



ctions have been carried out in view of Speaking to Minutes Order dated 19.03.2025.

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

**901 FIRST APPEAL NO. 1850 OF 2012
MAHADU TRIMBAK BANKAR
VERSUS
THE STATE OF MAH AND ORS**

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Advocate for the Appellant : Mrs. M R Jamdhade a/w.
Mr.Jamdhade Narendra R
Advocate for Respondent No.3 : Mr.A.M.Gaikwad
APP for Respondent/State : Mr. S.M.Ganachari

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CORAM : SHAILESH P. BRAHME, J.

DATE : 13th MARCH 2025

PER COURT :

1. Heard this matter finally with the consent of the parties.
2. Appellant is the original claimant whose land to the extent of 61R from Gat no.170 and 40R from Gat No. 192 situated at village Leha Tq.Fulambri, District Chhatraparti Sambhajinagar were acquired for Vakod Medium Project along-with lands of the adjoining owners. A common award was passed on 04.01.2005 by Special Land Acquisition Officer (S.L.A.O) thereby awarding rate of Rs.437 per R to the land of the appellant. Being aggrieved present appellant filed L.A.R No. 188 of 2006 and others also preferred different references. By common judgment and order dated 25.04.2012, references were allowed partly by enhancing the compensation from Rs. 437 per R to Rs.2625/-per R to the extent of petitioner. However, no compensation

was enhanced for fruit bearing trees. Being aggrieved appellant has preferred this appeal to the extent of compensation for fruit bearing trees located in land Gat Nos. 170 and 192.

3. Learned counsel for the petitioner Mrs.Jamdhade placed on record a copy of judgment and award passed on 25.02.2020 by the co-ordinate bench of this Court in the matter of **Jijabai Babulal Bankar vs. The State of Maharashtra and Others** in First Appeal No. 1496 of 2020 with connected appeals. It is submitted that under identical facts and circumstances and for the acquisition of self-same project, the judgment was passed granting compensation to the fruit bearing trees in that matter. On the ground of parity the appellant is entitled to receive compensation. She further tenders on record Exhibit-X containing a list of the trees which existed in land Gat Nos. 170 and 192 with 80% valuation of those trees. She would submit that as there was no challenge to the evidence of valuer and its valuation report depicting trees and their valuation, the denial of compensation is unwarranted and perverse.

4. Learned counsel Mr. Gaikwad appearing for contesting respondent no.3 supports impugned judgment and order. He submits that it is impossible to concede that so many trees were existing in the lands owned by the appellant which are acquired. He would submit that the reference court has rightly rejected the claim of the petitioner. The claim for the fruit bearing trees is exorbitant and without any support. Learned APP appearing for respondent Nos.1 and 2 adopts the submissions of respondent no.3.

5. I have considered rival submissions of the parties. I have gone through the original record and proceedings. Appellant submitted affidavit in lieu of examination-in-chief of himself and that of valuer Mr.Gaikwad. Both the witnesses were not cross-examined by the respondents. The valuation report submitted by Dr.Gaikwad is marked as Exhibit-19. There is no challenge to the valuation and the oral evidence on record. The number of trees shown by the valuer from the report can not be disputed. Respondents had ample opportunity to cross-examine the witnesses but for the reasons best known to them, no endeavour was made to do so.

6. The list of trees and their valuation which is tendered by appellant is in consonance with the record. Although it is tried to be submitted that it is not possible to have so many trees in a small piece of land but for want of cross-examination and specific challenge, the submission of respondent has no merit. I have no alternative than to rely upon the valuation shown by the valuer.

7. Learned counsel for the appellant has rightly adverted my attention to the judgment of this Court of passed on 20.02.2020 of co-ordinate bench in the matter of **Jijabai Babulal Bankar** (supra). In that case land Gat Nos.193 and 223 were acquired for the self-same project. In those appeals also the controversy was pertaining to the valuation of the fruits bearing trees only. The self-same valuer had given reports which were discarded by the reference court and by reasoned order partly allowed the appeals observing that the

valuation report, inspection reports should not have been discarded. I have carefully gone through the findings recorded in paragraph Nos.8 to 12 of that judgment. There is no reason for me to take any different view. I propose to adopt the same course.

8. For the reasons stated above, I hold that appellant is entitled to compensation of Rs.9,70,256/- for fruit bearing trees located in Gat Nos. 170 and 192 out of total compensation of Rs.12,12,820. I propose to rely on the judgment of Supreme Court in the matter of **Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon** reported in 2011(10)SCC 787 and hold that the appellant is entitled to receive 80% of the valuation. Accordingly, I fix the compensation to the extent of Rs.9,70,256/- which is 80% of the valuation. In that view of the matter, First Appeal is allowed partly in following terms :

ORDER

a) The claim of the enhancement of compensation for the land stands rejected.

b) The appellant is entitled to enhancement of compensation for fruit bearing trees in Gat Nos.170 and 192 to the extent of Rs.9,70,256/-

(i) The appellants-claimants are also entitled to receive statutory benefit as contemplated under Section 23(1-A) and 23(2) of the Act of 1894 on the aforesaid enhanced compensation amount.

(ii) In addition, the appellants-claimants will be entitled to get interest on the enhanced compensation as prescribed

under Section 28 and 34 of the Act of 1894.

c) First Appeal is allowed partly and award be drawn accordingly.

d) There shall be no order as to costs.

[SHAILESH P BRAHME, J.]

vsj..