



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

FIRST APPEAL NO. 813 OF 2021

Ramrao S/o. Sambhaji Kothare
Age: 88 years, Occu.: Agriculture,
R/o. Itgyal, Tq.Mukhed,
Dist.Nanded.

..Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra
Through District Collector,
Nanded.
2. The Executive Engineer,
Lendi Prakalap,
Division Degloor, Degloor, Dist.Nanded.
3. The Special Land Acquisition Officer,
Minor Irrigation Work, Nanded.

..Respondents

...

Advocate for Appellant : Mr. Darshan D. Pokharkar
AGP for Respondent nos.1 & 3 : Mr.D.R.Korade
Advocate for Respondent no.2 : Mr.Anand Chawre

...

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 15 OCTOBER, 2025
PRONOUNCED ON : 04 NOVEMBER, 2025**

JUDGMENT :-

1. By consent of the parties, matter is taken up for final hearing at the admission stage itself.

2. Being aggrieved by the judgment and order dated 16-03-2019 passed by the learned Civil Judge, S.D. Mukhed, appellant/original claimant has preferred instant appeal.

3. Brief facts of the case are that, the lands of the appellant/claimant are acquired by the respondent acquiring body for Lendi Major Project. It is not disputed that the lands situated in the vicinity of village Itgyal, Tq.Mukhed, at Block No.5-B to the extent of 02 H 10 R, block No.377 to the extent of 00 H 01 R, block No.41-B to the extent of 00 H 19 R, belonging to appellant/claimant has been acquired by the respondent acquiring body for aforesaid project.

The Special Land Acquisition Officer (SLAO) has granted compensation of Rs.2,16,838/- in toto including compensation towards a bore-well and pipeline. The claimant challenged the said award of SLAO before the Reference Court.

The Reference Court has increased the compensation amount by 30% and enhanced compensation to Rs.2,81,890/- and also granted additional compensation of Rs.53,143/- towards fruit bearing trees. Again, dissatisfied by the enhanced compensation awarded by the Reference Court, instant appeal is preferred by the appellant.

4. Learned counsel for the appellant submits that the learned Reference Court has not followed the principles well settled in respect of granting compensation for the acquired land. He further submits that there is no provision for granting only 30% increase over and above the compensation granted by the SLAO. Therefore, such methodology adopted is erroneous. He further submits that learned Reference Court, though observed in paragraph no.11 and 12 of the impugned judgment about existence of a bore-well and pipeline, learned Reference Court has not considered the lands as irrigated one. Therefore, he submits that, in view of above, the lands acquired are required to be considered as irrigated lands and accordingly, compensation is required to be enhanced.

5. Learned counsel invited attention of this Court to the Judgment of this Court dated 16-01-2019 in passed in First Appeal No.3133 of 2009 with connected matters and decision of this Court dated 25-10-2023 in First Appeal No.103 of 2016 and connected matters, and submits that, the land acquired therein were for the same project and this Court has granted Rs.2,50,000/- per Hectare for irrigated land. Considering the above situation, learned counsel prays for enhancement in the compensation in similar manner and at same rate.

Learned counsel also submits that the learned Reference Court has not awarded any compensation towards structure i.e. bore-well and pipeline. He also submits that the learned Reference Court awarded inadequate compensation towards the fruit bearing trees too.

6. Learned Counsel for respondent no.2 acquiring body supports the impugned judgment and submits that there was no source of water in the acquired land and the learned Reference Court noted the finding that there was no evidence about existence of well in the acquired land.

7. Heard. Perused the record. The learned Reference Court in paragraph nos.11 and 12 of the impugned judgment has observed as under :

*“11] The present claimant also claims a well, a bore-well, a structure, a pipeline & certain fruit bearing trees, present in the acquired lands. The existence of a well, is not evident vide either the award (Exh.16), E-Statement (Exh.17) or any other reliable documentary evidence on record. **The existence of pipeline & a bore-well is evident vide the chart alongwith the award & also E-statement (emphasis laid).** The fruit bearing trees are also evident vide award (Exh.16) & E-statement (Exh.17).*

12] In support of his contention, of existence of a borewell & a well, the claimant also examined their witness no.02 viz. Anil Vaijanath Fulari (Exh.12), who is an expert in that regard, equipped with a degree in that behalf. This witness though has put-forth the existence of a well, in the acquired lands, however there is no other reliable and cogent evidence on record to conclude that way”

8. From the aforesaid observations of the learned Reference Court, it is clear that specific finding has been recorded regarding existence of a bore-well and laying of pipeline. Therefore, in the opinion of this Court, so much evidence is sufficient to hold that the land acquired was irrigated. As this Court has granted compensation @ Rs.2,50,000/- per Hectare for the irrigated lands, which were acquired for the same project, this Court is of the view that, in the present case also compensation needs to be granted at the same rate for irrigated lands.

9. As regards to grievance of non-consideration of appropriate compensation for fruit bearing trees, learned counsel for appellant submits that, undisputedly there is evidence suggesting availability of fruit bearing trees and even qualified Expert was examined for ascertaining its value, however, the same has not been correctly appreciated and ultimately, he urges for grant of appropriate

compensation. Finding fault in the appreciation on the part of the Reference Court to this extent, attention is invited to paragraph 13 of the impugned judgment.

10. In view of above submission, judgment of the Reference Court is visited and it is emerging that learned Reference Court has appreciated the evidence of witness no.3 Nandkumar Ganpat Patil (exh.29), who was witness and alleged expert for valuation of trees. In paragraph 13, learned Reference Court has bothered to reflect the educational qualification of witness no.3 as holding degree of M.Sc. Agri. and it is further noted that according to said witness, valuation of two Mango trees is Rs.48,600/-, five Jujube trees to the tune of Rs.41,810/-, two Tamarind trees to the tune of Rs.1,22,165/- and as such, sum total of entire trees is arrived at Rs.2,12,572/-. Learned Reference Court has further taken into account panchanama exh.34 as well as valuation report of above expert at exh.35 and 36, however, the Reference Court has recorded finding that witness has exaggerated the amount of income from trees. Such observations are now questioned and it is tried to be submitted that there was no reason to record finding of exaggeration as there was no contrary evidence to form such opinion.

11. This Court has accordingly visited exh.36 i.e. Valuation of Fruit Bearing Trees, which shows consideration of two Mango trees, five Ber trees and two Tamarind trees. Ages of each of the type of tree is 19 years, 16 years and 39 years respectively. It needs to be noted that the Reference Court has marked above valuation report as an exhibit and therefore, there is no reason to not to appreciate such documentary evidence. By using common knowledge, there is no reason to not to consider the valuation reached at by an Expert, who is also shown to be qualified in the field of agriculture. Resultantly, there being no sufficient cause or reason to preclude the above valuation report, the same is taken recourse to for ascertaining value of fruit bearing trees. The Expert seems to have valued above trees to the tune of Rs.2,12,572/-. Learned counsel for appellant herein himself has claimed atleast consideration of 80% of the above amount. In the fitness of things, to strike a balance and taking into account age of the trees, which admittedly must be fruit bearing one, it would be just and proper to grant atleast 60% than the one awarded by the Expert towards compensation for fruit bearing trees.

12. Similarly though before the Reference Court, appellant had

placed on record valuation of structure comprising of bore-well and pipeline at exh.27 showing valuation to the tune of Rs.83,059/-, by applying Thumb Rule for above referred bore-well and pipeline, and considering the area of Gat/Block No.5B to be of 2 Hectare 10 Are, Rs.50,000/- would be just and proper compensation for bore-well and pipeline. Accordingly, I pass following order :

ORDER

(I) The market value of the lands involved in the present appeal is determined @ Rs.2,50,000/- per Hectare.

(II) The appellant is entitled for Rs.1,27,543/- (60% of Rs.2,12,572/- valuation shown at Exh.36) towards fruit bearing trees.

(III) The appellant is also entitled for Rs.50,000/- towards structure i.e. bore-well and pipeline.

(IV) The appellant in the present appeal is accordingly held entitled for the enhancement in the amount of compensation.

(V) Rest of the order of the Reference Court granting rate of interest and statutory benefits not being touched upon, there is no change in the same.

(VI) The appellant/claimant shall pay the deficit Court fees, if any, on the enhanced compensation.

(VII) Rest of the impugned judgment is maintained.

(VIII) The award be modified accordingly.

(IX) The appeal stands partly allowed in aforesaid terms.

(ABHAY S. WAGHWASE)
JUDGE