



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

FIRST APPEAL NO.197 OF 2017

Executive Engineer,
Lower Wardha Project Division,
Wardha, Tq. & Distt. Wardha. ..

Appellant
(On R.A.)
Ori. N.A. No.3)

..Versus..

1. Harikisan s/o Asarmi Chandak,
Aged 70 years, Occu. Cultivator.
R/o. Manulapur, Tah. Arvi,
Dist. Wardha. .. (On R.A.)
Ori. Applicant No.1
2. State of Maharashtra,
through the Collector,
Wardha. .. Ori. N.A. No.1
3. Special Land Acquisition Officer,
Lower Wardha Project (Vidarbha
Patbandhare Vikas Mahamandal,
Wardha, Tq. & Distt. Wardha... Ori. N.A. No.2

.....
Shri Amit M. Kukday, Advocate with Shri Vedant
Akhade, Advocate for Appellant.
Shri Ashwin R. Ingole, Advocate for Respondent No.1.
Shri S.C. Joshi, A.G.P. for Respondent Nos.2 and 3.
.....

CORAM : PRAVIN S. PATIL, J.

DATED : 27.11.2025.

JUDGMENT

1. By way of present appeal, the challenge is to the judgment and order passed by the learned Civil Judge, Senior Division, Wardha dated 29.6.2016 in Land Acquisition Case No.197/2007.

2. The undisputed facts of the present appeal are that in terms of Notification issued under Section 4 of the Land Acquisition Act for acquisition of land for submergence of area of Lower Wardha Project, the land owned by the respondent no.1 bearing Survey No.5/3 ad-measuring 1.29 HR of Mouza Manulapur, Tahsil-Arvi, District-Wardha was acquired for the project. In the said land acquisition proceeding, the total compensation awarded in favour of Respondent No.1 towards the land and tress was Rs.1,67,207/- alongwith statutory benefits.

3. The respondent no.1, being dissatisfied with the compensation amount awarded by the Land Acquisition Officer, preferred the reference bearing Land Acquisition

Case No.197/2007. In reference, the learned Reference Court awarded the compensation of Rs.1,75,000/- per hectare for acquired land and Rs.15,20,789/- for fruit bearing and forest trees standing in the acquired land.

4. The present appellant, who is acquiring body, has preferred this appeal mainly on two grounds, firstly, when the compensation has been awarded to the respondent no.1 towards the trees by applying the method of income capitalization, then the respondent-claimant is not entitled for separate compensation towards the land as awarded by the Reference Court and secondly on the ground that the learned Reference Court has wrongly relied upon the report of the valuer, who according to them, did not establish the correct valuation of the trees and, therefore, judgment and order passed by the Reference Court needs to be quashed and set aside.

5. In respect of first issue, as to whether, the claimant is entitled for the compensation separately towards the land when the calculation towards the fruit bearing trees and forest trees is done by the income capitalization

method, Hon'ble Supreme Court of India has clearly laid down the legal position in the case of *Ambya Kalya Mhatre (D) through Legal Heirs & Ors. .vs. State of Maharashtra, reported in 2011 (9) SCC 325* and held that 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 land has been determined on the basis of 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. In short, it is made clear that if the market value has been determined by the method of income capitalization with reference to yield, then question of making any addition either for the land or for the trees separately does not arise. In this regard, the observations of Hon'ble Supreme Court in para 34 and 35 would be relevant in the matter.

The same are reproduced as under :

“34. The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in State of Haryana v. Gurcharan

Singh³: (SCC p. 639, para 3)

"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 needs 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; once 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 land includes the benefits which accrue 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 as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given."

35. We are afraid that the High Court has misread the said decision in regard to 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."

6. In view of this settled principles of law which is still holding the field, I am of the opinion that the appellant is correct to state that once the compensation towards the

fruit bearing and forest trees has been awarded by applying the method of income capitalization, separate compensation towards the acquired land is illegal and incorrect in the present matter.

7. In respect of other issue that the respondent-claimant failed to establish the correct valuation of the fruit bearing and forest trees and the report of valuer cannot be accepted, firstly, it will be necessary to understand the legal position. For that purpose, it will be appropriate to first consider the judgment of the Hon'ble Supreme Court of India in the case of ***Chimanlal Hargovinddas ..vs. Special Land Acquisition Officer, Poona and Another reported in 1988 (3) SCC 751***. The Hon'ble Supreme Court in its judgment has held that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless same material is produced and proved before the court. The court has to treat the reference as an original proceeding before it and determine

the market value afresh on the basis of material produced before it. It will be proper to refer Para 4 of this judgment which has laid down certain factors which are to be considered while deciding the reference proceeding.

“4. The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant)

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has

also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

	Plus factor		Minus factors
1	Smallness of size	1	Largeness of area
2	<i>proximity to a road</i>	2	<i>situation in the interior at a distance from the road</i>

3	<i>frontage on a road</i>	3	<i>narrow strip of land with very small frontage compared to depth</i>
4	<i>nearness to developed area</i>	4	<i>lower level requiring the depressed portion to be filled up</i>
5	<i>regular shape</i>	5	<i>Remoteness from developed locality</i>
6	<i>level vis-à-vis land under acquisition</i>	6	<i>some special disadvantageous factor which would deter a purchaser</i>
7	<i>special value for an owner of an adjoining property to whom it may have some very special advantage</i>		–

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must

place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

8. It is also necessary to refer the judgment of the Hon'ble Supreme Court of India in the case of ***Special Land Acquisition Officer .vs. Karigowda and others, reported in 2010 (5) SCC 708.*** In this judgment, Hon'ble Supreme Court has held that though the burden to prove entitlement to receive higher compensation primarily lies on claimant, once he has discharged the burden by bringing on record the evidence of entitlement of higher compensation, then the burden shifts on the State to justify award once primary burden discharged by the claimant. In this regard, para 29 would be relevant to be considered in the matter and same is reproduced as under :

“29. It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In Basant Kumar v. Union of India this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors

regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in Gafar v. Moradabad Development Authority and the Court held as under: (SCC p. 620, para 12)

"12. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the courts are expected to scrutinise the evidence led by the parties in such proceedings."

9. The perusal of record shows that the respondent-claimant entered into the witness box and stated on oath that, he has done valuation of the land through one valuer namely Shri D.H. Borkar. He also stated that in the adjoining villages compensation has been awarded at higher rate in the reference proceeding and, therefore, considering this fact he is also entitled for the higher compensation in the matter.

10. The appellant then examined the valuer namely Dadan Harbaji Borkar. In his evidence, he has specifically stated that he has personally visited to the fruit garden on 25.1.1999 and found that fruit bearing and forest trees were standing in the field. According to him, there were three Ber trees, aged about 10 years and one Tamarind trees, aged about 30 years. In respect of forest trees, he has stated that there were 350 Teak trees and 7 forest trees. According to him, he has done the valuation of the trees and same is a part of record which was duly exhibited as Exh.48 and 49. He further stated that he has verified the value of the trees from the Wholesale Fruit Market, Nagpur. Hence, according to his valuation, the respondent-claimant is entitled for total compensation of Rs. 37,83,645.922.

11. It is further pertinent to note that this witness was cross-examined by the appellant. In his cross-examination, only thing which was elicited that he could not point out when these trees were planted and who has planted the said trees. In a question and answer form of

evidence shows that, when this witness was asked the specific question, in this regard, he has answered that the teak trees may have planted in the year 1978-79. Except this, there is nothing was elicited from the cross-examination in the matter.

12. Furthermore, before the Reference Court no evidence was adduced on behalf of the appellant to discharge the burden that, whatever evidence brought on record by the respondent-claimant for seeking enhancement of the compensation is not trustworthy or the correct valuation towards the fruit bearing and forest trees.

13. In the light of this factual aspect, the appellant has mainly relied upon the judgment delivered by the Coordinate Bench in the First Appeal No.285/2022 decided by coordinate bench vide judgment and order dated 21.04.2025 and states that even in the case the evidence is not recorded on behalf of the State, it is duty of the Court to prevent public money being fleeced only because of failure on the part of the State to contest the

land acquisition cases properly. It is further stated that in absence of material placed on record by the appellant to justify his claim for enhancement, the evidence of expert cannot be considered as a whole and it is the duty of the court to assess the opinion in the light of material relied upon by the valuer. He further stated that in such circumstances, the court has to decide as to whether the opinion of valuer is based on relevant material or not.

14. It is further pointed out that the Coordinate Bench of this court has doubted the report prepared by the valuer namely Dadan Borkar. In that case, it was recorded that in connected matters which were decided by the common order, the valuer namely Dadan Borkar has mentioned the same age, same girth and same heights of trees in all the connected matters which were listed before the Coordinate Bench. On that basis, the Coordinate Bench has recorded that, the report of valuer does not inspire confidence and, the material produced before the court is sufficient to discard the evidence of valuer and accordingly valuation report of Shri Dadan Borkar was discarded in the

said matter.

15. It is pertinent to note that in the said proceeding after discarding the evidence of valuer, the Coordinate Bench has relied upon the Govt. Circular dated 27.12.1990 which was referred by the Reference Court while awarding the compensation and on the basis of the calculation in the circular of the yield of orange trees was considered and awarded the compensation.

16. In the present appeal, it is admitted fact that the appellant did not enter into the witness box nor place any contrary documents on record to state that, whatever evidence brought on record by the appellant through valuer namely Dadan Borkar is incorrect and the record which they are relying upon is not accepted, by the Reference Court. Except bare statement that evidence of Dadan Borkar is not acceptable, nothing is place on record.

17. In my opinion, to dis-believe the statement of valuer, some adverse record must be available on record. Merely because in one case his valuation report is discarded does not mean in all pending cases, his report

should be dis-believed. The burden is upon Appellant to demonstrate on certain material as to how, the valuer report is to be dis-believed and what is the correct valuation of Trees.

18. In the background of above said factual position, the perusal of the impugned judgment, particularly para 13 and 14, the Reference Court specifically observed and recorded the findings that the report of valuer cannot be accepted as a whole. It is specifically recorded that the valuer in his report did not consider the aspect of natural calamities, cost of plantation and cost of transportation. Accordingly, 30% deduction was done towards the fruit bearing trees and 60% towards the forest trees to calculate just and proper value of the tress. As such, the Reference Court evaluate the evidence of valuer and then determined the valuation of Trees. Therefore, it is additional reason to not consider the submission of Appellant.

19. In the background of above said factual

position, particularly when the appellant failed to bring on record the evidence, I am of the opinion that in view of law laid down by the Hon'ble Supreme Court of India in the case of ***Special Land Acquisition Officer .vs. Karigowda and others, reported in 2010 (5) SCC 708***, the appellant failed to discharge their burden before the Reference Court. On the contrary, findings recorded by the Reference Court clearly established the fact that, correct valuation of the trees is determined in the matter.

20. It is further pertinent to note that, as per the case of ***Chimanlal Hargovinddas...vs...Special Land Acquisition Officer, Poona and Another***, the proceeding before the reference court being a suit, once the respondent-claimant established some facts on record, unless same are rebuttal by cogent evidence, the appellant cannot take benefit in the matter.

21. In the present case, considering the law laid down by the Hon'ble Supreme Court of India, as discussed above, is squarely applicable in the matter and on that

basis, I am of the opinion that the appellant-acquiring body failed to discharge their burden in the matter before the Reference court and the Reference court has applied its judicial mind in the matter while determining the correct valuation of the trees.

22. It is further required to keep in mind that, the Land Acquisition Act is beneficial legislation and, therefore, while interpreting any provision of the law same should be in favour of agriculturist. As per settled position of law, Judgment of court particularly in land acquisition proceeding is to be relied upon as a piece of evidence on a par with comparative sale transactions which required to be proved like any other comparative exemplar. Appellant failed to demonstrate as to how the Judgment of Coordinate Bench is applicable in the matter. Hence, I am of the opinion that the Reference court has rightly applied its mind while determining the valuation of fruit bearing and forest trees in the matter. For the aforesaid reasons, I proceed to pass the following order :

O R D E R

1) The judgment and order passed by the learned Reference Court dated 29.6.2016 in Land Acquisition Case No.197/2007 is modified to the extent that the compensation awarded towards the acquired land of Rs.1,75,000/- per hectare, is hereby quashed and set aside and the compensation awarded towards the fruit bearing and forest trees is confirmed.

2) The rest of the judgment and order is also confirmed.

3) The Registry of this court is directed to do the proper calculation as per the order passed by this court and if any amount is remained to be paid to the respondent no.1, then same should be paid to him firstly and balance amount, if any, same be reimbursed to the appellant-acquiring body.

4) All civil applications, if any, stands disposed of.

(Pravin S. Patil, J.)