indicate that no Government Officer including Talathi was present on the spot to show exact Gat No.125, situated at village Domgaon, which was to be visited by the valuer. Thus, it is evident that the valuer (PW 3) did not verify whether the land visited by him at the instance of claimants was really Gat No.125 or it was some another land. Thus, I am doubtful whether the valuer actually paid visit to the acquired land or not.

22. Another important aspect is that though according to the valuer, he paid visit to the acquired land on 26.7.1997, in the Land Reference filed on 22.9.2004 claimants have nowhere pleaded regarding visit of expert valuer on 26.7.1997 to the acquired land or regarding obtaining valuation report of the pomegranate trees standing over the acquired land. From cross-examination of Hambirrao (PW 1), it also emerges that at the time of filing of Land Reference in the year 2004, he informed his advocate regarding visit of the expert valuer to the acquired land in the month of July,1997 and regarding valuation report issued by the valuer. Thus, the absence of this important fact in the Land Reference Petition creates doubt about genuineness of the visit of expert valuer to the acquired land. Hambirrao (PW 1) has admitted in his cross-examination that after filing of Reference Petition, six months thereafter he handed over the valuation report to his advocate. Was valuation report prepared in the year 1997 as

claimed by the valuer (PW 3), certainly the claimants would have filed that report at the time of filing of Reference Petition. These all circumstances on record create every possibility of preparation of ante dated valuation report by private valuer (PW 3).

23. Another important aspect is that valuer (PW 3) has admitted in his cross-examination that while making valuation, he considered the market rate of Solapur Agricultural Produce Market Committee. However, no letter of Solapur Agricultural Produce Market Committee is placed on record by the valuer with his report to substantiate his contention. On the other hand, in examination-in-chief, valuer (PW 3) deposed that at the time of visit, he had discussed only regarding prevailing market rate of pomegranate trees at the time of preparation of panchanama. Therefore, the valuation made by the valuer (PW 3) regarding the yield from pomegranate trees itself is unreliable.

24. Another aspect is that though valuer (PW 3) claims that he plaid visit to the acquired land, in his cross-examination he cannot tell four boundaries of the land visited by him at the time of valuation. Even the panchanama of the acquired land (Exh.26) does not show four boundaries of the land visited by the valuer. This circumstance on record also creates doubt about the genuineness of valuation report of the so called pomegranate trees standing over the acquired land.

25. Next important aspect is that learned counsel for respondent no.3 has filed the relevant extract of Horticulture department regarding standards for tree plantation (R-4) and Government corrigendum dated 11.1.1991. As per the standards of plantation prescribed by Horticulture department, there shall be distance of 4.5 x 3 mtrs. or 5 x 5 mtrs. in between two pomegranate trees at the time of plantation for better yield. It also provides that only 400 to 740 pomegranate trees can be planted in one Hectare land. However, according to valuer (PW 3) in the acquired

land pomegranate trees were planted at the distance of 10 x 10 ft. and it is as per standard norms of plantation to get better yield. Thus, valuer (PW 3) has not hesitated even to depose falsely on oath regarding appropriate standards of plantation of pomegranate trees. The 7/12 extract of the acquired land i.e. crop statement (Exh.49) shows that pomegranate trees were planted only in 91 Are area i.e. less than one Hectare land. Therefore, question arises how 1500 pomegranate trees could be planted in only 91 Are land when prescribed norms are otherwise. This circumstance on record also falsifies the correctness and authenticity of testimony of valuer (PW 3) and the valuation report. Accordingly, after careful scanning of evidence of valuer Ghogare (PW 3) and valuation report, I have no hesitation to hold that neither the testimony of valuer (PW 3) is reliable nor the valuation report prepared by him.

26. In the circumstances, the claimants have neither proved the plantation of 1500 pomegranate trees in the acquired land nor the claimants have

proved the authenticity of valuation report of those pomegranate trees. Even regarding valuation of so called 25 mango trees and 25 tamarind trees in the acquired land, the valuer (PW 3) has not whispered a single word and he has also not taken pains to ascertain value of those trees. Therefore, even assuming that some mango trees or tamarind trees were standing in the acquired land, in absence of its valuation report, no compensation can be awarded to the claimants. In fact, the claimants miserably failed to prove even existence of those 25 mango and 25 tamarind trees in the acquired land.

27. Accordingly, my conclusion is that the claimants are neither entitled to compensation for 1500 pomegranate trees nor they are entitled to compensation for 25 mango and 25 tamarind trees. The claim of the claimants regarding enhanced compensation for trees standing over the acquired land cannot be allowed.

28. It follows that this appeal deserves to be partly allowed only to enhance the compensation for acquired land i.e. Gat No.125 area 2 Hectare 18 Are (5 acre and 18 guntha) at the rate of Rs.72,000/- per acre. The claimants are also entitled to statutory benefits under Section 23 (2) and 23(1A) of the Land Acquisition Act and interest under Section 28 of the Land Acquisition Act on the enhanced compensation, as awarded by the Reference Court. Remaining prayers of the appellants stand rejected. Appeal is disposed of in above said terms. Parties shall bear their respective costs of the appeal. Award be modified accordingly. Deficit court fee, if any, be recovered from the claimants.

[**SUNIL K.KOTWAL, J.**]

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