

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

38. CIVIL APPLICATION NO.3221 OF 2023
IN FIRST APPEAL STAMP NO.7582 OF 2023
WITH
CIVIL APPLICATION NO.3222 OF 2023
IN FIRST APPEAL STAMP NO.7582 OF 2023

- 1] The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Dist. Osmanabad.
- 2] The Special Land Acquisition Officer,
Manjara Project at Office Osmanabad,
Dist. Osmanabad.
- 3] The State of Maharashtra,
Through District Collector,
Osmanabad. .. APPLICANTS

VERSUS

Balaji s/o. Raosaheb Mule,
Age : 56 Years, Occ : Agril.
R/o. Narangwadi, Tq. Omerga,
Dist. Osmanabad. .. RESPONDENT

WITH
FIRST APPEAL STAMP NO.7582 OF 2023

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Age : 56 Years, Occ : Agril.
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Dist. Osmanabad.

.. RESPONDENT

...
Mr.R.D.Biradar, Advocate h/f. Mr.U.P.Giri, Advocate for the
applicants – appellants.
Mr.A.B.Kale, Advocate for the respondent.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 20.09.2023

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Civil Application No.3221 of 2023 is filed for
condonation of delay of 4587 days in filing the First Appeal.
For the reasons stated in the Civil Application, the same is
allowed. Delay is condoned. Accordingly, Civil Application
is disposed of. Appeal be registered.

3] The learned counsel for the parties submit that
this Court, by judgment and order dated 17th January, 2019
in First Appeal No.684 of 2012 and other connected appeals

has decided the Appeals and the same order would be applicable to the present First Appeal also.

4] In view of the same, First Appeal is **admitted** and disposed of by applying the judgment and order dated 17th January, 2019 in First Appeal No.684 of 2012 which reads as under :

1. Since all these appeals are arising out of the acquisition made for Narangwadi Storage Tank, I have heard common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. The lands which are the subject matter in the present appeals are from villages Savalsur and Narangwadi, Tq. Omerga, Dist. Osmanabad and were acquired as noted herein above for Narangwadi Storage Tank. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in that regard was published in the official gazette on 05.08.2004 and the award under Section 11 of the Act came to be passed on 01.06.2007. The Special Land Acquisition Officer had offered the compensation to the respective claimants at the rate of Rs.45,000/- per Hector. Dissatisfied with the amount of compensation so offered, the claimants had preferred applications under Section 18 of the Act, which were adjudicated by the Joint Civil Judge, Senior Division at Omerga. The said Court, is hereinafter referred to as the 'Reference Court'. Before the Reference Court, the claimants had

claimed the compensation at the rate of Rs.2,00,000/- per Acre. In order to substantiate the claim so raised by them, the respondents-claimants, in addition to their own testimonies, had placed on record certain sale instances. No evidence was adduced on behalf of the respondent-State or by the Special Land Acquisition Officer. The claimants had also examined the expert valuer so as to bring on record the value of the trees existing in the acquired lands on the date of acquisition. As per the averments in the application, there were Mango, Tamarind, Bor and Sandal trees in some of the acquired lands.

3. No evidence was adduced on behalf of the respondent-State or by the Land Acquisition Officer. The Reference Court after having considered the oral and documentary evidence brought on record by the claimants, determined the market value of the acquired lands at the rate of Rs.50,000/- per Acre i.e. Rs.1,250/- per R, and accordingly enhanced the amount of compensation. The Reference Court also gave some enhancement in the value of trees as well as the wells existing in some of the lands. Shri Salgare, learned AGP appearing for the appellant-State assailed the impugned judgment and award.

4. A common judgment is passed in LAR Nos.583/2009, 595/2009, 584/2009 and 594/2009. Whereas, the another common judgment is passed in LAR Nos.586/2009, 587/2009, 593/2009 and 592/2009. I mention herein below the information in tabular form as to the LAR numbers and the appeals filed against the decision in the said LAR.

Sr. No.	LAR No.	Appeal filed against the decision in the said LAR
1	586/2009	684/2012
2	583/2009	725/2012
3	587/2009	685/2012
4	593/2009	686/2012
5	592/2009	687/2012
6	584/2009	724/2012
7	595/2009	726/2012

5. Shri Salgare, learned AGP appearing for the State at the outset submitted that in so far as the amount of compensation enhanced by the Reference Court by determining the market value of the acquired lands at the rate of Rs.50,00/- per Acre is concerned, the State may not prosecute the appeals on the said ground since the enhancement as has been awarded by the Reference Court in the market value of the acquired lands is within the limit of four times of the market value as was determined by the Special Land Acquisition Officer. Learned AGP pointed out that the Special Land Acquisition Officer had offered the compensation of the acquired lands at the rate of Rs.450/- per R, which has been enhanced by the Reference Court to Rs.1,250/- per R i.e. within four times of the market value determined by the Special Land Acquisition Officer.

6. The learned AGP, however, objected to the amount of compensation enhanced by the Reference Court of the trees and the wells existing in some of the lands. The learned AGP

submitted that without there being any cogent and sufficient evidence, the Reference court has arbitrarily enhanced the amount. The learned AGP taking me through the evidence on record submitted that the claimants had failed in bringing on record any evidence so as to substantiate their claim for enhancement in amount of compensation towards the wells as well as the trees existing in their lands. The learned AGP submitted that on the contrary, the Special Land Acquisition Officer had methodically assessed the value of the trees as well as the wells existing in some of the lands and has awarded just and fair compensation to the claimants. The learned AGP submitted that to the said extent, the judgment and award needs to be modified and the amount of compensation deserves to be adequately decreased. The learned AGP also prayed for clarifying the fact that the interest under Section 28 or 34 of the Act shall be payable only from the date of passing of the award under Section 11 of the Act and not from any prior date.

7. Shri A.B. Kale, learned counsel appearing for the respondents i.e. original claimants in all these appeals opposed the argument advanced on behalf of the appellant-State. The learned counsel submitted that ample evidence was adduced by the claimants so as to prove the market value of the wells and trees existing in the lands on the date of acquisition. The learned counsel pointed out that the claimants have testified before the Court and stated about the market value of the trees as on the date of issuance of Section 4 Notification and also examined two independent witnesses in order to substantiate their claim in that regard.

The learned counsel submitted that witness by name Shri Ramchandra Shankarrao Baraskar was examined by the claimants in order to prove the valuation of the wells existing in some of the acquired lands witness Shri Nandkumar Ganpatrao Patil was examined to bring on record the value of the trees existing in the some of the lands. The learned counsel subitted that the evidence of the expert witnesses has not been rebutted. Learned counsel submitted that in no case it can be said that the amount of compensation as has been enhanced by the Reference Court towards the acquisition of the trees and wells is on higher side or to have been arbitrarily enhanced. Learned counsel, thereafter, prayed for dismissal of the appeals.

8. I have given due consideration to the submissions made by the learned AGP and the learned counsel appearing for the claimants. I have perused both the common judgments and award, which have been impugned in the present appeals. On perusal of the impugned judgments and awards, it is revealed that though the separate judgments are delivered by the Reference Court, the evidence in both these impugned judgments was common and the same has been discussed by the Reference Court in the same way in both the impugned judgments. As has been noted herein above, in so far as the amount of compensation enhanced by the Reference Court by determining the market value of the acquired lands at the rate of Rs.1250/- per R is concerned, the learned AGP has not pressed said issue in view of the policy adopted by the State Government vide Resolution dated 3.11.2016 with corrigendum dated 23.2.2017 &

13.8.2018. The objection is now restricted only to the extent of amount of compensation enhanced by the Reference Court towards the value of the trees in some of the lands and value of wells in two of the lands.

9. Though it was sought to be contended by the learned AGP that there was no cogent and sufficient evidence adduced by the claimants in order to substantiate their claim for enhancement in the amount of compensation towards acquisition of wells and the acquisition of trees, the material on record demonstrates that the claimants had examined two independent witnesses to substantiate their said contention. I have gone through the evidence of PW-4 Ramchandra Baraskar. The said witness, in his deposition before the Court, elaborately deposed about the valuation report submitted by him in respect of the wells existing in two of the Gut numbers i.e. Gut No.80/1 and Gut No.80/6. I have gone through the valuation given by the said witness in his report. Perusal of the impugned judgments reveals that the Reference Court has not fully accepted the valuation so given by the valuer and by applying its own mind and by carrying out some guess work has awarded some compensation, which is less than the valuation given by the expert valuer. The same is noticed in so far as the valuation of the trees are concerned. The claimants had examined one Nandkumar Patil, the expert witness, in order to prove the valuation of trees existing in their respective lands. I have gone through the evidence on record as well as the valuation report submitted by the said witness. The Reference court has also not accepted the report of the said witness in *toto*, but has

considered it objectively and has awarded the compensation lesser than the valuation given by the said expert witness.

10. After having considered the entire evidence on record, it does not appear to me that the Reference Court has committed any error in enhancing the amount of compensation for the wells and trees existing in the lands, which are the subject matter of the present appeal. It cannot be said that the amount of compensation as has been enhanced by the Reference Court is arbitrarily enhanced or is enhanced without there being any evidence. I, therefore, see no substance in the appeals filed by the State. In the result, the following order is passed:-

ORDER

[i] The appeals are dismissed, however, without any order as to the costs.

[ii] It is clarified that the interest under Sections 28 and 34 of the Act shall be payable in all these matters from the date of passing of the award under Section 11 of the Act i.e. 01.06.2007.

[iii] Awards be prepared accordingly.

[iv] The original claimants are permitted to withdraw the amount as per the award, which may be drawn in the present appeals, deducting the amount already withdrawn by the respective claimants.

[v] Amount, if any, remains in balance shall be refunded to the appellant-State.

[vi] Pending Civil Application, if any, stand disposed of.

5] In view of the above, I pass the following order :

ORDER

i] The appeal is dismissed, however, without any order as to the costs.

ii] It is clarified that the interest under Sections 28 and 34 of the Act shall be payable in all these matters from the date of passing of the award under Section 11 of the Act i.e. 01.06.2007.

iii] Award be prepared accordingly.

iv] The original claimant is permitted to withdraw the amount as per the award, which may be drawn in the present appeal, deducting the amount already withdrawn by the claimant.

[v] Amount, if any, remains in balance shall be refunded to the appellant-State.

[vi] Pending Civil Application, if any, stand disposed of.

[ARUN R. PEDNEKER]
JUDGE