IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1540 OF 2023

The Executive Engineer Minor Irrigation Division No.1
VERSUS
Mahebub Shah Abdul Shah Deceased Through Lrs. Ors
...
Mr. H. U. Dhage, Advocate for Appellant
Mr. B. V. Virdhe, AGP for Respondent-State
Mr. H. P. Kshirsagar, Advocate for Respondent nos.1 to 5 & 7
Mr. S. N. Rodge, Advocate for Respondent No.6
...
WITH
CIVIL APPLICATION NO. 5220 OF 2025
IN FA/1540/2023
WITH
FIRST APPEAL NO. 2125 OF 2026
.....
CORAM : AJIT B. KADETHANKAR, J.
DATED : 05TH OCTOBER, 2026

P.C. :-

. Feeling aggrieved by the judgment and award dated 30.12.2019 passed by the 8th Joint Civil Judge Senior Division, Aurangabad in Land Acquisition Reference No.97 of 2019, the Acquiring Body has preferred First Appeal No.1540 of 2023. The Record and Proceedings was called.

2. Mr. H. U. Dhage, learned Advocate for the appellant would take me through the mutation record of the subject matter/ property and also the evidence tendered by one Mr. Vishnu Kashiram Patil at Exhibit-64 who happen to be

Agricultural Valuer. Mr. Dhage submits that on the basis of the evidence tendered by the said Valuer, the Reference Court has awarded exorbitant compensation of more than Rs.17,00,000/- towards the trees and plants. He strongly objects authenticity of the Valuer's report and also contents therein. He points out the cross examination conducted by learned AGP whereby it could be seen that the evidence of the said Valuer was not at all trustworthy.

3. Mr. Dhage then points out the revenue record pertaining to the subject matter land which indicates that the plantation of the trees commenced only from the year 2008 onwards. He submits that if the valuation report is taken into consideration, the age and growth of the shown therein are contrary to the revenue record. The said revenue record is part of the Record and Proceedings and is at page no.27. Then pointing out to this controversial portion of the judgment and award passed by the Reference Court, Mr. Dhage learned Advocate prays to allow the First Appeal with a restricted prayer to remit the matter to the Reference Court to the extent of ascertaining correct compensation against the trees and plants.

4. Per contra, learned Advocate Mr. H. P. Kshirsagar for the claimants would object such relegation of the matter. He would submit that in fact in the award itself, there is reference of the trees and plants, and hence it is not open for the Acquiring Body to seek relegation of the matter. He further submits that there is nothing objectionable in the cross examination of Valuer Mr. Patil and merely for some hyper technical defect, the said report cannot be discarded.

Mr. Kshirsagar submits that his appeal for enhancement is also tagged with present appeal. There also he seeks finding that the land be held as an irrigated land.

5. I have heard both the sides extensively. Apparently the Reference Court relying on the valuation report tendered by the claimants as also the evidence of Valuer Mr. Patil has granted compensation worth Rs.17,68,292/- against the trees and plants. May it be, in the award there is reference of trees; however the revenue record cannot be discarded. Certainly the claimants are entitled for compensation even for acquisition of trees and plants forming part of the acquired land. However, it also cannot be lost sight of that the compensation is to be paid from the public exchequer. If some

contrary material is noticed by this Court, the Acquiring Body needs to be given atleast one opportunity to bring such data on record to enable the Reference Court to render finding in the light thereof. In view of this, I find that the appellant/Acquiring has made out a successful case for interference of this Court.

6. In the appeal filed by the claimants, Mr. H. P. Kshirsagar, learned Advocate submits that although the subject matter land was a fully irrigated land, still despite recording evidence that there was a well situated in the subject matter land, the Reference Court unnecessarily held the land as semi irrigated. His another contention is that even from the fact that the subject matter was containing such trees and plants, it is evident that the land was irrigated one. He would assail the findings of the Reference Court rendered at paragraph no.13 of the impugned judgment whereby the Reference Court did not hold the land as irrigated for any evidence. Mr. Kshirsagar learned Advocate submits that these findings are perverse to the evidence.

7. In view of the above, I deem it appropriate to partly allow both the appeals and relegate the matters to the

Reference Court for fresh consideration on the point of compensation of trees and the quality of land. Hence, I pass following order:

ORDER

a. Both the First Appeals are partly allowed.

b. Impugned judgment and award dated 30.12.2019 passed by learned 8th Joint Civil Judge Senior Division, Aurangabad in Land Acquisition Reference No.97 of 2019 is quashed and set aside.

c. Both the matters are relegated back to the learned 8th Joint Civil Judge Senior Division, Aurangabad for fresh consideration on the point of compensation of trees, quality of land and quantum of compensation.

d. Reference Court shall render its finding after granting opportunity to both the sides.

e. The amount deposited by the Acquiring Body in this Court be remitted back to the Reference Court. The disbursement of such amount shall be subject to the decision in the remitted reference matters.

f. So far as the share of respondent no.6 in First Appeal No.2125 of 2026 is concerned, claimants may seek amendment in the claim petition as is permissible in law.

g. Record and Proceedings be immediately sent back to the Reference Court.

h. Reference Court shall render its findings within a period of four months from the date of receipt of Record and Proceedings of this case.

i. The interest part shall be governed by the full bench judgment of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari, 2016(3) Mh.L.J. 457***.

j. Pending Civil Application stands disposed of.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2026