2025:BHC-NAG:5197

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

FIRST APPEAL NO. 27 OF 2016

1. The State of Maharashtra
Through Collector, Nagpur.

2. The Special Land Acquisition Officer,
Kanholi Nala Project, Nagpur.

3. Executive Engineer
Pench Kalwe Vibhag, Nagpur. **... APPELLANTS**

V E R S U S

Dadaji s/o Kashinath Mahakulkar
Aged about 70 Years, Occu : Agriculturist, R/o Plot No.7, Durga Nagar, Manewada Road, Nagpur.

[Since deceased through Legal Heirs]

1. Smt. Sulochana wd/o Dadaji Mahakulkar
Aged about 65 Years, Occu : Household;
R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

2. Trambak s/o Dadaji Mahakulkar
Aged about 48 Years, Occu : Agriculturist;
R/o Plot No. 16, Durga Nagar, Manewada Road, Post Office : Ayodhya Nagar, Nagpur-440024.

3. Raju s/o Dadaji Mahakulkar
Aged 39 Years, Occu : Agriculturist;
R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

4. Subhash s/o Dadaji Mahakulkar
Aged about 30 Years, Occu : Agriculturist; R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

5. Vinod s/o Dadaji Mahakulkar
Aged about 28 Years, Occu : Agriculturist; R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

6. Smt. Shakuntala w/o Vishwanath Nagpure
Aged about 45 Years, Occu : Household; R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

7. Smt. Asha w/o Krushnaji Bobde
Aged about 43 Years, Occu : Household; R/o Plot No. 38, Uday Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024.

8. Smt. Sunita w/o Bhojraj Bhogande
Aged about 35 Years, Occu : Household; R/o Plot No. 38, Udhay Nagar, Ring Road, Post Office : Ayodhya Nagar, Near Manewada Road, Nagpur-440024. ... **RESPONDENTS**

WITH
CROSS-OBJECTION NO. 21 OF 2024

Dadaji s/o Kashinath Mahakulkar (Dead) through Legal Heirs

1. Smt. Sulochana wd/o Dadaji Mahakulkar
Aged about 82 Years, Occu : Household;

2. Trambak s/o Dadaji Mahakulkar
Aged about 58 Years, Occu : Agriculturist;

3. Raju s/o Dadaji Mahakulkar
Aged 49 Years, Occu : Agriculturist;

4. Subhash s/o Dadaji Mahakulkar
Aged about 41 Years, Occu : Agriculturist;

5. Vinod s/o Dadaji Mahakulkar
Aged about 39 Years, Occu : Agriculturist;

6. Smt. Shakuntala w/o Vishwanath Nagpure
Aged about 55 Years, Occu : Household;

7. Smt. Asha w/o Krushnaji Bobde
Aged about 53 Years, Occu : Household;

8. Smt. Sunita w/o Bhojraj Bhogande
Aged about 45 Years, Occu : Household;

All R/o Ridhora, Tahsil Hingna, District Nagpur. ... **APPELLANTS**

VERSUS

1. The State of Maharashtra, through
The Collector, Nagpur.

2. The Special Land Acquisition Officer,
Kanholi Nala Project, Nagpur.

3. Executive Engineer, Pench Kalve Vibhag, Nagpur. ... **RESPONDENTS**

Ms. H. S. Dhande, AGP for Appellant Nos.1 and 2.
Mr. M. A. Kadu, Advocate for Appellant No.3.
Ms. Rajkumari Rai, Advocate for Respondent Nos.1 to 8/Cross-Objectors.

WITH
FIRST APPEAL NO. 888 OF 2024

1. Shankar s/o Ganpatrao Kuthe
Aged about 68 Years, Occu : Nil; R/o Satgaon

(Ridhora), MIDC Butibori, New Vasahat, Wardha Road, Nagpur.

2. Purushottam s/o Ganpatrao Kuthe
Aged about 64 Years, Occu : Nil; R/o Satgaon (Ridhora), MIDC Butibori, New Vasahat, Wardha Road, Nagpur.

3. Arun s/o Ganpatrao Kuthe
Aged about 61 Years, Occu : Agriculturist; R/o Satgaon (Ridhora), MIDC Butibori, New Vasahat, Wardha Road, Nagpur.

4. Smt. Sumitrabai wd/o Ganpatrao Kuthe

[Since deceased through legal heirs Appellant Nos.1 to 3 and following Appellants]

(i) Smt. Sudhabai w/o Dhyaneshwar Kumbhare
Aged about 72 Years, Occu : Household; R/o Hirapur, Post Khandegaon, Tahsil Deoli, District Wardha.

(ii) Smt. Bijubai w/o Kawduji Adkine
Aged about 70 Years, Occu : Household; R/o Nimbha (Aarambha), Tahsil Samudrapur, District Wardha.

(iii) Smt. Premshila w/o Santoshrao Thak
Aged about 62 Years, Occu : Household; R/o Nand, Post Besur, Tahsil Bhiwapur, District Nagpur.

(iv) Smt. Nirmala w/o Janakrao Junghare
Aged about 59 Years, Occu : Household; R/o Dahegaon, Tahsil Saoner, District Nagpur. ... **APPELLANTS**

V E R S U S

1. State of Maharashtra, through the Collector, Nagpur.

2. The Special Land Acquisition Officer, (Kanholi Nala Project), Nagpur.

3. Executive Engineer, Lower Vena Project, Nagpur. ... **RESPONDENTS**

Ms. Rajkumari Rai, Advocate for Appellants.
Ms. H. S. Dhande, AGP for Respondent Nos.1 and 2.
Mr. T. M. Zaheer, Advocate for Respondent No.3.

WITH
FIRST APPEAL NO. 679 OF 2023

Rambhau s/o Shivram Mohitkar
Aged about 61 Years, Occu : Agriculturist;
R/o Ridhora (Satgaon), Tahsil Hingna,
District Nagpur. ... **APPELLANT**

V E R S U S

1. The Special Land Acquisition Officer (Kanholi Nala Project), Nagpur.

2. The Executive Engineer Lower Wanna Project, Wardha. ... **RESPONDENTS**

Ms. Rajkumari Rai, Advocate for Appellant.
Ms. H. S. Dhande, AGP for Respondent No.1.
Mr. T. M. Zaheer, Advocate for Respondent No.2.

WITH
FIRST APPEAL NO. 962 OF 2022

1. Mohan s/o Mahadeo Mirashe
Aged about 45 Years,

2. Gajanan s/o Mahadeo Mirashe
Aged about 43 Years,

3. Smt. Vatsalabai wd/o Mahadeo Mirashe
Aged about 72 Years,

4. Ku. Minakshi d/o Shridhar Mirashe
Aged about 17 Years, since minor, acting through her natural guardian Shri Mohan Mirashe

All are Agriculturists, R/o Turakmari, New Vasahat, Wardha Road, Nagpur. ... **APPELLANTS**

V E R S U S

1. State of Maharashtra, through
the Collector, Nagpur.

2. Special Land Acquisition Officer,
(Kanholi Nala Project), Nagpur.

3. Executive Engineer
Pench Kalwe Vibhag, Nagpur. ... **RESPONDENTS**

Ms. Rajkumari Rai, Advocate for Appellants.
Ms. H. S. Dhande, AGP for Respondent Nos.1 and 2.
Mr. M.A. Kadu, Advocate for Respondent No.3.

WITH
FIRST APPEAL NO. 547 OF 2014

1. The State of Maharashtra
Through Collector, Nagpur.

2. Special Land Acquisition Officer,
Kanholi Nala Project, Nagpur.

3. Executive Engineer,
Lower Vanna Project, Wardha
(Pench Kalwe Vibhag) ... **APPELLANTS**

V E R S U S

1. Smt. Sunderabai wd/o Shivajirao Mahakulkar, Aged about 69 Years.

2. Dattatraya s/o Shivajirao Mahakulkar Aged about 50 Years, R/o Plot No. 125, Gurudev Nagar, Nagpur.

[Since deceased through Legal Heirs]

2(a) Smt. Geeta wd/o Dattatraya Mahakulkar Aged about 69 Years,

2(b) Rahul s/o Dattatraya Mahakulkar Aged about 50 Years,

2(c) Roshan s/o Dattatraya Mahakulkar Aged about 45 Years,

Respondent Nos.2(a) to 2(c) are R/o 1630/A/125, Gurudev Nagar, Nandanvan, Nagpur.

2(d) Smt. Rashmee w/o Keshao Kalaskar Aged about 48 Years, R/o Hanuman Nagar, Tukum Christ Hospital, Chandrapur.

3. Vasanta s/o Shivajirao Mahakulkar Aged about 46 Years, R/o A-1/42, Nabad Nagar, Thakur Complex, Kandiwali, East Mumbai.

Correct Address :- A-1/33, Turipati Tower Thakur Complex, Kandiwali, East Mumbai.

Correct Address :- A-33, Turipati Tower, Thakur Complex, Kandiwali, East Mumbai.

4. Ramesh s/o Shivajirao Mahakulkar Aged about 42 Years, Plot No. 84/85, Balaji Nagar, West Manewada, Nagpur.

5. Smt. Surekha w/o Vinayak Nandekar
Aged about – Yrs., R/o Plot No.76, Hanuman Nagar, Tahsil and District Yavatmal.

Correct Address :- Plot No. 76, Hanuman Nagar, Wadgaon Road, Tahsil and District Yavatmal.

Correct Address :- Hanuman Nagar, Plot No.76, Wadgaon Road, Tahsil and District Yavatmal.

6. Smt. Shobha w/o Anandrao Ekre
Aged about – Yrs., R/o Jatra Road, Near Adarsh School, Wani, Tahsil Wani, District Yavatmal.

7. Smt. Sudha w/o Ninadrao Nibuddhe
Aged About – Yrs., R/o Saraswati Nagar, Arni Road, Tahsil and District Yavatmal.

Correct Address :- R/o Rana Pratap Nagar, Plot No. 18, Arni Road, Tahsil and District Yavatmal. ... **RESPONDENTS**

WITH
CROSS-OBJECTION NO. 83 OF 2022

1. Smt. Sunderabai wd/o Shivajirao Mahakulkar, **(Dead)**

2. Dattatraya s/o Shivajirao Mahakulkar
Aged about 70 Years, Occu : Nil; R/o Plot No. 125, Gurudev Nagar, Nagpur.

[Since deceased through Legal Heirs]

2(a) Smt. Geeta wd/o Dattatraya Mahakulkar
Aged about 69 Years,Occu : Household,

2(b) Rahul s/o Dattatraya Mahakulkar
Aged about 50 Years, Occu : Private;

2(c) Roshan s/o Dattatraya Mahakulkar
Aged about 45 Years, Occu : Private;

Respondent Nos.2(a) to 2(c) are R/o 1630/A/125, Gurudev Nagar, Nandanvan, Nagpur.

2(d) Smt. Rashmee w/o Keshao Kalaskar
Aged about 48 Years, Occu : Household;
R/o Hanuman Nagar, Tukum Christ Hospital, Chandrapur.

3. Vasanta s/o Shivajirao Mahakulkar
Aged about 67 Years, Occu : Nil;
R/o A-1/42, Nabad Nagar, Thakur Complex, Kandiwali East, Mumbai.

4. Ramesh s/o Shivajirao Mahakulkar
Aged about 65 Years, Occu : Nil;
Plot No.84/85, Balaji Nagar, West Manewada, Nagpur.

5. Smt. Surekha w/o Vinayak Nandekar
Aged about : 58 Years, Occu : Housewife, R/o Plot No.76, Hanuman Nagar, Yavatmal, Wadgaon Road, Tahsil and District Yavatmal.

6. Smt. Shobha w/o Anandrao Ekre
Aged about : 55 years, Occu : Household; R/o Jatra Road, Narayan Nivas, Wani, Near Aadarsha School, Tahsil Wani, District Yavatmal.

7. Smt. Sudha w/o Ninadrao Nibuddhe
Aged About 51 Years, Occu : Household; R/o Saraswati Nagar, Arni Road, Yavatmal.

All Appellants through their Power of Attorney Holder Ramesh s/o Shivajirao Mahakulkar (Appellant No.4). ... **APPELLANTS**

V E R S U S

1. The State of Maharashtra, through Collector, Nagpur.

2. The Special Land Acquisition Officer, Kanholi Nala Project, Nagpur.

3. The Executive Engineer, Lower Wanna Project, Wardha (Pench Kalwe Vibhag) ... **RESPONDENTS**

Ms. M. R. Kavimandan, AGP for Appellant Nos.1 and 2.
Mr. Tariq Mohammad Zaheer, Advocate for Appellant No.3.
Ms. Rajkumari Rai, Advocate for Respondent Nos.2 to 7/Cross-objectors.

WITH
FIRST APPEAL NO. 28 OF 2016

Vidarbha Irrigation Development Corporation through its Executive Engineer, Lower Wardha Canal Division, Wardha (Pipari) ... **APPELLANT**

V E R S U S

1. Chindhu s/o Mahadeo Mohitkar
Aged : 67 Years, Occu : Agriculturist

[Since deceased through Legal Heirs]

1(a) Rajendra s/o Chindhuji Mohitkar
Aged about 54 Years, Occu : Nil; R/o Vikas Nagar, Nagpur-15.

1(b) Ratnamala Prabhakarrao Bhong
Aged about 57 Years, Occu : Nil; R/o Sumitra Nagar, Tadoba Road, Chandrapur.

1(c) Meena Dattatraya Wandhare
Aged about 52 Years, Occu : Nil; R/o Chhatrapati Nagar, Chandrapur.

1(d) Yogita Murlidhar Kinhekar
Aged about 50 Years, Occu : Nil; R/o At Post Aheri, Tahsil Aheri, District Gadchiroli.

2. Smt. Shantabai w/o Chindhu Mohitkar
Aged 64 Years, Occu : Household; R/o Ridhora, Tahsil and District Nagpur.

3. Special Land Acquisition Officer
(Kanholi Nala Project-I), Nagpur. ... **RESPONDENTS**

WITH
CROSS-OBJECTION NO. 75 OF 2022

1. Chindhu s/o Mahadeo Mohitkar
[Since deceased through Legal Heirs]

1(a) Rajendra s/o Chindhu Mohitkar, Aged about 54 Years, Occu : Service; R/o Vikas Nagar, Wardha Road, Nagpur.

1(b) Smt. Ratnamala w/o Prabhakarrao Bhong
Aged about 57 Years, Occu : Household; R/o Sumitra Nagar, Tadoba Road, Chandrapur.

1(c) Smt. Meena w/o Dattatraya Wandhare
Aged about 52 Years, Occu : Household; R/o Chhatrapati Nagar, Chandrapur.

1(d) Smt. Yogita w/o Murlidhar Kinhekar
Aged about 50 Years, Occu : Household; R/o Aheri, Tahsil Aheri, District Gadchiroli.

2. Shantabai wd/o Chindhu Mohitkar
Aged 78 Years, Occu : Household; R/o Vikas Nagar, Wardha Road, Nagpur. ... **APPELLANTS**

V E R S U S

1. Vidarbha Irrigation Development Corporation through its Executive Engineer, Lower Wardha Canal Division, Wardha (Pipri)

2. The Special Land Acquisition Officer, (Kanholi Nala Project-I), Nagpur. ... **RESPONDENTS**

Mr. J. B. Kasat, Advocate for Appellant.
Ms. Rajkumari Rai, Advocate for Respondent Nos.1 & 2/Cross-Objectors.
Ms. H. S. Dhande, AGP for Respondent No.3.

WITH
FIRST APPEAL NO. 504 OF 2023

Anant s/o Shivaji Mahakulkar
Aged about 61 Years, Occu : Agriculturist;
R/o Near R.S.S. Building, Mahal, Nagpur. ... **APPELLANT**

V E R S U S

1. State of Maharashtra, through Collector, Nagpur.

2. Special Land Acquisition Officer Kanholi Nala Project, Nagpur.

3. Executive Engineer, Lower Wanna Project, Wardha [Pench Kalwe Vibhag] ... **RESPONDENTS**

Ms. Rajkumari Rai, Advocate for Appellant.
Ms. H. S. Dhande, AGP for Respondent Nos.1 and 2.
Mr. T. M. Zaheer, Advocate for Respondent No.3.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING JUDGMENT : FEBRUARY 11, 2025
DATE OF PRONOUNCEMENT OF JUDGMENT : MAY 23, 2025.

<u>**COMMON JUDGMENT**</u>

. Heard learned Counsel for the respective parties.

2. All these Appeals are filed under Section 54 of the Land Acquisition Act, 1894 *(for short, 'the Act of 1894')*. The Cross-objections are filed under Section 54 of the Act of 1894 read with Order 41 Rule 22 of the Code of Civil Procedure, 1908.

3. The Appeals arise out of the Judgments passed in reference proceedings under Section 18 of the Act of 1894. The lands in all these cases are acquired for the same project namely, Lower Vena Project. All the lands are located at village Ridhora, Tahsil and District Nagpur. Notification under Section 4 of the Act of 1894 in all these cases was published in the Official Gazette on 27/4/1995, which is also the last date of publication. The Land Acquisition Officer has passed the Award under Section 11 of the Act of 1894 on 30/4/1997. All the lands comprise of orange orchards. In all these cases one Mr. Dadan Harbaji Borkar is examined as an expert Valuer for valuation of orange trees. Therefore, all these Appeals are decided by a common Judgment.

4. The learned Counsel for land owners contends that all the acquired lands are perennially irrigated lands. He has placed reliance on the

Judgment dated 22/2/2019 passed by this Court in the matter of ***S.L.A.O. V/s Suryabhan Bandu Nagpure*** in ***First Appeal No.418/2006*** to contend that the said Appeal pertains to acquisition of land from the same village for the same project where compensation for irrigated land is awarded at the rate of Rs.2,50,000/- per hectare, and therefore, compensation should be awarded at the same rate in the present cases. Apart from this, she has placed reliance on the Judgments of this Court in First Appeal Nos.419/2006 and 699/2015 to claim the compensation at the rate of Rs.5000/- per tree for the orange trees. The learned Counsel contends that since the Land Acquisition Officer has determined compensation by sale instance method, relying upon the sale instances of open lands, not having fruit bearing trees, the value of trees must be added to the value of land in order to determine appropriate compensation payable. She contends that the Valuer Mr. Dadan Borkar is an expert, who has valued the orange trees by a scientific evaluation and that there is no evidence on record to contradict the valuation done by the said Valuer.

5. *Per contra,* the learned Counsel for Appellant/Acquiring Body and the learned AGP contend that the learned reference courts have awarded compensation for orange trees by income capitalization method, and therefore, separate compensation cannot be awarded for the land and the trees. They contend that when the valuation of all fruit bearing trees in an

orchard is done by the income capitalization method, the value so determined, gives value for all the trees and the land beneath. As regards the evidence of Mr. Dadan Borkar, the same is criticized by stating that the Valuer has not made actual assessment of the yield and has merely given his opinion on the basis of some reference books, which are not placed on record. They further contend that the value of land claimed by the land owners is highly excessive, and therefore, claims for enhancement of compensation are liable to be dismissed.

6. As stated above, all Appeals are pertaining to compensation for lands acquired from same village under the same Notification and for the same project. The controversy in all cases is almost identical. Therefore, common points for determination are framed for determining the issues that are involved in the matter and once these points are decided, individual Appeals/Cross Objections will be taken up for consideration.

(i) What should be the valuation of orange trees?

(ii) Should separate compensation be awarded for the land in view of compensation awarded by adopting income capitalisation method? If yes, at what rate ?

(iii) What should be the compensation awarded for the acquired land which is not covered by orange orchard ?

AS TO POINT NO. (i) :

7. The Appellants have claimed compensation for orange trees, placing reliance on the earlier Judgments of this Court are also based on the evidence and Valuation Reports of Mr. Dadan Borkar.

8. As regards the Judgments on which the land owners have placed reliance, it is noticed that initially in Judgment dated 15/1/2018 passed in First Appeal No. 676/2005 compensation for orange trees was awarded at the rate of Rs. 5000/- per tree. In this case, the Notification under Section 4 of the Act of 1894 was issued on 29/3/1998. However, this Judgment was cited during the course of hearing of First Appeal No.699/2015. First Appeal No. 699/2015 pertains to acquisition of land from village Ridhora under Notification dated 27/4/1995. Placing reliance on earlier Judgment delivered in First Appeal No. 676/2005, compensation for orange trees was awarded at the rate of Rs.5000/- per tree in First Appeal No. 699/2015. However, the fact that First Appeal No. 676/2005 pertains to acquisition which was initiated after a period of three years, had skipped the attention, and accordingly, compensation at the same rate i.e. rate of Rs.5000/- per tree came to be awarded in First Appeal No. 699/2015. The Judgment dated 14/12/2020 passed in First Appeal No. 699/2015 came to be followed in two other cases

i.e. First Appeal Nos.419/2006 and 434/2004. Both of which, came to be decided vide Judgment dated 11/12/2023. In these cases also compensation is awarded at the rate of Rs.5000/- per tree as was awarded in First Appeal No. 699/2015.

9. As mentioned above, compensation at the rate of Rs.5000/- per tree is awarded, placing reliance on the Judgment pertaining to acquisition pursuant to Notification under Section 4 issued on 29/3/1998, although in the present Appeals as also in First Appeal Nos.699/2015, 419/2006 and 434/2004, Notification under Section 4 is issued on 27/4/1995 i.e. prior to a period of three years. Perusal of the Judgment passed in First Appeal No. 699/2015 does not indicate that compensation is awarded at the same rate despite noticing the difference in the dates of Section 4 Notifications. Had there been intention to award compensation at the same rate, despite a gap of three years, reasons for the same would have been recorded. Reliance is placed on the Judgment delivered in First Appeal No. 676/2005 without noticing a gap of three years in the Section 4 Notifications.

10. Despite this, normally the Judgments would have been followed and compensation would have been awarded at the same rate, by following the principle of parity and also because of binding efficacy of Judgments

delivered by a Division Bench and also by a Single Bench. However, as is held in the matters of ***Ranbir Singh and others V/s Union of India[1] and Babibai Babu Patil V/s State of Maharashtra and others[2],*** a Judgment in earlier case in land acquisition matter is required to be treated only as a piece of evidence and has to be evaluated and applied as such. In view of the fact that the above three Judgments are delivered, placing reliance on earlier Judgment in which Section 4 Notification was issued after a period of three years, it is not deemed appropriate to award compensation at the rate of Rs.5000/- per tree by applying principle of parity on the basis of the said Judgment. The aforesaid view is also taken by this Court with respect to the same Judgment vide Judgment dated 21/4/2025 in First Appeal No. 285/2022.

11. In view of the aforesaid, independent assessment will have to be made with respect to valuation of orange trees. The land owners in all these cases have placed on record the Valuation Reports issued by Mr. Dadan Borkar. He is also examined as an expert in all these cases. It is, therefore, necessary to evaluate the evidence and Valuation Reports issued by Mr. Dadan Borkar. Perusal of Valuation Reports in all the cases indicate that all the reports are issued in the same format. The contents of Valuation Reports, except the field Survey Number, area of field and number of trees, are identical. Surprisingly,

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1 (2005) 12 SCC 59
2 2017 SCC OnLine SC 2130

in all the cases, the Valuer has mentioned the age of orange trees as seven years. In all the cases, he has mentioned the height of trees as 4.5 meters and girth of the trunk of tree as 0.45 meters, except in one case where height and girth are mentioned as 5 meters and 0.5 meters respectively. In all cases, the Valuer has taken annual yield of each tree at 125 kilograms. The Valuer has not physically examined and made independent assessment of the yield. He has merely referred to certain reference books and has stated that annual yield of each tree is 125 kilograms. This he has done uniformly for all the trees in all the fields which are subject matter of all these Appeals. It should also be mentioned that the reference books or relevant extracts thereof are not a part of record. The same are not produced on record and also do not form a part of the Valuation Reports.

12. In this context, it is necessary to refer the Judgment of the Hon'ble Supreme Court in the matter of ***Special Land Acquisition Officer V/s Sidappa***[3]***,*** wherein it is held that before placing reliance on the Valuation Report of the 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

3 1995 (Supp) 2 SCC 168

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 ***State of Himachal Pradesh V/s Jailal***[4]***.*** 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 the 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.

13. In the matter of ***Narayanlal V/s State***[5] it is held that 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 the Judgment of the Hon'ble Supreme Court in the matter of ***P. Ram Reddy and Others V/s Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,***[6] wherein it is held that ineffective cross-

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[4] (1993) 7 SCC 280
[5] 2012 (1) Mh.L.J. 642
[6] (1995) 2 Supreme Court Cases 305

examination of the 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 the 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 the 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.

14. In the light of above decisions, it has to be held that an expert is not a witness of facts; his evidence is 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 entire material on the basis of which he arrives at the opinion given to the Court. It is the 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.

15. Apart from this, the Valuer has mentioned that the age of trees

was seven years. He has recorded that height of all trees was 4.5 meters and their girth was 0.45 meters. This uniformity in the age, height and girth cannot be a mere co-incidence. The Valuer has recorded that the fruit bearing life of orange trees is 25 years and probably, therefore, he has mentioned the age of trees in all cases as seven years. It will be pertinent to mention that orange trees start bearing fruits from the age of five to six years and the optimum yield is expected from seven years and onwards. It appears that in order to compute maximum value in all the cases, he has mentioned the age of tree as seven years. It will be pertinent to mention that he has not given any explanation, on the basis of which, he has determined the age of the trees. It is reiterated that the uniformity with respect to height and girth in all cases is also surprising.

16. It will be pertinent to mention that the Valuer has not made independent assessment of yield on inspection of the orchard in any of the cases. In all the cases, he has mechanically taken annual yield at 125 kilograms. It was expected of the Valuer to physically inspect the orchard and make a fair and reasonable assessment of fruit bearing capacity of trees in the orchard. Surprisingly, the Valuer has not done so in any of the cases. The Valuer has also not annexed the reference books to his reports. As stated above, the reference books are not independently filed on record. For the

reasons stated above, the Valuation Reports and evidence of Mr. Dadan Borkar are completely unreasonable and also not confidence inspiring. In view of the aforesaid, the Valuation Reports are liable to be discarded.

17. Having regard to the aforesaid, I am of the opinion that the learned Counsel for Appellant/Acquiring Body is right in submitting that the Valuation Report cannot be relied upon, in as much as, it is not worthy of any credence. The learned Counsel for Appellant/Acquiring Body is justified in placing reliance upon the Judgments as referred above.

18. It will also be pertinent to mention here that for similar reasons Valuation Report of Mr. Dadan Borkar is discarded in First Appeal No. 285/2022 as well.

19. In some cases documents from Agriculture Produce Market Committee, Nagpur is produced on record to prove the rate of oranges. The rate of oranges is stated in the said documents as Rs.5.75/- per kilogram. The Acquiring Body and State have not brought on record any material to contradict the same. The rate of oranges is, therefore, accepted for the purpose of computation of income from orange trees and valuation of orange orchards by income capitalization method.

20. Since the Valuation Reports and evidence of the Valuer are discarded, it will be appropriate to evaluate compensation for orange trees in the light of guidelines issued by the State Government vide Circular dated 27/12/1990. This Circular is relied upon in several cases in order to determine compensation payable for fruit bearing trees. As per the Circular, the annual yield of fully grown orange trees is between 40 kilograms to 90 kilograms per year. It will be appropriate to take the average of the annual yield which comes to 65 kilograms per year. The factor of good and bad seasons, unpredictability etc.. are taken care by taking average of the estimated yield. Likewise, in land acquisition cases some amount of guess work is also required to be done to determine amount of compensation.

21. As mentioned above, the rate of oranges at the relevant time was Rs.5.75/- per kilogram. Therefore, gross annual income from each orange tree will be Rs.373.75/- (Rs.5.75 x 65 kilograms).

22. In order to arrive at net annual income, deductions will have to be considered. Deduction of 20% of gross income on account of expenses for upkeep and maintenance, manure, fertilizers, pesticides, labour charges, broker's commission etc. is upheld in the following cases :

(i) ***Chindha Fakira Patil V/s S.L.A.O. (2011) 10 SCC 787;***

(ii) **Narayan Kapase V/s State of Maharashtra, 2020 (5) Mh.L.J. 391;** and

(iii) **The Judgment dated 26/10/2015** passed by this Court in **First Appeal No. 2356/2016.**

23. In view of 20% deduction, the net annual income of each tree will be at Rs.299/- (gross income of Rs.373.75/- minus 20% deduction i.e. Rs.74.75/-).

24. In order to arrive at the amount of compensation by income capitalization method appropriate multiplier of 'years purchase' will have to be considered. Normally, multiplier between eight to ten years is considered as an appropriate multiplier by the Hon'ble Supreme Court as also by this Court. In the present case, the Valuer has adopted the multiplier of 8.804. It will, therefore, safe to adopt multiplier of 9 which is the average of eight to ten years, which is generally applied by the Courts and is also in close proximity with the multiplier adopted by the Valuer. In the light of above, the compensation of each tree is calculated as under :

(i) Gross income : Rs.5.75/- x 65 kg = **Rs.373.75**

(ii) Expenses (20% of gross income) : **Rs.74.75/-**

(iii) Net annual income : **Rs.299/-**

(iv) Value by income capitalization : Net Annual Income Rs. 299/- x years purchase of 9 years = **Rs.2691/-**.

(v) Add wood value : **Rs.6.236/-** [This value is derived as per Valuation Report]

(vi) Total value : **Rs. 2697.236**
(Rounded of to **Rs.2700/-**)

AS TO POINT NO. (ii) :

25. 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.

26. The learned Counsel for Acquiring Body and the learned AGP placed reliance on the Judgments of the Hon'ble Supreme Court in the matter of ***State of Haryana V/s Gurcharan Singh and Another***[7] and ***Ambya Kalya Mhatre (Dead) through LRs. and Others V/s State of Maharashtra***[8] to contend that when compensation for fruit bearing trees is awarded by income capitalization method, separate compensation cannot be awarded for the land, since the said compensation includes compensation for both the lands and the trees. They contend that the learned reference court has computed the compensation for orange trees by income capitalization method, and therefore, separate compensation cannot be awarded for the land.

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7 1995 (Supp) 2 SCC 637
8 (2011) 9 SCC 325

27. As against this, the learned Counsel for land owners also placed reliance on the Judgment of ***Ambya Kalya Mhatre (supra)*** to contend that separate compensation will have to be awarded for the trees, since compensation is determined by the Land Acquisition Officer by comparable sale instance method pertaining to lands not having fruit bearing trees and the acquired lands are admittedly having orange trees. The learned Counsel has also placed reliance on the Judgment in the matter of ***Bhupendra Ramdhan Pawar V/s VIDC***[9]***.***

28. The Hon'ble Supreme Court has, in the matter of ***Gurcharan Singh (supra)*** held that when compensation for orchard is determined by its income by applying suitable multiplier, then land and fruit bearing trees cannot be valued separately. It is held that market value determined on the basis of yield by applying appropriate multiplier gives composite market value for land and the trees standing thereon. This ratio of ***Gurcharan Singh's case*** is followed in the matter of ***Ambya Kalya Mhatre.*** Since both the parties placed reliance on the said Judgment, it will be necessary to quote the relevant extract from paragraph No. 35 of the said Judgment as under :

> "***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."***

[9] (2021) 12 SCC 58

29. Similar view is taken by the Hon'ble Supreme Court in the matter of ***Koyappathodi M. Ayisha Umma V/s State of Kerala[10],*** 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.****"*

30. 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 the credible evidence with respect to net annual income of fruit bearing trees is available, market value of orchard can be determined by applying

10 (1991) 4 SCC 8

appropriate multiplier of capitalization to the net income. It is however, emphasized that both methods cannot be adopted. It is held that when the 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.

31. 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 ten years.

32. 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 the 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 in 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 V/s State of Maharashtra***[11] and ***State of Maharashtra V/s Damu Gorade***[12]***.*** Similar view is taken by the learned Single Judge in the case of ***State of Maharashtra V/s Dharma Kana Katekar in First Appeal No. 414/2005 decided on 3/5/2016.***

33. As regards the Judgment in the matter of ***Bhupendra Ramdhan Pawar (supra)*** relied upon by the land owners, the said Judgment also refers to the Judgments in the matter of ***Gurcharan Singh*** and ***Ambya Kalya Mhatre (supra).*** The Judgment does not deviate from the legal principle laid down in the said cases. It will be pertinent to mention that in the said case, compensation was determined by the 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 in addition. 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 judgement does not lay down a legal principle or ratio that when valuation of an orchard

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[11] 2021(1) AIR Bom.R.622

[12] 2009 SCC OnLine Bom.1296

is done by income capitalisation method, separate compensation needs to be awarded for the land. The ratio of ***Gurcharan Singh*** and ***Ambya Kalya Mhatre (supra)*** that orchard land cannot be valued twice over is not disturbed by this Judgement. The Hon'ble Supreme Court does not hold that the land should be valued twice over.

34. 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."*

35. The Judgment in the matter of ***Bhupendra Ramdhan Pawar V/s VIDC***[13]***,*** 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's case (supra)*** does not alter the legal position set out in the matter of ***Ambya Kalya Mhatre.***

13 (2021) 12 SCC 58

36. It will be appropriate to refer to the Judgment of the Hon'ble Supreme Court in the matter of ***Bhavnagar University V/s Palitana Sugar Mill Pvt. Ltd., and Others***[14], 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."*

37. Thus, ***Bhupendra's case*** cannot be considered to be a precedent for the proposition canvassed by the land owners that separate compensation should be awarded for land and trees even when compensation for orchard is determined by income capitalization method.

38. 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 exemplar 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

14 (2003) 2 SCC 111

determined by income capitalization method. The submission of the learned Counsel is, therefore, liable to be rejected.

39. Ms. Rai, the learned Counsel for Respondent No.1/Cross-objector has placed reliance on a Single Bench Judgment of this Court in the matter of ***Pramilabai V/s State of Maharashtra[15].*** In the said case, the market value of irrigated land having fruit bearing trees was determined by following sale instance method, placing reliance on the 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.

40. The learned Counsel for land owners has placed reliance on another Division Bench Judgment of this Court in the matter of ***Ratnamalabai Madhukar Daulat V/s State of Maharashtra[16],*** 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. This Judgment also does not hold that separate compensation is

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15 2018(3) Mh.L.J. 787
16 2020 D.G.L.S. (Bombay) 667

payable for land even when compensation for orchard is determined by income capitalization method.

41. 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.

42. While appreciating the ratio of above Judgments, it is necessary to bear in mind the legal principle with respect to interpretation of the Judgment laid down in the matter of ***Dalbir Singh V/s State of Punjab***[17]***,*** 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*

17 (1979) 3 SCC 745

> *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 (Wolverhamption) 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."*

43. It will be pertinent to mention here that although separate compensation for fruit bearing trees is awarded in the Judgment dated 22/2/2019 in First Appeal No. 418/2016 passed by this Court, the number of trees in the said case was very less, and therefore, the land could not be classified as orchard. Since the land was not an orchard, separate compensation was awarded for the trees.

44. It will be pertinent to mention here that 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[18].***

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18 (2018) 4 SCC 743

45. In all the Judgments quoted above, the ratio laid down in the matter of ***Gurcharan Singh*** and ***Ambya Kalya Mhatre (supra)*** 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.

46. In the light of aforesaid, it needs to be held that when market value of fruit bearing trees is determined by income capitalization method, separate compensation cannot be awarded for land as the compensation determined by adopting income capitalization method will be appropriate compensation for both i.e. the land and the trees.

AS TO POINT NO. (iii) :

47. As regards compensation for open land, which is not an orchard, the learned Counsel for Appellant had placed reliance on the Judgment dated 22/2/2019 passed in First Appeal No. 418/2006 (SLAO V/s Suryabhan Bandu Nagpure). The said Judgment also pertains to acquisition of land from the same village for the same project under the same Notification. In the said case, compensation for irrigated land is awarded at the rate of Rs.2,50,000/- per hectare. In view of the aforesaid, it will be appropriate to award compensation for open land at the same rate. However, compensation for dry crop land and

seasonally irrigated land will have to be taken at Rs.1,25,000/- per hectare and Rs.1,87,500/- per hectare respectively, since it is well settled that date of perennially irrigated land should be taken as double of dry crop land and that of seasonally irrigated land should be 1.5 times the value of dry crop land. It will be pertinent to mention here that the Judgment in the said Appeal is based upon another Judgment relating to acquisition of land in the same village for the same project and acquired under the same Notification.

48. In view of the above determination, it is now necessary to deal with the facts of individual case to determine the compensation payable in each case.

FIRST APPEAL NO. 27 OF 2016 FILED BY THE ACQUIRING BODY A/W CROSS-OBJECTION NO. 21 OF 2024 FILED BY THE LAND OWNER

49. The land of the Appellant bearing Survey No.42 admeasuring 2.02 HR is acquired. The said land comprises of the orange orchard. There are 744 orange trees.

50. A perusal of 7/12 extract of the acquired land pertaining to the year 1996-97 will demonstrate that there is an entry showing existence of well along with the pump in the acquired land. 1.20 HR land is shown as irrigated

land and 0.80 HR land is shown as dry crop land. Apart from this, 0.02 HR land is shown to be not under cultivation.

51. The compensation for orange trees is determined at the rate of Rs.2700/- per tree. Therefore, compensation for 744 orange trees comes to Rs.20,08,800/-. It is already held that separate compensation cannot be awarded for the land since all the trees are evaluated by income capitalization method. Therefore, the total compensation payable for acquired land comes to Rs.20,08,800/- as per income capitalization method. The learned Reference Court has awarded compensation of Rs.24,34,000/-.

52. First Appeal is, therefore, allowed and Cross-objection is dismissed. Parties to bear their own costs.

FIRST APPEAL NO. 888 OF 2024 FILED BY THE LAND OWNERS

53. Land bearing Survey No. 266 admeasuring 1.95 HR came to be acquired. The land is an orange orchard having 781 trees. The learned Reference Court has awarded compensation for the acquired land by income capitalization method, granting compensation at the rate of Rs.3000/- per orange tree. The learned Reference Court has rightly not granted separate compensation for land under orchard. Compensation for orange trees is

determined at Rs.2700/- per tree, which is less than the compensation determined by the learned Reference Court. According to the learned Reference Court, the compensation payable comes to Rs.23,43,000/-, as against Rs. 21,08,700/-, which is payable according to this Court.

54. First Appeal is, therefore, dismissed. Parties to bear their own costs.

FIRST APPEAL NO. 679 OF 2023 FILED BY THE LAND OWNER

55. The land of the Appellant bearing Survey No. 318 admeasuring 1.62 HR came to be acquired. The learned Reference Court has awarded compensation to the tune of Rs.12,85,000/- as under :

(i)	Rs.2500/- per tree for 500 orange trees	…	Rs.12,50,000/-
(ii)	Electric motor-pump and PVC pipeline	…	Rs.20,000/-
(iii)	Rs.1000/- per tree for 12 Kalmi Ber trees	…	Rs.12,000/-
(iv)	Rs.1000/- per tree for 3 Mhowa trees	…	Rs.3,000/-

Separate compensation is not awarded for the land under orchard.

56. In this matter, initially the Appellant had stated that his land was having 55 orange trees, however, the Reference Application was amended and it was mentioned that the land was having 500 orange trees. The 7/12 extract

demonstrates 500 orange trees, however, in the Joint Measurement Report at Exhibit-33 it is stated that there are 190 orange trees. The Appeal preferred by the State against the Judgment and Award passed by the learned Reference Court is dismissed.

57. The dispute is with respect to valuation of orange trees and compensation for land. As held above, separate compensation cannot be awarded for land under orchard, since compensation is computed by income capitalization method. The learned Reference Court has rightly not awarded separate compensation for land. The learned Reference Court has determined compensation for 500 orange trees at the rate of Rs.2500/- per tree.

58. As stated above, value of each orange tree by income capitalization method is computed at Rs.2700/- per tree. However, in the present case, the orange trees were not fully grown trees. In other cases, compensation for fully grown trees is determined by taking market value of oranges at Rs.5.75/- per kg. This is the rate mentioned by Mr. Dadan Borkar, the expert Valuer. Mr. Dadan Borkar, who is expert Valuer in this matter as well, has taken rate of Rs.4.41/- per kg for oranges in the field of Appellant. Keeping all the parameters the same and taking the rate of oranges at Rs.4.41/- per kg, in the present case, the market value of each orange tree

comes to Rs. 2079/-. Therefore, cost of 500 orange trees and the land beneath it as per income capitalization method comes to Rs.10,39,500/-. In addition to this, compensation of Rs.35,000/- needs to be added for electric motor-pump and PVC pipeline, 12 Kalmi Ber trees and 3 Mhowa trees, as is awarded by the learned Reference Court. The total amount of compensation payable comes to Rs.10,74,500/- as against Rs.12,85,000/- awarded by the learned Reference Court.

59. First Appeal is, therefore, dismissed. Parties to bear their own costs.

<u>FIRST APPEAL NO. 962 OF 2022 FILED BY THE LAND OWNERS</u>

60. The land bearing Survey No. 258 admeasuring 8.97 HR is acquired. Perusal of 7/12 extract at Exhibit-19 shows that 3.50 HR land is covered under orange orchard, 3.22 HR land is irrigated land, 2.15 HR land is dry crop land and 0.10 HR land is uncultivable land. It is further apparent that there are 925 orange trees standing on portion admeasuring 3.50 HR in the acquired land, out of which, 855 trees are fully grown and 73 trees are small. This fact is apparent from perusal of the Joint Measurement Report at Exhibit-21. The learned Reference Court has awarded compensation at the

rate of Rs.1500/- per tree for 925 orange trees and compensation at the rate of Rs.38,500/- per hectare for the acquired land.

61. In view of the discussion made above, value of each fully grown tree will be Rs.2700/- per tree. There is no evidence with respect to age of small orange trees, therefore, by resorting to guess work value of small orange trees is taken at Rs.1350/- per tree. The orange orchard extends to 3.50 HR land, for which, separate compensation is not payable. Therefore, value of 3.50 HR orange orchard comes to Rs.24,03,000/- (Rs.2700/- per tree x 855 trees = 23,08,500/- + Rs.1350/- per tree x 70 trees = 94,500/-).

62. As regards 3.22 HR irrigated land, compensation will be payable at the rate of Rs.2,50,000/- per hectare, which comes to Rs.8,05,000/- with respect to 2.15 HR dry crop land and 0.10. HR land which is not cultivable being under approach road, the compensation will be payable at the rate of Rs.1,25,000/- per hectare, which comes to Rs.2,81,250/-. In addition to this, compensation of Rs.48,000/- is payable for four mango trees, Rs.20,000/- for 20 Ber trees and Rs.6935/- for 57 forest trees. The compensation for mango, Ber, and forest trees awarded by the learned Reference Court is maintained, since neither party has challenged the same. Thus, the total compensation payable for the acquired land comes to Rs.35,64,185/-.

63. First Appeal is, therefore partly allowed in the following terms :

(i) Total amount of compensation payable for the acquired land is computed at Rs.35,64,185/-.

(ii) The amount of solatium, 12% component and interest under Section 28 of the Land Acquisition Act, 1884 will be computed on the enhanced amount in accordance with clause – (7) of the operative order and Award passed by the learned Reference Court.

(iii) The amount already received by the Appellants shall be deducted from the enhanced amount of compensation.

(iv) In view of order dated 11/8/2022 the Appellants will not be entitled for interest for the delayed period of 5308 days. Likewise, in terms of order dated 30/11/2022 the Appellants will not be entitled to claim any statutory benefits including interest on the enhanced amount of compensation for the period of 23 days i.e. the period of delay caused in filing the First Appeal.

(v) Office is directed to prepare the Award/Decree accordingly.

FIRST APPEAL NO. 547 OF 2014 FILED BY THE ACQUIRING BODY A/W CROSS-OBJECTION NO. 83 OF 2022 FILED BY THE LAND OWNERS

64. The land bearing Survey No. 32 admeasuring 3.72 HR is acquired.

The land owners have not filed 7/12 extract of the acquired land on record. Two Joint Measurement Reports, though not exhibited, they are marked as Articles-B and C respectively in examination-in-chief of the land owner. The land owner has not disputed the correctness of Joint Measurement Report and Re-joint Measurement Report in the examination-in-chief. As per the Joint Measurement Report and Re-joint Measurement Report there were 346 fully grown orange trees and 342 orange grafts in the acquired land. The land owner has stated that age of 460 orange trees was seven years and age of 340 orange trees was six years as on the date of issuance of Section 4 Notification. The land owner claims compensation for 802 orange trees. Mr. Dadan Borkar, the expert Valuer has furnished report speaking about existence of 802 orange trees, out of which, 460 trees are stated to be seven years old and 340 trees are stated to be six years old. According to this report, there is a difference of one year only in the age of two sets of trees. Perusal of letter dated 3/7/1995 (Exhibit-19) issued by the Cross-objector No.1 Sundarabai to Sub Divisional Engineer indicates that 460 orange trees were referred by her as big trees and 342 trees were referred as small trees.

65. As against this, in the Joint Measurement Report there is a reference to 346 fully grown trees and 342 orange grafts. The procedure of grafting of orange trees involves a process of joining a small stem or branch of

orange tree into root stock of another citrus fruit tree. The grafted stem of orange tree is then allowed to grow while the citrus tree, on which the grafting is done, is gradually cut and removed. The fact that 342 plants are referred as grafts rather than orange tree is indicative of the age of said 342 trees. The Appellant No.1 has also classified the trees as big and small in her letter at Exhibit-19. Except for word of the Appellant and the Valuer, there is no independent documentary evidence to determine the age of orange grafts.

66. The learned Reference Court has awarded compensation for big orange trees at the rate of Rs.3000/- per tree. This needs to be reduced to Rs.2700/- per tree. The learned Reference Court has awarded compensation at the rate of Rs.500/- per graft for 342 orange grafts. The Appellants have failed to demonstrate any cogent reason for granting enhancement of compensation for orange grafts. However, in connected Appeal compensation for small orange trees is determined as Rs.1350/- per tree. It will be safe to award compensation of the same at the rate of Rs.1350/- per tree. It will be safe to award compensation of the same at the rate of Rs.1350/- per tree.

67. The learned Reference Court has erred in granting separate compensation for the land which is impermissible, since compensation is determined by adopting income capitalization method.

68. In addition to this, compensation for 15 Ber trees is awarded at Rs.22,500/-(at the rate of Rs.1500/- per tree) and compensation of Rs.1,22,000/- is awarded for non-fruit bearing trees. Apart from this, compensation of Rs.20,000/- is awarded for Bund and PVC pipeline. The compensation for Ber trees, forest trees, Bund and PVC pipeline, as awarded by the learned Reference Court, is not assailed by either party and, therefore, the same is accepted. The total compensation payable, thus, comes as under :

(i) Rs.9,34,200/- for 346 orange trees;

(ii) Rs.4,61,700/- for 342 orange grafts;

(iii) Rs.22,500/- for Ber trees;

(iv) Rs.1,22,000/- for forest trees; and

(v) Rs.20,000/- Bund and PVC pipeline.

Total compensation comes to Rs.15,60,400/-, as against Rs.18,38,500/- awarded by the learned Reference Court.

69. First Appeal is, therefore, allowed and Cross-objection is dismissed in the following term :

- Compensation awarded is reduced to Rs.15,60,400/- as against Rs.18,38,500/- awarded by the learned Reference Court.
- Award passed by the learned Reference Court be modified accordingly.

- Parties to bear their own costs.

FIRST APPEAL NO. 28 OF 2016 FILED BY THE ACQUIRING BODY A/W CROSS-OBJECTION NO. 75 OF 2022 FILED BY THE LAND OWNERS

70. **Description of acquired land** :

(i) Survey No. 3 admeasuring 1.85 HR having 300 orange trees.

(ii) Survey No.40 admeasuring 0.04 HR dry crop land.

(iii) Survey No.181 admeasuring 2.00 HR dry crop land.

(iv) Survey No.182 admeasuring 2.23 HR dry crop land.

(v) Survey No. 183 admeasuring 0.40 HR dry crop land.

(vi) Survey No. 205 admeasuring 1.21 HR dry crop land.

(vii) Survey No. 45 admeasuring 1.34 HR dry crop land.

71. The learned Reference Court has granted compensation for lands at Sr. Nos. (ii) to (vii) above, at the rate of Rs.1,25,000/- per hectare, treating them to be dry crop lands. During the course of arguments, this finding rendered by the learned Reference Court was not assailed by the learned Counsel for land owners. The land owners have also preferred a Cross-objection. Perusal of Cross-objection will also demonstrate that no ground is raised with respect to quantum of compensation awarded for the said lands, treating them to be dry crop lands. In the Cross-objection, the land owners are

seeking enhancement in the amount of compensation awarded for land at Sr. No.(i) above.

72. As regards land bearing Survey No.3, compensation at the rate of Rs.2,00,000/- per hectare is awarded for 1.85 HR land in Survey No.3 which is held to be perennially irrigated land. In addition to this, compensation for 300 orange trees is awarded at the rate of Rs.3,00,000/- per tree and compensation for two mango trees is awarded at the rate of Rs.2000/- per tree. Likewise, for 30 non-fruit bearing trees compensation is awarded at the rate of Rs.1000/- per tree. Thus, total compensation awarded by the learned reference court for the trees on land bearing Survey No. 3 is Rs.9,34,000/-. As held above, separate compensation cannot be awarded for land of orchard.

73. In the present case, there is no evidence to suggest what is the area of Survey No.3 which is covered under orange plantation. The evidence of Valuer as also the land owner is silent on this aspect. The Valuation Report also does not specify the area covered under orange trees plantation. However, on perusal of documents in other connected matters, it is seen that around 300 to 400 orange trees are planted in 1.00 hectare of land. In that view of the matter, the area covered under orchard comprising of 300 orange trees is taken as 1.00 hectare by broad guess work. The Appellant will not be entitled

for separate compensation of land with respect to 1.00 hectare land in Survey No.3.

74. However, with respect to remaining 0.85 HR land, Appellant will be entitled for compensation at the rate of Rs.2,50,000/- which comes to Rs.2,12,500/-.

75. As regards 1.00 hectare land, the compensation payable will be Rs.8,10,000/- (Rs.2700/- x 300 trees). In addition to this, separate compensation will have to be paid for two mango trees and 30 non-fruit bearing trees. The rate of these trees, as awarded by the learned reference court, is not disputed by either side, and therefore, the said rate will have to be accepted.

76. Accordingly, the compensation for Survey No.3 is derived as under :

(i) Rs. 8,10,000/- for 1.00 HR orange orchard;

(ii) Rs.4000/- for two mango trees; and

(iii) Rs.30,000/- for 30 non-fruit bearing trees.

(iv) Rs.2,12,500/- for 0.85 HR open field.

Total amount comes to Rs.10,56,500/-. Thus, total compensation payable for entire land comes to Rs.19,59,500/-. The learned Reference Court has awarded compensation of Rs.22,06,500/-.

77. First Appeal is, therefore, allowed and Cross-objection is dismissed. Parties to bear their own costs.

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78. The land bearing Survey No. 31 admeasuring 3.71 HR and land Survey No. 238 admeasuring 1.21 HR owned by the Appellant have been acquired. The land bearing Survey No.31 comprises of an orchard having 920 orange trees. The learned Reference Court has awarded compensation for each orange tree at the rate of Rs.3000/-. In addition, the learned Reference Court has also awarded separate compensation for the land at the rate of Rs.1,25,000/- per hectare. In view of the reasons mentioned above, the rate of each orange tree comes to Rs.2700/- as against Rs.3000/- awarded by the learned Reference Court. Apart from this, separate compensation is not payable for land of orchard, since trees are valued by income capitalization method.

79. A sum of Rs.5,10,000/- is required to be added for other fruit bearing trees, forest trees, well, cattle-shed and PVC pipeline. This amount of

Rs.5,10,000/- is not disturbed, since neither party has raised challenge to the same.

80. As regards the land bearing Survey No.238, perusal of 7/12 extract (Article-D) of the said land indicates that there is an entry of well along with a pump. However, the entry with respect to pump is scored out. In the cultivation column 1.20 HR land out of total 1.21 HR is shown as unirrigated land and 0.01 HR land is shown as not fit for cultivation. Accordingly, compensation for land bearing Survey No.238 is payable at the rate of Rs.1,25,000/- per hectare. The total compensation for the said land comes to Rs.1,51,250/-. The total compensation for both the lands Survey Nos.31 and 238 payable is as under :

(i) Rs.24,84,000/- for orange trees; and

(ii) Rs.5,10,000/- for other fruit bearing trees, forest trees, well, cattle-shed and PVC pipeline and motor-pump for the land Survey No. 31; and

(iii) Rs. 1,51,250/- for Survey No.238.

Total compensation payable is Rs.31,45,250/-, which is less than the amount of compensation awarded by the learned Reference Court.

81. First Appeal is, therefore, dismissed. Parties to bear their own costs.

82. In view of disposal of First Appeals, pending Civil Application(s), if any, does not survive. The same stands disposed of accordingly.

(ROHIT W. JOSHI, J.)

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