IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 418 OF 2017

Manikbai w/o Jagganath Soni,
Age 66 years, Occ: Agri
r/o Partur, Taluka Partur
District Jalna. ...APPELLANT
[Orig. Claimant]

VERSUS

1. The State of Maharashtra
Through Collector,
Jalna.

2. The Deputy Collector,
Land Acquisition
(Minor Irrigation Department)
Jalna, Taluka and District Jalna.

3. The Executive Engineer,
Minor Irrigation Department,
Near Motibag, Jalna
Taluka and District Jalna. ...RESPONDENTS
[Orig. Respondents]

WITH
FIRST APPEAL NO. 419 OF 2017

Jagganath s/o Bhagwandas Soni,
Age 69 years, Occ: Agri
r/o Partur, Taluka Partur
District Jalna. ...APPELLANT
[Orig. Claimant]

VERSUS

1. The State of Maharashtra
Through Collector,
Jalna.

2. The Deputy Collector,
Land Acquisition

(Minor Irrigation Department)
Jalna, Taluka and District Jalna.

3. The Executive Engineer,
Minor Irrigation Department,
Near Motibag, Jalna
Taluka and District Jalna. ...**RESPONDENTS**
[Orig. Respondents]

Mr. N.K. Kakade, Advocate for appellants
Mr. R.B. Dhaware, AGP for State
Respondent No. 3 served.

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 22nd AUGUST, 2024
PRONOUNCED ON : 23rd SEPTEMBER, 2024

JUDGMENT :

1. Claimant- Manikbai has filed First Appeal No. 418 of 2017 and claimant- Jagganath has filed First Appeal No. 419 of 2017.

2. For the sake of convenience claimants are referred by their names and respondents are referred to as 'State' and 'acquiring body'.

3. Land admeasuring 1 Hectare 37 Are out of Gut No. 264 and admeasuring 1 Hectare 10 Are out of Gut No. 267 situated at village Shevga, Taluka- Partur, Dist. Jalna owned by the claimant- Manikbai were acquired for Bamni Minor Irrigation Tank.

Land admeasuring 58 Are out of Gut No. 262 situated at village Shevga, Taluka- Partur, Dist. Jalna owned by the claimant- Jagganath was acquired for Bamni Minor Irrigation Tank.

4. Notification under Section 4 of the Land Acquisition Act is published on 09.07.2004, award was published by Special Land Acquisition Officer on 09.06.2006 and notification under section 12(2) was received by Manikbai and Jagganath on 02.04.2007. In the award, SLAO has awarded total compensation of Rs. 5,98,233/- to Manikbai for land Gut No. 267 and Rs. 5,88,296/- for land Gut No. 264. SLAO has awarded total compensation of Rs. 4,54,904/- to Jagganath. In the lands of Manikbai total 346 Keshar mango trees, 1 guava tree, 2 jamun trees and 6 ber trees were there. In the land of Jagganath 140 Keshar mango trees, 5 ber trees were there. Being aggrieved by inadequate compensation awarded by SLAO Manikbai and Jagganath filed Land Acquisition Reference No. 981 of 2010 and 1200 of 2010 respectively contending that SLAO has assessed less market value and has awarded meager compensation for the acquired lands and to the fruit bearing trees.

Reference Court after appreciating the evidence on record has awarded enhanced compensation of Rs. 7,86,604/- to Manikbai and rejected the claim of Jagganath. Manikbai has filed First Appeal No. 418 of 2010 for enhancement of compensation and Jagganath has filed First Appeal No. 419 of 2010 challenging the judgment of the Reference Court thereby dismissing his reference.

5. Heard learned advocate for appellants/claimants and learned AGP for respondents No. 1 and 2-State. Though served, none appears for respondent No. 3

6. Learned advocate for claimants assailed both the impugned judgments contending that the approach of the Reference Court in enhancing compensation in reference of Manikbai and rejecting similar evidence led by Jagganath and dismissing his reference is totally erroneous. He submits that evidence brought on record by the claimants is not properly appreciated by the Reference Court, on the basis of which claimants are entitled for enhanced compensation. The Reference Court has committed an error in deducting 40% income by relying on Government circular in the reference of Manikbai and further erred in deducting 82% income of

Jagganath by relying on same circular. He therefore submits that both the claimants are entitled for enhanced compensation. In support of arguments, reliance is placed on ***Bayaji Tatya Kalunge vs. State of Maharashtra***, 2007(2) ALL MR 316.

7. Learned AGP, on the other hand, supported the impugned judgments. He submits that the Reference Court is justified in placing reliance on the Government circular while deducting amount of compensation. He submits that no case is made out by the claimants for enhancement of compensation and first appeals may be dismissed.

8. Heard learned advocate for claimants and learned AGP for State at length. Perused the record, written notes of arguments filed by claimants and the citation relied upon.

9. Admittedly, while acquiring lands of Manikbai 346 Keshar mango trees, 1 guava tree, 1 jamun tree and 6 ber trees were acquired. While acquiring land of Jagganath 140 Keshar mango trees and 5 ber trees were acquired. These number of trees are reflected in the e-statement. So there is no dispute that these number of trees were standing in the respective lands of the claimants, which were acquired by the respondents.

Both the claimants have examined Shaikh Musa Shaikh Ibrahim, a kotwal of village Shevga, who was present at the time of visit and panchnama carried out by valuer Mr. V.M. Ghogare and he is signatory to the panchnama about fruit bearing trees. Shaikh Akbar Abdul Nabi Bagwan, a fruit seller is examined by the claimants to whom claimants used to sell the fruits. He has deposed that from time to time Manikbai had sold Keshar mangoes to him as follows:

Sr. No.	Date	Quantity	Rate Per Quintal	Total amount paid after deducting commission and labour charges
1	30/04/2001	27 Quintal 30 KG	2800/-	99,030/-
2	05/05/2001	40 Quintal 30 KG	3000/-	1,14,655/-
3	08/05/2001	33 Quintal 10 KG	3000/-	94,170/-
4	24/05/2001	36 Quintal 50 KG	3000/-	1,03,840/-
5	29/04/2002	35 Quintal 42 KG	3100/-	1,04,135/-
6	01/05/2002	35 Quintal 64 KG	3000/-	1,01,400/-
7	06/05/2002	45 Quintal	3100/-	1,32,300/-
8	10/05/2002	38 Quintal 50 KG	3000/-	1,09,530/-
9	07/05/2003	43 Quintal 30 KG	3200/-	1,31,410/-
10	10/05/2003	41 Quintal	3450/-	1,34,170/-
11	27/04/2003	43 Quintal 10 KG	3300/-	1,34,905/-
12	30/04/2003	38 Quintal 20 KG	3500/-	1,26,825/-

10. In Jagganath’s case also he has deposed that Jagganath has sold mangoes to him as follows:

Sr. No.	Date	Quantity	Rate Per Quintal	Total amount paid after deducting commission and labour charges
1	01/05/2001	56 Quintal	3,000/-	1,59,320/-
2	10/05/2002	58 Quintal 80 KG	3100/-	1,72,870/-
3	28/04/2003	63 Quintal	3300/-	1,97,190/-

11. Receipts of the above transactions are placed on record and they are proved by this witness. Nothing damaging to his evidence is brought on record during his cross examination.

12. Claimants have also examined Venkatrao Manikrao Ghogare, expert valuer of orchard, who has visited the acquired lands and prepared panchnama of the fruit bearing trees. He has stated that he is bachelor of agriculture since year 1980 and acting as valuer of orchard. He has proved the valuation report of the trees standing in the acquired lands. He has proved Expert’s report (Exhibit-56 and 43), notes of number of trees in the acquired land (Exhibit-55 and 41), valuation report (Exhibit-57 and 44), his bachelor’s degree (Exhibit- 58 and 45) and certificate of institution of valuers that he is approved valuer (Exhibit-59 and 46).

Except giving him suggestion that he has not conducted panchnama, he is not Government approved orchard expert and he has prepared false valuation report, nothing damaging to his evidence is brought on record by the respondents.

13. The Reference Court has observed that nothing is brought on record in the cross examination of Mr. Ghogare to disbelieve his evidence. The Reference Court has further proceeded to observe that whether the valuation prepared by expert (Mr. Ghogare) is correct or not, it is necessary in the interest of justice to go through the A.E. Miram's table and circulars issued by State Government from time to time. Then by relying on circular dated 27.07.1990 issued by Agriculture Department in respect of valuation of fruit trees, it is stated that for obtaining maximum yield, Keshar mango trees, have to be planted at a distance of 10 x 10 feet, ber tree 5 x 5 feet, jamun tree 10 x 10 feet and guava tree 6 x 6 feet. Considering this for proper yield claimant Manikbai needs to plant 346 mango trees, 1 guava tree, 1 jamun tree and 6 ber trees in 3 Hectare 49 Are. However, she has planted these trees in 2 Hectare 47 Are and therefore, due to inadequate space and non availability of suitable weather, claimant Manikbai definitely will get less yield and income. Reference Court further proceeded to hold that

considering the requisite area mentioned in the circular, Manikbai has planted 40% more trees and therefore her income to the extent of 60% only will be taken into consideration.

14. In the case of Jagganath also by relying on circular dated 27.07.1990 issued by Agriculture Department in respect of valuation of fruit trees, it is stated that for maximum yield to the Keshar mango trees, same has to be planted at a distance of 10 x 10 feet and ber tree at 5 x 5 feet. Considering this for proper yield claimant Jagganath needs to plant 140 mango trees and 5 ber trees in 1 Hectare 41 Are. However, he has planted these trees in 58 Are and therefore, due to inadequate space and non availability of suitable weather, claimant Jagganath definitely will get less yield and income. Reference Court further proceeded to hold that considering the requisite area mentioned in the circular, Jagganath has planted 82% more trees and therefore his income to the extent of 18% only will be taken into consideration.

15. The approach of the Reference Court in placing reliance on the Government circular and ignoring the evidence brought on record by claimants is totally erroneous. The Reference Court has misdirected itself by placing reliance on the Government circular and ignoring the positive evidence brought

on record by claimants of plantation of fruit trees as well as yield received and sold by them from the year 2001 onwards. As is observed supra, evidence of PW 3 and PW 4 is not at all shattered in the cross examination. It is a matter of record that in the lands of Manikbai total 354 fruit trees and land of Jagganath 145 fruit trees were there. The Reference Court, therefore, could not have ignored the evidence and deducted 40% income from the fruit trees in Manikbai's case and 82% income in Jagganath's case.

16. Though receipts of sell of fruits are brought on record by claimants at Exhibit- 34 to Exhibit-35 in case of Manikbai and Exhibit- 25 to Exhibit-28 in Jagganath's case, Reference Court has ignored them on the ground that those are not final receipts. When PW3 has proved these receipts and has stated on oath that claimants have sold their fruits to him from time to time and he has paid rates as stated in chart mentioned in paragraphs No. 9 and 10 of this judgment, Reference Court could not have lightly brushed aside said receipts on a specious ground that those are not final receipts. Unwarranted inferences are drawn by the Reference Court while ignoring the said receipts. Hence, said finding of the Reference Court is unsustainable.

17. Admittedly, respondents have not brought anything on record to disbelieve the evidence led by the claimants. The finding recorded by the Reference Court in deducting 40% income of Manikbai and 82% income of Jagganath can be said to be perverse and same is also vitiated for non application of mind.

18. The Reference Court has further erred in denying enhanced compensation to the Jagganath when on the basis of similar evidence ehnahncement was granted to Manikbai, who is wife of Jagganath. In view of decision in ***Ningappa Thotappa Angadi (Dead) Through Legal Representatives vs. Special Land Acquisition Officer and Another***, (2020) 19 SCC 599, on the ground of parity, claimant- Jagganath is also entitled for enhanced compensation.

19. Claimant Manikbai Jagganath Soni, is therefore entitled for following compensation:-

For Keshar Mango trees, as per the report of orchard expert PW4, yield of 70 kg Mangoes per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.12/-, therefore, annual income from each tree comes to Rs.12 x 70 = Rs.840/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.840 – 20% =

Rs.672/-. After applying multiplier of 10.686 as per the A.E. Miram table, total loss per tree comes to Rs.672 x 10.686 = Rs.7,181/-. Cost of firewood from Keshar Mango as per the expert report is Rs.200/- and after applying multiplier of 0.1301 to the same, loss of income through firewood comes to Rs.200 x 0.1301 = Rs.26. Therefore, total loss of income from each Keshar Mango tree comes to Rs.7,181 + Rs.26 = Rs.7,207. As there are total 346 Keshar Mango tree, total loss from Keshar Mango Trees comes to Rs.7,207 x 346 = Rs.24,93,622/-.

For Guava tree, as per the report of orchard expert PW4, yield of 100 kg guava per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.4/-, therefore, annual income from guava tree comes to Rs.100 x 4 = Rs.400/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.400 – 20% = Rs.320/-. After applying multiplier of 9.471 as per the A.E. Miram table, total loss per tree comes to Rs.320 x 9.471 = 3030.72 which is rounded off to Rs. 3031/-. Cost of firewood from guava tree as per the expert report is Rs.80/- and after applying multiplier of 0.2470 to the same, loss of income through firewood comes to Rs.80 x 0.2470 = Rs.20. Therefore, total loss of income from one guava tree comes to Rs.3031 + Rs.20 = Rs.3,051/-. As there is only one guava tree, total loss from it comes to Rs. 3,051/-.

For Jamun tree, as per the report of orchard expert PW4, yield of 70 kg guava per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.10/-, therefore, annual income from guava tree comes to Rs.70 x 10 = Rs.700/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.700 – 20% = Rs.560. After applying multiplier of 10.686 as per the A.E. Miram table, total loss per tree comes to Rs.560 x 10.686 = 5,984/-. Cost of firewood from jamun tree as per the expert report is Rs.270/- and after applying multiplier of 0.1301 to the same, loss of income through firewood comes to Rs.270 x 0.1301 = Rs.35. Therefore, total loss of income from jamun tree guava tree comes to Rs.5,984+ Rs.35 = Rs.6,019/-. As there is only one jamun tree, total loss from it comes to Rs. 6,019/-.

For Ber trees, as per the report of orchard expert PW4, yield of 32 kg Ber per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.4.50/-, therefore, annual income from each tree comes to Rs.32 x 4.50 = Rs.144/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.144 – 20% = Rs.115/-. After applying multiplier of 10.686 as per the A.E. Miram table, total loss per tree comes to Rs.115 x 10.686 = Rs.1,229/-. Cost of firewood from Ber trees as per the expert report is Rs.220/- and after applying multiplier of 0.1301 to the same, loss of income through firewood comes to Rs.220 x 0.1301 = Rs.29. Therefore, total loss of income from each ber tree comes to Rs.1,229 + Rs.29 = Rs.1,258/-. As there are total 6 Ber trees, total loss from Ber Trees comes be Rs.1,258 x 6 = Rs.7,548/-.

Hence, claimant Manikbai is entitled for total compensation for fruit bearing trees as follows:

Sr. No.	Particulars	Compensation
1	Keshar Mango Trees (7207 x 346)	Rs. 24,93,622/-
2	Guava Tree (3051 x 1)	Rs. 3,051/-
3	Jamun Tree (6019 x 1)	Rs. 6,019/-
4	Ber Trees (7548 x 6)	Rs. 7,548/-
	Total Compensation to be awarded	Rs. 25,10,240/-
	Less Compensation awarded by the Reference Court	Rs. 7,86,604/-
	Total Enhanced compensation (Rs. 25,10,240 – Rs. 7,86,604)	**Rs. 17,23,636/-**

20. Claimant Jagganath Soni, is therefore entitled for following compensation:-

For Keshar Mango trees, as per the report of orchard expert PW4, yield of 70 kg Mangoes per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.12/-, therefore, annual income from each tree comes to Rs.12 x 70 = Rs.840/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.840 – 20% = Rs.672/-. After applying multiplier of 10.686 as per the A.E. Miram table, total loss per tree comes to Rs.672 x 10.686 = Rs.7,181/-. Cost of firewood from Keshar Mango as per the expert report is Rs.200/- and after applying multiplier of 0.1301 to the same, loss of income through firewood comes to Rs.200 x 0.1301 = Rs.26. Therefore, total loss of income from each Keshar Mango tree comes to Rs.7,181 + Rs.26 = Rs.7,207. As there are total 140 Keshar Mango trees, total loss from Keshar Mango Trees comes be Rs.7,207 x 140 = Rs.10,08,980/-.

For Ber trees, as per the report of orchard expert PW4, yield of 32 kg Ber per year for each tree needs to be considered. Rate per Kg as considered by the reference Court is Rs.4.50/-, therefore, annual income from each tree comes to Rs.32 x 4.50 = Rs.144/-. After deducting 20% maintenance cost of the tree, annual profit per tree comes to Rs.144 – 20% = Rs.115/-. After applying multiplier of 10.686 as per the A.E. Miram table, total loss per tree comes to Rs.115 x 10.686 = Rs.1,229/-. Cost of firewood from Ber trees as per the expert report is Rs.220/- and after applying multiplier of 0.1301 to the same, loss of income through firewood comes to Rs.220 x 0.1301 = Rs.29. Therefore, total loss of income from each ber tree comes to Rs.1,229 + Rs.29 = Rs.1,258/-. As there are total 5 Ber trees, total loss from Ber Trees comes be Rs.1,258 x 5 = Rs.6,290/-.

Hence, claimant Jagganath is entitled for total compensation for fruit bearing trees as follows:

Sr. No.	Particulars	Compensation
1	Keshar Mango Trees (7,207 x 140)	Rs. 10,08,980/-
2	Ber Trees (1258 x 5)	Rs. 6,290/-
	Total Compensation to be awarded	Rs. 10,15,270/-
	Less Compensation awarded by the SLAO	Rs. 2,90,371/-
	Total Enhanced compensation (Rs. 10,15,270 – Rs. 2,90,371)	**Rs. 7,24,899/-**

21. In the result, following order:

ORDER

(I) First Appeal No. 418 of 2017 is allowed with proportionate costs.

(II) Impugned judgment and award dated 08.11.2016 passed by learned 3rd Joint Civil Judge Senior Division, Jalna in Land Acquisition Reference No. 981 of 2010 is modified to the effect that claimant Manikbai Soni is entitled for enhanced compensation of Rs. 17,23,636/- along with statutory benefits. Rest of the award is maintained.

(III) First Appeal No. 419 of 2017 is allowed with proportionate costs.

(IV) Impugned judgment and award dated 11.11.2016 passed by learned 3rd Joint Civil Judge Senior Division, Jalna in Land Acquisition Reference No. 1200 of 2010 is hereby quashed and set aside.

(V) Claimant Jagganath Soni is entitled for enhanced compensation of Rs. 7,24,899/- along with statutory benefits.

(VI) Claimants to pay additional court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde