IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1028 OF 2007

Dhananjay s/o Nagnathrao Patil,
Age : 30 years, Occu. Agriculture, **APPELLANT**
R/o Andga, Tq. Loha, Dist. Nanded **(Orig. Claimant)**

VERSUS

1. The State of Maharashtra,
   through the Collector, Nanded

2. The Special Land Acquisition Officer,
   Minor Irrigation Work,
   Collector Office, Nanded

3. The Executive Engineer,
   Medium Project Division,
   Jangamwadi, Nanded **RESPONDENTS**

WITH

FIRST APPEAL NO.1552 OF 2008

1. The State of Maharashtra,
   through the Collector,
   Nanded

2. The Special Land Acquisition Officer,
   Minor Irrigation Work,
   Collector Office, Nanded

3. The Executive Engineer,
   Medium Project Division, **APPELLANTS**
   Jangamwadi, Nanded **(Ori. Respondents)**

VERSUS

Dhananjay s/o Nagnathrao Patil,
Age : 30 years, Occu. Agriculture, **RESPONDENT**
R/o Andga, Tq. Loha, Dist. Nanded **(Orig. Claimant)**

Mr. A.R. Rathod, Advocate for the appellant in First Appeal No.1028/2007 and for the respondent in First Appeal No.1552/2008
Mr. A.V. Deshmukh, A.G.P. for respondent Nos.1 and 2 in First Appeal No.1028/2007 and for appellant Nos.1 and 2 in First Appeal No.1552/2008
Mr. S.G. Sangle, Advocate for respondent No.3 in First Appeal No.1028/2007 and for appellant No.3 in First Appeal No.1552/2008

CORAM : T.V. NALAWADE AND SUNIL K. KOTWAL, JJ.

JUDGMENT RESERVED ON : 1st MARCH, 2019
JUDGMENT PRONOUNCED ON : 19th MARCH, 2019

JUDGMENT (PER : SUNIL K. KOTWAL, J.) :

First Appeal No.1028 of 2007 is filed by the original claimant and First Appeal No.1552 of 2008 is filed by the State of Maharashtra and the Executive Engineer, Medium Project Division, Jangamwadi, Nanded (Acquiring Body) against the judgment and award, dated 23rd April, 2007, passed by the learned Joint Civil Judge, Senior Division, Kandhar in Land Acquisition Reference ("LAR", for short) No.1 of 2003.

2. For the sake of convenience, hereinafter the parties are referred to in accordance with their status in the original proceedings, such as claimant (appellant in First Appeal No.1028/2007) and respondent (Acquiring

Body), respectively.

3. Undisputed facts in between the parties are that the claimant is owner of the acquired land i.e. Survey No.65, admeasuring 5 Hectares 67 Ares and Survey No.67, admeasuring 2 Hectares 77 Ares, situated at village Andga, Taluka Loha, District Nanded, for Upper Manar Project, Limboti, Taluka Loha, District Nanded for submergent area. The land was acquired along with various fruit bearing trees standing thereon. Notification under Section 4 (1) of the Land Acquisition Act, 1894 ("the Act", for short) was published in Government Gazette on 20h August, 1987. The award was passed on 28th February, 1990. Notice under Section 12 (2) of the Act was issued and it was served on the claimant on 24th September, 1993. The claimant received compensation under protest on 27th September, 1993. Being dissatisfied with quantum of compensation, the claimant preferred Land Acquisition Reference (LAR) before the Trial Court. After considering the evidence placed on record, the Reference Court enhanced the compensation for acquired land to the tune of Rs.60,000/- per Hectare, considering it as perennially irrigated land. The Reference Court enhanced compensation for Mango trees to the extent of Rs.5000/- per tree, for Sweet

Lemon trees and grafted Guava trees, Rs.2000/- per tree, for orange trees Rs.1500/- per tree and for jujube trees, seedling Guava and lemon trees Rs.1000/- per tree.

4. Being aggrieved with this award, the claimant as well as Acquiring Body and the State of Maharashtra have filed counter appeals, challenging the correctness of this award.

5. Heard Shri A.R. Rathod, learned counsel for the appellant/claimant, Shri A.V. Deshmukh, learned A.G.P. for respondent Nos.1 and 2 – the State and Shri S.G. Sangle, learned counsel for respondent No.3 – the Acquiring Body.

6. The learned counsel for the claimant submits that though acquired land is cotton soil perennially irrigated land with the help of well and lift irrigation, even the Reference Court awarded meager compensation at the rate of Rs.60,000/- per Hectare. He has drawn our attention towards the award passed by this Court in First Appeal No.428 of 1999, wherein compensation is awarded by this Court at the rate of Rs.73,500/- per Hectare for acquisition of irrigated land, situated at same village Andga. He has also

placed reliance on the award passed by the Civil Judge, Senior Division in LAR No.129/1994 (Exh-65) wherein compensation was awarded at the rate of Rs.75,000/- per Hectare.

7. The learned counsel for the claimant submits that so far as compensation for fruit bearing trees is concerned, the claimant has placed reliance on the evidence of valuer Shri Rajeshwar Kulkarni (PW3). He submits that said valuer Shri Kulkarni has considered the valuation report (Exh-47), prepared by the Deputy Director of Horticulture Department and in view of evidence of this private valuer, the compensation for fruit bearing trees needs to be enhanced. He placed reliance on the decisions in the cases of ***Smt. Pramilabai wd/o Manguji Ade (d) and others Vs. The State of Maharashtra and another 2018 (6) ALL MR 96, Ambya Kalya Mhatre (dead) through Lrs. and others Vs. State of Maharashtra, 2012(1) Mh.L.J. 9*** and ***State of Madras Vs. Rev. Brother Joseph (1973)2 SCC 504***.

8. In reply, learned counsel for the Acquiring Body has pointed out that against the award passed in LAR No.129/1994, First Appeal No.1341/2003 is filed and the same is pending. However, he has fairly conceded

that the award passed by this Court in First Appeal No.428/1999 is not challenged before the Supreme Court and it has reached to finality.

9. The learned A.G.P. for the State submits that private valuer Shri Kulkarni (PW3) did not pay visit to the acquired land and he had not physically examined the trees standing thereon. He has pointed out that the learned Reference court enhanced compensation for fruit bearing trees to the extent of 33% without any appropriate reason for such enhancement. He has also pointed out that the evidence of valuer Shri Kulkarni (PW3) is not corroborated by any panchanama or valuation report and therefore, the testimony of Shri Kulkarni (PW3) cannot be relied upon.

10. Next contention of learned counsel for the Acquiring Body and the learned A.G.P. is that only because a well is shown in the Record of Rights of the acquired land, inference cannot be drawn that the said land is perennially irrigated land, when crop statement shows that for some years, dry crop was taken from the acquired land. Learned counsels for the respondents placed reliance on the decisions in the cases of **State of Maharashtra Vs. Damu Shankar Gorade and another 2009**

BCI 264, Nelatur Sampoornamma w/o Shrinivasulureddy Vs. Special Deputy Collector, L.A. Telugu Ganga Project, Podalakur at Nellore, Andhra Pradesh and another 2017 (8) Scale 66, State of Haryana Vs. Gurcharan Singh and another 1995 Supp (2) SCC 637 and Government Circular dated 11th January, 1991, wherein the guidelines issued by the Horticulture Department are modified.

11. After hearing learned counsel for both the parties, following points arise for our consideration. We have recorded our findings thereon for the reasons stated hereinbelow :-

Sr. No.	Points	Findings
1	Whether the compensation awarded by the learned Reference Court is just compensation	NO
2	Whether the judgment and award passed by the learned Reference Court is correct and proper ?	NO
3	What order ?	Both the appeals are partly allowed

R E A S O N S

12. After going through the judgment passed by the learned Reference Court, it emerges that it considered

the acquired land as perennially irrigated land. However, the learned Reference Court without considering any particular sale instance, enhanced the compensation of the acquired land to the extent of Rs.60,000/- per Hectare.

13. Before proceeding to consider the evidence placed on record by claimant, we must make it clear that the case of ***Janki Vashdeo Bhojwani and another V. Indusind Bank Ltd. And others,*** **(*AIR 2005 SC 439*)**, is distinguishable on facts for the simple reason that the PW1, who is Power of Attorney for claimant Dhananjay in the present case, is the real brother of the claimant and therefore, he can certainly depose regarding the facts, which are within his knowledge.

14. At the outset, we must make it clear that though the claimant placed reliance on the award passed in LAR No.129/1994 (Exh-65) for claiming enhancement to the extent of Rs.75,000/- per Hectare, the said award cannot be considered as its correctness is subjudice before this Court in First Appeal No.1341/2003. For determining the true market value of the acquired land on the basis of sale instance, true copy of any sale-

deed of the land situated in village Andga is not filed by the claimant on record. By examining Govind Malshette (PW6), who is attesting witness to the sale-deed dated 9^{th} August, 1985 of Survey No.68/1/8, admeasuring 60 Ares, situated at village Gaundgaon, the claimant has brought on record evidence that, that particular dry crop land was sold out at the rate of Rs.20,000/- per acre. However, this sale instance is of no use to determine the true market value of the acquired land for simple reason that this attesting witness Govind Malshette (PW6) has admitted in his cross-examination that the acquired land and the land under sale instance are not of identical quality. So also, no evidence is on record to show that villages Andga and Gaundgaon are adjoining villages or the land under sale instance is adjoining to the acquired land.

15. However, in this appeal, the judgment and award passed by this Court in First Appeal No.428/1999 is placed on record. Against this award, no second appeal is preferred before the Hon'ble the Supreme Court of India and therefore, it has reached to finality. After going through this judgment, it emerges that for the irrigated land, situated at village Andga, compensation

was awarded at the rate of Rs.73,500/- per Hectare. The date of notification under Section 4 (1) of the Act in that case is 24^{th} November, 1988. Therefore, considering the proximity in between date of notification under Section 4(1) of the Act and the quality of the land, the award passed by this Court in First Appeal No.428 of 1999 in respect of acquisition of irrigated land situated in the same village, can be safely considered for determining the true market value of the acquired land in the present case.

16. The Record of Rights of the acquired land shows that one well is situated in the said land and in major portion of the land, irrigated crops like sugarcane, banana and turmeric are taken since 1983 onwards. No doubt, learned A.G.P. has pointed out that small area of this survey number is shown as fallow land. However, the term “fallow land” does not mean that no crop can be taken from that land, but it only indicates that in that particular year, that area was not cultivated. Therefore, we do not find any substance in the objection raised by the learned A.G.P. regarding the nature of the acquired land. In **Chindha Fakira Patil (D) through L.Rs. Vs. the Special Land Acquisition Officer, Jalgaon,**

(AIR 2012 SC 481), the Apex Court has considered similar situation and held that when it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat, cannot lead to any inference that the land was not irrigated and in the view of Apex Court, there was no valid reason for the High Court to interfere with the findings recorded by the Reference Court that parts of the lands were Bagayat.

17. The situation in the case at hand is much better. The Record of Rights of the acquired land shows that one well and many fruit bearing trees are standing over the acquired land and the crop statement entries indicate taking of the yield of the irrigated crop from acquired land. Therefore, we have no hesitation to hold that the acquired land is perennially irrigated land.

18. In the circumstances, applying the rate awarded by this Court in First Appeal No.428/1999 for irrigated land situated at village Andga, we hold that true market value of the acquired land is at the rate of Rs.73,500/- per Hectare. Therefore, the claimant is entitled to compensation at the enhanced rate of Rs.73,500/- per Hectare for the acquired land.

19. Regarding valuation of the trees standing over the acquired land, neither the Acquiring Body or the State Government have examined the Deputy Director of Horticulture Department to determine the correct valuation of the trees standing over the acquired land, nor the claimant has examined the private valuer who physically examined the trees standing over the acquired land and determined the true market value of trees at the relevant period of acquisition.

20. No doubt, for claiming enhanced compensation, the claimant has examined valuer Shri Rajeshwar Kulkarni (PW3), who works as Horticulture Lecturer in Marathwada Agricultural University, Parbhani. However, no importance can be given to the testimony of this witness, for enhancing the compensation for the acquired trees, for the simple reason that neither this witness physically examined the trees standing over the acquired land, nor he has prepared and submitted the valuation report regarding the trees standing over the acquired land. It is to be noted that while determining the market value of the trees, this valuer did not obtain wholesale rates of the fruits from Agriculture Produce Market Committee (APMC) to ascertain the market price of

the annual yield taken from each tree. Therefore, testimony of Shri Rajeshwar Kulkarni (PW3) deserves to be discarded for ascertaining the true market value of the trees standing over the acquired land on the date of publication of notification under Section 4 (1) of the Act.

21. However, the record and proceedings show that the claimant himself has filed the valuation report of the trees prepared by the Deputy Director of Horticulture Department, Nanded (Exh-47). This valuation report is admitted by the learned District Govt. Pleader and therefore, it is marked as Exhibit-47. Even the claimant has referred this valuation report while recording the evidence of private valuer Shri Kulkarni (PW3). As this valuation report (Exh-47) is admitted by both the parties, it can be read in evidence without its formal proof.

22. The valuation report (Exh-47) shows that following fruit bearing trees were standing over the acquired land and the valuation determined by the Deputy Director of Horticulture Department is as under :-

Sur-vey No.	Name of Fruit	Number of trees	Probable Age of tree at the time of inspection	Remaining life span of tree	Market price of tree	Annual yield of the fruit	Mainten a-nce Expenditure	Valuation of …... wood
65	Mango	15	40	30	900	Rs.25 per 100 items	40	50
			..”..	..”..	950	..”..	..”..	..”..
			45	25	900	..”..	..”..	..”..
			-”-	25	-”-	..”..	..”..	..”..
			-”-	-”-	-”-	..”..	..”..	..”..
			35	35	950	..”..	..”..	..”..
			40	30	900	..”..	..”..	..”..
			-”-	-”-	-”-	..”..	..”..	..”..
			35	35	950	..”..	..”..	..”..
			-”-	-”-	-”-	..”..	..”..	..”..
			-”-	-”-	-”-	..”..	..”..	..”..
			-”-	-”-	850	..”..	..”..	..”..
			-”-	-”-	-”-	..”..	..”..	..”..
			40	30	-”-	..”..	..”..	..”..
			35	35	900	..”..	..”..	..”..
65	Jujube (Seed)	25	5	20	450	Rs 2 per kg.	20	50
65	Guava (Seed)	120	6	15	120 Kg.	Rs. 2 per kg.	40	50
65	Guava	276	–	25	40 Kg.	-”-	25	50
67	Mango	3		35	900	Rs. 25 per 100 item	40	50
				35	900	-”-	-”-	-”-
				35	900	-”-	-”-	-”-
67	Jujube (Seed)	25	5	20	50 kg.	Rs. 2 per kg	20	50
	Orange	123	6	22	600	Rs. 25 per 100	50	50
	Guava (Seed)	40	-	15	120	Rs. 2 per kg	40	50
	Guava	80	6	25	10kg.	-”-	25	50
	Mosumbi	125	6	22	450	Rs. 40 per 100	50	50
	Lemon	170	-	20	700	Rs. 15 per 100	25	--

23. On the basis of valuation report submitted by the Deputy Director of Horticulture Department, Nanded, the Special Land Acquisition Officer has awarded compensation of Rs.10,51,713/- for fruit bearing trees standing over the acquired land.

24. After going through paragraph No.23 of the judgment of Reference Court, it emerges that without assigning any reason, the Reference Court has awarded 33% escalation of the compensation for fruit bearing trees. Division Bench of this Court in **State of Maharashtra Vs. Damu Shankar Gorade and another** (supra), held that the report submitted by the Government Horticulturist cannot be rejected without assigning reasons by the Reference Court. In ***Nelatur Sampoornamma w/o Srinivasulureddy*** (supra), the Apex Court has made it clear that the compensation in relation to fruit bearing trees would depend upon the facts and circumstances of each case. In ***Ambya Kalya Mhatre (dead) through Lrs. and others*** (supra), the Apex Court has explained ***State of Haryana Vs. Gurcharan Singh and another*** (supra) and made it clear that if the value of the land had been determined with reference to the sale

statistics or compensation awarded for a nearby vacant land, then necessarily, trees will have to be valued separately. This ratio is followed by Single Judge of this Court in ***Smt. Pramilabai wd/o Manguji Ade (d) and others*** (supra). However, in the case at hand, fair market value of the acquired land is determined on the basis of award passed by this Court for acquisition of another land in the same village. That land was not orchard or land with fruit bearing trees. Therefore, separate compensation is to be determined for the trees standing over the acquired land.

25. The reliance placed by Reference Court on the testimony of fruit purchasers Shaikh Mehboob Shaikh Mehtab (PW4) and Chand Sab (PW5) is erroneous as testimonies of these so called fruit vendors are not supported by any documentary evidence in the form of agreement or receipt. Therefore, we have no hesitation to hold that the enhancement awarded by the Reference Court regarding the compensation of fruit bearing trees standing over the acquired land is erroneous and deserves to be set aside. It follows that the claimant is entitled to compensation for fruit bearing trees standing over the acquired land as awarded by the Special Land Acquisition Officer. In other words, claim

of the appellant/claimant for enhancement of the compensation for fruit bearing trees deserves to be rejected.

26. For determining the correctness of rate of interest awarded by the Reference Court, the date of delivery of possession of acquired land by the claimant to the Acquiring Body plays important role. However, both the parties have not filed any reliable documentary evidence to establish as to on which date possession of the acquired land was obtained by the Acquiring Body. The Reference Court fixed the date of delivery of possession of the acquired land on 1st March, 1990 on the basis of "E" Statement issued by the Special Land Acquisition Officer. When at the stage of argument, learned counsel for claimant cannot make any specific statement regarding date of delivery of possession of the acquired land, it is to be held that possession of the acquired land was obtained by the Acquiring Body on 1st March, 1990.

27. In the result, the claimant is entitled to 30% solatium under Section 23(2) of the Land Acquisition Act and component at the rate of 12% of the market value of the acquired land from the date of notification under

Section 4(1) of the Land Acquisition Act till the date of passing of the award i.e. till 28th February, 1990. On the enhanced compensation i.e. excess amount than awarded by the Collector, the claimant is entitled to interest under Section 28 of the Land Acquisition Act from the date of possession i.e. 1st March, 1990 till the date of deposit of the entire compensation together with solatium and component by the Collector in the Court. On the compensation awarded by the Collector, the claimant is also entitled to interest under Section 34 of the Act from the date of possession till the date of payment of compensation on 27th September, 1993. The amount of compensation already received by the claimant under protest needs to be deducted from the compensation amount payable to the claimant.

28. It follows that First Appeal No.1028/2007 filed by the claimant as well as First Appeal No. 1552/2008 filed by the State of Maharashtra and Acquiring Body deserve to be partly allowed.

29. Accordingly, First Appeal No.1028/2007 and First Appeal No.1552/2008 are partly allowed. The award passed by the Reference Court is set aside and modified as under :-

"(i) Reference Petition is partly allowed with proportionate costs.

(ii) The claimant namely Dhananjay Nagnath Patil is entitled to enhanced compensation at the rate of Rs.73,500/- per hectare for acquired land i.e. Survey No.65, admeasuring 5 Hectares 67 Ares and Survey No.67, admeasuring 2 Hectares 77 Ares, total area 8 Hectares 44 Ares, situated at village Andga, Taluka Loha, District Nanded.

(iii) The claimant is entitled to compensation for trees standing over the acquired land as awarded by the Special Land Acquisition Officer.

(iv) The claimant is also entitled to component amount at the rate of 12% per annum on the market value of the acquired land for the period commencing from the date of notification under Section 4(1) of the Act i.e. 20th September, 1987 to the date of award i.e. 28th February, 1990, under Section 23 (1A) of the Land Acquisition Act.

(v) The claimant is also entitled to solatium of

30% on market value of the acquired land under Section 23 (2) of the Land Acquisition Act.

(vi) The claimant is entitled to interest under Section 28 of the Land Acquisition Act on enhanced compensation amount (i.e. excess amount than awarded by the Collector) at the rate of 9% per annum from 1st March, 1990 till 2nd March, 1991 and for subsequent years, at the rate of 15% per annum, on enhanced compensation amount together with component and solatium, till the deposit of entire amount by the Collector in the Court.

(vii) The claimant is also entitled to interest on the compensation awarded by the Collector, under Section 34 of the Land Acquisition Act, at the rate of 9% per annum from 1st March, 1990 to 2nd March, 1991 and thereafter at the rate of 15% per annum till payment of this compensation to the claimant ie. on 27th September, 1993.

(viii) The compensation amount already received by the claimant shall be deducted from the total amount payable to the claimant."

28. The parties to bear their respective costs of the appeals.

[SUNIL K. KOTWAL]
JUDGE

[**T.V. NALAWADE**]
JUDGE

npj/FA1028-07-1552-2008