

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

**FIRST APPEAL NO.3702 OF 2017 WITH
CIVIL APPLICATION NO.7127 OF 2016**

- 1) The Executive Engineer,
Osmanabad Medium Project Division,
Osmanabad
- 2) The State of Maharashtra
through Collector ... **APPELLANTS**

VERSUS

- 1) Anandrao s/o Vinayakrao Deshmukh,
Died, through L.Rs.
- a) Vijaykumar s/o Anandrao Deshmukh,
Age 29 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- b) Dhanwantari w/o Anandrao Deshmukh,
Age 55 years, Occu. Housewife,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- c) Ashwini w/o Balajirao Deshmukh,
Age 32 years, Occu. Housewife,
R/o Zari, Tq. and Dist. Parbhani
- 2) Late Shri Sayajirao Vinayakrao Deshmukh,
Died, through L.Rs.
- a) Raviraje s/o Sayajirao Deshmukh,
Age 30 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- b) Shailaja w/o Sayajirao Deshmukh,
Age 52 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

- c) Supriya w/o Omkar Raje-Bhosle
Age 31 years, Occu. Housewife
R/o Near Jalmandir, Besides Natyagruha,
Satara, Dist. Satara
- d) Sneha d/o Sayajirao Deshmukh,
Age 23 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- e) Komal d/o Sayajirao Deshmukh,
Age 20 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

(Legal heirs of R.Nos.1 and 2 are
brought on record as per Court's order
Dated 23/8/2017 in C.A. No.9533/2017) ...

RESPONDENTS

.....
Shri B.R. Surwase, Advocate for appellants
Shri V.D. Salunke, Advocate holding for
Shri S.V. Deshmukh along with
Shri Ranjeet Deshmukh, Advocate for R.No.1(a) to 1(c) &
2(a) to 2(e)

.....

WITH

CROSS OBJECTION STAMP NO.6137 OF 2018 WITH
CIVIL APPLICATION NO.14153 OF 2018 IN
FIRST APPEAL NO.3702 OF 2017

- 1) Late Shri Anandrao Vinayakrao Deshmukh,
Died, through L.Rs.
- a) Vijaykumar s/o Anandrao Deshmukh,
Age 29 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- b) Dhanwantari w/o Anandrao Deshmukh,
Age 55 years, Occu. Housewife,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

- c) Ashwini w/o Balajirao Deshmukh,
Age 32 years, Occu. Housewife,
R/o Zari, Tq. and Dist. Parbhani
- 2) Late Shri Sayajirao Vinayakrao Deshmukh,
Died, through L.Rs.
- a) Raviraje s/o Sayajirao Deshmukh,
Age 30 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- b) Shailaja alias Shailabai w/o Sayajirao Deshmukh,
Age 52 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- c) Supriya w/o Omkar Raje-Bhosle
Age 31 years, Occu. Housewife
R/o Near Jalmandir, Besides Natyagruha,
Satara, Dist. Satara
- d) Sneha d/o Sayajirao Deshmukh,
Age 23 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- e) Komal d/o Sayajirao Deshmukh,
Age 20 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

... APPELLANTS

VERSUS

- 1) The State of Maharashtra,
through the Collector, Osmanabad
- 2) The Executive Engineer,
Osmanabad Medium Project Division,
Osmanabad

... RESPONDENTS

.....
Shri V.D. Salunke, Advocate holding for
Shri S.V. Deshmukh along with
Shri Ranjeet Deshmukh, Advocate for appellants
Shri B.R. Surwase, Advocate for respondents
.....

WITH

**FIRST APPEAL NO.3703 OF 2017 WITH
CIVIL APPLICATION NO.7129 OF 2016**

- 1) The Executive Engineer,
Osmanabad Medium Project Division,
Osmanabad
- 2) The State of Maharashtra
through Collector ... **APPELLANTS**

VERSUS

- 1) Vishwasrao s/o Vinayakrao Deshmukh,
Age 45 years, Occu. Agriculture,
- 2) Late Shri Sayajirao Vinayakrao Deshmukh,
Died, through L.Rs.
 - a) Raviraje s/o Sayajirao Deshmukh,
Age 30 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - b) Shailaja w/o Sayajirao Deshmukh,
Age 52 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - c) Supriya w/o Omkar Raje-Bhosle
Age 31 years, Occu. Housewife
R/o Near Jalmandir, Besides Natyagruha,
Satara, Dist. Satara
 - d) Sneha d/o Sayajirao Deshmukh,
Age 23 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - e) Komal d/o Sayajirao Deshmukh,
Age 20 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

(Legal heirs of R.No.2 are
brought on record as per Court's order
Dated 23/8/2017 in C.A. No.9532/2017) ... **RESPONDENTS**

.....
Shri B.R. Surwase, Advocate for appellants
Shri V.D. Salunke, Advocate holding for
Shri S.V. Deshmukh along with
Shri Ranjeet Deshmukh, Advocate for respondents
.....

WITH

CROSS OBJECTION STAMP NO.6139 OF 2018 WITH
CIVIL APPLICATION NO.14152 OF 2018 IN
FIRST APPEAL NO.3703 OF 2017

- 1) Vishwasrao s/o Vinayakrao Deshmukh,
Age 70 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
- 2) Late Shri Sayajirao Vinayakrao Deshmukh,
Died, through L.Rs.
 - a) Raviraje s/o Sayajirao Deshmukh,
Age 30 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - b) Shailaja alias Shailabai w/o Sayajirao Deshmukh,
Age 52 years, Occu. Agriculture,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - c) Supriya w/o Omkar Raje-Bhosle
Age 31 years, Occu. Housewife
R/o Near Jalmandir, Besides Natyagruha,
Satara, Dist. Satara
 - d) Sneha d/o Sayajirao Deshmukh,
Age 23 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad
 - e) Komal d/o Sayajirao Deshmukh,
Age 20 years, Occu. Student,
R/o Ieet, Tq. Bhoom, Dist. Osmanabad

... APPELLANTS

VERSUS

- 1) The State of Maharashtra,
through the Collector, Osmanabad
 - 2) The Executive Engineer,
Osmanabad Medium Project Division,
Osmanabad
- ... RESPONDENTS

.....

Shri V.D. Salunke, Advocate holding for
Shri S.V. Deshmukh along with
Shri Ranjeet Deshmukh, Advocate for appellants
Shri B.R. Surwase, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 22nd November, 2021

Date of pronouncing judgment : 31st March 2022

J U D G M E N T:

These appeals with Cross-Objections therein are being decided by this common judgment since common questions of fact and law arise therein.

2. Both the appeals have been preferred by the State of Maharashtra and acquiring body, Osmanabad Medium Project Division, taking exception to common judgment and award dated 9/1/2013, passed by the Court of Jt. Civil Judge, Senior Division, Osmanabad in Land Acquisition Reference/s No.486 and 487 of 2003. The challenge is to grant of enhancement in compensation awarded by Land Acquisition

Officer (LAO) for compulsory acquisition of the lands belonging to the respondents herein. The respondents have, on the other hand, preferred Cross-Objections for enhancement of compensation awarded by the Reference Court.

3. **FACTS: -**

Agricultural lands admeasuring 42 R and 76 R in Survey No.508 and 507 in L.A.R. No.486/2003 and 487/2003 respectively have been acquired for Dhokewadi Medium Project (submergence area). Both the lands were in the nature of Orchards mainly of pomegranate and mango respectively. The notification under Section 4 of the Land Acquisition Act, 1894 was published on 19/6/1992 while the award came to be passed on 30/8/1996, offering compensation of Rs.4,52,470/- and Rs.6,03,590/- respectively. The Reference Court, in turn, enhanced the same to Rs.23,52,800/- and Rs.18,64,800/- respectively (minus the amount offered by the LAO).

4. Heard. The learned counsel for the acquiring body and the learned A.G.P. for the State (appellants) would submit that, the amount of compensation offered by the LAO was just

and reasonable one. Enhancement granted therein by the Reference Court is exorbitant. The reference is silent to state the land owners to have had requested the expert/ valuer to visit the Orchards and make valuation thereof. The expert's so called visit to the lands was without notice to the appellants herein. The valuer was not an authorised valuer at the relevant time. No notes of valuation were placed on record. Price of fruits in the market at District place like Solapur was taken into consideration. The lands are situated at remote place. Interest has also been awarded in breach of the dictum of the Full Bench judgment of this Court in case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016 (3) Mh.L.J. 457]**. The learned counsel, therefore, ultimately urged for setting aside the impugned awards.

5. The learned counsel for the respondents/ land owners would, on the other hand, submit that, the mango grafts were Ratnagiri Mango trees, while it was "Ganesh" pomegranates. Life of the mango trees and pomegranate grafts was not less than 40 years. The Reference Court erred in applying the multiplier of 8. It should have, at least, applied multiplier of 15. The expert, who valued the Orchards, had in fact paid visit to the lands. Valuation of the

trees was made scientifically. The Government approved method/ procedure was followed for valuation of the trees. The procedure adopted for valuation has been discussed in detail. The condition of the trees has been specifically given in the evidence. The claim for compensation for both the lands goes beyond Rs.41,50,000/- and Rs.64,50,000/- respectively. The learned counsel took me through the evidence to ultimately urge for dismissal of the appeals and allowing the Cross-Objections. The learned counsel has also placed reliance on the following authorities :

- (1) Chindha Fakira Patil, Died through L.Rs. Vs.
The Special Land Acquisition Officer, Jalgaon
[2012 AIR (SC) 481]
- (2) Special land Acquisition Officer Vs. Chindha Fakira
Patil & ors. [2007(2) Bom.C.R. 370]
- (3) The State of Maharashtra Vs. Dharma Kana Katekar
[First Appeal No.414/2005]

6. Considered the submissions advanced. Perused the evidence in the case. Gone through the impugned judgment and award and authorities relied on. the details of the land acquired and compensation offered by LAO and granted by the Reference Court are as under :

L.A.R. No.	Land Survey No./ Gut No. & area	No. of trees	Compensation offered by LAO	Compensation awarded by Reference Court.
486/2003	Sy.No.508, Gut No.327	Pomegranate 346 trees	4,07,370/-	19,00,000/-
487/2003	Sy.No.507, Gut No.326	Mango 63 trees	6,03,590/-	12,60,000/-

7. Admittedly, the agricultural lands belonging to the respondents – land owners have been acquired for Dhokewadi Medium Project (submergence area). Notification under Section 4 of the Act was published on 19/6/1992. The award was passed on 30/8/1996. Possession of the land is said to have been taken by the acquiring body on 6/11/1992. Admittedly, there were 346 pomegranate trees/ plants in the land Gut No.508/ Survey No.327 and 63 mango trees in the land Survey No.507. The Reference Court substantially enhanced the compensation relying on the evidence of an expert/ Horticulturist (C.W.3 N.G. Patil). The Reference Court observed in paragraph no.26 of the impugned judgment that the expert would work as an Agricultural Consultant and Valuer. He did M.Sc. (Agri.) in 1975. He would run Agro Service Centre at Tuljapur. He paid visit to the lands on 10/10/1992. The procedure adopted by him consists of

estimation of (1) production/ yield rates, (2) present age, future productive and economic life period, (3) average cost of production, (4) average local wholesale market price, (5) capitalization of annual net income at 8% interest rate and redemption of capital at 4% interest rate as per Miram's table, (6) present fuel value of the trees and differed value at the future term until the trees become uneconomic to maintain and (7) timber calculator method. He also considered the cultivation method, fertility of land, climate condition, age of the trees etc. The valuation reports Exhs.36 and 37 have been substantially relied upon, except the marginal deduction @ Rs.54 and Rs.127/- per pomegranate and mango tree respectively towards cultivation charges/ expenditure. The valuer assessed a net annual income per pomegranate tree @ Rs.995/- and Rs.3773/- per mango tree.

8. Relying on the Apex Court judgment in **State of Haryana Vs. Gurucharan Singh, AIR 1996 SC 106**, the Reference Court applied the multiplier of 8. It also opined that the land and the fruit bearing trees should not be valued separately.

9. The question is whether the amount of

compensation granted by the Reference Court is exorbitant or inadequate. According to the land owners, the expert valuer had paid visit to the lands before the acquiring body took possession thereof. If the land owners were in possession of valuer's report, they have not offered any explanation as to why the application for reference under Section 18 of the Act is silent to make mention thereof. The appellants have, therefore, every reason to contend that the valuer must not have paid visit to the lands as claimed. When the process of acquisition of the lands was underway, it was reasonably expected of the valuer to give notice to the appellants asking them to remain present on the day of his proposed visit. He did not do so. Rough notes of valuation have not been placed on record. At the relevant time, the valuer was not a Government approved valuer. For ascertaining the value of fruits, he took into consideration rate of similar fruits prevailing in the market place at major cities like Solapur. It was the case which dates back to 1992. In view of this Court, way back in 1992 the price of a pomegranate (per fruit) must not have been more than Re.1/- or Rs.2/- at the place whereat those are grown. If we consider the valuation made by the expert per tree, that would indicate that one

pomegranate tree was assumed to have given not less than 800 fruits per year. In case of mango tree, it is around 3000 fruits per tree. The same does not appeal to conscious. It has, however, to be taken that the expert might have paid visit to the lands as claimed. He being a private witness engaged by the claimants for valuation of their lands with a view to earn more compensation, has to be taken to have given inflated valuation reports favourable to the respondents - claimants. For application of multiplier of 8, this Court relies on the judgment of the Apex Court in case of Gurucharan Singh (supra). Although the respondents - claimants have relied on the judgment of this Court in First Appeal No.414/2005, decided on 3/5/2016, wherein multiplier of 15 was applied. Needless to mention that, each case has to be decided on the basis of its peculiar facts and circumstances and evidence obtained therein.

10. While in case of Chindha Patil (supra), the Apex Court upheld 20% deduction in the valuation made by the expert. This Court has come across another judgment of the Apex Court in The Executive Engineer, M.I.W. Vs. Vitthal Damodar Patil & anr. [(2019) 7 SCC 225], wherein the report submitted by the very witness/ expert in some other L.A.R.,

has not been accepted, and remanded the matter back to the High Court for appreciation of his evidence. This Court finds the expert C.W.3 N.G. Patil to have given inflated valuation report. This Court is, therefore, inclined to deduct 30% thereof and grant compensation @ 70% of the valuation report.

11. This Court also finds the Reference Court to have directed to pay interest from the date of taking possession. In view of the Full Bench judgment of this Court in Kailash Rangari's case (supra), it should have been from the date of award. The appeals, therefore, partly succeed. The Cross-Objections fail. Hence the following order :

ORDER

- (i) The appeals are partly allowed.
- (ii) The amount of compensation granted by the Reference Court is reduced by 30% with all consequential benefits thereon.
- (iii) The interest be awarded/ paid @ 9% p.a. for the first year from the date of the award and @ 15% for further period up to payment.

- (iv) The Cross-Objections are dismissed.
- (v) The amount in deposit with this Court be paid to the respondents – land owners in terms of this order along with interest accrued thereon, and the balance amount, if any, be paid back to the acquiring body along with interest accrued thereon.
- (vi) Pending Civil Applications, if any, are disposed of.

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

fmp/-