

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

FIRST APPEAL NO. 774 OF 2016

1. The Executive Engineer
Minor Irrigation Division No.1, Aurangabad
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad
2. The State of Maharashtra
Through the Collector, Aurangabad
3. The Special Land Acquisition Officer,
Jaykwadi Project Division, Aurangabad ... Appellants

VERSUS

Fulchand Bandu Dhanawat
Age: Major, Occup: Agriculturist,
R/o- Leha, Tq- Fulambri,
District-Aurangabad ... Respondent

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Mr. S. G. Bhalerao, Advocate for appellant No.1 and
Mr. S. N. Morampalle, AGP for co-appellant Nos. 2 and 3
Mr. J. M. Murkute, Advocate h/f Mr. A. B. Kale, Advocate for
respondent No.1

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WITH

FIRST APPEAL NO. 775 OF 2016

1. The Executive Engineer
Minor Irrigation Division No.1, Aurangabad
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad
2. The State of Maharashtra
Through the Collector, Aurangabad
3. The Special Land Acquisition Officer,
Jaykwadi Project Division, Aurangabad ... Appellants

VERSUS

1. Vitthal Jaysing Dhanawat (Died)
Through Legal Heirs

 - 1-A) Radhabai w/o Vitthal Dhanawat
Age: 70 years, Occu. Household,
R/o Leha Jahagir, Tq. Phulambri,
Dist. Aurangabad

 - 1-B) Nandu s/o Vitthal Dhanawat
Age: 45 years, Occu. Agril.,
R/o. Lahe Jahagir, Tq. Phulambri,
Dist. Aurangabad

 - 1-C) Kantabai w/o Bhagchand Chapule
Age: 35 years, Occu. Agril.,
R/o. Leha Jahagir, Tq. Phulambri,
Dist. Aurangabad

 - 1-D) Gokul s/o Vitthal Dhanawat
Age: 45 years, Occu. Agril.,
R/o. Leha Jahagir, Tq. Phulambri,
Dist. Aurangabad

 2. Madansing Jaysing Dhanawat
Age: Major, Occup: Agriculturist,
R/o. Leha, Tq. Fulambri,
Dist. Aurangabad
- ... Respondents

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Mr. S. G. Bhalerao, Advocate for appellant No.1 and
 Mr. S. N. Morampalle, AGP for co-appellant Nos. 2 and 3
 Mr. J. M. Murkute, Advocate for respondent No.1-A to 1-D
 Mr. Y. R. Barhate, Advocate for respondent No.2-absent

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 09th MARCH, 2021
PRONOUNCED ON : 09th APRIL, 2021

JUDGMENT :-

. Both these appeals are being decided by this common judgment since common questions of fact and law arise therein. Moreover, the challenge in both these appeals is to the common award dated 06.01.2014 passed by the Court of 4th Joint Civil Judge, Senior Division, Aurangabad, in L.A.R. Nos.182 of 2006 and 262 of 2006.

2. The challenge is to the extent of grant of compensation in respect of fruit bearing trees. The acquiring body along with the Special Land Acquisition Officer and the State of Maharashtra are therefore before this Court in these appeals.

3. Shri S. G. Bhalerao, learned Advocate for the appellant in both the appeals would submit that the reference Court has granted exorbitant compensation, considering the area of the land acquired, there could not be huge number of trees standing thereon. The evidence of witness examined on behalf of the respondents should not have been taken as it is for determining the amount of compensation. The reference Court has made no discussion in the impugned judgment regarding trees. The learned AGP, therefore, urged for setting aside the impugned judgment and remand of the

matter back to the reference Court for redetermination of the compensation.

4. Shri Murkute, learned Advocate for the respondents, would on the other hand submit that the reference Court has granted just and adequate compensation. No interference therewith is called for.

5. Perused the impugned judgment and award. Considered the rival submissions. The reference Court has referred and relied on the report of joint measurement. In paragraph 27 of the impugned judgment, the reference Court has observed that in the case of Reference No.262 of 2006, 28 trees of Jujube and 100 trees of Sweet lime (Mosambi) were not found in the joint measurement. The claimant was therefore held to have not been entitled for compensation in that regard. The reference Court has awarded compensation in respect of the trees, the existence of which was evident during the joint measurement.

6. On behalf of the claimants/respondents an expert /Horticulturist was examined as a witness. He was PW-4 – Dr. Vishnu Patil. It is in his evidence that he had paid visit to the land Gut Nos.

220 and 223 on 18.04.1997. He also paid visit to the lands of other project affected farmers from village Leha. Panchas were with him during his visit to the lands. He prepared his spot inspection report and submitted the same along with the valuation of the trees in his estimation.

7. This witness was cross examined by the Assistant Government Pleader. I have carefully perused the cross examination of this witness to find that his report has not been specifically taken exception to. As such, the evidence on this material point has gone unchallenged. Relying on the evidence of this witness, the reference Court has quantified the amount of compensation. It has also taken into consideration the judgment in the case of ***Chindha Fakira Patil Vs The Special Land Acquisition Officer, Jalgaon – 2012 AIR SCW 270***. This Court, therefore, has no reason to interfere with the impugned judgment and award and remand the matter back to the reference Court for redetermination of compensation in respect of the lands with the fruit bearing trees. Thus, the appeals fail. Both the appeals therefore, stand dismissed.

[R. G. AVACHAT, J.]