IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.443/2011

APPELLANT : Sushilabai Ajabrao Nagpure,
Aged about 50 Years, Occ. Farmer,
R/o. Mahadeo Nagar, Ramnagar Road,
Yavatmal.

...VERSUS…

RESPONDENTS :

1. The State of Maharashtra.

2. The Collector, Yavatmal,
Tq. & Distt. Yavatmal.

3. The Special Land Acquisition Officer,
Bembala Project Division, Yavatmal,
Distt. Yavatmal.

4. The Executive Engineer,
Bembala Project, Yavatmal.

WITH

FIRST APPEAL NO.441/2011

APPELLANT : Manoj Ajabrao Nagpure,
Aged about Major, Occ. Farmer,
R/o. Mahadeo Nagar, Ramnagar Road,
Yavatmal.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra.

2. The Collector, Yavatmal,
Tq. & Distt. Yavatmal.

3. The Special Land Acquisition Officer, Bembala Project Division, Yavatmal, Distt. Yavatmal.

4. The Executive Engineer, Bembala Project, Yavatmal

Shri R.S. Nagpure, Advocate for the Appellant in both appeals
Mrs. M.H. Deshmukh, AGP for the Respondent Nos. 1 to 3 in both appeals
Shri M.A. Kadu, Advocate for the Respondent No.4 in both appeals

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CORAM : AVINASH G. GHAROTE, J.
Judgment reserved on : 23/12/2022
Judgment pronounced on : 21/06/2023

JUDGMENT

1. Heard Mr. Nagpure, learned counsel for the appellant in both the appeals, Mr. Kadu, learned counsel for the respondent no.4 and Mrs. Deshmukh, learned Assistant Government Pleader for the respondent nos.1 to 3/State.

2. Both these appeals question the judgment of the learned Reference Court rendered on an application under Section 18 of the Land Acquisition Act, 1894 ("LA Act" hereinafter for short), being dis-satisfied by the quantum of compensation awarded.

3. The facts in First Appeal No. 443/2011 are as under :

BEMBLA PROJECT, DISTRICT YAVATMAL			
Village: Pimpalkhuta, Tahsil Babhulgaon, District : Yavatmal			
DATE OF NOTIFICATION UNDER SECTION 4 OF THE LAND ACQUISITION ACT			17/02/2003
Details	**Details of property**	**LAO Award Dated 22/09/2005**	**Reference Court Award Dated 20/03/2009**
Village: Pimpalkhuta,	Gat No.297 admeasuring 5.26 HR [Orchard in 2.29 HR and 2.97 HR is under cultivation]	Rs.69,115/- per Hectare, for 2.97 HR. Rs. 30,570/- per hectare for Orchard Land. (i.e. for the strip of land between two rows of trees- which is termed as deferred payment, which amount is actually paid with the compensation for the cultivable land)	Rs.1,42,500/- per hectare for 2.97 HR and
Claim for trees	140 Sweet lime trees (Mosambi)	Rs. 736/- per tree	Rs. 1,750/- per tree,
	495 Orange Trees	Rs. 1109/-	Rs.3710/- (for 495 Orange Trees)
Claim in the present appeal	Land admeasuring 2.97 HR	Rs. 2,50,000/- per hectare	
	For 495 Orange trees	Rs. 8880/- per tree	
	For 140 Sweet Lime (Mosambi) Trees	Rs.7,160/- per tree	

4. The facts in First Appeal No. 441/2011 are as under :

BEMBLA PROJECT, DISTRICT YAVATMAL			
Village: Pimpalkhuta, Tahsil Babhulgaon, District : Yavatmal			
DATE OF NOTIFICATION U/S 4 OF THE LAC ACT			**17.02.2003**
Details	**Details of property**	**LAO Award Dated 22.09.2005**	**Ref. Court Award Dated 20.03.2009**
Village: Pimpalkhuta,	Gat No.298 admeasuring 5.26 HR [Orchard in 2.06 HR and 3.20 HR is under cultivation]	Rs.69,115/- per Hectare, for 3.20 HR. Rs. 22,842/- per hectare for Orchard Land. (i.e. for the strip of land between two rows of trees- which is termed as deferred payment , which amount is actually paid with the compensation for the cultivable land)	Rs.1,42,500/- per hectare for 3.20 HR and
Claim for trees	599 Sweet lime trees (Mosambi)	Rs. 736/- per tree	Rs. 1,750/- per tree, Since Form-E indicates 570 Trees, the compensation at the above rate comes to Rs.9,97,500/- for the entire 570 trees.
Claim in the present appeal	Land admeasuring 3.20 HR	Rs. 2,50,000/- per hectare	
	For 570 trees	Rs.7,160/- per tree	

5. Mr. Nagpure, learned counsel for the appellants submits, as under:

5.1. That insofar as regarding the age of sweet lime trees is concerned, the age is incorrectly shown as six years, whereas the actual age should be nine years for the reason that Note-2 in Form-E (Exh. 29/pg. 42 to 47 of R & P) prepared by the Horticulture Department, on instructions, states that the age of the sweet lime trees (First Appeal No.441/2011) was determined as on the date of publication of Section 4 notification, and since the acquisition in the present matter was consequent to the notification dated 17/02/2003 on account of the earlier notification under Section 4 of the LA Act having lapsed, the age of the trees as on the date of Section 4 notification dated 17/02/2003, would be six years plus three years which would come to 9 years 8 months approximately, and therefore, the yield would increase, resulting in increase of value of the trees, for which he places reliance upon the Government Resolution dated 27/12/1990. He therefore submits, that by applying the Mirams Table factor, the value of the trees would be more than what has been calculated by the learned Reference Court. He further relies upon the valuer's report at Exh. 46 dated

01/02/2003 (pg. 69 of R & P) to claim support for the rate as claimed by him as indicated in the above chart.

5.2. That in Form-E at Exh. 29 (pg. 47) Note-3 indicates that the spot inspection report in respect of the trees is of October 2000, and therefore, considering that the notification under Section 4 of the LA Act in this regard was 17/02/2003, the trees would have grown by more than two and half years, and therefore, the yield would also be consequently increased, which factor also according to him supports the report of the valuer at Exh. 46 and so also the claim made by the appellant.

5.3. That in view of the above factors, the average yield was to be determined, based upon a consideration of the age of fruit bearing trees (sweet lime) as more than ten years giving a yield of 100 to 200 kg. per year, instead of 50 to 100 as per Government Resolution dated 27/12/1990.

5.4. That the market rates of Agricultural Produce Market Committee, Nagpur ("APMC, Nagpur" hereinafter for short) for the relevant period are material for determining the compensation payable for the trees and states, that the rates of the APMC, Nagpur, for orange and sweet lime trees and so also other trees have been placed on record alongwith Civil Application (CAF) No.230/2019. He submits, that since these rates have been considered by the learned Reference Court in Land Acquisition Case No.838/2006 decided on 18/12/2017 [***Sahebrao Pundalikrao Nagpure (Dead), through his L.Rs. Vs. The State of Maharashtra and others***], it is permissible for this Court to consider these rates. Though the civil application is opposed by Mr. Kadu, learned counsel for the respondent No.4, however, considering the fact, that the rates of the APMC, Nagpur for the period from 2001 to 2003, have been proved at Exhs. 96 to 98 in Land Acquisition Case No.838/2006 decided on 18/12/2017, it would be permissible for this Court to consider these rates for the purpose of determining the present appeal. Civil Application (CAF) No. 230/2019 is therefore **allowed**.

5.5. If the rates of the APMC, Nagpur for the relevant period are considered, the average per quintal rate of sweet lime for three years from 2001 to 2003 comes to Rs. 690/- per quintal and that of oranges to Rs.1121/- per quintal, and therefore, the calculations, will have to redone by considering the aforesaid rates.

5.6. Insofar as the compensation for land is concerned, reliance is placed upon the judgment of this Court in ***First Appeal***

No. 457/2015 Tulshidas S/o Shamraoji Nagpure Vs. The State of Maharashtra and others, decided on 01.12.2022, in which, for dry crop land of Village Pimpalkhuta, a rate of Rs.2,10,000/- per hectare has been granted and rate of Rs.2,25,000/- per hectare has been granted for seasonally irrigated land. According to him, since the land in question was irrigated, the claimant would be entitled for Rs.2,50,000/- per hectare. In order to demonstrate that the land was irrigated, he places reliance upon the joint report at Exh. 28 (refer pg. 40 of R & P) which indicates that the land was being irrigated from the adjacent river.

6. Mr. Kadu, learned counsel for the respondent No.4 counters the aforesaid submissions and states that the correct factors have been applied by the learned Reference Court for determining the rates of fruit bearing trees as well as for the land and the judgment of the learned Reference Court does not need any interference.

6.1. Mr. Kadu, learned counsel for the respondent No.4 further submits, that though a claim is made that the entire land in both the appeals was irrigated it is based on a single note in the Joint Measurement Report ("JMR" hereinafter for short) "irrigated from River" and there is absolutely nothing apart from the above entry, either in the 7/12 extract or any other revenue record, to indicate this position, nor any cultivation in that regard is being claimed. There is also absence of any electric bill to show the consumption of electricity for operation of any pump for irrigation of the entire land.

6.2. For the cultivation of the agriculture land there should be pipeline network for distribution of water, however, no compensation in that regard was ever claimed, which indicates lack of irrigation. It is, therefore, submitted that the land which is not claimed to be under the orchard is not irrigated land but dry crop land and therefore the compensation for irrigated land as claimed in respect thereof cannot be granted.

6.3. Mr. Kadu, learned counsel further submits that there is a controversy in regard to the number of trees. He draws my attention to the evidence of the claimant-Manoj Nagpure (para 3 of the cross-examination of page 65 of the paper-book), in which it has been averred by the claimant that the plantation of the sweet lemon trees (Mosambi) was made under the Government Horticulture Scheme for which there was 100 % subsidy and entry to that effect was taken in the 7/12 extract when the plantation was made. However, no such 7/12 extract has been filed and therefore, it is contended by Mr. Kadu, learned counsel that there was no plantation of any sweet lime trees at all. He further relies upon the cross-examination, in which it is admitted by the claimant that there was no document to show that he had sold the crop of sweet lime in any year or any document to show any income from the sweet lime orchard derived.

The claimant in his further cross-examination (pg.66) admits that there was no Well in the acquired land for the purpose of irrigation and though permission was required from the Tahsildar for irrigation from the river no document was filed to indicate any such permission.

6.4. In reference to the JMR and Form-E, it is submitted that page 45 of the record, that insofar as Gat no.297 is concerned, indicates that as many as 100 orange trees had dried up. The JMR and the valuation was of the year 2000 and considering the fact that Section 4 notification in the present case was dated 17/02/2003, it was not known as to how many trees had survived and therefore neither Exh. 29 nor Form-E could be relied upon for the purpose of granting any compensation whatsoever.

6.5. Insofar as the valuation report is concerned, it is contended that the same has been discarded by the Courts below apart from which there is no document placed on record either before the Land Acquisition Officer or the Reference Court regarding rate of the crop prevailing at that time and therefore there is no question of enhancement of compensation.

6.6. In the alternative, it is contented that in case the claimant is held to be entitled to any compensation on the basis of Exhs.96 to 98, the rates of APMC at Nagpur, then the transportation charges, would be required to be deducted from the total compensation which may be enhanced.

7. The law of Land Acquisition, in regard to a compulsory acquisition, which deprives the owner of his property, would dictate that benefit thereof ought to be given to the owner by taking a liberal view.

8. Though the 7/12 extract may not indicate an entry in respect of the concerned agricultural land of it being irrigated from the river, yet what has been relied in the present case is the JMR,

which contains the note that the land is irrigated by taking water from the river. The JMR having been done in the presence of the Taluka Inspector of Land Records, the same is binding upon the respondents and specifically when the respondents have not questioned the entries therein before the LAO by leading any evidence to rebut the entry. The respondents would thus now be estopped from contending otherwise than what has been stated in the JMR.

9. Agricultural cultivation, even today in the interior villages is not done by laying a pipeline in a scientific manner but in most of the areas the old systems are being followed. Merely because pipelines have not been found to have been laid, that would not mean that the field is not irrigated. In many areas in the interior, the age old system of watering the field by digging irrigation ditches and spreading a network of such ditches in the field for distribution of water is followed. Considering the costs of laying a pipeline, it cannot be said that absence of a pipeline would lead to a presumption of absence of irrigation. Such presumption is clearly unwarranted.

10. The plea raised by Mr. Kadu, learned counsel for the respondent no.4, regarding the number of trees based on the fact that though there was a subsidy and the same was not reflected in the 7/12 extract is clearly nullified by the finding in the JMR of 570 sweet lime (Mosambi) trees being in existence. Though the JMR was of the year 2000 and the acquisition was under the notification dated 17/02/2003, the respondents, then ought not to have relied upon the JMR of the year 2000 for the purposes of acquisition and ought to have done another JMR in the year 2003 or thereafter. Nothing prevented them from doing so. However, since the respondents choose to proceed ahead on the basis of the JMR of the year 2000, it is not now open for them to raise a plea contrary to the JMR. No objection to the entries in the JMR appear to have been taken either before the Land Acquisition Officer or the Reference Court by the respondents, which again indicates the consent of the respondents to the figures in the JMR in respect of both the matters.

11. The contention that during the duration 2000 to 2003, as many as 100 orange trees had dried up, then necessarily required the respondents to conduct another JMR, which has not been done. Thus, the existence of 570 sweet lime trees now cannot be disputed

by the respondents, as they cannot be permitted to take advantage of their own lapses.

12. Insofar as the plea for deduction on account of transportation as raised by Mr. Kadu, learned counsel for the respondent no.4 is concerned, such deduction could be permissible, if anything was brought on record that the goods were transported to a distant place and were not sold at the nearby market. No such plea has been raised earlier, as a result of which, there is no such material on record, in order to claim any such deduction.

13. In regard to the number of trees permissible per hectare, it is material to note that the general method commonly used in agriculture is a grid of 10 ft. X 10 ft., for the overall growth of a fruit bearing tree.

14. The Government Resolution dated 27/12/1990 prescribes the average yield statement of fruits trees (irrigated food crops) which for the sake of ready reference is reproduced as under:

Average Yield Statement of Fruit Trees (Irrigated fruit crops)

Sr. No.	Name of fruit	Early Bearing		Full Bearing		Life period in years.	Re-marks
		Age in Years	Average Yield per tree	Age in years	Average yield per tree		
1	2	3	4	5	6	7	8
1.	Mango (Country)	8 to 12	400 to 600 fruits (75 to 100 kgs.)	13 onwards	800 to 1600 fruits (150 to 250 kgs)	70 to 90	

2.	Mango (Grafts)	5 to 8	150 to 250 fruits (30 to 50 kgs.)	9 onwards	200 to 500 fruits (40 to 100 kgs)	30 t0 50	
3.	Santra	5 to 8	150 to 300 fruits (15 to 30 kgs.)	9 onwards	400 to 900 fruits (40 to 90 kgs.)	20 to 30	
4.	Mosambi	5 to 8	100 to 250 fruits (20 to 50 kgs.)	9 onwards	300 to 600 fruits (50 to 100 kgs.)	20 to 30	
5.	K-Lime	4 to 6	50 to 150 fruits (4 x 4 mtrs)	7 onwards	500 to 1000 fruits (4 x 4 mtrs)	20 to 30	
6.	Guava (Seedling)	5 to 8	100 to 200 fruits (15 to 30 kgs.)	9 onwards	400 to 700 fruits (60 to 100 kgs.)	30 to 40	
7.	Guava (Grafts)	4 to 5	150 to 250 fruits (40 to 60 kgs.)	6 onwards	400 to 600 fruits (80 to 150 kgs.)	25 to 30.	
8.	Poma-Granate	3 to 5	20 to 50 fruits (3 to 7 kgs.)	7 onwards	(60 to 120 fruits (15 to 30 kgs.)	20 to 30	
9.	Fig	4 to 7	4 to 8 kgs.	8 onwards	10 to 20 kgs.	20 to 25	
10.	Chiku	6 to 10	150 to 400 fruits (15 to 40 kgs.)	11 onwards	(600 to 1200 fruits (60 to 120 kgs.)	40 to 60	
11.	Cashewnut Seedling	4 to 8	3 to 5 kgs.	9 onwards	8 to 10 Kgs.	25 to 30	
12.	Coconut	8 to 14	10-30 Nuts	15 onwards	40 to 60 Nuts	60 to 80	
13.	Arecanut	7 to 10	1/2 tol kg.	11 onwards	2 to 90 kgs.	50 to 60	
14.	Custard apple	4 to 6	30 to 50 fruits	7 onwards	60 to 90 fruits	15 to 20	

							Distance	
							in between two row	in between two vires.
15.	Grapes							
	i) Thomson Seedlings	2 to 4	2500 to 6000 kgs.	5 onwards	12000 to 20000 kgs.	7 to 8	2.50 m.	1.20 m
	ii) Gulabi	2 to 3 @	5000 to 10000 kgs.	4 onwards	12000 to 15000 kgs.	8 to 10	3.00 m.	1.50 m.
	iii) Kalisahebi	2 to 4	2500 to 6000 kgs.	5 onwards	12000 to 20000 kgs.	8 to 12	3.00 m	1.50 m.
	iv) Anabeshali	2 to 5	3000 to 12000 kgs.	6 onwards	25000 to 30000 kgs.	10 to 15	3.00 m	1.50 m
	v) Bang-alore purple	2 to 3	7500 to 12000 kgs.	4 onwards	20000 to 25000 kgs.	8 to 12	3.00 m.	1.50 m.
	vi) Selection-7	2 to 4	7500 to 12000 kgs.	5 onwards	25000 to 30000 kgs.	10 to 12	3.00 m.	1.50 m.
	vii) Bhokari	2 to 3	5000 to 15000 kgs.	5 onwards	25000 to 35000 kgs.	15 to 20	2.50 m.	1.00 m.
	Note - In case of grapes the yields are given on per hectare basis for all varieties).							
16.	Jack fruits	10 to 14	50 to 100 fruits	15 onwards	200 to 250 fruits	40 to 50		
17.	Ber (Seedlings)	6 to 10	10 to 20 kgs.	11 onwards	25 to 40 kgs.	40 to 50		
18.	Ber (grafted)	3 to 5	20 to 40 kgs.	6 onwards	50 to 80 kgs.	30 to 35		
19.	Awala	7 to 12	15 to 25 kgs.	13 onwards	60 to 100 kgs.	35 to 40		
20.	Belphal	8 to 12	50 to 100 fruits	13 onwards	200 to 300 fruits	40 to 60		
21.	Wood apple	10 to 15	30 to 50 fruits	16 onwards	100 to 250 fruits	50 to 60		
22.	Ramphal	6 to 10	10 to 20 fruits	11 onwards	30 to 50 fruits	10 to 60		

23.	Jambhul	8 to 12	20 to 30 kgs.	13 onwards	60 to 80 kgs.	40 to 50		
24.	Tamarind	10 to 15	20 to 40 kgs.	16 onwards	60 to 100 kgs.	80 to 100		
25.	Karwand	3 to 5	2 to 4 kgs.	6 onwards	8 to 15 kgs.	25 to 30		
26.	Phalsa	2 to 4	1 to 2 kgs.	5 onwards	5 to 6 kgs.	7 to 10		
27.	Kokam	7 to 10	15 to 20 kgs.	11 onwards	50 to 150 kgs.	50 to 60		
28.	Litchi	5 to 8	20 to 40 kgs.	9 onwards	80 to 100 kgs.	30 to 4029.		
29.	Shevga	1 to 3	2 to 3 kgs.	40 onwards	8 to 12 kgs.	7 to 10		
30.	Hadga	2 to 4	1 to 2 kgs.	5 onwards	5 to 8 kgs.	7 to 10		
31.	Charoli	5 to 8	3 to 4 kgs.	9 onwards	12 to 15 kgs.	20 to 25		
32.	Rayan (Khirani)	10 to 15	10 to 20 kgs.	16 onwards	30 to 50 kgs.	60 to 70		
33.	Bibwa	8 to 10	2 to 5 kgs.	11 onwards	10 to 15 kgs.	30 to 40		
34.	Citrus group (Other than Santra, Mosambi, K.lime, Jumberi group fruit etc.)	5 to 8	20 to 30 kgs.	9 onwards	40 to 70	20 . to 30		

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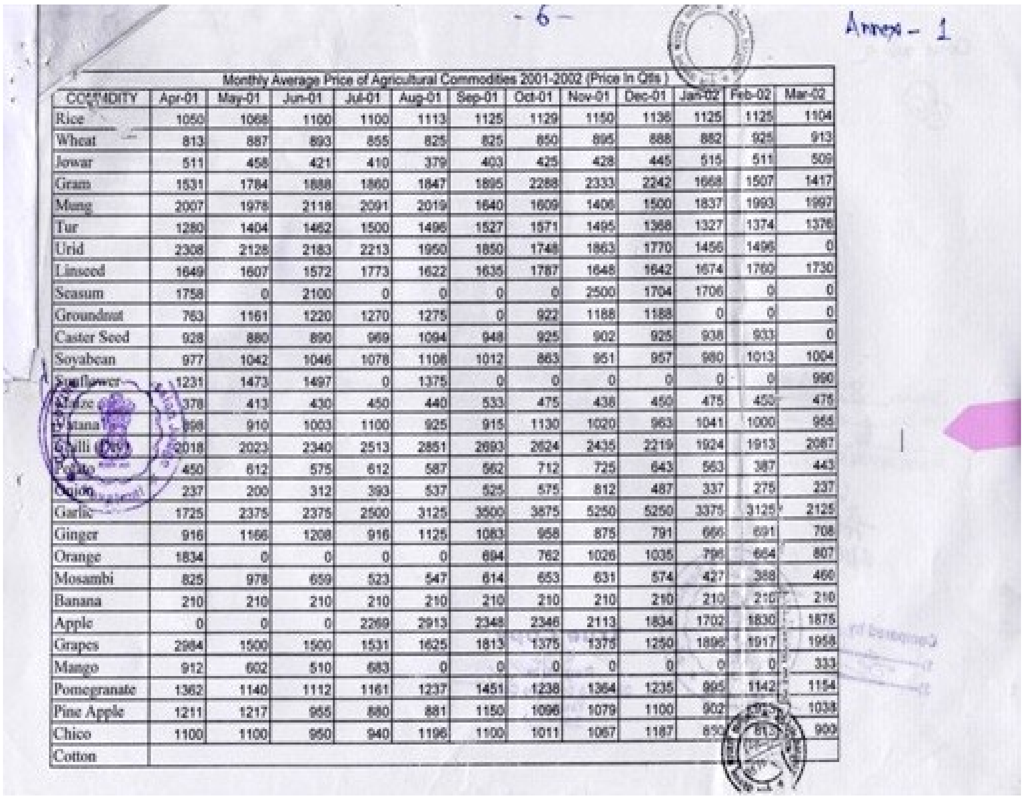
क्रमांक : जनरल १०९१/१८४/(३८)/अ-४
महसूल व वन विभाग
मंत्रालय, मुंबई-४०० ०३२.
दिनांक : १५ एप्रिल, १९९१.

विभागीय आयुक्त, कोकण विभाग,
कोकण भवन, नवी मुंबई.

15. The rates of the APMC, Nagpur for various fruit bearing trees for the period 2001 to 2003 [Exhs. 96 to 98 in Land Acquisition Case No.838/2006 decided on 18/12/2017 (Sahebrao Pundalikrao Nagpure (Dead), through his L.Rs. Sau. Leelabai Sahebrao Nagpure and others Vs. The State of Maharashtra, Through Collector, Yavatmal Tq. and Distt. Yavatmal and others)] are as under:



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Annex - 1

Monthly Average Price of Agricultural Commodities 2001-2002 (Price in Qtls)

COMMODITY	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-02	Feb-02	Mar-02
Rice	1050	1068	1100	1100	1113	1125	1129	1150	1136	1125	1125	1104
Wheat	813	887	893	855	825	825	850	895	888	882	925	913
Jowar	511	458	421	410	379	403	425	428	445	515	511	509
Gram	1531	1784	1888	1860	1847	1895	2288	2333	2242	1668	1507	1417
Mung	2007	1978	2118	2091	2019	1640	1609	1406	1500	1837	1993	1997
Tur	1280	1404	1462	1500	1496	1527	1571	1495	1368	1327	1374	1376
Urid	2308	2128	2183	2213	1950	1850	1748	1863	1770	1456	1496	0
Linseed	1649	1607	1572	1773	1622	1635	1787	1648	1642	1674	1760	1730
Seasum	1758	0	2100	0	0	0	0	2500	1704	1706	0	0
Groundnut	763	1161	1220	1270	1275	0	922	1188	1188	0	0	0
Caster Seed	928	880	890	969	1094	948	925	902	925	938	933	0
Soyabean	977	1042	1046	1078	1108	1012	863	951	957	980	1013	1004
Sunflower	1231	1473	1497	0	1375	0	0	0	0	0	0	990
Maize	378	413	430	450	440	533	475	438	450	475	450	476
Vatana	998	910	1003	1100	925	915	1130	1020	963	1041	1000	958
Chilli (Dry)	2018	2023	2340	2513	2851	2693	2624	2435	2219	1924	1913	2087
Potato	450	612	575	612	587	562	712	725	643	563	387	443
Onion	237	200	312	393	537	525	575	812	487	337	275	237
Garlic	1725	2375	2375	2500	3125	3500	3875	5250	5250	3375	3125	2125
Ginger	916	1166	1208	916	1125	1083	958	875	791	666	691	708
Orange	1834	0	0	0	0	694	762	1026	1035	796	664	807
Mosambi	825	978	659	523	547	614	653	631	574	427	388	466
Banana	210	210	210	210	210	210	210	210	210	210	210	210
Apple	0	0	0	2269	2913	2348	2346	2113	1834	1702	1830	1875
Grapes	2984	1500	1500	1531	1625	1813	1375	1375	1250	1896	1917	1958
Mango	912	602	510	683	0	0	0	0	0	0	0	333
Pomegranate	1362	1140	1112	1161	1237	1451	1238	1364	1235	995	1142	1154
Pine Apple	1211	1217	955	880	881	1150	1096	1079	1100	902	[illegible]	1038
Chico	1100	1100	950	940	1196	1100	1011	1067	1187	850	813	909
Cotton												

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Ann- 2

Monthly Average Price of Agricultural Commodities 2002-2003 (Price In Qtls)												
COMMDITY	Apr-02	May-02	Jun-02	Jul-02	Aug-02	Sep-02	Oct-02	Nov-02	Dec-02	Jan-03	Feb-03	Mar-03
Rice	1040	1075	1100	1125	1175	1175	1175	1175	1175	1175	1175	1175
Wheat	866	900	900	900	900	900	900	910	925	1175	925	842
Jowar	500	500	500	500	500	500	488	403	400	400	400	400
Gram	1425	1483	1468	1448	1551	1574	1681	1683	1487	1310	1391	1456
Mung	2042	1995	1972	1883	1815	1709	1675	1444	1424	1623	2031	1797
Tur	1492	1677	1676	1657	1655	1722	1614	1553	1452	1470	1625	1579
Urid	1739	1793	1765	1739	1490	1333	1309	1357	1153	1230	1347	1315
Linseed	1686	1865	2014	1961	2063	2204	2152	2143	2018	2131	2314	2187
Seasum	0	0	0	0	0	0	1700	1877	2074	2164	2350	2217
Groundnut	0	0	0	1300	1261	1200	1000	1282	1361	1300	1643	0
Caster Seed	968	1050	1105	1038	1093	1088	1107	1073	1115	1040	1000	1359
Soyabean	1100	1233	1370	1375	1446	1248	1125	1272	1282	1306	1472	1413
Sunflower	1591	1629	1594	1500	715	1500	0	950	0	0	0	0
Maize	0	0	0	450	376	430	513	460	513	486	541	585
Vatana	1025	1122	0	1150	1096	0	1300	1226	1225	950	1281	1031
Chilli (Dry)	2225	2346	2462	2390	2572	2737	3025	2888	3051	2824	2931	3392
Potato	462	500	512	562	662	750	750	762	512	287	275	275
Onion	225	250	337	425	500	525	700	462	312	250	262	287
Garlic	1625	1750	1750	1875	3250	4312	4000	3375	2875	2375	1500	1312
Ginger	1233	915	1041	1208	1166	1083	1083	999	874	1083	1250	1416
Orange	1147	1237	0	0	0	0	908	1088	1746	2304	1175	819
Mosambi	507	628	878	760	548	519	633	626	1151	500	618	742
Banana	210	210	210	210	210	210	210	210	210	210	210	210
Apple	2146	0	2344	2250	2375	2202	2180	1270	2106	2271	1369	1990
Grapes	1767	1978	1438	1375	1625	2500	1375	1375	1375	1675	1725	1631
Mango	1246	1034	1059	1008	0	0	0	0	0	0	2450	1216
Pomegranate	787	796	995	1089	1228	1155	1117	1199	1316	1312	1052	844
Pine Apple	1255	1300	1229	1050	850	950	1188	1100	1100	1147	1138	958
Chico	700	617	800	850	814	800	1088	1544	1022	1390	988	
Cotton												

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Annex - 3

Monthly Average Price of Agricultural Commodities 2003-2004 (Price In Qtls)												
COMMDITY	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04
Rice	1175	1151	1150	1150	1150	1100	1050	1050	1015	1000	1000	1000
Wheat	773	803	808	827	833	822	837	851	864	871	838	822
Jowar	400	427	431	425	425	425	423	427	435	446	452	452
Gram	1491	1361	1351	1294	1244	1337	1396	1459	1470	1381	1291	1291
Mung	1903	1759	1649	1652	1650	1490	1672	1350	1475	1150	1642	1451
Tur	1597	1759	1635	1677	1629	1612	1773	1608	1607	1805	1686	1626
Urid	1373	1293	1161	1670	1126	1150	1175	1150	1150	1150	1100	1133
Linseed	2194	2115	2123	2150	2150	2150	2162	2150	2150	2180	2318	2270
Seasum	0	0	0	0	0	0	0	0	0	0	0	0
Groundnut	0	0	0	1587	0	0	0	0	0	0	0	0
Caster Seed	1602	1667	1625	1551	1400	0	0	0	0	0	0	0
Soyabean	1517	1476	1472	1288	1193	1273	1165	1196	1338	1472	1508	1649
Sunflower	1729	1719	1753	1693	0	0	0	0	0	0	1751	1713
Maize	562	524	0	564	482	0	0	0	0	480	0	0
Vatana	2032	1083	0	987	952	0	1110	0	1100	0	0	989
Chilli (Dry)	3487	3418	3729	3584	3554	3405	3336	3548	3698	3708	3603	2569
Potato	412	312	365	418	375	412	437	387	437	400	337	350
Onion	300	208	265	537	643	775	762	562	700	800	675	412
Garlic	1437	1500	1375	1437	1497	1250	1375	1375	1875	1625	2000	1125
Ginger	1666	1916	2249	2749	2249	2083	1750	1666	2083	2333	2750	3250
Orange	815	0	0	0	0	528	594	533	618	331	269	275
Mosambi	1001	933	1018	902	620	780	845	970	738	409	499	779
Banana	210	210	210	210	210	210	210	210	210	210	210	210
Apple	2946	6577	3932	3085	2432	2118	2142	1687	1454	1482	1461	1833
Grapes	2652	1919	1500	1420	1618	1846	1435	1570	2497	3262	3216	3150
Mango	1082	684	956	1138	1385	1424	1396	0	0	0	0	1912
Pomegranate	774	815	737	744	825	1035	963	816	710	650	682	595
Pine Apple	850	888	917	1009	1063	999	934	1119	965	1110	1120	1158
Chico	709	975	1250	1060	655	655	768	1283	1018	1069	864	610
Cotton												

16. The basic deductions to be made are on account of cultivation charges, manure, insecticides, maintenance, watch and ward, packing, transportation etc., which is indicated by the Government Resolution dated 10/07/2002 as under:

नमुना उदाहरण १)- फळझाडांचे मुल्यांकनासाठी लागवडखर्च वजा करण्यासाठी प्रति फळझाड आवश्यक असणा-या निविष्ठांचा खर्च वर्ष-२००१-२००२
फळपिकाचे नाव - आंबा (हापूस / कलमी) पूर्ण फलधारणावय- ९ वर्षे.

अ.क्र.	निविष्ठांचे नाव	रा. खत किटकनाशक	मात्रा (कि.)	दर	रक्कम (रू.)
१	कंपोस्ट	-	५०	२	१००
२	नत्र - १.५ कि	युरीया	३.२५	४.७	१५.२८
३	स्फुरद ०.५कि	सिंगल सुपर फॉस्फेट	३.१३	३.१	९.७
४	पालाश ०.५कि	म्युरेट ऑफ पोटॅश	१	३.२	३.२
५	पीक संरक्षण	एंडोसल्फान	५०० मिली	२२६	११२
६		कार्बेन्डिझम	२५० ग्रॅम	३०८	८०
७	मजुरी		२ श्रमिकदिन	४७ /दिन	९४
				एकुण	४१४.१८

नमुना उदाहरण २) फळझाडांचे मुल्यांकनासाठी लागवडखर्च वजा करण्यासाठी प्रति फळझाड आवश्यक असणा-या निविष्ठांचा खर्च. वर्ष-२००१-२००२
फळपिकाचे नाव - आंबा (स्थानिक गावरान) पूर्ण फलधारणावय- १३ वर्षे.

अ.क्र.	निविष्ठांचे नाव	रा.खत किटकनाशक	मात्रा (कि.)	दर	रक्कम (रू.)
१	कंपोस्ट	-	-	२	-
२	नत्र - १.५ कि	युरीया	-	४.७	-
३	स्फुरद ०.५कि	सिंगलसुपर फॉस्फेट	-	३.१	-
४	पालाश ०.५कि	म्युरेट ऑफ पोटॅश	-	३.२	-
५	पीक संरक्षण	एंडोसल्फान	२५० मिली	२२६	५४
६		कार्बेन्डिझम	१२५ ग्रॅम	३०८	३८.५
७	मजुरी		२ श्रमिकदिन	४७ /दिन	९४
				एकुण	१८६.५

टीप- विभाग नेवेळोवेळी दिलेल्या मार्गदर्शक सुचनांचा अवलंब करून फळझाडांच्या लागवड खर्चाव्यतिरिक्त अन्य फळपिकांचा लागत खर्च निश्चित करताना फळझाडांचे मुल्यांकनासाठी विचारात घ्यावा.

17. The further deductions, are on account of cultivators' risks and profits which is attributable to the risk taken by the cultivators and the skill in carrying on the enterprise. In case the fruit bearing trees are planted with a view to obtain regular income the orchard becomes an enterprise. As per the Govt Circular No. LON- 4275/A-2 dated 18/12/1975, 10% of the gross income is permissible to be deducted on this count.

18. Insofar as the position in First Appeal No.443/2011 is concerned, the learned Reference Court, notes that though reliance is placed by the appellant upon the expert's report at Exh.45 of Dr. Kamalnayan Uttamchand Sanghavi (P.W.2) it also records the lacunae in the report inasmuch as it finds that there is an admission by P.W. 2 that he has not done soil testing of the acquired land; has not mentioned in his report that orange and sweet lime trees were fruit bearing; market rate at Nagpur of these trees was not mentioned; neither any certificate was as to rates by the APMC, Nagpur or any other authority was filed. It is further recorded that though a claim is made that the field was being irrigated by lift irrigation from the adjacent river, no bills for use of water or for that matter any permission from the irrigation department was seen by

him. This has also not been produced on record. It is further recorded in regard to his evidence that he had not verified the 7/12 extract nor seen any document regarding any expenditure incurred by the appellant for the orchard nor has seen any account maintained by the appellant. The learned Reference Court records that P.W. 2 has admitted that he has mentioned the value of trees in his report on the basis of presumption.

19. The learned Reference Court therefore, in my considered opinion, has rightly relied upon the fruit valuation statement as Exh.29 of the year 2002-03 when the possession of the acquired land was taken as per possession receipt Exh.32, which records that there were only 495 orange trees and 140 sweet lime trees in Gat No.297. The report (Exh.45) of the Expert P.W. 2, therefore is not of much assistance in determining the value of the land either way.

20. A finding has also been rendered by the learned Reference Court that though the entire land of Gat No.297 Mouza Pimpalkhuta was 5.26 HR the orchard was only an area of 2.29 HR. It has therefore rightly calculated the value of 2.29 HR of land as an orchard and the balance land of 2.97 HR on the basis of dry crop

land, as there does not exist sufficient material on record to indicate that this balance land was being irrigated in any manner, except for the statement made in this regard by the appellant.

21. Insofar as the calculation of the price for the orchard upon 2.29 HR of land it has come on record that in the year 2002-03 as per Exh.29 (fruit valuation statement) the age of the sweet lime trees in Gat no.297 was 6 years and that of orange trees was 11 years. The yield therefore has been calculated on the basis of the Government Notification dated 27/12/1990, according to which, the average yield for the sweet lime trees of 6 years of age would be 22 to 50 kg. and that for orange trees of 11 years age would to 40 to 90 kg.

22. The rate of APMC, Nagpur for period 2001-02, of Rs.615/- per quintal for sweet lime and Rs.952/- per quintal for oranges at APMC, Nagpur as stated in the report of P.W. 2 at Exh.45 has been considered for the purpose of determining the rate of the fruit tree and a deduction of 40 % has been made on account of transportation, loading-unloading charges, gradation, plucking, commission agent etc. and a rate of Rs.370/- per quintal for sweet lime and Rs.575/- per quintal for orange has been determined.

23. Since the notification in the present case under Section 4 of the Land Acquisition Act is dated 17/02/2003, it is rightly contended by Mr. Nagpure, learned counsel for the appellants that the prices of the APMC, Nagpur for the year 2001 has been incorrectly considered. Since the rates of the APMC, Nagpur for the year 2002-03 as considered in Land Acquisition Case No.838/2006 (***Sahebrao Pundalikrao Nagpure (Dead) through L.Rs. Vs. The State of Maharashtra, Through – Collector, Yavatmal Tq. & Dist. Yavatmal, decided on 18/12/2017***) have been placed on record it would be appropriate to consider these rates. According to this, at APMC, Nagpur the rate of sweet lime in February, 2003 was Rs.618/- per quintal and that of oranges was Rs.1175/- per quintal. Even if the deduction of 40% as done by the learned Reference Court is considered, insofar as the rate for sweet lime is concerned, there is a difference of only Rs.3/-, which is hardly any difference. However, insofar as the rate for oranges is concerned, considering the rate of Rs.1175/- per quintal for February, 2003 and 40% deduction, it would come to Rs.705/- per quintal (i.e. Rs.7.05 per kg.) and the rest of the calculations made will accordingly increase.

24. The value of a tree, therefore would be yield into market rate, which for sweet lime tree, considering an average yield on account of its age of 6 years as per the notification dated 27/12/1990 is concerned, is shown as 20 to 50 kg. and that for oranges for 11 years is shown as 40 to 90 kg., considering an average yield taken by the learned Reference Court of 70 kg. for oranges, the value of fruit bearing orange tree would be calculated as 70 kg. X 7.05=Rs.493.5. From this, the cost of maintenance, transportation, fuel value etc. will have to be deducted, and considering the same to be 10% the value would come to Rs.444.1/-, to which multiplier of ten years will be required to be added in view of ***Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. S.T. Pompanna Setty, 2005 (5) ALL MR SC 293***, which would make the value of the orange trees as 444.1 X 10 = 4440.10. Considering that there are 495 orange trees in the orchard in Gat No.297, the value of the orange trees would be that 495 X 4440.10 = 21,97,849.5 as against Rs.18,36,450/-, calculated by the learned Reference Court and the value for the 140 sweet lime trees calculated at Rs.2,45,000/- remains the same on account of the negligible difference in the rate as indicated above. Thus, for the

orchard on the land admeasuring 2.29 HR of Gat No.297, having orange and sweet lime trees to the extent as indicated above, the appellant would be entitled to a compensation of Rs.24,42,849.5. Insofar as the balance land of 2.97 HR of Gat No.297 is concerned, there is no material brought on record that there are any trees planted therein and therefore the same will have to be considered on the basis of market rate granted in ***Tulshidas Shamraoji Nagpure*** (supra) of Rs.2,10,000/- per hectare as nothing has been brought on record to show that this portion of Gat No.297 was irrigated.

25. Insofar as the position in First Appeal No.441/2011 is concerned, the learned Reference Court, notes that though reliance is placed by the appellant upon the expert's report at Exh.46 of Dr. Kamalnayan Uttamchand Sanghavi (P.W.2) it also records the lacunae in the report inasmuch as it finds that there is an admission by P.W. 2 that he has not done soil testing of the acquired land; has not mentioned in his report that orange and sweet lime trees were fruit bearing; market rate at Nagpur of these trees was not mentioned; neither any certificate was as to rates by the APMC, Nagpur or any other authority was filed. It is further recorded that though a claim is made that the field was being irrigated by lift

irrigation from the adjacent river, no bills for use of water or for that matter any permission from the irrigation department was seen by him. This has also not been produced on record. It is further recorded in regard to his evidence that he had not verified the 7/12 extract nor seen any document regarding any expenditure incurred by the appellant for the orchard nor has seen any account maintained by the appellant. The learned Reference Court records that P.W. 2 has admitted that he has mentioned the value of trees in his report on the basis of presumption.

26. The learned Reference Court therefore, in my considered opinion, has rightly relied upon the fruit valuation statement as Exh.29 of the year 2002-03 when the possession of the acquired land was taken as per possession receipt Exh.32, which records that there were only 570 sweet lime trees in Gat No.298. The report (Exh.46) of the expert P.W. 2, therefore, is not of much assistance in determining the value of the land either way.

27. A finding has also been rendered by the learned Reference Court that though the entire land of Gat No.298 Mouza Pimpalkhuta was 5.26 HR the orchard was only an area of 2.06 HR. It has therefore rightly calculated the value of 2.06 HR of land as an

orchard and the balance land of 3.20 HR on the basis of dry crop land, as there does not exist sufficient material on record to indicate that this balance land was being irrigated in any manner, except for the statement made in this regard by the appellant.

28. Insofar as the calculation of the price for the orchard upon 2.06 HR of land it has come on record that in the year 2002-03 as per Exh.29 (fruit valuation statement) the age of the sweet lime trees in Gat no.298 was 6 years. The yield therefore has been calculated on the basis of the Government Notification dated 27/12/1990, according to which, the average yield for the sweet lime trees of 6 years of age would be 22 to 50 kg.

29. The rate of APMC, Nagpur for period 2001-02, of Rs.615/- per quintal for sweet lime at APMC, Nagpur as stated in the report of P.W. 2 at Exh.46 has been considered for the purpose of determining the rate of the fruit tree and a deduction of 40 % has been made on account of transportation, loading-unloading charges, gradation, plucking, commission agent etc. and a rate of Rs.370/- per quintal for sweet lime has been determined.

30. Since the notification in the present case under Section 4 of the Land Acquisition Act is dated 17/02/2003, it is

rightly contended by Mr. Nagpure, learned counsel for the appellants that the prices of the APMC, Nagpur for the year 2001 has been incorrectly considered. Since the rates of the APMC, Nagpur for the year 2002-03 as considered in Land Acquisition Case No.838/2006 (***Sahebrao Pundalikrao Nagpure (Dead) through L.Rs. Vs. The State of Maharashtra, Through – Collector, Yavatmal Tq. & Dist. Yavatmal, decided on 18/12/2017***) have been placed on record it would be appropriate to consider these rates. According to this, at APMC, Nagpur the rate of sweet lime in February, 2003 was Rs.618/- per quintal. Even if the deduction of 40% as done by the learned Reference Court is considered, insofar as the rate for sweet lime is concerned, there is a difference of only Rs.3/-, which is hardly any difference. However, insofar as the rate of sweet lime is concerned, considering the rate @ Rs.618/- per quintal for February, 2003 and 40% deduction, it would come to Rs.370.80 per quintal (i.e. Rs.3.70 per kg.) and the rest of the calculations made will accordingly increase.

31. The value of a tree, therefore would be yield into market rate, which for sweet lime tree, considering an average yield on account of its age of 6 years as per the notification dated

27/12/1990 is concerned, is shown as 20 to 50 kg. Considering an average yield taken by the learned Reference Court of 50 kg. for sweet lime trees would be calculated as 50 kg. X 3.70 = Rs.185/-. From this, the cost of maintenance, transportation, fuel value etc. will have to be deducted, and considering the same to be 10% the value would come to Rs.166.50, to which multiplier of ten years will be required to be added in view of ***Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. S.T. Pompanna Setty, 2005 (5) ALL MR SC 293***, which would make the value of the sweet lime as Rs.166.50 X 10 = Rs.1,665/-. Considering that there are 570 sweet lime trees in the orchard in Gat No.298, the value of the sweet lime trees would be that 570 X Rs.1665 = Rs.9,49,050/- as against Rs.9,97,500/- calculated by the learned Reference Court. Thus, for the orchard on the land admeasuring 2.06 HR of Gat No.298, having sweet lime trees to the extent as indicated above, the appellant would be entitled to a compensation of Rs.9,49,050/-. However, as there is no appeal by the respondents, the judgment in reference will have to be maintained, and the appellant thus would be entitled to compensation of Rs.9,97,500/-. Insofar as the balance land of 2.06 HR of Gat No.298 is concerned, there is no material brought on record that there are any trees planted therein and therefore the same will have to be considered on the basis of market rate granted in ***Tulshidas Shamraoji Nagpure*** (supra) of Rs.2,10,000/- per hectare as nothing has been brought on record to show that this portion of Gat No.298 was irrigated.

32. In view of above, the following order is passed.

(A) The appellant in First Appeal No.443/2011 is entitled to a compensation of Rs.24,42,849.50 for the orange trees and sweet lime trees in the orchard on the land admeasuring 2.29 HR of Gat No.297. Insofar as the balance land of 2.97 HR of Gat No.297 is concerned, since there is no material brought on record that the balance land was irrigated land the same is considered on the basis of market rate granted in ***Tulshidas Shamraoji Nagpure*** (supra) of Rs.2,10,000/- per hectare. First Appeal No.443/2011 is, thus, partly allowed in the above terms.

(B) The judgment impugned in First Appeal No.441/2011, for the reasons recorded, does not need any interference.

(AVINASH G. GHAROTE, J.)

Jalit/Bhimte/Wadkar