

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

FIRST APPEAL NO.31 OF 2013

Kisan s/o Satwaji Patil Kinhalkar,
Age 67 years, Occu. Agriculture,
R/o Kinhala, Tq. Bhokar, Dist. Nanded ... **APPELLANT**

VERSUS

1. The State of Maharashtra
through District Collector,
Station Road, Nanded,
District Nanded
2. The Special Land Acquisition Officer,
P.T.M.I.W. 1, Nanded
3. The Executive Engineer,
Minor Irrigation Works,
Nanded ... **RESPONDENTS**

.....
Shri K.M. Nagarkar, Advocate for appellant
Shri S.N. Morampalle, A.G.P. for respondents No.1 and 2
Shri R.D. Biradar, Advocate for respondent No.3.
.....

WITH

**FIRST APPEAL NO.32 OF 2013 WITH
CIVIL APPLICATION NO.2648 OF 2019**

Shaikh Farid s/o Walliji
Age 67 years, Occu. Agriculture,
R/o Kinhala, Tq. Bhokar, Dist. Nanded ... **APPELLANT**

VERSUS

1. The State of Maharashtra
through District Collector,
Station Road, Nanded,

District Nanded

2. The Special Land Acquisition Officer,
P.T.M.I.W. 1, Nanded
3. The Executive Engineer,
Minor Irrigation Works,
Nanded

... RESPONDENTS

.....

Shri K.M. Nagarkar, Advocate for appellant
Shri S.N. Morampalle, A.G.P. for respondents No.1 and 2
Shri R.D. Biradar, Advocate for respondent No.3.

.....

WITH

FIRST APPEAL NO.3498 OF 2019

Godhavari Maratwada Irrigation
Development Corporation, Aurangabad
through its Executive Engineer
Minor irrigation Division, Nanded,
District Nanded

... APPELLANT

VERSUS

1. Kishan s/o Satwaji Patil Kinhalkar,
Age major, Occu. Agril.,
R/o Kinala, Tq. Bhokar,
District Nanded
2. The State of Maharashtra,
through the Collector, Nanded
3. The Special Land Acquisition Officer,
P.T. Minor Irrigation Works No.1,
Collector Office, Nanded

... RESPONDENTS

.....

Shri R.D. Biradar, Advocate for appellant
Shri K.M. Nagarkar, Advocate for respondent no.1.
Shri S.N. Morampalle, A.G.P. for respondents No.2 and 3

.....

WITH

FIRST APPEAL NO.3499 OF 2019

Godhavari Maratwada Irrigation
Development Corporation, Aurangabad
through its Executive Engineer
Minor Irrigation Division, Nanded,
District Nanded

... APPELLANT

VERSUS

1. Madhukar s/o Shankarappa Deshmane,
Age major, Occu. Agril.,
R/o Kinhala, Tq. Bhokar,
District Nanded

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

3. The Special Land Acquisition Officer,
P.T. Minor Irrigation Works No.1,
Collector Office, Nanded

... RESPONDENTS

.....
Shri R.D. Biradar, Advocate for appellant
Shri A.N. Patale, Advocate for respondent no.1.
Shri S.N. Morampalle, A.G.P. for respondents No.2 and 3
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 14th December, 2021

Date of pronouncing judgment : 23rd June, 2022

J U D G M E N T :

This group of four appeals is being decided by this
common judgment and order since common questions of facts

and law arise therein. Moreover, the challenge therein is to one and the same judgment and order dated 30/9/2010, passed by the Court of Civil Judge, Senior Division, Bhokar in Land Acquisition Reference Nos.30/2010 (Old No.76/2003) and 33/2010 (Old No.86/2003). The First Appeals No.31/2013 and 32/2013 have been filed by the original land owners, whose lands came to be acquired for Renapur Sudha Project. The other two appeals have been preferred by the acquiring body. The appeals preferred by the original land owners are for enhancement of compensation granted by the Reference Court in the aforesaid two Land Acquisition References. While the other two Appeals have been preferred by the acquiring body, contending the enhancement granted by the Reference Court to have been on higher side and, therefore, urged for reduction therein to the amount which was offered by the Land Acquisition Officer (L.A.O.).

For the sake of convenience, the parties and evidence in First Appeals No.31/2013 and 32/2013 are being referred to.

2. Facts giving rise to the present appeals are as follows :-

FIRST APPEAL NO.31/2013:

Land bearing Gut No.85, admeasuring 4 Hectors 57 R originally belonged to the appellant – land owner. As stated above, the said entire land came to be acquired for the purpose of Renapur Sudha Project. Notification under Section 4 of the Land Acquisition Act, 1894 (for short the Act) was published on 17/2/2000. The award came to be passed on 8/6/2001. The appellant – land owner claimed compensation @ Rs.2,40,000/- per acre. According to him, the land was irrigated one. There was a well and pipeline in the land as well. Moreover, there were 1300 teak trees besides fruit bearing trees. The L.A.O. granted compensation in respect of 147 teak trees. The amount of compensation awarded was very meagre. The appellant – land owner claimed compensation @ Rs.10,000/- per teak tree besides compensation for other fruit bearing trees.

FIRST APPEAL NO.32/2013:

The land bearing Survey No.73, admeasuring 4 Hectors 22 R belonged to the appellant – land owner. 3 Hectors 70 R land therefrom came to be acquired for the very public purpose. Notification under Section 4 of the Land

Acquisition Act and the award under the Act came to be passed on the same days and dates mentioned hereinabove. The appellant – land owner claimed compensation @ Rs.2,40,000/- per acre as it was an irrigated land. According to him, there were 400 teak trees. Compensation, however, was awarded only in respect of 107 trees. The rate of compensation awarded is stated to be very meagre. The appellant claimed compensation @ Rs.10,000/- per teak tree. It is also his case that, there were 600 sweet-lime trees. The L.A.O. awarded compensation only for 200 trees. The quantum of compensation awarded in respect thereto was also meagre one.

3. Both the appellants – land owners, therefore, preferred the respective Land Acquisition References - L.A.R. Nos.30/2010 (Old No.76/2003) and 33/2010 (Old No.86/2003) respectively for enhancement of compensation. The learned Reference Court, vide impugned judgment and award/s dated 30/9/2010, partly allowed both the L.A.Rs., enhancing the compensation as under :

- (1) Compensation for land was granted @ Rs.2,00,000/- per Hector.

- (2) Compensation @ Rs.3000/- for each teak wood tree was granted.
- (3) In L.A.R. No.30/2010, compensation was granted for 183 teak trees while in L.A.R. No.33/2010, it was granted for 160 teak trees.
- (4) The Reference Court also granted compensation for 400 sweet lime trees @ Rs.3000/- per tree. The L.A.O. had granted the same rate, but only for 200 such trees.

The details of the compensation awarded by the Reference Court are as under :

LAR 30/2010

Compensation is granted @ Rs.2,00,000/- per Hectore for the land and Rs.6,58,800/- for 183 teak trees and Rs.12,00,000/- for 400 fruit bearing trees.

The respondents shall pay amount of Rs.27,37,276/- to the appellant along with future interest @ 15% p.a. on the amount of Rs.18,75,080/- till satisfaction of the entire dues.

LAR 33/2010

Compensation is granted @ Rs.2,00,000/- per Hectore for

the land, Rs.5,76,000/- for 160 teak trees and Rs.6,500/- for fruit bearing trees.

The respondents shall pay the amount of Rs.12,37,847/- to the appellants along with future interest @ 15% p.a. on the amount of Rs.7,41,358/- till the satisfaction of the entire dues.

4. Heard. Both the learned Advocates for the appellants – land owners made submissions consistent with the averments in the memorandums of appeals. According to both the learned Advocates, the lands acquired were irrigated one. The sale instance (Exh.59) relied on pertained to unirrigated land. In view of the settled legal proposition, the compensation for the irrigated land shall be double the rate of compensation awardable for unirrigated land. This principle was not relied on by the learned Reference Court in spite of number of authorities having been relied on in that regard. The L.A.O. found the existence of wells in both the lands and even quantified some compensation in respect thereto. The Reference Court, however, did not grant separate compensation for the wells in the lands acquired. According to learned Advocates, crops like sugarcane, papaya, banana

etc. were being raised. According to them, the compensation, therefore, ought to have been granted @ Rs.2,40,000/- per acre. It was also submitted by the learned Advocates that, in terms of Section 25 of the Act, the amount of compensation to be awarded in Land Acquisition Reference shall not be less than the one offered by the Collector.

TEAK TREES

5. According to the learned Advocates, there were 1300 and 400 teak trees in the lands Gut No.85 and Survey No.73 respectively. The compensation has, however, been awarded only in respect of 183 and 160 trees respectively @ Rs.3600/- per tree. According to the learned Advocates the Government of Maharashtra fixed the prices of the things every year. The same is called D.S.R. rates. A chart of the D.S.R. rates has been given in the appeal memo. It is in terms of per cubic metre for the years 1992-1993 to 2007-2008. The learned Advocates have calculated the same by giving a chart in clause (C) of the appeal memo. According to them, it would be Rs.10,000/- per tree. It is also their case that, the State Government has awarded compensation for teak tree at much more rate in Land Acquisition proceedings in respect of the lands in District of Nanded.

NUMBER OF TREES

6. According to the learned Advocates, there were 1300 and 400 teak trees in both the lands. The possession of the lands were taken before the notification was published. The project work commenced immediately. While the authorities went to the site for counting of trees, the lands were under water. The counting could not be made. The Talathi, however, could count the trees in terms of the number of trees claimed by the appellants – land owners. He also took entry thereof in the 7/12 extract. The compensation, therefore, ought to have been granted in respect of 1300 and 400 teak trees respectively.

SWEET-LIME TREES

7. According to the appellants – land owners, though there were 600 sweet-lime trees, the L.A.O. granted compensation only in respect of 200 trees. The Reference Court granted the same for 400 trees without there being any change in the rate of compensation offered by the L.A.O. According to the learned Advocates, each tree would give yield of not less than 1000 fruits per year. The life expectancy of the trees was not less than 20 years. The compensation,

therefore, ought to have been awarded @ Rs.15,000/- per tree. There were other fruit bearing trees as well such as custard apple, jujabi, tamarind, lemon etc. No separate compensation, however, has been awarded in respect thereto. Both the learned Advocates placed on record the authorities which were relied on before the Reference Court as well. They ultimately urged for allowing the appeals with enhancement of compensation as prayed for.

8. Shri Biradar, learned Advocate for the respondent – acquiring body would, on the other hand, submit that, the amount of compensation offered by the L.A.O. was quite reasonable and as per the market value prevailing on the date of notification under Section 4 of the Act. According to him, no separate compensation could have been awarded for land on one hand and the trees thereon on the other. According to him, interest has also been awarded in breach of judgment of Full Bench of this Court in case of **State of Maharashtra Vs. Kailash Shiva Rangari** [2016 (3) Mh.L.J. 457].

9. Considered the submissions advanced. Perused the award/s passed by the L.A.O. and the Reference Court as

well. Admittedly, the lands came to be acquired for Renapur Sudha Project. The date of publication of notification under Section 4 of the Act is 17/2/2000 while the date of award is 8/6/2001.

FIRST APPEAL NO.31/2013:

10. Land admeasuring 4 Hectors 57 R of Gut No.85 belonging to the appellant – land owner came to be acquired. The L.A.O. offered the compensation separately i.e. one for the land and other for the trees standing thereon. The L.A.O. considered only some of the land to be irrigated one. He awarded compensation amounting to Rs.91,500/-. The Reference Court enhanced it to Rs.2,00,000/- per Hector. The question is, whether the amount of compensation enhanced by the Reference Court is grossly inadequate and not in terms of the market value of the land on the date of notification under Section 4 of the Act. The appellant – land owner gave his oral evidence on affidavit. In response to the notice under Section 9 of the Act, he claimed compensation @ Rs.1,50,000/- per acre. It appears that, the appellants – land owners amended their Reference applications before the Reference Court, seeking enhancement in compensation

manifold. In view of this Court, Order VI Rule 17 of the Code of Civil Procedure may not have application to the proceedings of L.A.Rs. Be that as it may. In his oral evidence, particularly paragraph No.8, the appellant – land owner relied on three sale instances. Two of them pertained to the lands situated at the village whereat the acquired lands were located. The other sale instance relied on pertained to the land situated at village Somthana. The Reference Court appears to have placed reliance on the sale instance of Somthana. Under the said sale instance, land admeasuring 33 R was sold for Rs.90,000/- in February 1998. The said land was unirrigated one.

11. Admittedly, there were other other sale instances pertaining to the lands situated in the village Kinhala, in which village the lands acquired were situated. It appears that, the land owners have consciously withheld those sale instances. It has, therefore, to be assumed that those sale instances are not favourable to them. In paragraph No.9 of the examination-in-chief, the two sale instances relied on pertained to the lands situated at village Kinhala were referred to. One sale instance is of the year 1995 while another is of the year 1996. Thereunder, land admeasuring

81 R and 62 R were sold for Rs.60,000/- and Rs.50,000/- respectively. By making additions thereto as an increase @ 10% p.a., the same would not be more than Rs.1,10,000/-, one for two acres of the land and the other for 1 ½ acre. The learned Advocates for the land owners had urged before the Reference Court that compensation @ Rs.3,00,000/- per Hector may be awarded. When the sale instances from the very village were relied on, in the examination-in-chief itself reliance on the sale instance pertaining to the land from village Somthana was unwarranted. We take one of the two sale instances from the very village which is higher in value i.e. Rs.60,000/- for 81 R. The rate of Rs.50,000/- for 62 R relating to the land sold by one Maruti Santuka to Baburao Ade in February 1996 comes to little over Rs.80,000/- per hector. If the said land is considered to be unirrigated, and making addition of at least 10% p.a. towards increase in cost up to the date of notification under Section 4 of the Act and even accepting the case of the learned advocate for the appellants – land owners that for irrigated land the rate shall be double the one grantable for unirrigated land, the compensation awarded by the Reference Court @ Rs.2,00,000/- per acre is found to be in terms of the market

value of the lands acquired on the date of notification.

12. Each case has to be decided on its own facts and circumstances. The authorities relied on by the learned Advocates for the appellants that the rate of compensation in respect of the irrigated land, shall be double the one grantable for unirrigated land cannot be considered to be a precedent.

13. In case of Baliram Patil (supra), it has been observed :-

*“Market price of dry crop land and irrigated land –
If the market price of dry crop land is worked out,
for working out the market price of irrigated land,
in absence of any other evidence on record,
double the market rate of jirayat land has to be
awarded.”*

14. On the contrary, there are Apex Court judgments particularly one in case of **State of Haryana Vs. Gurucharan Singh & Anr. [AIR 1996 SC 106]**, wherein it has been observed that, compensation for the land acquired and for the trees standing thereon may not be separately granted. The land value can be ascertained from its yield giving capacity. True, in this case the L.A.O. has granted separate compensation, one for the land and other for the trees standing therein. This Court is not inclined to upset the same.

The fact, however, remains that grant of compensation @ Rs.2,00,000/- per Hector is found to be in terms of the market value of the land on the date of notification under Section 4 of the Act.

15. The L.A.O. has quantified separate compensation in respect of the wells in both the lands. For the well in land Gut No.85 (First Appeal No.31/2013) Rs.1,34,732 and Rs.43,843/- in land Gut No.73 (First Appeal No.32/2013). This Court is inclined to grant that much compensation as enhancement since the same was not considered for grant by the L.A.O. and the Reference Court as well.

TEAK TREES

16. The L.A.O. has granted compensation in respect of 147 teak trees. The Reference Court enhanced it to 160 teak trees. According to appellants – land owners, there were 1300 and 400 teak trees in both the lands. The possession of the lands were acquired before the notification was published. The project work commenced immediately. While the authorities went to the site for counting of trees, the lands were under water. The counting could not be made.

17. In view of this Court, the case of the appellant – land owner that there were 1300 teak trees, is found to be untrue. True, in the Reference, the appellant claimed that there were 1300 trees. In the joint measurement report (Exh.31), which was prepared in the presence of the appellant – land owner, there were only 160 teak trees. The appellant – land owner could have very well objected to the joint measurement report then and there. In the award, there is reference that the appellant – land owner had joined hands with the village Talathi to bring on record some more teak trees. In view of this Court, the joint measurement report and the report submitted by the T.I.L.R. undoubtedly indicate that there were 160 trees only. In para 12 of his examination-in-chief, the appellant – land owner made a following statement :

“Initially on 14/01/1999 Govt. has done joint measurement. At that time Govt. has not considered Sagwan trees and to that I have filed application towards Govt. Accordingly as per letter of Respondent, 2nd joint measurement was held on 10/08/2000 in which Govt. has recorded my 167 Sagwan trees. Later on for its valuation Forest Office Bhokar had visited my land on 14/03/2001 & 15/03/2001 but at that time there was full project water in acquired land and therefore Forest Office had made valuation of

167 Sagwan trees only which was outside the water and this fact was also mentioned in award itself and therefore compensation to all trees i.e. 167 Sagwan trees may kindly awarded to me. I have filed document of trees to that effect.”

18. There can be no dispute about the legal proposition that entries in the revenue record carry presumptive value. There can, therefore, be no two views over the authorities relied in this regard. The fact, however, remains that, in the joint measurement map and the T.I.L.R. report, the teak trees found at the site were not more than 160 trees. The entries in the revenue record are not the conclusive proof. Admittedly, the land was under water and counting of the trees could not be made post joint measurement.

19. The land owner restricted his claim in respect of not more than 167 trees. There is no concrete and reliable evidence to suggest that there were 1300 teak trees.

RATE PER TREE

20. The appellant – land owner first relied on the D.S.R. issued by the State Government year to year. A look

thereat would indicate that the same pertains to finished product of teak trees. The same cannot be resorted to for grant of compensation. The appellant – land owner then relied on chart calculating compensation per cubic metre. According to them, it comes to Rs.10,000/- per tree.

21. A reference to grant of compensation in respect of teak trees in the land belonging to one Pralhad Surnar of village Loha, District Nanded was made, whereunder the Government has awarded approximately Rs.22,000/- per cubic metre to this farmer as compensation. The learned Reference Court was justified in discarding the said piece of evidence since according to the learned Reference Court, the quality of teak trees with their age, circumference was not before the Court for grant of equal compensation. The Reference Court, therefore, relied on the rate of compensation awarded in some other land acquisition proceedings pertaining to the land of the same village, whereunder rate per teak tree was not more than Rs.1405=83 ps. The L.A.O., considering the height and width of the teak trees, granted the compensation in the range of Rs.5000/- to 9000/- per cubic metre with deduction of Rs.1000/- per cubic metre towards

cutting charges. The Reference Court found that the sizes of the acquired trees ranged from 0.30 cubic metre to 1.36 cubic metre and above. The rate awarded comes to on an average Rs.1005/- per tree. The Reference Court, therefore, relied on land acquisition proceedings of the adjoining land wherein the L.A.O. granted compensation @ Rs.3600/- per teak tree. On the principle of parity, the Reference Court granted the same rate of the teak trees herein. This Court finds no reason to take a different view to enhance the same.

FIRST APPEAL NO.32 OF 2013:

22. For the very reasons given hereinabove, the findings recorded by the Reference Court in respect of amount of compensation for the land and teak trees is maintained. So far as regards number of teak trees are concerned, the joint measurement reports indicate the number of trees was (In First Appeal No.31/2013 L.A.R. No.33/2010) - 183 in First Appeal No.32/2013 (L.A.R. No.30/2010) - 160.

SWEET-LIME GRAFTS

23. The L.A.O. granted compensation @ Rs.3000/- per tree for 200 trees. The Reference Court granted the same

rate, finding it to be 400 grafts/ plants. The same is evident from the joint measurement report. Section 4 notification dates back to the year 2000. In his examination-in-chief, Shaikh Farid has categorically admitted as follows :-

“It is true that, as per T.I.L.R. report below Exh.36, the total small and big Sagwan (teak) trees were 107 and there were 50 custard apple trees, 50 jujabi trees, 2 tamarind trees, 5 mango trees 3 bel trees. Except these trees, there were no other trees.”

24. Still, in view of reliance on another report indicating existence of 400 sweet-lime trees, the Reference Court has granted compensation @ Rs.3000/- per tree. This Court, therefore, finds that the amount of compensation enhanced by the Reference Court may be more than the market price of the lands and the trees on the date of publication of Section 4 notification.

25. It appears that, the Reference Court has awarded interest from the date of taking possession of the land i.e. from 15/2/2000. The date of Section 4 notification is 17/2/2000. while date of award is 8/6/2001. Interest, therefore, ought to have been awarded from the date of

award and not from the date of notification under Section 4. To that extent, modification in the impugned award is required besides grant of compensation on account of well which was quantified by the L.A.O. in land Gut No.85 (First Appeal No.31/2013) Rs.1,34,732 and Rs.43,843/- in land Gut No.73 (First Appeal No.32/2013). With this, all the four appeals are disposed of in terms of the following order :

ORDER

- (i) The respondent – State and the acquiring body shall pay the respective appellants – land owners compensation in respect of the wells in land Gut No.85 (First Appeal No.31/2013) Rs.1,34,732 and Rs.43,843/- in land Gut No.73 (First Appeal No.32/2013) with consequential benefits.
- (ii) The interest shall be payable on the amount of compensation from the date of award/s and not from the date of notification under Section 4 of the Land Acquisition Act.

- (iii) Rest of the terms of the impugned award/s to stand unaltered.
- (iv) Pending civil application is disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-