

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 3440 OF 2018  
WITH  
CROSS OBJECTION (ST) NO. 7797 OF 2020  
IN FA/3440/2018

1) Pralhad Vithalrao Zungure,  
Age; Major, Occ; Agriculture,  
R/o; Ukhanda, Tq. Patoda,  
District; Beed.

2) Kalabai Namdeo Thosar,  
Age; Major, Occ; Agriculture,  
and household ,  
R/o; Ukhanda, Tq. Patoda,  
District; Beed.

**...APPELLANTS**  
**(Orig. Claimants)**

**V E R S U S**

1) The State of Maharashtra,  
Through Collector, Beed.

2) The Special Land Acquisition  
(MI) Beed, Tq. & District; Beed.

3) Godavari Khore Development,  
Corporation through the Executive  
Engineer Bed Jrri. Div. Beed,  
District; Beed.

**...RESPONDENTS**  
**(Orig. Respdts.)**

.....  
Advocate for the Appellants : Mr.V.D. Hon (Senior Advocate) i/b Mr.  
C.V. Thombre  
A.G.P. for the Respondent Nos. 1 & 2/State : Mr.S.S. Dande  
Advocate for Respondent No. 3 : Mr. B.R.Surwase  
.....

**CORAM : KISHORE C. SANT, J.**

**Date of Reservation : 11.10.2023**  
**Date of Pronouncement : 06.12.2023**

## **ORDER**

1. Heard the parties. This appeal is preferred by the original claimants whose land has been acquired by the respondents from village Ukhanda (Ukirda), Tq. Patoda, District; Beed. for Domari project challenging judgment and award of the reference Court on additional issues.

2. The respondent/State has also filed cross-objection in the appeal. The State preferred First Appeal against the said Award. This Court, by order dated 23.08.2015 remanded the matter back to the reference Court since the Acquiring Body was not added as a party. The judgment and award was set aside directing the claimants to add the Acquiring Body as party to the Reference. After remand, the learned Reference Court passed an award by judgment and order dated 27.06.2016 and maintained rates as it is.

Appellants challenged the said award by filing First Appeal No. 3694 of 2016 before this Court. This Court in said appeal enhanced the rate towards land. As the learned Reference Court had not granted compensation amount, this Court again remanded the matter back directing the Reference Court to consider the award and compensation for fruit bearing trees, wells, pipelines had stone bunds for reconsideration as the Reference Court has awarded inadequate compensation for the above things. This Court confirmed the order as regards the rate of land is concerned. This Court has set aside the award in respect of compensation for fruit bearing trees and stone bunds and remanded the matter back for fresh consideration by judgment and order dated 07.08.2017 in First Appeal No. 3694 of 2016.

3. After second remand the learned Reference Court partly allowed the reference and directed to pay the present appellants compensation by enhancing an amount of Rs. 83,794.50ps towards acquisition of fruit bearing trees in Survey No. 3, 6 and 9 and 181 of village Domari along with interest on compensation @ 12% p.a. enhancement to the appellants vide Section 23 (1) (A) of the Land Acquisition Act. From the date of publication of notification under Section 4 and for consequential reliefs.

4. The main ground of challenge is that the learned reference Court has failed to consider the provisions of Section 25 of the Land Acquisition Act. This Court had specifically remanded the matter to consider the compensation towards fruit bearing trees, wells and stone-bunds and the same is not considered. The possession was taken in the year 1987 and therefore, the Section 34 interest ought to have been given from the date of possession. The learned reference Court further directed an interest from the date of notification. The learned reference Court did not consider the evidence of expert witness, which was considered even by this Court while remanding the matter. This Court had recorded the number of total trees as 578 while the same is not properly considered. When this Court has specifically directed the learned reference Court to consider the same. This Court had also given directions while remanding the matter. On remand, the learned reference Court has wrongly concluded that the possession was taken on 01.10.1992, whereas, it is clearly recorded that the possession was taken on 01.05.1987 i.e. even prior to the award. The person examined as witness Mr. Ghogre was the Government approved Valuer, still his evidence is not considered. His evidence though has accepted at some places, the same is discarded while considering value of trees. The learned reference Court should have

considered the evidence of Mr. Ghogare. The learned reference Court has not made the calculations properly. The learned Counsel relied upon the following judgments :

*a) 2017 AIAR (Civil) 795 - in the case of Nelatur Sampooranamma vs. Special Deputy Collector, L. Telugu Ganga Project, Podalakur At Nellor A.P. & Anr.*

*b) 2011 (11) SCC 639 - in the case of Shaik Imambi vs. Special Deputy Collector (Land Acquisition), Lelegu Ganga Project.*

*c) 2016 (3) Mh.L.J. 457 (SC) (Full Bench) - in the case of State of Maharashtra Vs. Kailash Shiva Rangari.*

*d) FA 691 of 2005 -in the case of Smt. Pramila Bai wd/o Manguji Ade (Since deceased) through Baliram s/o Manguji Ade and Ors. vs. The State of Maharashtra and Anr.*

5. At last he submitted that an order passed by the reference Court is without considering the directions of this Court. The calculations given are against the provisions of law. If no expert was to be believed, at least the learned reference Court should accept the valuations as per the report of Government valuer and prays for allowing an appeal.

6. The learned Advocate Mr. Surwase for Acquiring Body submitted that in this appeal Section 4 notification was of dated 23.02.1989. Section 6 of the notification was passed on 23.01.1990 and the award was passed on 29.08.1992. The

reference was filed on 16.02.1994. The award was passed by private negotiations, however, no such date is given accordingly the possession was taken on 17.04.1987. He submitted that there is no material to show that the possession was taken in 1987. There is no pleadings of visit by the expert to the land. Exh. 43 is missing from the record and therefore, the report was called. An explanation received was that after prescribed period the papers were destroyed and thus, total 50 exhibits are missing. The expert visited the project and after completion of project the claimant could not give any evidence about the fruit bearing trees except entries in the 7/12 extract. In absence of supporting documents it cannot be accepted that the fruit bearing trees were there in the land. The valuer has visited the land in the year 1989, whereas, he was approved as valuer in the year 2009. Though the second valuation also not seen about the interest, he submits that it should be made applicable in view of the judgment in the case of State of Maharashtra Vs. Kailash Shiva Rangari (supra).

7. In the Cross-Objection he submitted that all the benefits needs to be granted from the date of award. There was no urgency clause invoked and therefore, there is no question of granting interest from the date of possession.

7. Learned AGP, Mr.Dande also opposed an appeal and supported the arguments of Mr. Surwase. He submits that there is nothing on record to show that the valuer has done any exercise for valuation. He has not produced any material to show that he in fact has visited the land and prepared the report. Mere evidence in the form of deposition before the Court cannot be considered when it is not supported by any documents. The Court has also taken into consideration the quality of land etc. in such case separate compensation towards trees is not permissible, when the land is considered to be orchard land. He relied upon judgment in the case of **1011 AIAR (Civil) 867** in the case of Ambya Kalya Mhatra (D) by Lrs. And Ors. Vs. State of Maharashtra. He further submitted that an expert was examined after 20 years of his alleged visit. The said expert without any evidence prepared that valuation report. He could not produce on record rough sketch or notes on the basis of which he prepared valuation. He submitted that no Miram's table is applied.

8. In rebuttal, the learned Senior Advocate for the appellant submitted that all the documents were before this Court while remanding matter and therefore the remand was made in specific terms. He submitted that the arguments and defence of the

respondent State and Acquiring Body are contrary to the order passed by this Court.

9. This Court called for the record and proceedings. The matter was fixed for final disposal at the admission stage. Appellant has also filed paper book on record. Thus, considering the record and the evidence, this Court heard the parties finally. The rate of award of the land is not in dispute as the same was finalized by this Court in First Appeal. The question is only about compensation of the fruit bearing trees, wells and other structures as the same was not properly considered. Whereas, it is the case that the acquiring body and the Government came to a conclusion that trees were not in existence at all and thus there is no question of grant of any compensation towards the fruit bearing trees. This Court has thus, to consider the submissions on the basis of the record and the paper book.

10. In view of the submissions, this Court has considered the evidence that was laid before the reference Court after the remand of the matter to the extent of fruit bearing trees and other structures i.e. wells and stone-bunds etc. The learned reference Court framed following issues as additional issues :

| No | ADDITIONAL ISSUES                                                                                                                                                              | FINDINGS                                                                                                               |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 1) | Whether the petitioners prove that fruit bearing trees were in existence at the time of acquisition of Domari Irrigation Project in Block Nos. 3, 6, 9 and 181 as prayed for ? | ...Yes.<br>Fruit bearing trees were in existence as shown in chart given below.                                        |
| 2) | Whether the compensation awarded by the respondents in respect of acquired well, stone-bunds and fruit bearing trees are just and adequate ?                                   | ....No.<br>Only for fruit bearing trees.<br>....Yes.<br>Yes for other structures.                                      |
| 3) | Is the petitioner entitled to pay enhanced amount of compensation of well, stone-bunds and fruit bearing trees ? If yes, to what extent ?                                      | ....Yes.<br>To receive enhanced compensation only for fruit bearing trees, with statutory benefits as per final order. |
| 4) | What order ?                                                                                                                                                                   | ...Petition is partly allowed.                                                                                         |

11. The Court considered that when it is for the acquiring body to prove adequacy of the compensation, it is for the claimant to prove in-adequacy of the compensation. Thus, it was for the claimant to produce evidence and to examine witnesses to prove inadequacy of compensation and to prove his claim. Certainly admitted facts also needs to be considered, which are considered by the reference Court that the possession was taken on 01.10.1992 and the award was passed on 29.08.1992.

12. To prove the costs/amount of compensation the claimant in support of his case has examined himself as PW-1, one Vyankat Ghogare as PW-2 and Balbhim Patil as (PW-3). The claimant in the evidence deposed nothing about the value and the age of the trees etc. He also could not give the value of the wells, stone-bunds structure etc. PW-2 Ghogare though he has stated that he is expert, private valuer, he could not give any evidence on record to show that on the date of inspection he was recognized as Expert Valuer, nor he gave his educational qualifications. He also accepted that he had not given notice to the respondents before making inspection. He also could not produce any record/rough noting and the data collected by him to show as to on what basis he came to the conclusion about the age of the trees and the valuation of the trees. He gave the valuation of the mango trees as Rs. 36,000/-, which is lesser just by few thousands of rupees given for 40R land i.e. Rs. 43,120/- which was confirmed by the High Court. The Court thus, found that the value given by PW-2 Mr. Ghogare was excessive and exorbitant. The reference Court disbelieved his evidence on this aspect. On other aspects also the Court considered that there are entries about trees in the 7/12 extract. The entries of the trees appeared for the first time in the year 1986-87. The

Court held that the testimony of the age of trees was thus not reliable. The Court accepted the evidence of PW-2 Mr. Ghogare about the market price of the fruits in absence of challenge by the respondents to that extent in the cross-examination. The Court appreciated the evidence of PW-2 in view of judgment of the Hon'ble Apex Court reported in **AIR 1995 SC 840** in the case of The Special Land Acquisition Officer and Another Vs. Shri Siddappa Omana Kumari and Others and in the case of **AIR 2012 SC 481** in the case of Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon, wherein it is held that the Court may accept evidence of expert based upon the material produced in support of such evidence.

13. This Court therefore, considered that since no sale instance was there on record the net income was required to be considered. Thus considering the record it is seen that the representative of the Horticulture Department had been to take measurements of the trees, however there was obstructions by the land owners to the said representatives. The Land Acquisition Officer was therefore, required to personally visit the spot to convince the land owners. It is thereafter, the said representative took the measurement of trees for that purpose even intervention at

the hands of Deputy Minister Revenue, (Forest Department) and the Collector was required. There is a reference made by the Special Land Acquisition Officer to this fact. It is further revealed from the record that since beginning there was dispute between the land owners and the authorities.

14. From the record it is further seen that the Special Land Acquisition Officer had submitted ex-gratia proposal for compensation and structures of trees and the same was annexed to the award. The officer had excluded the trees from the payment of compensation attached to distinct annexures showing exclusion of trees. It was stated by the Officer that the said exclusion is made when the allegations about trees were made after the date of notification. The reference Court however observed that the officer himself had proposed ex-gratia compensation for the trees and the same was never challenged by any of the parties. Thus, the positive evidence was required from the appellant about the existence of the trees and its age. Admittedly, there is no evidence of joint measurement on record. The Court, therefore, accepted that there were fruit bearing trees in view of the ex-gratia proposal for compensation. The Court thus finds that the claimant proves that there were trees as per the following chart holding that these trees

were in existence on the date of issuance of notification under Section 4 (1) of the Act.

| Types of tree | Number of trees | Type of tree | Number of trees |
|---------------|-----------------|--------------|-----------------|
| Mango         | 3               | Coconut      | 126             |
| Bore          | 40              | Mosambi      | 225             |
| Custard Apple | 75              | Orange       | 60              |

15. The Court in view of the facts has again deducted certain amount i.e. 10% towards cultivation costs from the income of the fruit bearing trees and arrived at the compensation as per table below :

| Type of tree  | Number of trees | Market price in Rs. | Annual Yield per tree | Valuation per Tree in Rs. (C.3 x C.4 x multiplier 10) | Cultivation costs per tree (10%) | Market value of all trees on date of notification (C.5 -C.6 x C.2) |
|---------------|-----------------|---------------------|-----------------------|-------------------------------------------------------|----------------------------------|--------------------------------------------------------------------|
| C.1           | C.2             | C.3                 | C.4                   | C.5                                                   | C.6                              | C.7                                                                |
| Mango         | 3               | 0.50 per fruit      | 250 fruits            | 1250                                                  | 125                              | 3625                                                               |
| Bore          | 40              | 2 Per kg.           | 20 kg.                | 400                                                   | 40                               | 15960                                                              |
| Custard Apple | 75              | 0.10 per fruit      | 40 fruits             | 40                                                    | 4                                | 2996                                                               |
| Coconut       | 126             | 1 per               | 10 fruits             | 100                                                   | 10                               | 12590                                                              |

|                                                       |     |                |            |     |       |           |
|-------------------------------------------------------|-----|----------------|------------|-----|-------|-----------|
|                                                       |     | fruit          |            |     |       |           |
| Mosambi                                               | 225 | 0.50 per fruit | 125 fruits | 625 | 62.50 | 140562.50 |
| Orange                                                | 60  | 0.50 per fruit | 150 fruits | 750 | 75    | 44925     |
| Total Market Value                                    |     |                |            |     |       | 220658.50 |
| Compensation Granted by Spl. Land Acquisition Officer |     |                |            |     |       | 136864.00 |
| Difference                                            |     |                |            |     |       | 83794.50  |

16. This Court finds that there is difference of Rs.83794.50ps. of the market value and the compensation granted by the Special Acquisition Officer.

17. So far as the evidence of PW 3 Balbhim Patil is concerned in respect of structures is concerned, this witness has given different valuation for different structure in the acquired property. He could not however, give reason to arrive to such conclusion, nor he could satisfy the method through which the valuation of the structures were drawn. In the cross-examination this witness admitted that when he had been to the spot for inspection of the well, pipeline and stone-bunds, the work of the dam was already completed. The Court, therefore, did not accept his evidence as there was no occasion for the witness to personally

verify the width, length and height of the structures as the said things are essential to draw the valuation of the said structures. The work of the dam was completed on 01.10.1992 whereas PW-3 stated that he had paid visit on 14.04.1989 to see the structure is not found to be reliable.

18. This Court finds that the learned trial Court on the basis of this evidence was justified in taking the valuation of the trees as per the chart given above. This also is taken because there was proposal of Ex-gratia compensation prepared by the Special Acquisition Officer and in absence of the cross-examination of PW-2 about the rates of fruits. The claimant has not proved inadequacy of the compensation to succeed on the additional issue and it was for the claimant to prove inadequacy in the compensation. So far as the well structures are concerned the Court has rightly held that evidence of PW-3 is not reliable for the reasons recorded. As it is PW-1 i.e. the claimant could not give evidence on both the aspects.

19. The reference Court has rightly considered the aspect of entitlement of component in view of Section 23 (1) (A) of the Act and other benefits i.e. Ex-gratia interest under Sections 28 and 34 of the Land Acquisition Act and other statutory reliefs etc.

20. In view of above discussion, this Court finds that there is no substance in the appeal of the claimant. This Court, thus finds that no interference is required in the judgment and award passed by the learned reference Court. The First Appeal is therefore devoid of merits and the same is therefore, dismissed with no order as to the costs.

21. In view of the same, pending Cross Objection (St.) No. 7797 of 2000 also is dismissed.

**( KISHORE C. SANT )**  
**JUDGE**

mahajansb/