



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

**FIRST APPEAL NO. 346 OF 2023
WITH
CIVIL APPLICATION NO. 7626 OF 2024**

Kalindabai Raosaheb Sherkar .. Appellant

Versus

The State of Maharashtra, through
District Collector .. Respondents

Ms. Laxmi R. Thakur, Advocate for the Appellant.
Shri S. N. Morampalle, A.G.P. for the Respondent.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 20TH JANUARY, 2026.**

FINAL ORDER :

. Heard both sides finally.

2. The original claimant has preferred first appeal against the judgment and award dated 08.07.2009 passed in L.A.R. No. 759 of 1997. A separate civil application is filed for seeking permission to adduce additional evidence. It is brought to the notice of this Court that pomegranate trees are existing in the land acquired have not been taken into account for awarding compensation. It reveals from record that reference was preferred against State of Maharashtra only and acquiring body was not a party. The Executive Engineer, Medium Project is the acquiring body, who is necessary party. The matter needs to be

remanded to the Reference Court for deciding afresh after adding the acquiring body in the reference petition.

3. Learned Assistant Government Pleader Mr. Morampalle for the respondent would advert my attention to the law laid down by the Supreme Court in the matter of State of Haryana Vs. Gurchan Singh reported in *1995 Supp. (2) SCC 637* and **judgment dated 27.08.2009 of the Division Bench of parent High Court in First Appeal No. 358 of 1999** to buttress that it is impermissible for the claimant to claim separate compensation for the fruit bearing trees, when already land under acquisition has been classified to be irrigated land and compensation has already been awarded.

4. As this Court is not deciding the matter on merits and relegating the matter before the Reference Court, it would not be appropriate to deal with the issue raised by the respondent. In the present case, the land is treated to be irrigated land. It would be open for the Reference Court while examining the matter on merits to consider the objection of the respondent and the judgments cited before it.

5. For the reasons stated above, I pass following order.

O R D E R

A. First appeal is allowed partly.

B. Impugned judgment and award dated 08.07.2009 in L.A.R. No. 759 of 1997 is quashed and set aside.

C. The matter is relegated to the Reference Court and leave is granted to the appellant/claimant to implead the acquiring body.

D. The Reference Court shall decide the matter on its own merits taking into account all the factual and legal aspects including the judgments cited supra.

E. Reference shall be decided expeditiously.

F. The civil application for additional evidence stands disposed of.

[SHAILESH P. BRAHME J.]

bsb/Jan. 26