

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.492 OF 2017

APPELLANTS:

On R.A.

Ori. N.A. No.1

1. Executive Engineer,
Bembla Project Division,
Yavatmal.

Ori. N.A. No.4

2. Vidarbha Irrigation Development
Corporation through Executive Director,
Sinchan Bhawan, Civil Lines, Nagpur.

V E R S U S

RESPONDENTS:

ON R.A.

Ori Applicant

1. Manik Panjabrao Kalmegh,
Aged 61 years, Occ. Cultivator,
R/o Barad, Post-Pahur,
Tq. Babhulgaon, District Yavatmal.

Ori. N.A. No.2

2. State of Maharashtra
Through the Collector, Yavatmal,
Tq. and Dist. Yavatmal.

Ori. N.A. No.3

3. Special Land Acquisition Officer,
Benefited Zone, Yavatmal,
Tq. and Dist. Yavatmal.

WITH

CROSS-OBJECTION NO.65 OF 2017

IN

FIRST APPEAL NO.492 OF 2017

APPELLANTS:-

1. Executive Engineer, Bembla Project
Division, Yawatmal.
2. Vidarbha Irrigation Development
Corporation through Executive Director,
Sinchan Bhawan, Civil Lines, Nagpur.

VERSUS**RESPONDENTS**

1. Manik Panjabrao Kalmegh,
Aged: 61 years, Occupation:
Cultivator, R/o Barad, Post-Pahur,
Taluka: Babhulgaon, District
Yawatmal.
2. State of Maharashtra, through
Collector, Yawatmal, Taluka
Yawatmal, District : Yawatmal.
3. Special Land Acquisition Officer,
Benefited Zone, Yawatmal, Taluka:
Yawatmal, District : Yawatmal.

CROSS OBJECTOR: Manik Panjabrao Kalmegh.

Shri M.A. Kadu, Advocate for the appellants.
Shri Kalyan Chiwarkar, Advocate h/f Shri Anand Parchure,
Advocate for respondent No.1 / Cross-Objector.
Shri A.S. Fulzele, Addl. G.P. for the respondent Nos. 2 and 3.

CORAM: A.S. CHANDURKAR AND G. A. SANAP, JJ.

ARGUMENTS WERE HEARD ON : 25/10/2021

JUDGMENT IS PRONOUNCED ON : 02/12/2021

JUDGMENT : (PER G. A. SANAP, J.)

1. In this appeal, the appellants have challenged the Judgment and award passed by the learned Civil Judge, Senior Division, Yawatmal in LAC No.613/2005 decided on 04/04/2015 and corrected by order dated 05/08/2015 in MJC No.61/2015, whereby the learned Judge enhanced the amount of compensation awarded by the Special Land Acquisition Officer (SLAO).

The respondent No.1 filed the Cross-Objection No.65/2017 being aggrieved by the Judgment and award refusing the claim for enhanced compensation in entirety.

The facts leading to the filing of this appeal and the Cross-Objection are as follows :-

2. The appellant No.2 is the Acquiring Body. The appellant No.1 is the Executive Engineer, Bembla Project, Yavatmal. The respondent No.1 is the original applicant. The respondent No.2 is the State. The respondent No.3 is the Special Land Acquisition Officer. The respondent No.1 owned the land bearing Survey No.14 admeasuring 4.32 HR, Survey No.15 admeasuring 1.40 HR and land bearing Survey No.17 admeasuring 5.87 HR situated at village Barad, Tq. Babhulgaon, Dist. Yavatmal. The lands were acquired for construction of Bembla Project. The notification under Section 4 of the Land Acquisition Act, 1894 was published in the Government Gazette on 24/07/2003. (hereinafter referred to as the "Land Acquisition Act"). The respondent No.3 declared the award on 27/06/2005.

The Land Acquisition Officer granted compensation @ Rs.83,099/- per hectare for land bearing Survey No.14 and compensation of Rs.7,27,669/- for fruit bearing trees. The Land Acquisition Officer granted compensation @ Rs.83,245/- per hectare for land bearing Survey No.15 and the compensation of Rs.23,600/- for fruit bearing trees. The Land Acquisition Officer granted compensation @ Rs.82,904/- for the land bearing Survey No.17. The respondent No.1 accepted the compensation under protest on 12/07/2005. He did not agree with the compensation awarded by the Special Land Acquisition Officer. The respondent No.1, therefore, made a reference under Section 18 of the Land Acquisition Act.

3. The respondent No.1 inter alia contended that the Special Land Acquisition Officer failed to determine the proper market value of the land as well as the value of the trees. The Special Land Acquisition Officer did not follow the procedure laid down under Section 23 of the Land Acquisition Act. The lands bearing Survey Nos.14 and 15 were irrigated. The land of the respondent No.1 is situated at the distance of about 500 feet from village locality. The Special Land Acquisition Officer has failed to consider the quality and fertility of the land. The land was black soil land. The compensation awarded for the fruit bearing trees

was meagre. The Special Land Acquisition Officer did not take all the aspects into consideration. The respondent No.1 claimed enhanced compensation of Rs.96,51,110/- for land bearing Survey No.14 and the fruit bearing trees therein. The respondent No.1 claimed enhanced compensation of Rs.65,69,857/- for land bearing Survey No.15 and the fruit bearing trees therein. The respondent No.1 claimed enhanced compensation of Rs.1,05,42,729/- for land bearing Survey No.17 and the fruit bearing trees therein.

4. The appellants and the respondent Nos.2 and 3 opposed the reference by filing their written statement. They have not disputed the acquisition of land with fruit bearing trees and the compensation awarded by the Land Acquisition Officer. According to them, the Land Acquisition Officer while passing the award, has taken into consideration the relevant factors mentioned in Section 23 of the Land Acquisition Act. The Land Acquisition Officer has granted just, proper and reasonable compensation. The Land Acquisition Officer has not committed any mistake. They further contended that the Land Acquisition Officer on the basis of the material, determined the market value of the land and also the value of the fruit bearing trees. According

to them, the compensation sought to be claimed by the respondent No.1 was excessive and exorbitant. There was no basis for excessive and exorbitant compensation. The respondent No.1 had been granted an opportunity of hearing before passing the award. They accordingly pleaded for dismissal of the reference.

5. The respondent No.1 examined himself in support of the reference. PW-2 - Dadan Borkar examined by the respondent No.1 was the Valuer. PW-3 - Chandrashekhar Wankhade was examined to prove the valuation of the well and pipeline. The respondent No.1 placed on record number of documents. The appellants did not lead oral or documentary evidence before the Reference Court. The learned Judge on the basis of the evidence, partly allowed the reference. The learned Judge granted compensation @ Rs.3,40,000/- per hectare for the acquired land bearing Survey Nos.14 and 15 and Rs.1,75,000/- per hectare for land Survey No.17.

6. The learned Judge directed the appellants to pay enhanced compensation of Rs.3,000/- per tree for 500 Orange trees, Rs.4,200/- per tree for 200 Mosambi trees, Rs.2,500/- per

tree for 50 Lemon trees, Rs.2,000/- for one Guava tree, Rs.5,000/- per tree for 5 Mango trees, Rs.3,160/- per tree for 10 Ber trees and Rs.4,000/- per tree for 5 Chiku trees in Survey No.14 to the respondent No.1. The learned Judge directed the appellants to pay enhanced compensation of Rs.3,070/- per tree for 500 Awala trees, Rs.3,160/- per tree for 100 Ber trees and Rs.2,000/- per tree for 100 Custard Apple trees in Survey No.15 to the respondent No.1. The learned Judge directed the appellants to pay enhanced compensation of Rs.1000/- each for 1824 Awala trees and Rs.40000/- for Bore Well in Gat No.17.

7. Being aggrieved by the enhancement of compensation, the appellants have come before this Court in appeal. The respondent No.1 after receipt of the notice in appeal, filed the cross-objection being aggrieved by the inadequacy of the enhanced compensation.

8. We have heard the learned Advocate for the appellants, the learned Advocate for the respondent No.1 and the learned Additional Government Pleader for the respondent Nos.2 and 3. We have perused the record and proceedings.

9. In view of the facts and circumstances, following question falls for our determination :-

Whether the Judgment and award passed by the learned Civil Judge, Senior Division, Yavatmal granting enhancement in the compensation payable in respect of the lands and fruit bearing trees is just, proper and reasonable ?

10. The learned Advocate for the appellants submitted that the learned Judge has not taken into consideration the evidence placed on record. The learned Advocate pointed out that the available evidence on record has not been properly appreciated and the compensation has been enhanced without properly appreciating and considering the evidence. As far as the order passed in Review Application is concerned, the learned Advocate for the appellants submitted that the learned Judge without considering the basic provisions of law with regard to the admissibility of the evidence has taken into consideration the documents without proof of the contents of the same and granted exorbitant compensation in respect of 1824 Awala trees and Borewell in land bearing Survey No.17. The learned Advocate

took us through the evidence and urged that this part of the award cannot be sustained at all. The learned Advocate further submitted that the learned Judge has erred in awarding enhanced compensation separately for the land and the fruit bearing trees. In order to substantiate this submission, he has relied upon the reported decision to which we will make reference at appropriate place.

11. The learned Additional Government Pleader appearing for the respondent Nos.2 and 3 has adopted the submissions advanced by the appellants.

12. The learned Advocate for the respondent No.1 submitted that the learned Judge has failed to appreciate the oral and documentary evidence placed on record and as such, committed a mistake in denying the quantum of enhanced compensation claimed in reference application. In the submission of the learned Advocate, the compensation awarded in respect of fruit bearing trees is too meagre and therefore, it needs to be enhanced as claimed by the respondent No.1 in his application filed under Section 18 of the Land Acquisition Act. The learned

Advocate submitted that in order to justify the claim for enhanced compensation in respect of the land as well as in respect of fruit bearing trees, the respondent No.1 has examined the Valuer. The learned Advocate took us through the report of the Valuer - PW-2 and submitted that the Valuer has stated reasons in respect of the conclusion arrived at by him vis-a-vis the market value of the land as well as the fruit bearing trees. The learned Advocate submitted that the learned Judge has taken into consideration the decisions in the earlier references arising out of the same acquisition proceedings, wherein the sale instances were considered to determine the market value of the land. In the submission of the learned Advocate for the respondent No.1, therefore, the learned Judge was right in granting separate compensation for the land as well as for the fruit bearing trees.

13. In order to appreciate the rival submissions, we have carefully perused the material placed on record and particularly, the order passed by the Reference Court in Review Application No.61/2015. The learned Judge, as can be seen from the order passed in Review Application, reviewed the Judgment and order dated 04/04/2015 and awarded compensation in

respect of 1824 Awala trees and one Borewell. The compensation awarded is @ Rs.1,000/- each for 1824 Awala trees and Rs.40,000/- for Borewell situated in land bearing Gut / Survey No.17. Perusal of the award dated 04/04/2015 passed by the learned Judge would show that the claim for enhancement of compensation for 1824 Awala trees and Borewell in Gut No.17 was rejected for the reasons recorded in Paragraph No.16 of the Judgment and award. The learned Judge on the basis of 7/12 extract recorded a finding that the plantation of 1824 Awala trees was new plantation done in the year 2003-2004 onwards. The learned Judge recorded finding that there is no substantive evidence to prove the existence of 1824 Awala trees in Gut / Survey No.17. It is seen that for want of substantive evidence, this claim was initially rejected. The order was passed on 05/08/2015 in Review Application. The learned Judge has relied upon second Joint Measurement Report and three representations made by the respondent No.1 before the Land Acquisition Officer at the stage of acquisition proceedings. The second Joint Measurement Report and the representations submitted to the Land Acquisition Officer were not part of the record when the award was passed. The respondent No.2 produced those representations / reply to the

notices received from the Land Acquisition Officer and the copy of the second Joint Measurement Report prepared in the year 2003-2004 with the Review Application.

14. In order to satisfy ourselves about real factual position, we have called record and proceedings of the Review Application. On going through the record and proceedings of the Review Application, it is seen that the documents as mentioned above, were simply filed with the Review Application. The documents were not proved. The documents were not given Exhibit Numbers. No evidence was adduced to prove the contents of the documents. The learned Judge despite the strongest possible objection on the part of the appellants and the respondent Nos.2 and 3 took those documents into consideration and granted compensation / enhancement in respect of 1824 Awala trees and Borewell. It is seen that while deciding Review Application, there was no substantive evidence on record. The learned Judge without having substantive evidence on record made a self-contradictory observation in the Review order. In this respect, the learned Judge ought to have ensured that the evidence sought to be relied upon is legally admissible evidence. In our opinion, the

documents would have become legally admissible evidence provided the contents of the same have been proved or the opponent has admitted the contents of the same. In this case on both the counts, the documents could not have been taken into consideration. Perusal of the order passed in Review Application would show that the learned Judge has not followed the provisions of the substantive and procedural law. The exercise was carried out by the learned Judge mechanically. The compensation granted / enhanced was Rs.18,00,000/- to Rs.19,00,000/- on this count. It is settled legal position that the finding based on inadmissible evidence cannot be sustained. Such finding has to be termed as erroneous finding and as such a patent illegality. In our considered opinion, on this point, we are fully agree with the learned Advocate for the appellants. In our opinion, the order passed by the learned Judge was without evidence. It is also seen that the case was not at all made out to warrant the review of the order earlier passed by the learned Judge in the reference. We, therefore, conclude that this part of the award passed by the learned Judge, cannot be sustained.

15. In order to satisfy ourselves about the sustainability of the award, we have gone through the record and the evidence afresh. The learned Advocate for the appellants relying upon the decision in the case of State of Haryana Vrs. Gurcharan Singh and another, reported in 1995 Supp (2) SCC 637 submitted that the separate compensation cannot be awarded for the land and the orchard planted on the said land. The learned Advocate for the respondent No.1 relied upon the decision in the case of Ambya Kalya Mhatre (dead) through LRs and others Vrs. State of Maharashtra, reported in 2012(1) Mh.L.J.9 and submitted that the Hon'ble Supreme Court has explained and clarified the decision in the case of the State of Haryana (supra) and held that awarding the compensation separately for the land and fruit bearing trees is permissible. In order to appreciate the rival submissions, it would be necessary to reproduce the relevant portion of the Judgment of the Hon'ble Supreme Court in the case of Ambya Kalya Mhatre (supra). Paragraph Nos.21 and 22 read thus :-

"21. The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in State of Haryana vs. Gurcharan Singh - 1995 Supp (2) SCC 637 :

"It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees. The definition of land includes the benefits which accrue from the land as defined in section 3(a) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given."

22. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for

the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land."

The above quoted paragraph in the said Judgment would show that if the value of the land has been determined with reference to the sale statistics or the compensation awarded to the nearby vacant land, then the trees will have to be valued separately. In order to consider the applicability of proposition to the facts of the appeal before us, it would be necessary to go through the Judgment of the Reference Court as well as evidence on record. The learned Judge has awarded separate compensation for the land and for fruit bearing trees. The learned Judge while determining the market value of the lands, bearing Survey Nos.14 and 15 relied upon the Judgment in LAC No.48/2007. It is at Exh.68. The land covered in Exh.68 has been acquired for the same project and the said land is situated at village adjoining to the village of respondent No.1. The learned Judge found that the Judgment at Exh.68 would be the proper guide to determine the compensation of the land / real market value of the land bearing

Survey Nos.14 and 15. The learned Judge on the basis of the Judgment at Exh.68 quantified market value of the land bearing Survey Nos.14 and 15 @ Rs.3,40,000/- per hectare. It would be necessary for us to see basis for deciding the compensation in LAC No.48/2007 by the concerned Reference Court. Perusal of this Judgment at Exh.68 and particularly, Paragraph No.7 would show that the sale deed of the year 1994 which was marked as Exh.35 in the said reference was taken into consideration for the purpose of quantifying compensation of the land. In the said reference, the market price of the irrigated land situated adjoining to the village of the respondent No.1 was determined at Rs.3,40,000/- per hectare. In the Judgment at Exh.68, number of Judgments arising out of the references of the village Kolhi were considered and the compensation @ Rs.1,70,000/- was awarded for the dry crop lands. It is therefore, apparent that in the Judgment at Exh.68, the basis for deciding the compensation was the sale instance. The Reference Court while deciding the reference at Exh.68 granted 10% rise per year from 1994 for the purpose of determining the market value of the land. The learned Judge on consideration of the Judgment at Exh.68 found that the sale instances relied in the said references are comparable and as such, accepted the same.

It is therefore, apparent on the face of record that the learned Judge determined the market value of the lands on the basis of the sale statistics referred in the Judgment at Exh.68. Therefore, it could not be said that in this case, income capitalization method was adopted by the learned Judge while determining the market value of the land Survey Nos.14 and 15.

16. The land Survey No.17 was dry crop land. The learned Judge relying upon the Judgment in LAC No.165/2006 at Exh. 66 has quantified the market value of the land bearing Survey No.17 @ Rs.1,75,000/- per hectare. The learned Judge found that the Judgment in LAC No.165/2006 at Exh.66 is the best evidence to determine the market price of the land Survey No.17. We have perused the Judgment in LAC No.165/2006 at Exh.66. In LAC No.165/2006, the sale deeds produced on record were not found comparable with the land in question. The learned Judge relied upon the Judgment in LAC No.167/2006, which pertains to the agricultural land situated at Village Barad and acquired for the said project. The land in question was dry crop land. The land bearing Survey No.17 and the lands from the Judgment in LAC No.167/2006 were found identical and similarly situated. The learned Judge in our case while determining the

compensation in respect of dry crop land Survey No.17 accepted this Judgment as the best evidence. In our view, on this count, the Judgment of the Reference Court cannot be set aside. Even if it is assumed for the sake of argument that no sale instance was relied upon in LAC No.165/2006, the respondent No.1 would be entitled to get the enhanced compensation @ Rs.1,75,000/- per hectare being dry crop land, inasmuch as it would be 50% less than the enhanced compensation awarded for the irrigated land bearing Survey Nos.14 and 15.

17. It is, therefore, apparent that the market value of the lands in this case has not been decided on the basis of income capitalization method. The same has been determined on the basis of earlier decisions in the land reference cases. In those cases, the sale deeds were referred to arrive at or determine the market value of the land. It is pertinent to mention that number of land references arose due to acquisition of lands for the same project. It is seen that by and large, the compensation awarded by the Reference Courts is Rs.3,40,000/- for irrigated land and Rs.1,75,000/- for dry crop land. In view of this position, it is seen that the Judgment relied upon by the learned Advocate for the

appellants is of no help and assistance to substantiate his submission.

18. We have minutely perused the evidence of the respondent no.1 and the evidence of the Valuer - PW-2. We have perused the cross-examination of the Valuer. The report of the Valuer is at Exh.76. In the report, the Valuer has stated that the soil of the land was medium black, porous in texture, rich in organic matter, well drained and fertile. He has further stated that the land is ideal for fruit growing. He has further stated that the general condition of the trees found in the land at the time of inspection was good and they were healthy. Perusal of the cross-examination would show that there was no challenge to this part of evidence and report. It is seen that the PW-1 / respondent No.1 has categorically deposed about the quality of the land and the management of the land by him. In our view, considering this evidence, the market value of the land quantified by the learned Judge could not be said to be excessive and exorbitant. We do not find any reason to disturb the finding of fact recorded by the Judge. This finding is supported by the evidence. The learned Judge has recorded the reasons in support of his finding to quantify the market value of the land.

19. It would now be necessary to consider the challenge to the part of the award which deals with the enhancement of the compensation in respect of the fruit bearing trees. The learned Advocate for the appellants submitted that the Land Acquisition Officer has taken into consideration the first Joint Measurement Report at Exh.64 to count the number of fruit bearing trees and awarded the compensation for the same. Before we proceed to appreciate the submissions on merits with regard to the quantification of compensation for the fruit bearing trees, it would be necessary to take into consideration the observations made by the Land Acquisition Officer in his award at Ext.65. The relevant observation is under caption "value of the trees". A specific reference has been made to Survey Nos.14 and 15. The Land Acquisition Officer has recorded reasons for taking into consideration the number of trees for the purpose of determining the compensation of the same. The learned Advocate for the appellants has not made serious grievance about the facts noted down in the Joint Measurement Report at Exh.64 with regard to the number of trees found existing in the land bearing Gut Nos.14 and 15. This Joint Measurement Report was prepared in June,

1999. The second Joint Measurement Report which was produced on record with the Review Application was prepared in 2003-2004. Perusal of the Judgment of the Reference Court would show that the Reference Court has taken into consideration the number of fruit bearing trees found existing at the time of preparation of the first Joint Measurement Report. Therefore, it is not possible to accept the submissions made on behalf of the appellants with regard to the number of trees and the age of the trees. As noted above, the compensation has been awarded for fruit bearing trees of different varieties. On this count, we are not prepared to take a different view from the one taken by the learned Judge.

20. The next important point is with regard to the sustainability of the order with regard to the quantum of compensation awarded by the Reference Court. In order to prove the valuation of the fruit bearing trees, the respondent No.1 has deposed in his evidence about the quality of the land, the management of the land and the irrigation facility for the land. PW-2 Valuer has deposed extensively about the quality of the land, the management of the land and the modern technique used by the respondent No.1 for getting maximum yield from the trees. The report of the Valuer is at Exh.76. At this stage, it is necessary

to mention that the learned Judge of the Reference Court has not accepted this report in toto. The enhancement of the compensation for the trees sought by the respondent No.1 was higher than the one granted by the learned Judge. Perusal of the Judgment and report of the Valuer together would show that the learned Judge has awarded enhancement of compensation for fruit bearing trees 40 % less than the one quantified by the Valuer. In our view, therefore, the report of the Valuer cannot be discarded in toto. The report with regard to the quality of the land and other related aspects has not been challenged in the cross-examination. We are, therefore not prepared to discard the evidence of the Valuer in toto. The report of the Valuer, therefore, has been rightly made a basis for determining the enhanced compensation in respect of the fruit bearing trees. The learned Judge as can be seen from the Judgment has taken into consideration the award of the Reference Court in LAC No.519/2007 at Exh.70 for determining the compensation for fruit bearing trees. The Judgment at Exh.70 was found by the learned Judge the best guide to determine the compensation for fruit bearing trees. It is seen that the said Judgment was in respect of the land of the same village Kopra Barad acquired for the same

project. The Reference Court in the Judgment of LAC No.519/2007 at Exh.70 has quantified the compensation for fruit bearing trees of the variety of fruit bearing trees similar to the one in this case. On minute scrutiny and appreciation of the evidence, we are of the view that as far as the compensation for fruit bearing trees is concerned, the learned Judge has not committed any mistake. The learned Judge has recorded the reasons. The finding on this point is based on the evidence. The enhancement of compensation granted in respect of fruit bearing trees, in our view is just, proper and reasonable. It does not warrant interference. It is needless to state that while quantifying the market value of the land and fruit bearing trees, based on the material placed on record and the circumstances in totality, some guess work would be required to be done. The fundamental principle needs to be borne in mind in such cases is that the compensation awarded to the land loser for the acquired land as well as for the trees which is source of his livelihood must be just, fair and reasonable. In our opinion, even subjecting the material placed on record and the circumstances in totality to the robust guess work, enhanced the compensation awarded by the Reference Court for the land as well as fruit bearing trees could not be said to be excessive. In our

view, on this count, the award passed by the Reference Court does not warrant interference. Similarly, the grievance made by the respondent No.1 on the point of inadequacy of the enhanced compensation also cannot be sustained. The evidence on record does not warrant enhancement of compensation at the rate claimed by the respondent No.1 in the cross-objection.

21. In view of the above, we conclude that initial Judgment and award dated 04/04/2015 does not require interference and modification. The Judgment and award to the extent of grant of compensation pursuant to the review order dated 05/08/2015 in respect of 1824 Awala trees and one borewell in Gut No.17 cannot be sustained and is required to be set aside. We accordingly, proceed to pass the following order.

ORDER

- i] The appeal is partly allowed.
- ii] The Judgment and award to the extent of compensation awarded for 1824 Awala trees and one Borewell from Survey No.17 is set aside. The appeal is partly allowed to this extent.

iii] The cross-objection filed by the respondent No.1 is dismissed.

iv] The appellants have paid the amount of compensation with all consequential benefits to the respondent No.1. The respondent No.1 is directed to refund the amount of compensation paid by the appellants in respect of 1824 Awala trees and for one borewell from land bearing Survey No.17 within four months from today.

v] Since the respondent No.1 was permitted to withdraw the entire amount of compensation without furnishing any security in view of the order dated 27/04/2017, we have not directed refund of the excess amount of compensation with interest. However, the excess amount of compensation if not repaid within four months would carry interest from expiry of said period at 7.5% per annum till its payment.

vi] Decree be drawn accordingly.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

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VITHAL MAROTRAO
CHOULWAR
Date: 2021.12.02
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