

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

FIRST APPEAL NO.1230 OF 2013

LAKHU YEDU PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Appellant: Mr. Dattatraya R. Jayabhar

AGP for Respondent/State: Mr. S. N. Morampalle

...

WITH

...

FIRST APPEAL NO.1231 OF 2013

MARUTI LAXAMAN GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Appellant: Mr. Dattatraya R. Jayabhar

AGP for Respondent/State: Mr. S. N. Morampalle

...

CORAM: SHRIKANT D. KULKARNI, J.

DATE: 08th APRIL, 2022

PER COURT:

1. Heard finally with consent of both the sides at admission stage.

2. The lands owned and possessed by the appellants / claimants came to be acquired by the Respondents / State for Shivana Takali Medium Project. The State initiated the proceedings under the Land Acquisition Act, 1894 (*hereinafter*

referred to as 'Act-1894') and passed the Award. The Respondent / State did not Award any compensation to the appellants / claimants in respect of trees. The appellants / claimants approached the Reference Court by filing Reference U/Sec.18 of the Act-1894. The Reference Court, after considering rival pleadings of the parties, evidence on record and the arguments advanced on behalf of both the sides, was pleased to hold that claimants / appellants are entitled to get compensation in respect of their respective acquired lands with statutory benefits. However, Reference Court did not grant any compensation in respect of the trees which were standing in the acquired lands just before the Notification U/Sec.4 of the Act-1894.

3. Feeling aggrieved by the impugned Judgment and Award passed by the Reference Court in L.A.R. No.244 of 2006 and L.A.R.No.271 of 2006 challenged the impugned Judgment and Award to the extent of 123 bor trees, 28 mango trees and 50 sweet-lemon trees (Mosambi trees).

4. Heard Mr. D. R. Jayabhar, learned Counsel for the appellants / original claimants and Mr. S. N. Morampalle, learned A.G.P. for the State / Respondent No.1. Respondent No.2 / Acquiring Body and Respondent No.3 remained absent though, duly served with notices.

5. Mr. D. R. Jayabhar, learned Counsel for the appellants / claimants submitted that in view of Section 5 of the Act-1894, the claimants are entitled to get compensation in respect of trees which were standing in the acquired lands before the Notification U/Sec.4 of the Act-1894. Their claim regarding fruit trees cannot be denied. The Reference Court has turned down the claim in respect of fruit trees by stating that it has no jurisdiction to grant compensation in respect of trees since the trees were standing in the acquired lands just before the Notification U/Sec.4 of the Act-1894. It is for the Collector to award compensation. He, therefore, submitted that both the appeals need to be allowed by giving directions to the Collector and the

Acquiring Body to consider the claim of both the claimants / appellants regarding compensation in respect of fruit trees standing in the acquired lands just before the Notification U/Sec.4 of the Act-1894.

6. Mr. S. N. Morampalle, learned A.G.P. for the Respondent / State submitted that in view of Section 5 of the Act-1894, it is for the Collector to take decision in respect of fruit trees which were cut off before Notification U/Sec.4 of the Act-1894.

7. On going through the impugned Judgments passed by the Reference Court in both the proceedings the Reference Court has observed that since the fruit trees were cut off before Notification U/Sec.4 of the Act-1894, it has no jurisdiction to award any compensation in respect of fruit trees. The view taken by the Reference Court appears to be correct in view of Section 5 of the Act-1894. Section 5 of the Act-1894 speaks provision for payment of damages which reads thus-

"5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case, of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district, and such decision shall be final."

8. On going through the certified copy of the Award passed by the Special Land Acquisition Officer (S.L.A.O.) dated 02.03.2000, it is noticed that there were trees standing in the acquired lands in view of Joint Measurement, which were cut off by making Panchanama. The S.L.A.O. in clause No.15 of the Award observed that since the trees were cut off before Notification U/Sec.4 of the Act-1894, it is for the Acquiring Body / Executive Engineer, Minor Irrigation Division, Aurangabad to pay the compensation of those trees.

9. Having regard to the above factual scenario observed by the S.L.A.O. in his Award, it appears that certain fruit trees were standing in

the acquired lands. Those trees were cut off on 11.03.1996 by making the Panchanama. The same were shown in the Joint Measurement. As such, the claimants / appellants are entitled to get compensation in respect of their fruit trees which were standing in the acquired lands and cut off before Notification U/Sec.4 of the Act-1894. Section 4 of the Act-1894 has taken care of this situation. It is for the Collector to decide the amount of compensation on the basis of valuation made by the District Horticulture Officer by giving liberty to both sides being heard and direct to the Acquiring Body to pay the compensation. The claimants cannot be denied their reasonable amount of compensation.

10. Having regard to the above reasons and discussion, I am of the view that both the appeals can be disposed by giving certain directions as under-

[I] Both the Appeals stand partly allowed.

[II] The District Collector, Aurangabad in the proceedings of L.A.R. No.244 of 2006 and L.A.R.No.271 of 2006 shall decide the amount of compensation in respect of fruit trees which were standing in the acquired lands of the appellants / claimants after giving an opportunity of being heard to both the sides in view of report submitted by the District Horticulture Officer, Aurangabad.

[III] After determining the amount of compensation, the Collector, Aurangabad shall issue direction to the Acquiring Body to make payment of compensation of those fruit trees to the claimants within stipulated time.

[IV] The Awards stand modified to above extent, rest of the Awards passed by the Reference Court stand confirmed.

[V] The District Collector, Aurangabad shall take decision in this regard within a period of six (06) months from today.

[VI] Record and Proceedings be sent back to the Reference Court.

11. Both the First Appeals are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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