



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

CROSS OBJECTION NO. 27 OF 2016

IN

FIRST APPEAL NO.746 OF 2015

Sharad S/o. Manikrao Burghate
aged about 55 years, Occu : Cultivator;
R/o Italapur, Tq. Arvi, Dist. Wardha ... **CROSS OBJECTOR**

VERSUS

1. The Executive Engineer [V.I.D.C.],
Lower Wardha Project (VIDC), Wardha.
2. State of Maharashtra, through Collector,
Yavatmal.
3. Special Land Acquisition Officer,
Wardha. ... **RESPONDENTS**

Mr. K. S. Narwade, Advocate for Cross-Objector/Respondent No.1.
Ms. A. S. Athalye, Advocate for Respondent No.1/Appellant.
Mr. M. A. Kadu, AGP for Respondent Nos.2 & 3/State.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : FEBRUARY 06, 2025.

DATE OF PRONOUNCING THE JUDGMENT : APRIL 21, 2025.

JUDGMENT:

. The present Cross Objection is filed by the land owner seeking enhancement in the amount of compensation granted by the learned Reference Court vide judgment and award dated 03.04.2013 passed in Land Acquisition Case No.281/2006.

2. The land owner is referred in the judgment as “cross objector” and acquiring body/VIDC is referred as “appellant” since the appeal under Section 54 was preferred by it in which the land owner has filed cross objection.

3. Initially, the acquiring body/Vidarbha Irrigation Development Corporation (VI.D.C.) filed appeal challenging the judgment and award dated 03.04.2013 passed by the learned 2nd Joint Civil Judge, Senior Division, Wardha in Land Acquisition Case No.281/2006 whereby the land acquisition reference initiated at the behest of the respondent no.1 land owner was partly allowed thereby enhancing the amount of compensation awarded by the land acquisition officer in lieu of acquisition of land of the respondent no.1. The original applicant/land owner has filed Cross-Objection No.27/2016 seeking further enhancement of compensation determined by the learned Reference Court. The appeal and cross objection were decided vide judgment and order dated 30.03.2023. The appeal and cross objection were dismissed holding that determination of compensation by the learned Reference Court was just and proper. The said judgment and order came to be assailed by the cross objector land owner before the Hon’ble Supreme Court of India vide Civil Appeal No.12972/2024. The Hon’ble Supreme Court of

India was pleased to quash and set aside the judgment dated 30.03.2023 and was further pleased to direct this Court to reconsider the valuation report (Exhibit C-2) relied upon by the cross objector for valuation of trees and the issue with respect to land bearing survey no.336 being an irrigated land or dry crop land. It will be pertinent to mention here that the other land bearing survey no.221 is considered to be an irrigated land by the land acquisition officer as also by the learned Reference Court. Both the parties agree that survey no.221 is an irrigated land. The direction to reconsider the nature of land is thus for land bearing survey no.336 on which the parties are at a contention.

4. The appellant/ acquiring body has not challenged the judgment dated 30.03.2023, dismissing the first appeal no. 746/2015 preferred by it. In view of the above, only the cross objection is taken up for adjudication afresh in terms of directions of the Hon'ble Supreme Court.

In brief the facts of the case are as under:

5. Agricultural land of the cross objector bearing survey no.221 admeasuring 3.36 HR and survey no.336 admeasuring 1.38 HR, situated at village Deurwada, Tahsil Arvi, District

Wardha came to be acquired for irrigation project of the appellant VI.D.C. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'L.A. Act') was published in official gazette on 08.04.1999. The notice was published in the Gram Panchayat Office on 28.07.1999, which is the last date of publication of notice and as such this is the relevant date of Section 4 notification for the purpose of determination of compensation. The land acquisition officer passed award dated 27.03.2003 under Section 11 of the L.A. Act awarding compensation for land bearing survey no.336 at the rate of Rs.33,144/- per hectare. This land bearing survey no.336 is treated as dry crop land. The land bearing survey no.221 is considered as irrigated land for which compensation is awarded at the rate of Rs.45,500/- per hectare. Land bearing survey no.221 is an orchard. The land acquisition officer has awarded separate compensation for 537 orange trees, 6 guava trees, 1 jamun tree, 2 pomegranate trees, 8 lemon trees, 1 awla tree. Apart from this, compensation is also awarded for non fruit bearing trees i.e. 12 teak trees, 21 *babul* trees and 16 neem trees.

6. The rate of each orange tree is fixed at Rs.3255.28 in the award passed by the land acquisition officer. As regards survey no.221, learned Advocate Mr. Narwade has raised serious dispute

with respect to compensation awarded for orange trees. The rate of other trees, both fruit bearing and non-fruit bearing, was not disputed. The joint measurement report records that there were 561 orange trees in Survey N.221 however, the land acquisition officer has awarded compensation for 537 orange trees only.

7. Dissatisfied with the amount of compensation awarded, the cross objector made an application seeking reference for enhancement of compensation as per Section 18 of the L.A. Act. The land acquisition officer made a reference to the learned Civil Court under Section 18 which came to be registered as Land Acquisition Case No.281/2006. The cross objector raised objection to valuation of land bearing survey no.336 contending that it is an irrigated land and also raised serious dispute with respect to valuation of fruit bearing trees and more particularly orange trees. The appellant V.I.D.C. filed written statement justifying the award passed by the Land Acquisition Officer.

8. The Cross Objector has examined himself and one Subhash Tayde, a valuer as his witness. The appellant did not examine any witness.

9. The cross objector has referred to different sale instances in his evidence and has stated that Rs.1,60,000/- per

hectare will be appropriate market value of the acquired land. He has stated that the lands owned by him were irrigated and fertile lands. As regards the fruit bearing trees, he relied upon valuation report prepared by the Valuer (CW-2). During his evidence the award passed by the land acquisition officer and 7/12 extracts of the acquired land were proved and exhibited. Apart from this, a sale deed with respect to agricultural land at village Pachegaon was also proved and exhibited. This sale deed dated 07.03.1998, pertains to 1.21 HR land in village Pachegaon, Tahsil Arvi, District Wardha.

10. CW-2 Subhash Tayde, the expert, has stated in his evidence that he holds qualification of M.Sc. in Agriculture (Horticulture). He was working as Assistant Professor in Horticulture Department at Shivaji Agriculture College, Amravati. He has stated that on the request of the cross objector he had inspected his agricultural land bearing survey no.221 and 336 for the purpose of valuation of fruit bearing trees and other trees. He has stated that the said land was an irrigated land drawing water from Balki river by means of electric motor pump. He has stated that fruit bearing trees in survey no.221 were 10 years old and has determined the value of each tree having regard to annual yield, expenses for maintenance and up-keep and market price of the

fruits as per rates notified by Agricultural Produce Market Committee, Kalamna, Nagpur. He has issued valuation report dated 26.12.2001 with respect to fruit bearing trees in survey no.221. The said valuation report is marked as Exhibit C-2. As per the valuation report this witness had visited and inspected land bearing survey no.221 on 25.12.2001. He states that there were 561 Orange trees in survey no.221. The average yield per tree is stated to be 1 quintal and the average market rate of oranges is taken as Rs.900 per quintal for determination of market value. He has made a deduction of Rs.100/- towards the expenses on account of land preparation, manure and fertilizers, irrigation charges, labour charges and harvesting charges, transportation charges and agent commission. Accordingly, he has determined net income of Rs.800/- per year for each orange tree. He has applied multiplier of 7.696 and determined value of each orange tree at Rs.6156.80.

11. In his cross examination PW-2 has stated that he had inspected the orchard for around 1 hour. He has prepared rough notes for computing the value of tree. However, the said notes were not attached with the valuation report. He did not ask for the expenses incurred by the cross objector for maintenance of the trees. Other suggestions were also given such as he did not

identify the land and also that he never visited the land which he obviously denied.

12. Having recorded the evidence of the cross objector and the expert/CW-2, the learned Reference Court proceeded to hear the arguments in the matter and passed judgment and award dated 03.04.2013. The learned Reference Court has fixed rate of dry crop land at Rs.1,10,000/- per hectare based on judgment in Land Acquisition Case No.280/2006. The land bearing survey no.336 is held to be a dry crop land for which compensation is determined at the rate of Rs.1,10,000/- per hectare. As regards survey no.221 the learned Reference Court recorded that the said land was an irrigated land for which compensation payable would be Rs.2,20,000/- per hectare i.e. double the rate determined for dry crop land. However, the learned Reference Court has also taken into consideration the value of fruit bearing trees in order to determine the compensation payable for survey no.221 by income capitalization method. The learned Reference Court found that land bearing survey no.221 will fetch a higher value if the compensation is determined by income capitalization method as compared to sale exemplar method. The compensation for survey no.221 was fixed at Rs.24,18,303/- by adopting income capitalization method. However, the learned Reference Court has

held that the cross objector will not be entitled to receive separate compensation for the land by the exemplar method since that would tantamount to valuing the land twice over, which, according to learned Reference Court is not permissible in law.

13. The learned Reference Court has accepted that average yield of each orange tree is 1 quintal per tree per year. The learned Reference Court has taken rate of orange at Rs.800/- per quintal and has deducted a sum of Rs.100/- per tree per year. It has then made a deduction of 25% towards expenses and applied multiplier of 8 for determining value of each tree. Accordingly, value of each tree is fixed at Rs.4200/- by the learned Reference Court.

14. The acquiring body VI.D.C. challenged the judgment and award passed by the learned Reference Court by filing the present appeal. The land owner has filed cross objection seeking further enhancement in the amount of compensation. The appeal and cross objection were dismissed by this Court vide judgment dated 30.03.2023. However, the cross objector preferred appeal before the Hon'ble Supreme Court. The appellant accepted the judgment and did not assail it further.

15. The Hon'ble Supreme Court was pleased to allow the civil appeal no.12972/2024 preferred by the cross objector challenging the said judgment and was pleased to remand the matter for hearing the appeal afresh directing to reconsider the valuation report Exhibit C-2 and the nature of land bearing survey no.336 i.e. whether it is a dry crop land and or irrigated land.

16. The learned counsel Mr. K. S. Narwade appearing for the cross objector has canvassed that the valuer PW-2 is an expert who has inspected the orchard and has submitted valuation report having examined the fruit bearing trees. He states that the valuer has taken into consideration the prevailing price of fruits in the A.P.M.C. Market Yard at Kalamna and has also taken into consideration the average yield of the trees in order to determine market value of each tree. He states that the valuer has followed Miram's table and has arrived at a reasonable rate with respect to the fruit bearing trees. He contends that the valuer has given cogent reason for the opinion with respect to valuation of fruit bearing trees in the valuation report. He also argues that nothing worthwhile is elicited in the cross-examination of the expert to challenge the valuation. He, therefore, prays that compensation for fruit bearing trees should be determined by accepting the valuation report. He further contends that in addition to the value

for trees compensation should also be awarded for the land of survey no.221 at the rate of Rs.1,10,000/- per hectare. He submits that the sale exemplar is not with respect to an orchard and therefore, while determining market value of survey no.221 which is an orchard, compensation should be awarded for the open land and the value of trees as well.

17. As regards land bearing survey no.336 he contends that the village Deurwada is located besides river Balki. The villagers draw water for their fields from the said river. He contends that land bearing survey no.336 is also irrigated land which is irrigated by drawing water from the said river. He, therefore, prays that market value of land bearing survey no.336 should be fixed at Rs.2,20,000/- per hectare, which is the rate determined by the learned Reference Court for irrigated lands.

18. *Per contra*, Ms. Ashwini Athalye, the learned counsel for the appellant argues that an expert is not a witness of fact. His evidence is in the nature of advice or opinion for guiding the court to determine certain issue. She states that the opinion of expert must be based on hard facts. She contends that in the present matter the valuer/PW-2, has not taken into consideration the actual yield of the fruit bearing trees and has hypothetically

considered the actual yield at 1 quintal per tree without any evidence to support the same. She contends that the valuation report is based on assumption that each orange tree gives average yield of 1 quintal per year for which there is no evidence on record. According to her valuer ought to have ascertained the actual yield by asking the cross objector to produce evidence with respect to the annual yield of the orchard. According to her, the actual annual yield could be ascertained from the sale vouchers, bills, accounts entries etc. with respect to sale of fruits from the orchard. She also contends that expenditure of Rs.100/- per tree is also determined without any rational basis. She further challenges the valuation report by pointing that there is no evidence in order to establish that the average price of oranges at the relevant time was Rs.900/- per quintal.

19. I have heard the rival submissions as aforesaid and I have perused the record of the case. Having heard the parties as aforesaid the following points arise for my determination in the present cross objection.

POINTS FOR DETERMINATION

- (i) Was land bearing survey no.336 an irrigated land or dry crop land? What should be the appropriate market value

of land bearing survey no.336 as on 28.07.1999 i.e. the date of Section 4 notification ?

(ii) What should be the correct valuation of fruit bearing trees in survey no.221 as on 28.07.1999 i.e. date of Section 4 notification?

(iii) Should separate compensation be awarded for land bearing survey no.221 in addition to the value of trees and land determined by income capitalization method?

(iv) What should be the total amount of compensation payable to the cross objector/ land owner ?

AS TO POINT NO. (i) :

20. The land acquisition officer has considered survey no.336 as dry crop land. The learned Reference Court has also awarded compensation for survey no.336 at the rate of Rs.1,10,000/- per hectare treating it to be a dry crop land. In this regard when we refer to examination-in-chief of the cross objector it is seen that he contends that the said land is an irrigated land and claims compensation for the same at the rate of Rs.1,60,000/- per hectare. The cross objector has placed reliance on sale exemplar from village Deurwada in support of the said claim. 7/12 extracts of survey no.336 are filed on record by the cross

objector at Exhibits 19 and 20. The 7/12 extract at Exhibit 19 pertains to the year 1996-97. Perusal of 7/12 extract demonstrates that total area of survey no.336 was 1.38 HR out of which 0.70 HR land is shown to be under cultivation as, 'unirrigated land'. The remaining 0.68 HR land is recorded as, 'land not fit for cultivation'. There is no entry with respect to any irrigation facility for land bearing survey no.336 in this 7/12 extract.

21. Another 7/12 extract of survey no.336 is at Exhibit-20. It pertains to the year 2006-07. This 7/12 extract is not of relevance since it pertains to period 7 years subsequent to Section 4 notification. However, it may be recorded that as per 7/12 extract 1.30 HR land is under cultivation as, 'unirrigated land' and 0.08 HR land is shown as not fit for cultivation. In this 7/12 extract also there is no entry with respect to any well or other source of irrigation. It will be pertinent to mention here that both the 7/12 extracts show that the land was cultivated only in kharif season. There is no entry with respect to cultivation of land in rabi season. In view of the fact that the revenue record relied upon by the cross objector does not indicate that two crops were taken in survey no.336 coupled with the fact that there is no entry with respect to any well or other source of irrigation, I am of the opinion that land bearing survey no.336 is a dry crop land and not

an irrigated land as contended by the appellant. It must be mentioned that in 7/12 extract pertaining to survey no.221 which is also owned by the cross objector in the same village there is an entry in Column no.16 regarding irrigation from river by means of electric pump. Such entry is not recorded with respect to land of the cross objector in the same village for land bearing survey no.336. This further fortifies that survey no.336 is not an irrigated land but a dry crop land. The learned Reference Court has rightly held that survey no.336 is a dry crop land. It will be pertinent to mention that both Advocates have not challenged finding of the learned Reference Court determining rate of dry crop land at Rs.1,10,000/- per hectare and therefore, I hold that land bearing survey no.336 must fetch compensation at the rate of Rs.1,10,000/- per hectare.

AS TO POINT NO. (ii) :

22. The land acquisition officer has awarded compensation for 537 orange trees. The relevant portion of the land acquisition award (Exhibit-17) records that there were 561 trees at the time of joint measurement report. However, it is stated that inspection of acquired land was held on 11.12.2002 and 18.12.2002 in which only 537 orange trees were found. The land

acquisition officer has awarded compensation for 537 orange trees at the rate of Rs.3255.18 per tree. The learned Reference Court has referred to 7/12 extract of the land bearing survey no.221 which are at Exhibits 18 and 21. The 7/12 extract at Exhibit 21 pertains to the year 1996-97 in which there is an entry of 565 orange trees. The notification under Section 4 is issued on 28.07.1999. Placing reliance on the said 7/12 extract the learned Reference Court has held that the cross objector is entitled to compensation for 561 orange trees. It will be pertinent to mention here that in the 7/12 extract of the year 2006-07 at Exhibit 18 the number of orange trees is recorded as 537. It is natural and also logical that the number of trees may from vary slightly over a period of years. The relevant date in the present case is 28.07.1999. 7/12 extract of the 1996-97 at Exhibit 21 records entry of 565 orange trees. The J.M.R. also indicates existence of 561 trees. Having regard to the evidence on record, I find that the learned Reference Court is right in holding that the appellant is entitled to receive compensation for 561 orange trees as against compensation for 537 trees awarded by the Land Acquisition Officer.

23. The cross objector has placed reliance on valuation report by PW-2 for the purpose of valuation of orange trees. The

valuer has stated that he had visited the orchard in survey no.221 on 25.12.2001 and has issued valuation report on 26.12.2001 which is at Exhibit C-2. The valuer has computed the value of each orange tree at Rs.6156.80. He has considered annual yield of each tree as 1 quintal and taken price of oranges at Rs.900/- per quintal. He has made a deduction of Rs.100/- per tree towards maintenance and up-keep of orange tree and has accordingly arrived at net annual income of Rs.800/- per tree and by adopting multiplier of 7.696 he has fixed the value of each tree at Rs.6156.80 (Rs.800 x 7.696).

24. Mr. Narwade, the learned Advocate for the cross objector vehemently argues that as against the evidence brought on record by examination of the valuer/PW-2, the acquiring body has not led any evidence to the contrary. He contends that the valuer has stood the test of cross-examination and as such the valuation report must be accepted and compensation should be awarded for the orange trees in terms of the valuation report.

25. As against this, the learned Advocate for appellant has contended that valuer PW-2 has not placed any material on record to demonstrate that prevailing market value of orange was Rs.900/- per quintal as stated in the valuation report. She further

contends that there is no material on record to support the observation in the valuation report that annual yield of the orange trees was one quintal. She argues that the valuer has merely referred to some text-books to contend that the annual yield was one quintal without factually ascertaining the same. She has argued that the notification under Section 4 was issued on 28.07.1999 and the valuer has issued valuation report dated 26.12.2001 on the basis of alleged visit to the acquired land on 25.12.2001. She contends that there was ample opportunity in between to make a physical assessment of the yield of the orange trees standing on the acquired land. She criticizes the valuation report and the evidence of the valuer for having failed to make physical assessment of the annual yield.

26. She places reliance on the judgments of *Special Land Acquisition Officer v. Sidappa* reported in *1995 (Supp) 2 SCC 168* and *State of Himachal Pradesh v. Jailal* reported in *(1993) 7 SCC 280*, to contend that unless valuer satisfies that he has gathered relevant factual data, the valuation report cannot be relied upon and that report of valuer is not binding on the court and is only a piece of evidence, which may or may not be accepted. Then she refers to judgment of this Court in the matter *Narayanlal v. State* reported in *2012 (1) Mh.L.J. 642* to contend that even in the

absence of proper cross-examination, valuation report in land acquisition cases cannot be accepted mechanically.

27. The contention of the learned counsel for the appellant as regards rate of oranges is rejected in view of the fact that the Land Acquisition Officer has mentioned rate of oranges at Rs.861/- per quintal in his award as against Rs.900/- considered by the valuer. The difference in the rate is negligible. The statement with respect to rate of oranges is not even challenged during the cross examination of the expert PW-2. In view of that, I am inclined to accept that rate of orange was Rs.900/- per hectare at the relevant time.

28. Perusal of the valuation report will indicate that the valuer has not personally verified the actual yield of the orchard in survey no.221. It is necessary to state that the date of publication of Section 4 notification is 28.07.1999. The valuer has inspected the field on 25.12.2001. The intervening period is of two and half years. Thus, there was ample opportunity to inspect the orchard while the trees were bearing fruits in order to make a fair estimate of yield capacity of each tree and orchard as a whole. However, the valuer has failed to conduct the said exercise. The valuer could also have asked the cross objector to provide documentary

evidence with respect to sale of oranges to determine the yield of the orchard and income derived from sale of fruits. The valuer has however, chosen to feed a hypothetical figure of annual yield without verifying the hard facts as regards the annual yield of the tree. It is necessary to record that two or three seasons of orange crop have intervened the date of Section 4 notification and the date of inspection. The valuer has erred in not taking into account the actual yield of the orchard in survey no.221 while giving his report.

29. The figures of annual yield are based merely on contents of some textbook when the same could have been factually verified and ascertained. Valuer has committed a fundamental mistake in not trying to estimate the annual yield of the fruit, although he had opportunity to assess the same.

30. The valuation report indicates that age of all orange trees is 10 years. The valuer has allegedly inspected the field on 25.12.2001. He states that as on 25.10.2001, the age of all trees is 10 years. In this regard, when 7/12 extract of the land bearing survey no. 221 for the year 1995-96 (Exhibit-21) is perused, it is found that there is entry of 565 orange trees. It is mentioned that the trees are tall and age of trees is mentioned as 12 years.

Accordingly, as on 25.12.2001, the age of the trees will be 17 years. However, the valuer has mentioned the age of trees is 10 years. The 7/12 extract is proved during the course of evidence of the claimant. The claimant is relying on the said 7/12 extract. The 7/12 extract creates a serious doubt about the genuineness of the valuer's report. It can be conceived that error of a few years may occur while determining the age of the trees by a valuer. However, in the case at hand, the error is of 7 years. This assumes a great significance, in as much as, according to the valuer fruit bearing capacity of orange trees is upto age of 25 years. Apart from this, the valuation report also does not indicate the basis on which age of trees is determined and mentioned as 10 years. It is therefore not safe to rely on the valuation report for considering the age of trees. The only evidence available to determine the age of trees is the 7/12 extract, according to which, as on the date of issuance of Section 4 Notification, the age of trees was 14 years.

31. Apart from the above aspects, it also needs to be mentioned that the valuer has mentioned that expenses for upkeep and maintenance of each orange tree would be Rs.100/- per year. However, he has not mentioned any reason for arriving at a said figure. It is impossible to ascertain the basis of arriving at a figure of Rs.100/- towards expenses. He has referred to

recommendations of Dr. Punjabrao Deshmukh Agricultural University Akola on the aspect of expenditure. It will be pertinent to mention here that the said document i.e. alleged recommendations of PDKVU have not been proved or exhibited during the course of evidence. It will be pertinent to mention here that the extracts of reference books to which reference is made in the valuation report are not annexed with the valuation report. The same are also not placed on record separately. Sketch Map of the acquired land, letter by APMC Nagpur regarding rates of oranges and Table Nos.1 and 2 from Valuation Tables of Reference Book – Valuation of Real Property in India by A.E. Miram are attached to the valuation report. Thus, the material on the basis of which deduction is suggested by the valuer is not proved and rather it is not on record.

32. Having regard to the aforesaid, it is difficult to place reliance on the valuation report and the evidence of the valuer/PW-2 with respect to annual yield of the orange trees and the expenses for upkeep, maintenance, harvesting of crop etc. Apart from this, the valuer has taken into consideration incorrect age of the orange trees in his valuation report. He has considered the age of trees as on the date of issuance of Section 4 notification as 10 years as against 17 years which appears from the 7/12

extracts. However, as stated above, the rate of orange trees in the market taken by the valuer is near about the same as the rate taken into consideration by the Land Acquisition Officer, and therefore, the rate taken into consideration by the valuer can be accepted.

33. Having regard to the aforesaid, I am of the opinion that the learned advocate for the acquiring body is right in a submission that the valuation report cannot be relied upon, in as much as it is not worthy of any credence. The learned advocate for the acquiring body is justified in placing reliance on the judgments as referred above.

34. The Hon'ble Supreme Court has held in the matter of ***Sidappa (supra)*** that before placing reliance on valuation report of his valuer the Court must satisfy itself that the opinion formed by the valuer is on the basis of relevant factual data or material. Such material is required to be produced before the Court. The material must be proved to be genuine and reliable as any other evidence. The Court must be satisfied with respect to authenticity and reliability of the material on which the expert relies. It is held that the Court must examine the data or the material on the basis of which the valuation report is prepared before placing reliance on

the valuation report. Similar view is taken in the matter of ***Jailal (supra)***. It is held that an expert is not a witness of facts and his evidence is only advisory in nature. The Court may seek guidance from the opinion of the expert. However, the conclusions drawn by expert are not binding. The opinion must be based on relevant material and it is open for the Court as to whether the opinion is given on the basis of any relevant material to support the observation/findings/conclusions arrived at by the expert.

35. The learned counsel for the appellant has placed reliance on the judgment of this Court in the matter of ***Narayanlal V/s State*** reported in ***2012 (1) Mh.L.J. 642*** wherein even in the absence of proper cross examination of an expert in land acquisition cases, the court must exercise due care and caution in placing reliance on the evidence of expert. It is the duty of the Court to examine whether the opinion of expert inspires confidence, having regard to the material on which the opinion is based and the principles of which opinion is formed. This Court has referred to judgment of Hon'ble Supreme Court in the matter of ***P. Ram Reddy v. L.A.O., Hyderabad*** reported in ***1995 (2) SCC 305*** wherein it is held that ineffective cross examination of witness is a common feature in land acquisition cases. Having regard to the manner in which land acquisition cases are defended by the

State, it is held that evidence of witnesses in land acquisition cases cannot be accepted simply because there is no effective cross examination or evidence in rebuttal is not led by the State. The evidence of witnesses examined by land owners must be evaluated on broad probabilities. It is held that it is the duty of the Court to prevent public money being fleeced only because of failure on the part of State to contest land acquisition cases properly.

36. In the light of above decisions, it has to be held that an expert is not a witness of facts; his evidence in the nature of an opinion; the opinion is not binding on the Court and the Court has to independently examine and assess the opinion. An expert while he submits his report to the Court for consideration must place before the Court the entire material on the basis of which he arrives at the opinion given to the Court. It is duty of the Court to assess the opinion in the light of the material relied upon by the valuer. The Court may as well decide as to whether the opinion of valuer is based on any relevant material.

37. As stated above, in the present case, the material on the basis of which opinion is given regarding valuation is not produced on record. As already pointed out, the opinion with respect to age of trees is contrary to the 7/12 extracts proved and

relied upon by the cross objector. The Valuation Report is therefore discarded.

38. The learned Reference Court has determined value of each orange tree at Rs.4200/-. For this the learned Reference Court has taken the annual yield of each tree at one quintal per annum. The rate of oranges is taken at Rs.800/- per quintal. Annual expenses for each tree are considered to be Rs.100/-. Accordingly net income per tree is determined at Rs.700/- per annum. The learned Reference Court has applied multiplier of 8 and has accordingly arrived at market value of each orange tree at Rs.5,600/- (Rs.700 x 8).

39. It is already held that the rate of Rs.900/- per quintal determined by the valuer can be accepted, since it is near about the same as the rate considered by the Land Acquisition Officer. I am of the opinion that the valuer should have factually assessed the annual yield of the orchard which he has failed to do. I find that there is no material in order to hold that average annual yield of each orange tree was 1 quintal. The learned Reference Court has erred in taking the annual yield of each tree as 100 kg per year. Likewise, there is no material for computation of expenses.

40. In the absence of any legally admissible and reliable evidence as regards annual yield and expenses, it will be profitable to refer to Government Resolution dated 27.12.1990 which speaks about annual average yield of different fruits trees in irrigated land. Entry no.3 in the Government Resolution deals with oranges. The Government Resolution states that orange trees yield 15 to 30 kg. of fruit when they are at 5 to 8 years old from 9th year onwards the annual average yield is 45 to 90 kg. The fruit bearing capacity of a tree as per the said Government Resolution is upto 20 to 30 years of age. As against upper limit of 90 kg. prescribed in the Government Resolution dated 27.12.1990 the valuer has taken the annual yield at 1 quintal i.e. 100 kg. In the absence of any concrete evidence regarding the annual yield, in my opinion it will be just and proper to consider annual yield as per Government Resolution dated 27.12.1990.

41. A perusal of the award passed by the land acquisition officer indicates that the orange trees have been classified into three categories namely small, dried and good. Perusal of the award further indicates that rate of around 2000 and above have been awarded for orange trees of good condition in different fields. The rate of orange trees granted for land owned by the cross objector bearing survey no.221 is Rs.3255.18 per tree. In

view of the fact that relatively higher rate is awarded for trees of cross objector, I am inclined to compute compensation for the orange trees considering the annual yield of each tree at 90 kg per annum which is the optimum yield as per the Government Resolution dated 27.12.1990. Thus the gross annual income of each tree will be Rs.810/- (Rs.9/- X 90 kg).

42. At this stage, we need to consider the deduction to be made towards cultivation charges, manual fertilizers, insecticides, maintenance watch and ward, ploughing, packing, transportation etc. 20% deduction towards expenses is approved by the Hon'ble Supreme Court in the matter of *Chindha Fakira Patil Vs. S.L.A.O. reported in (2011) 10 SCC 787*, judgment dated 26.10.2015 passed by this Court in **First Appeal No.2356/2016, Narayan Kapase Vs. State of Maharashtra** reported in **2020(5) Mh.L.J. 391** and several other judgments. On making 20% deduction as aforesaid, the net annual income from each tree comes to Rs.648/- (Rs.810-Rs.162/-). This net annual income is required to be multiplied by appropriate multiplier of 'years purchase' to determine the value of each tree by income capitalization method. The valuer has applied multiplier of 7.696. Applying the same multiplier, the compensation of each tree works out to Rs.4987/-.

43. The valuer has determined compensation for each tree by applying multiplier of 7.696 as per **Miram's Table**. The valuer has observed that as in December, 2001, when he had allegedly visited the orchard the age of trees was 10 years. Accordingly, as on 28.07.1999 i.e. the date of Section 4 Notification, the age of trees, according to the valuer, was 8 years. On this basis he has adopted multiplier of 7.696. As observed above, the actual age of orange trees as on date of Section 4 Notification was 14 years. The fruit bearing life of orange trees is around 18 to 20 years. There is error of around 6 years in considering the age of trees. With increase in age of trees, its balance fruit bearing life will be less and accordingly the trees will fetch less value. By rough estimate a further 20% deduction should be made while determining the compensation for each orange tree. This 20% deduction is made since the valuer has adopted the multiplier by taking into consideration the wrong age. By making this deduction, the value for each tree comes to Rs.3989.60, rounded off to Rs.3990/-. The wood value of each tree is determined at Rs.23/- by the learned Reference Court, which is in accordance with the opinion of the valuer. The parties are not at issue on the wood value. Therefore, the total compensation for each orange trees works out to Rs.4013/-. The

land bearing survey no.261 had 561 orange trees and accordingly, total compensation payable for the orange trees works out to Rs.22,51,293/-.

44. Shri Narwade, learned Advocate for the cross objector has placed reliance on the judgment in the matter of ***Executive Engineer Vs. Manik Shamrao Chore*** reported in ***(2023) 1 AIR Bom. R. 373***. The said judgment pertains to acquisition of land for submergence of lower Wardha Project, Wardha. The land in the said case is from village Wathoda. The present acquisition is also pertaining to the same project. The suit property in the present appeal is from village Daurwada. Both these villages are situated in Tahsil Arvi, Dist. Wardha. In the said case placing reliance upon other judgments wherein rate of orange trees was fixed at Rs.6311/- per tree, this Court was pleased to grant the rate of orange trees at the same rate i.e. Rs.6,311/- per tree. Shri Narwarde contends that value of each orange tree should be fixed at Rs.6,311/- as has been done in the said case and other cases. He has argued that the principle of parity should be applied while determining the rate of orange trees as well placing reliance upon the observations in paragraph Nos.13 to 17 of the judgment.

45. Principle of parity is judicially recognised in land

acquisition cases. This principle of parity is followed for valuation of trees as well in the case of *D. Eswara Naidu Vs. The Special Deputy Collector (Land Acquisition) (2019) 13 SCC 785*. A contention was raised before the Hon'ble Supreme Court that with respect to lemon trees standing on acquired lands, compensation @ Rs.4000/- was granted in a particular case and therefore, the same rate should be applied for lemon trees on lands acquired under the same notification. In this context, the Hon'ble Supreme Court has observed in paragraph 5 as under:

“5. Needless to say that in case, similarly situated persons covered under the very same notification have been granted, compensation at the rate of Rs.4000/- per Lemon tree, the petitioners herein may not be discriminated on the ground of delay”

Therefore, there cannot be any dispute that principle of parity needs to be followed for valuation of trees as well.

46. However, since the principle of parity is sought to be applied on the basis of a judgment, it is necessary to consider judgments of the Hon'ble Supreme Court in the matters of *Ranvir Singh and others Vs. Union of India* reported in *(2005) 12 SCC 59* and *Babibai Babu Patil Vs. State of Maharashtra and others* reported in *2017 SCC Online SC 2130*, wherein it is held that a

judgment in a earlier case pertaining to compensation awarded is merely a piece of evidence and is required to be evaluated and examined as such. It cannot be followed as a precedent.

47. In this regard, since reliance is placed on a judgment of this Court, which also has a precedential value, it will be appropriate to clarify that the ratio flowing from the judgment will have to be followed as a precedent, however, the factual aspect of the judgment relating to valuation will have to be appreciated as an evidence and not as binding precedent.

48. The principle of parity which is the ratio of the judgment in the matter of Executive Engineer, relied upon by Mr.Narwade will have to be accepted. However, parity can be applied when all parameters are same or similar. Factual aspects of the matters cannot be ignored while applying principle of parity, else it will result in promoting disparity. Perusal of the judgment relied upon by learned Advocate does not indicate the age of trees in the said cases.

49. In the judgment of *Manik Chore*, relied upon by Mr.Narwade, the age of trees is not mentioned. In that view of the matter, compensation in the present case cannot be awarded at the rate of Rs.6311/- which is granted in the aforesaid judgment

relied upon by cross objector. It needs to be mentioned that the age of trees is a very important factor in determining the value of fruit bearing tree. Likewise, the judgment also does not indicate the annual yield and rate that was taken into consideration by the valuer. These are the vital aspects which need to be considered before applying the principle of parity. It needs to be reiterated that in the light of judgments of the Hon'ble Supreme Court in the matters of *Ranbir Singh and Babibai Babu Patil*, the said judgment will have to be looked upon as a piece of evidence, and therefore, unless factual aspects on the basis of which the rate is determined in the said case come to the fore, it will not be safe to rely upon the said judgment in order to apply principle of parity.

AS TO POINT NO. (iii) :

50. The question that now arises is whether the compensation payable for an orchard determined by adopting income capitalization method is for the value of trees alone or for value of the land along with the trees.

51. Mr. Narwade, the learned counsel for the appellant has raised a contention that the learned Reference Court has granted compensation only for trees standing on land bearing

survey no.221. He contends that apart from the compensation for the trees the learned Reference Court ought to have awarded compensation for land. He contends that the land owner cannot be deprived of his land without making payment of compensation for the same. In support of his contention that separate compensation should be paid for the land and the trees, he places reliance on Section 23(1) of the Land Acquisition Act as also on the judgments of the Hon'ble Supreme Court in the matter of *Ambya Kalya Mhatre (Dead) through LRs. and others v. State of Maharashtra* reported in (2011) 9 SCC 325 and *Bhupendra Ramdhan Pawar v. V.I.D.C.* reported in (2021) 12 SCC 58. He states that when valuation of an orchard is made on the basis of comparable sale instance of a land not having fruit bearing trees, compensation has to be awarded firstly for the land and thereafter separate compensation is required to be paid for the fruit bearing trees on the land. He states that as regards land bearing survey no.221 the learned Reference Court ought to have awarded compensation for the land treating it to be a dry crop land and thereafter the compensation should have been awarded for the trees as well. In sum and substance the contention is that value of the trees and land will have to be added to the value of land in order to compute compensation payable for survey no.221 which

is an orchard.

52. In the matter of *State of Haryana v. Gurcharan Singh and another etc.* reported in 1995 (Supp) 2 SCC 637, the Hon'ble Supreme Court has held as under:

“3. It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation need to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over and one on the basis of the value of the land and again on the basis of the yield got from the fruit bearing trees. The definition of the land includes the benefits to arise from the land as defined in Section 3(a) of the Act. After compensation is determined on the basis of the value of the land from the income applying suitable multiplier, then the trees would be valued only as fire-wood and necessary compensation would be given.”

53. In the matter of *Ambya Kalya Mhatre* a contention

was raised before the Hon'ble Supreme Court that once compensation is awarded for an orchard, additional or separate compensation cannot be awarded for the trees standing on the land. The contention was raised placing reliance upon judgment of the Hon'ble Supreme Court in the matter of ***Gurcharan Singh (supra)***. The Hon'ble Supreme Court after considering the said judgment has held as under:

35. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land.

54. Perusal of the aforesaid observations will indicate that the Hon'ble Supreme Court has expressed that when land value is

determined with reference to sale statistics or compensation awarded for a vacant land then the trees are required to be valued separately and additional compensation is required to be paid for the trees. This is required to be done in case where the comparable sale instance pertains to vacant land. However, if the comparable sale instance is with respect to orchard having fruit bearing trees then value of trees cannot be added separately. Most importantly the Hon'ble Supreme Court has held that in cases where the market value is determined by income capitalization method on the basis of yield in that case also making addition either for the land or for the trees separately will not arise. In the matter before the Hon'ble Supreme Court the market value was not determined by income capitalization method i.e. with reference to yield of the orchard. Likewise, the market value was also not determined on the basis of a comparable sale instance of an orchard. In such circumstances, the Hon'ble Supreme Court has held that value of the trees can be added to the value of the land. The Hon'ble Supreme Court has however categorically stated that when determination of market value is done by income capitalization method separate valuation for land and trees is not permissible.

Mhatre is that if market value of land comprising of orchard is done by following sale exemplar method by referring to sale instance pertaining to vacant land, then the trees will have to be valued separately and compensation for the trees will have to be added to the market value of the land in order to determine the total amount of compensation payable. However, the said judgment does not state that in cases where market value is of an orchard is determined by following income capitalization method, separate compensation should be awarded for the land on which the trees are standing. The judgment rather prohibits it.

56. It will be pertinent to mention that in view of the aforesaid judgments of the Hon'ble Supreme Court if compensation for land is computed on the basis of income capitalization method, separate compensation cannot be awarded for the land. The income capitalization method gives market value of the land with the trees standing on it. However, if land having fruit bearing trees is valued by following comparable sales method, relying upon sale instances of open land, then the trees can be valued separately. However, in view of clear exposition in the matter of *Ambya Kalya*, the trees will have to be valued only as fire wood or timber and in no case the valuation of trees can be made by yield/income capitalization method. The Hon'ble

Supreme Court has held that if compensation is awarded for the land based on sale instance method and thereafter the trees standing thereon are valued by income capitalization method then the land owner will get benefit of valuation of the land twice over which is impermissible in law.

57. The principle that land cannot be valued twice over is also categorically laid down by the Hon'ble Supreme Court in the *Koyappathodi M. Ayisha Umma v. State of Kerala* reported in *(1991) 4 SCC 8*, wherein in paragraph no.6 of the judgment it is held as under:

6. It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the land acquisition officer or the court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly the determination of the compensation of the land as well as the trees is illegal. The High Court laid the law correctly.

58. Perusal of the above judgment will indicate that the Hon'ble Supreme Court has accepted that when valuation of orchard is required to be done, the land and trees can be treated as separate units. In such cases the land acquisition officer can assess the land with all its advantages and fix the market value having regard to the potential of land. Alternatively, in cases where credible evidence with respect to net annual income of fruit bearing trees is available, market value of orchard can be determined by applying appropriate multiplier of capitalization to the net income. It is however, emphasized that both methods cannot be adopted. It is held that when trees are to be valued separately then they must be valued as wood/timber. This judgment again clarifies the legal position that when separate value is to be awarded for land and fruit bearing trees, the valuation can either be by income capitalization method or by following comparable sale instance method and not both and further even if trees are required to be valued separately only timber value of tree i.e. wood value of tree can be taken into consideration.

59. It will be pertinent to mention here that the said judgment states that appropriate multiplier for income

capitalization should be 15, however in subsequent judgments the appropriate multiplier is reduced between 8 to 10. It is now well settled that in no case the multiplier can be more than 10 years.

60. A Division Bench of this Court in its *judgment dated 15.12.2009 in First Appeal No.700/1993* and other connected matters has examined this aspect in great detail by taking into consideration almost all the judgments of the Hon'ble Supreme Court on the point and has reaffirmed the legal principle that when market value of land having fruit bearing trees is determined by income capitalization method, the land owner is not entitled to receive separate compensation for the land since the same will tantamount the valuing the land twice over and awarding the compensation twice by income capitalization method and also by sale exemption method. The same legal principle is reiterated by another Division Bench in the matter of *Naresh Samirmal Kotecha Vs. State of Maharashtra* reported in *2021(1) AIR Bom. R. 622 and State of Maharashtra Vs. Damu Gorade* reported in *2009 SCC Online Bom. 1296*. Similar view is taken by the learned Single Judge in the case of *State of Maharashtra Vs. Dharma Kana Katekar in First Appeal No.414/2005 decided on 03.05.2016*.

61. As regards the judgment in the matter of ***Bhupendra Ramdhan Pawar*** relied upon by the cross objector, the said judgment also refers to the judgments in the matter of *State of Haryana v. Gurcharan Singh and another* and *Ambya Kalya Mhatre v. State of Maharashtra*. The judgment does not deviate from the legal principle laid down in the said case. In the said case the total area of land acquired was around 9.98 HR. Compensation was awarded for the land at the rate of Rs.1,00,000/- per hectare. Around 277 orange trees, 400 sindhi trees and 30 berry trees were standing on 2.00 HR of land. Compensation for acquired land was computed by following sale statistics method. Compensation was awarded for 7.98 HR of land. However, compensation was not awarded for 2 hectares of land on which fruit bearing trees were standing, since compensation was awarded for the trees standing on the said portion of land. In this backdrop the Hon'ble Supreme Court has directed that compensation for 2.00 HR of land should be paid to the land owner at the rate of Rs.1,00,000/- per hectare which was the rate determined for the remaining 7.98 HR land. The said judgment is distinguishable because the Hon'ble Supreme Court has not directed the payment of compensation of land in addition to compensation computed by following income capitalization

method. The said judgment does not lay down a legal principle or ratio that when valuation of an orchard is done by income capitalisation method, separate compensation needs to be awarded for the land. The ratio of Gurcharan Singh and Ambya Kalya that orchard land cannot be valued twice over is not disturbed by this judgment.

62. It will be pertinent to mention that in the said case, compensation was determined by sale instance method. The comparable sale instances relied upon were pertaining to open agricultural lands. Therefore, value of trees was directed to be paid separately. The judgment of the Hon'ble Supreme Court cannot be interpreted to mean that even when value of an orchard is determined by income capitalization method, additional compensation should be awarded for the land. The Hon'ble Supreme Court does not hold that the land should be valued twice over.

63. In this context it will be profitable to quote the paragraph 14 of the judgment as under :

“14. Admittedly, for 2 hectares of land, compensation has not been awarded and it is not disputed that the land value has been determined with reference to sales

***statistics** and this Court in **Ambya Kalya Mhatre** held that in a case where the land value has been determined with respect to the sales statistics, the trees will have to be valued separately.”*

64. **Bhupendra** therefore, is not an authority for the proposition that even when compensation for an orchard is awarded by following income capitalization method, separate compensation should be awarded for the land. **Bhupendra** does not alter the legal position set out in the matter of **Ambya Kalya Mhatre**, wherein in paragraph 35 it is held as under:-

“Further, if the market value has been determined by capitalising the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise.”

65. It will be appropriate to refer to the judgment of the Hon’ble Supreme Court in the matter of **Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd., and others** reported in **(2003) 2 SCC 111**, wherein it is held as under :

“A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

66. Thus, ***Bhupendra*** cannot be considered to be a precedent for the proposition canvassed by the cross objector that separate compensation should be awarded for land and trees even when compensation for orchard is determined by income capitalization method. Since the learned Reference Court has awarded compensation for orchard by income capitalisation method, separate compensation cannot be awarded for the land and the trees.

67. As regards interpretation of 2nd clause of Section 23, which states that compensation is also payable for trees in addition to the land, it needs to be mentioned that the provision will apply where the compensation is determined by sale exemplars method of an open land. In cases where compensation is determined for an orchard by adopting income capitalization method, there cannot be any doubt in the light of the above judgments of the Hon'ble Supreme Court that the compensation determined includes compensation for both land and trees. Therefore, question of granting separate compensation for land or trees will not arise, when compensation is determined by income capitalization method. The submission of the learned counsel is, therefore, liable to be rejected.

68. Mr. Narwade, the learned counsel for the cross objector has placed on a Single Bench judgment of this Court in the matter of *Pramilabai v. State of Maharashtra* reported in **2018 (3) Mh.L.J. 787**. In the said case the market value of irrigated land having fruit bearing trees was determined by following sale instance method placing reliance on sale exemplar with respect to dry crop land. In this backdrop this Court has held that the land owner was entitled to receive separate compensation for the land and the fruit bearing trees. The ratio of the said judgment cannot be interpreted to mean that when compensation for orchard is awarded by income capitalization method, separate compensation should be paid for the land.

69. The learned counsel for the cross-objector has placed reliance on another Division Bench judgment of this Court in the matter *Ratnamalabai Madhukar Daulat v. State of Maharashtra* reported in **2020 D.G.L.S. (Bombay) 667** wherein separate compensation is held to be payable for the land and trees since the market value of land was determined by relying upon sale instance of dry crop land not having fruit bearing trees. However, this judgment does not disturb the legal position as settled by the Hon'ble Supreme Court.

70. However, both these judgments do not disturb the legal position as settled by the Hon'ble Supreme Court. They do not lay down that market value can be determined twice over by income capitalization method as also by sale instance method.

71. While appreciating the ratio of the above judgments it is necessary to bear in mind legal principle with respect to interpretation of the judgment laid down in the matter of ***Dalbir Singh v. State of Punjab*** reported in ***(1979) 3 SCC 745*** wherein it is held as under:

“22. According to the well settled theory of precedents every decision contains three basic ingredients:

“(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (I) and (ii) above.”

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that

estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. (R.J. Walker & M.G. Walker : The English Legal System. Bultterworths, 1972, 3rd Edn., pp. 123-24.]. It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. Int he leading case of Qualcast (Wolverhampton) Ltd. Vs. Haynes, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the Judge is not bound to draw the same inference as drawn in the earlier case."

72. It will be pertinent to mention here that the above view is delivered in the dissenting judgment. However, the legal principle above is not the dissent. The same view is quoted with approval by the Hon'ble Supreme Court in the matter of **Jayant Verma Vs. Union of India** reported in **(2018) 4 SCC 743**.

73. In all the judgments quoted above, the ratio laid down in the matter of **Gurcharan Singh and another** and **Ambya**

Kalya Mhatre that the land cannot be valued twice over is not doubted. None of the judgments hold that even if an orchard is valued by following income capitalisation method separate compensation should be awarded for the land.

74. In view of the above legal position, I am of the considered opinion that the cross objector is not entitled to receive separate compensation for the land by sale instance method. Since the compensation is computed by income capitalization method, the compensation includes compensation for both land and the trees. Compensation computed by income capitalization method will not be compensation for trees alone, it will be composite compensation for both, the trees and for the land.

75. Since the parties did not dispute the rate awarded by the learned Reference Court for other trees, the same is not disturbed.

AS TO POINT NO. (iv) :

76. Compensation for land bearing survey no.221 is determined by income capitalization method as under :

- (i) 561 orange trees @ Rs.4013/- per tree : Rs.22,51,293/-
- (ii) 6 Guava trees @ Rs.2400/- per tree : Rs.14,400/-
- (ii) 1 Jambhul trees @ Rs.2400/- per tree : Rs.2,400/-
- (iii) 8 Lemon trees @ Rs.2400/- per tree : Rs.19,200/-
- (iv) 1 Amala tree @ Rs.2400/- : Rs.2,400/-
- (v) 2 Pomegranate trees @ Rs.5,400/- per tree : Rs.10,800/-

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Total Rs.23,00,493/-

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77. However, the learned Reference Court has awarded compensation for the said Survey No.221 at Rs.24,18,303/- which is confirmed by this Court in the earlier round of litigation. This judgment was accepted by the appellant. The appellant did not file any appeal before the Hon'ble Supreme Court. In that view of the matter, it will not be appropriate to reduce the compensation as awarded by the learned Reference Court. However, since the compensation determined afresh, in the light of directions issued by the Hon'ble Supreme Court is less than the compensation determined by the learned Reference Court, Cross Objection with respect to survey No. 221 is liable to be dismissed. As regards Survey No. 336, it is held that the compensation awarded by the learned Reference Court is proper.

78. Hence the following order :-

ORDER

- (i) Cross Objection is dismissed.
- (ii) The parties to bear their own costs.

(ROHIT W. JOSHI, J.)

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