

(2012) 08 BOM CK 0058

In the Bombay High Court

Case No : First Appeal No. 261 of 2007 with Civil Application No. 782 of 2007
and First Appeal No. 1070 of 2005

The State of Maharashtra and The Executive Engineer,
Karanjwan Dam Project, Nashik

APPELLANT

Vs

Shri Chandrakant Mangilal Samdadia and Shri Prakash
Swarupchand Raka
 Vasant Namdeo Kakad Vs The
State of Maharashtra and The Executive Engineer, Karanjwan
Dam Project, Nashik

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12(2), 18, 23, 23(1)

Citation : (2012) 6 ALLMR 871 : (2013) 1 BomCR 117 : (2013) 1 MhLj 397

Hon'ble Judges : Shrihari P. Davare, J;A.S. Oka, J

Bench : Division Bench

Advocate : A.R. Patil, AGP for the State in the Above Appeals, Mr. P.B. Shah in FA No. 177 of 2003 to FA No. 192 of 2003 and Mr. P.N. Joshi in FA Nos. 1070 of 2005 to 1073 of 2005 and FA No. 699 of 2002, for the Appellant; P.B. Shah for Respondent No. 1 in FA Nos. 263, 268 of 2007, for Respondent Nos. 1 to 3 in FA No. 264 of 2007 and for Respondent Nos. 1 and 2 in FA No. 1579 of 2007, Shri P.N. Joshi for Respondent Nos. 1C, 2 and 14 in fa No. 1053 of 2009, for Respondent Nos. 1 to 7 in FA No. 1055 of 2009, for the Respondent

Judgement

A.S.Oka, J.—This group of First Appeals can be disposed of by a common judgment and order. As some of the Appeals pertain to jurisdiction of learned Single Judge, an order dated 16th July, 2012 has been passed by Hon"ble the Chief Justice assigning these Appeals to this Court. These Appeals consist of two groups. One group of the Appeals is First Appeal No. 699 of 2002 alongwith the First Appeal Nos. 1053 of 2009 to 1056 of 2009. In these Appeals, the challenge is to the judgment and award dated 21st December, 2000 passed by the learned Joint District Judge in Land Acquisition Reference Nos. 264 of 1993 to 267 of 1993. The remaining Appeals out of this group of First Appeals arise out of a common judgment and award dated 30th April, 2001 in Land Acquisition

Reference Nos. 213 of 1994 to 232 of 1994, 128 of 1995, 129 of 1995, 72 of 1996 and 28 of 2001. All the aforesaid references are u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act").

FACTS OF GROUP - I

The lands subject matter of the first group of First Appeals being First Appeal No. 699 of 2002 and First Appeal Nos. 1053 of 2009 to 1056 of 2009 are situated at Male-Dumale, Taluka Dindori, District - Nashik. The lands were notified under a Notification u/s 4(1) of the said Act which was published in Government Gazette dated 4th January, 1990. The purpose of acquisition was construction of the PuneGaon Dam. The acquired lands subject matter of the said References are the agricultural lands. The awards u/s 11 of the said Act were made on 23rd January, 1993. While offering compensation by the award u/s 11 of the said Act, the Special Land Acquisition Officer divided the acquired lands into four categories viz. Jirayat-I, Jirayat-II, Jirayat-III and Jirayat-IV. The market value offered by the Special Land Acquisition Officer for the said categories is as under:-

1.

Jirayat ?I

Rs. 19,000/- Per Hectare

2.

Jirayat ?II

Rs. 21,000/- Per Hectare

3.

Jirayat ?III

Rs. 23,000/- Per Hectare

4.

Jirayat ?IV

Rs. 25,000/- Per Hectare

The Pot kharaba land was valued at Rs. 200/- Per Hectare. The Special Land Acquisition Officer offered compensation for the wells and structures separately as per the valuation made by the Competent Authority. The Special Land Acquisition Officer accepted the valuation of trees/orchards on the acquired lands made by the Horticultural Department and compensation was offered accordingly for trees/orchards. As far as fuel trees are concerned, no compensation was offered. The Claimants did not accept the compensation offered by the Award u/s 11 of the said Act and at their instance, references were made u/s 18 of the said Act. By the impugned judgments and awards, the learned Trial Judge came to the conclusion that in case of the lands falling in Bagayat -III, the market value

will be Rs. 1,33,000/- Per Hectare. On that basis, the learned Trial Judge determined the market value of various categories of the lands.

1.

Jirayat

?I

Rs.86,000/-

Per Hectare

2.

Jirayat

?II

Rs.88,000/-

Per Hectare

3.

Jirayat

?III

Rs.90,000/-

Per Hectare

4.

Bagayat

?I

Rs.1,29,000/-

Per Hectare

5.

Bagayat

-II

Rs.1,31,000/-

Per Hectare

6.

Bagayat

-III

Rs.1,33,000/-

Per Hectare

7.

Bagayat

-IV

Rs.1,35,000/-

Per Hectare

2. The learned Trial Judge did not grant any enhanced compensation on account of trees/orchards, wells and structures. The learned Judge observed that as far as the valuation of Pot kharaba land at Rs. 200/- Per Hectare made by the Special Land Acquisition Officer is concerned, none of the Claimants have either pleaded or proved that the said rate was inadequate. The learned Judge granted statutory benefits u/s 23(1-A) and Section 23(2) of the said Act. The learned Judge also granted statutory benefit u/s 28 of the said Act. However, the benefit of interest u/s 28 was granted only on the component of excess land value and not on the other two components u/s 23(2) and Section 23(1-A) of the said Act. The market value was fixed on the basis of the sale instance of the Sale Deed dated 9th June, 1988 (Exhibit-49) in respect of the lands bearing Gat No. 161 from the same village. The market value reflected from the sale instance was also approximately Rs. 1,15,800/- for Bagayat-III land. Considering the fact that the relevant date for determination of the market value was 4th January, 1990, the 15% escalation was given and, therefore, the market value of Bagayat-III land was arrived at Rs. 1,33,170/- Per Hectare which was rounded off to Rs. 1,33,000/- Per Hectare. The Special Land Acquisition Officer while determining the market value of various categories of the lands had added Rs. 2,000/- Per Hectare for arriving at the market value of immediately next higher category of the acquired lands. Accordingly, the market value of various categories of Jirayat and Bagayat lands was fixed by adding Rs. 2000/- per Hectare. The market value of Bagayat I lands was fixed at 1 and 1/2 times the rate of Jirayat-I lands. The Reference Court by the impugned judgments and awards proceeded to fix the following rates of market value.

1.

Jirayat

?I

Rs. 86,000/-

Per Hectare

2.

Jirayat

?II

Rs. 88,000/-

Per Hectare

3.

Jirayat

?III

Rs. 90,000/-

Per Hectare

4.

Bagayat

?I

Rs. 1,29,000/-

Per Hectare

5.

Bagayat

-II

Rs. 1,31,000/-

Per Hectare

6.

Bagayat

-III

Rs. 1,33,000/-

Per Hectare

7.

Bagayat

-IV

Rs. 1,35,000/-

Per Hectare

FACTS OF GROUP - II

3. The second group of the First Appeals arises out of a common judgment and award dated 30th April, 2001 in the group of References to which we have referred earlier. The said References were u/s 18 of the said Act. The lands subject matter of the References are also situated at village Male-Dumale. The Notification u/s 4(1) of the said Act was published in the Government Gazette on 7th March, 1991. The Awards u/s 11 of the said Act were made on 27th April, 1994. The market value offered by the Special Land Acquisition Officer under the said Awards u/s 11 of the said Act was at the following rates:-

1.

Jirayat

?I

Rs.21,000/- Per Hectare

2.

Jirayat

?II

Rs.23,000/- Per Hectare

3.

Jirayat

?III

Rs.25,000/- Per Hectare

4.

Jirayat

-IV

Rs.27,000/- Per Hectare

5.

Bagayat

?I

Rs.31,500/- Per Hectare

6.

Bagayat

-II

Rs.34,500/- Per Hectare

7.

Bagayat

-III

Rs.37,500/- Per Hectare

8.

Bagayat

-IV

Rs.40,500/- Per Hectare

4. Separate compensation was offered for the fruit bearing trees on the acquired land as well as the wells and structures on the acquired lands. The market value of the Pot kharaba lands was fixed at Rs. 200/- Per Hectare. While passing the impugned common judgment and award, the learned Trial Judge relied upon the common judgment and award in the Land Acquisition References Nos. 264 of 1993 to 267 of 1993 dated 21st December 2000 which is subject matter of challenge in the first group of the Appeals. In the said group of Appeals, the relevant date is 4th January, 1990. In the second group of First Appeals, the relevant date is 21st April, 1991. For this gap, the learned Judge took into account the rise at the rate of 11.5% (at the rate of 10% per annum). After giving the said rise, by the impugned judgments and awards, the market value was fixed at the following rates:-

1.

Jirayat

?I

Rs. 95,890/- Per Hectare

2.

Jirayat

?II

Rs. 97,890/- Per Hectare

3.

Jirayat

?III

Rs. 99,890/- Per Hectare

4.

Jirayat

-IV

Rs. 1,01,890/- Per Hectare

5.

Bagayat

?I

Rs. 1,43,835/- Per Hectare

6.

Bagayat

-II

Rs. 1,45,835/- Per Hectare

7.

Bagayat

-III

Rs. 1,47,835/- Per Hectare

8.

Bagayat

-IV

Rs. 1,49,835/- Per Hectare

5. As regards the Pot kharaba land, the learned Trial Judge relied upon a decision of this Court in the case of State of Maharashtra v. Pralhad Bajarang Magar [1996 (1) BCJ 247]. On the basis of the said decision, the Pot kharaba land was valued at the rate equivalent to 50% of the value of Jirayat land. The learned Trial Judge granted statutory benefits u/s 23(1-A) and Section 23(2) of the said Act. The learned Judge also granted statutory benefit u/s 28 of the said Act. However, statutory benefit of interest u/s 28 of the said Act was confined to the excess market value. The interest u/s 28 was denied on the other two components u/s 23(2) and Section 23(1-A) of the said Act.

INTEREST u/s 28 OF THE SAID ACT:

6. Before dealing with the submissions made by the learned counsel appearing for the Claimants and the learned AGP for the State, we may note here that in both the groups, there is no dispute regarding entitlement of the Claimants to statutory benefits under Sections 23(1- A), 23(2) and 28 of the said Act. However, the interest u/s 28 of the said Act has been granted only on the

component of excess market value. The interest u/s 28 of the said Act has been denied on the components of Section 23(2) and 23(1-A) of the said Act on the basis of a decision of the Apex Court in the case of Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, . In the subsequent decision of the Apex Court in the case of Sunder Vs Union of India [(2001)7 SCC 21], the decision in Prem Nath Kapur's case (supra) is held as no longer a good law and now it is well settled that the interest u/s 28 of the said Act is payable on the excess amount granted by the Reference Court under all the three components of compensation i.e. market value u/s 23(1), Solatium u/s 23(2) and interest u/s 23(1-A) of the said Act. In view of the settled position, whenever an enhancement in compensation is granted by the Reference Court in a Reference u/s 18, the Claimant is entitled to interest u/s 28 on all three components as a matter of right. In this view of the matter, as regards the entitlement of Claimants to benefit u/s 28 of the said Act, we have made no further discussion in the subsequent part of the judgment.

SUBMISSIONS OF RIVAL PARTIES:

7. Now we turn to the submissions made across the bar on the issue of market value of the lands, wells structures and trees. Shri P.N. Joshi and Shri P.B. Shah, the learned counsel have made submissions on behalf of the Original Claimants in the Appeals preferred by the Claimants as well as in the Appeals preferred by the State Government. Shri A.R. Patil, AGP has made submissions on behalf of the State Government in all the First Appeals.

8. Learned counsel appearing for the Claimants submitted that the market value of the lands involved in the second group of Appeals will have to be determined on the basis of the market value of the lands subject matter of first group of the first Appeals. Firstly, the learned counsel submitted that there was no reason to deny compensation on account of market value of the trees. The learned counsel for the Claimants relied upon the evidence of the witness Uttamrao Patil. He pointed out that he is a Valuer who had visited the suit property for ascertaining the market value of trees. He invited our attention to the valuation report submitted by the said witness. He invited our attention to the evidence of the PW-3 Hemant Haribhau Dhattrak who submitted a valuation report in respect of the structures such as Gobargas Plant, Water Storage Tank, Houses, Wells, etc. He submitted that the learned Trial Judge has not correctly understood the legal position as regards the grant of market value of the trees on the acquired lands. He submitted that the evidence in the form of certificate yield issued by the Agricultural Produce Market Committee, Nashik was also produced and proved by the Claimants. He urged that the law on this aspect has been laid down by the learned Single Judge in the case of Shrimati Vishwanath Acharya (dead, represented by her legal representatives) Vs. Special Land Acquisition Officer and Another, . He submitted that based on the valuation reports, the Claimants were entitled to enhanced compensation on account of damage caused by reason of taking standing crops/fruits bearing trees on the acquired lands. He submitted

that the case for enhancement of compensation was made out especially as regards the fruits bearing trees as well as the structures and wells on the acquired lands. The learned counsel appearing for the Claimants in support of the Appeals preferred by the Claimants in the second group of Appeals submitted that the acquired lands were from the same village and were notified for the same project as in the case of acquired lands in the first group of Appeals. They submitted that there was a difference of only 14 months before publication of the notification. They submitted that the Notification u/s 4(1) of the said Act in the second group of Appeals is subsequent to the Notification u/s 4(1) of the said Act in the first group. It was submitted that the price of the market value as on the date of Notification u/s 4(1) i.e. 21st April, 1991 of the said Act in the second group of Appeals has been arrived at by the Trial Court by taking escalation at the rate of 10% per annum on the market value fixed in the first group as on 4th January, 1990. It was submitted that the escalation should have been taken at minimum rate of 15% per annum. The learned counsel appearing for the Claimants submitted that even in second group of Appeals, expert valuer Uttamrao Patil (PW2) has been examined to prove the loss on account of trees on the acquired lands. It was submitted that for no cogent reason, the learned Trial Judge has doubted the case made out by the witness about the date on which he took inspection of the acquired lands. The submission is that the compensation ought to have been enhanced in respect of the fruit bearing trees as well as regards structures and wells.

9. In support of the common judgment and award in the first group, the learned AGP submitted that the sale instance of Sale Deed dated 9th June, 1988 in respect of the land bearing Gat No. 161 ought to have been kept out of consideration inasmuch as even the said land was acquired under the same Notification and the sale was obviously made in anticipation of the acquisition only with the object of creating evidence regarding higher market value. He submitted that in fact the sale instance dated 27th March, 1981 at Exhibit-75 which is proved by the witness Bipinchand Parikh examined by the Special Land Acquisition Officer shows that the market value on the relevant date was much less than what has been granted. He submitted that as a comparison method was adopted, no separate compensation is payable on account of fruit bearing trees on the acquired lands and the structures. He submitted that in any event in both the groups of Appeals, there was no evidence to show that the prices of the agricultural lands were increased in the span of 14 to 18 months. He submitted that escalation granted at the rate of 10% and 15% per annum respectively is on the higher side and no such escalation could have been taken into consideration unless there was evidence to show that there was escalation of the prices of the agricultural lands in the vicinity of the acquired lands during the relevant period. As far as the second group of References is concerned, he submitted that some of the References were barred by limitation.

CONSIDERATION OF SUBMISSIONS:

10. As pointed out earlier, the relevant date in the first group of Appeals is 4th January, 1990. In the second group, the relevant date is 7th March, 1991. The acquired lands subject matter of both groups are situated in the same village Male Dumale and the purpose of acquisition is the same. The public purpose in case of lands in both the groups is for construction of Pune Gaon Dam. The lands subject matter of both the groups are agricultural lands. Therefore, for determining the market value of the lands involved in both the groups, it will be necessary to firstly determine the market value of the acquired lands as of 4th January, 1990 which is the relevant date in the first group. In the first group, the sale instance relied upon by the Claimants is of 9th June, 1988 which is a sale deed in respect of the land bearing Gat No. 161 in the same village. The area of the said lands subject matter of the sale deed is 1 Hectare and 62 Ares which is a cultivable portion along with the Pot kharaba land of 2 Ares. The total market value reflected from the said Sale Deed is Rs. 1,90,000/-. We must note here that even the said Gat No. 161 was notified for acquisition by the same Notification published on 4th January, 1990. The said land bearing Gat No. 161 is the subject matter of Land Acquisition Reference No. 267 of 1993. Against the award in the said Reference, First Appeal No. 1056 of 2009 has been preferred by the State Government which forms part of first group. On this aspect, it will be necessary to make a reference to the evidence of one Jagannath Korale, who is the Claimant in Land Acquisition Reference No. 267 of 1993. He deposed that by Sale Deed dated 9th June, 1988, he purchased the entire Gat No. 161 for a consideration of Rs. 1,90,000/-. He stated that the land was a bagayat land. He identified the signature of Tarabai, the vendor on the sale deed. He stated that he purchased the land as per the market value prevailing in the village. In the examination-in-chief, he claimed that the acquired lands were irrigated by water from the well and river. In the cross-examination, he denied the correctness of the suggestion that he purchased the land bearing Gat No. 161 as he was holding the adjoining lands. He denied the correctness of the suggestion that he has purchased the land under the Sale Deed Exhibit-49 at exorbitant price as he was holding the adjoining lands. It is pertinent to note that there was no suggestion given to the said witness that the Sale Deed was got executed by him at a higher price as the acquisition of other lands held by him for the public purpose was contemplated. Only suggestion given is that the land bearing Gat No. 161 was a valuable land for him as he was holding the lands abutting the said lands. If a suggestion would have been given to the witness that the said transaction was not a genuine sale transaction, the Claimants could have examined the Vendor under the said Sale Deed. Thus, except for a bald suggestion that the said Claimants purchased the land bearing Gat No. 161 at an exorbitant price as he was holding surrounding lands, there was no other serious cross-examination on the Sale Deed.

11. We must note here that the State Government examined one Bipinchand Parikh to prove the sale instance at Exhibit 75 of the Sale Deed dated 27th March, 1989 in respect of an area of 3 Hectare and 19 Ares out of Gat No. 170

from the same village. In the cross-examination, the witness who was the purchaser admitted that the consideration was not fixed as per the prevailing market value as there was a tenancy dispute pending in respect of the land. He admitted that he had not made any inquiry about the then prevailing rate of market value. He admitted that he was not a resident of the village Male Dumale and he was staying at Kalyan. In view of this admission, the Trial Court has rightly held that the sale instance of the said Sale Deed at Exhibit-75 does not reflect the prevailing market value. Apart from the Sale Deed dated 9th June, 1988 at Exhibit - 49, the Claimants relied upon the award in Land Acquisition Reference Nos. 15 to 23 of 1992.

12. The sale instance at Exhibit-49 is of a land which was an agricultural land from the said village. The said land was also a subject matter of acquisition under the said Notification dated 4th January, 1990. The acquired lands which are subject matter of the first group of the Appeals are in a close vicinity with each other and some of the lands are the adjacent lands. The gap between the Sale Deed and the relevant date for determination of the market value is of 18 months. Thus, a sale instance of a land which was subject matter of the same acquisition, was available. Hence, evidence in the form of Awards of the Reference Court will have to be kept out of consideration. Therefore, for determination of the market value, the only relevant piece of evidence is the said Sale Deed dated 9th June, 1988

13. Therefore, the market value as of 4th January, 1990 will have to be determined on the basis of the Sale Deed dated 9th June, 1988. For arriving at the market value as of the relevant date, the Reference Court has considered 15% escalation. In this behalf, it will be necessary to make a reference to the decision of the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel & Another, [(2008) 14 SCC 745]. It will be necessary to make a reference to what is held in Paragraphs 14 and 15 of the said decision which read thus:-

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."

15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is

no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, upto neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic stagnation in prices or sudden spurts in prices affecting the very standard of increase."

(Underline supplied)

14. In Paragraph 18 of the said decision, the Apex Court observed that the logical, practical and appropriate method is to apply the increase cumulatively and not at the flat rate. In the facts of the case, the land acquired was situated in a rural area. In the present case, there was no evidence of any extra-ordinary development or extra-ordinary increase in the prices of lands in the area. Therefore, as observed in Paragraph 17 by the Apex Court, considering the fact that the acquired agricultural lands were in rural area, the rate of escalation will have to be taken at 7.5% per annum.

15. Therefore, the escalation taken at 15% per annum by the Trial Court is on the higher side. In the present case, the market value reflected from the Sale Deed dated 9th June, 1988 is Rs. 1,15,800/- Per Hectare. The said land was found to be Bagayat-III category. For determining the market value as of 4th January, 1990, the escalation will have to be taken at the rate of 7.5% per annum on the basis of the market value of Rs. 1,15,800/- per Hectare as of 9th June, 1988. The escalation at the rate of 7.5% per year will have to be taken into consideration on a cumulative basis. The escalation will have to be calculated for a period of 18 months. The interest at the rate of 7.5% per annum for one year will be Rs. 8685/-. Thus, market value as of 9th June, 1989 will be Rs. 1,24,485/- (Rs.1,15,800/- + Rs. 8685/-). On Rs. 1,24,485/-, the yearly increase at 7.5% will be Rs. 9336.37 and therefore, interest for six months will be Rs. 4668.18 i.e. Rs. 4668/-. Hence, market value of bagayat III land as of 4th January, 1990 will be Rs. 1,29,153 (Rs. 1,24,485 + 4668). The Trial Court has held this value to be Rs. 1,33,000/- which is on the higher side.

MARKET VALUE OF LANDS IN GROUP-I

16. The Special Land Acquisition Officer himself had divided the acquired lands into various groups such as Jirayat-I, II, III and IV. The Special Land Acquisition Officer himself has taken the difference between the Jirayat-I and Jirayat-II at Rs. 2,000/- Per Hectare. In fact, the difference between every successive category is taken at Rs. 2,000/- Per Hectare. As held above, by applying the cumulative increase at the rate of 7.5% per annum, the market value of Bagayat-

III land as of 4th January, 1990 will be Rs. 1,29,153/-. Accordingly, the market value of the lands for various categories in the lands falling in first group is as under:-

1.

Bagayat

?I

Rs.1,25,153/-

Per Hectare

2.

Bagayat

-II

Rs.1,27,153/-

Per Hectare

3.

Bagayat

-III

Rs.1,29,153/-

Per Hectare

4.

Bagayat

-IV

Rs.1,31,153/-

Per Hectare

17. The learned Judge has taken the market value of Jirayat lands at 2/3rd of the corresponding market value of Bagayat Lands. Thus, the market value of Jirayat I land will be 2/3rd of Rs. 1,25,153 i.e. Rs. 83,435/- per Hectare. For determining market value of successive categories of Jirayat lands, Rs. 2000/- per category will have to be added. Accordingly, the market value of the lands will be as under:-

1.

Jirayat

?I

Rs. 83,435/-

Per Hectare

2.

Jirayat

?II

Rs. 85,435/-

Per Hectare

3.

Jirayat

?III

Rs. 87,435/-

Per Hectare

4.

Jirayat

-IV

Rs. 89,435/-

Per Hectare

MARKET VALUE OF TREES/STRUCTURES:

18. Now the other issue is regarding the grant of enhancement in compensation on account of market value of the trees/orchards, wells and structures. It must be noted here that for determining the market value of the acquired lands, a comparison method has been adopted. The basis for determination of the market value is the Sale Deed dated 9th June, 1988 at Exhibit-49. The land subject matter of sale deed is itself a Bagayat land which was irrigated through well water and which was having the trees/orchards. Thus, the market value has been fixed on the basis of the sale instance of a land which itself is a Bagayat land having orchards or fruit bearing trees. In this behalf, a reference will have to be made to the decision of the Apex Court in the case of *Ambya Kalya Mhatre (Dead) Through LRs. and Others v. State of Maharashtra* [(2011) 9 SCC 325]. In Paragraph 35, the Apex Court held thus:-

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 capitalising the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. 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.

(Underline added)

19. As in the present case, the market value has been fixed on the basis of the sale instance of a land having fruit bearing trees. Hence, as held by the Apex Court, there is no question of again adding the value of the trees. It is true that the market value of trees has been separately assessed by the Land Acquisition Officer. However, that is no ground to consider the case for enhancement. The decision of the learned Single Judge in the case of Smt. Shrimati Vishwanath Acharya (supra) holds that under the caption "secondly" in sub-section (1) of Section 23 of the said Act, the Reference Court is bound to take into consideration the damage sustained by reason of taking any standing crops or trees which may be on the land at the time of the Collector taking possession. In view of the subsequent binding precedent in the case of Ambya Kalya Mhatre (supra), the decision in the case of Shrimati Vishwanath (supra) cannot be read as a precedent. In the present case, the Claimants have examined one Uttamrao Patil (PW-2) who claims to be the Agro Horticulture Consultant. He claims that he visited the lands in the year 1990. Plain reading of the evidence shows that he has not considered the number of trees in existence at the time of dispossession of the Claimants. In evidence, he claims that he visited the acquired lands in the year 1990. In the present case, the Award u/s 11 of the said Act was made on 23rd January, 1993 and the possession must have been taken only thereafter. Therefore, the witness could not have deposed as regards the damage sustained by reason of taking possession of the trees which were on the land at the time of taking over possession. Hence, there is no reason to grant any enhancement under the caption of market value of the trees. As regards the market value of the structures and wells on the lands, the Claimants have examined one Hemant Haribhau Dhattrak who is the Civil Engineer. He has set out the market value of the wells, houses, gohar gas plant, water storage tank, etc. He has merely stated the figures of the market value in his evidence without stating the basis for coming to the conclusion as to why that a particular structure or a particular well was having the said market value. It is a mere opinion evidence without disclosing the basis for forming opinion. Therefore, his evidence will have to be kept out of consideration.

OBJECTION REGARDING BAR OF LIMITATION AS REGARDS THE REFERENCES
SUBJECT MATTER OF GROUP-II

20. We find from the impugned common judgment that the issue regarding bar of limitation was specifically framed. The record shows that the date of the Award u/s 11 of the said Act is 27th April, 1994. There is nothing on record to show that the Claimants were present at the time of declaration of the Award. By carrying out the amendment to the Reference Applications, the Claimants have stated that they were not duly served with the notices u/s 12(2) of the said Act. In fact, the Claimants served a notice to the State Government to produce the office copy of the notices u/s 12(2) of the said Act and the documents showing the service of notices. However, inspite of service of notice to produce documents, the State Government did not produce any document. The Reference Applications were filed on 24th August, 1994. Thus, the Reference Applications were filed within a period of six months from the date of the Award u/s 11 of the said Act. The learned Trial Judge has rightly drawn adverse inference against the State of Maharashtra for not producing the relevant documents. The witness Jagannath Korale examined by the Claimants stated that the notices u/s 12(2) of the said Act were not served and the Claimants became aware of the Award when they received payment of compensation. In the Land Acquisition Reference Nos. 128 of 1995 and 129 of 1995, it is brought on record that the notices u/s 12(2) of the said Act were issued on 19th July, 1994 and the Reference Applications were filed on 30th August, 1994 i.e. within the stipulated period of 42 days. Though in Land Acquisition Reference No. 28 of 2001, notice u/s 12(2) of the said Act was issued on 9th July, 1994, the Reference Application was filed on 30th August, 1994. However, the State Government did not produce any material to show that the notice was duly served to the Claimants. Therefore, it is not possible to find fault with the finding recorded by the learned Trial Judge on the issue of bar of Limitation.

MARKET VALUE OF LANDS IN GROUP-II

21. Now we turn to the second group of First appeals. As held earlier, the market value of the lands will have to be determined on the basis of the market value of the land subject matter of the first group. The relevant date in the first group is 4th January, 1990 and in the second group, it is 7th March, 1991. There is a gap of about 14 months between the two dates. As held earlier, the escalation taken by the learned Judge at the rate of 10% per annum will have to be reduced to 7.5% per annum on the cumulative basis. To that extent, the market value fixed by the Trial Court will have to be reduced. The market value of Jirayat I land as of 4th January, 1990 is Rs. 83,435/-. Interest for 12 months thereon at the rate of 7.5% per annum will be Rs. 6257.62 i.e. Rs. 6258/-. Hence, the market value as of 4th January, 1991 will be Rs. 89,693/- (Rs.83,435 + 6258). By adding interest at the rate of 7.5% per annum for a period of two months on Rs. 89,693/- which is equivalent to Rs. 1120/-, as of 7th March, 1991, the market value will be Rs. 90,813/- (Rs.89,693/- + Rs. 1120/-). The market value of successive category of Jirayat lands will have to be calculated by adding Rs. 2,000/- Per Hectare. Market value of Bagayat -I land as of 4th January, 1990 was Rs. 1,25,153/-. Interest for 12 months thereon will be Rs. 9386/-. Hence, market

value as of 4th January, 1991 will be Rs. 1,34,539/- (Rs. 1,25,153 + Rs. 9386). The interest on the said amount for two months will be Rs. 1,682/-. Hence, market value as of 7th March, 1991 will be Rs. 1,36,221/- (Rs.1,34,539 + Rs. 1682). Market value of further categories of bagayat land will have to be determined by adding Rs. 2,000/- Per Hectare. Therefore, the market value of the various categories of the lands in the second group is as under:-

1.

Jirayat

?I

Rs. 90,813/-

Per Hectare

2.

Jirayat

?II

Rs. 92,813/-

Per Hectare

3.

Jirayat

?III

Rs. 94,813/-

Per Hectare

4.

Jirayat

-IV

Rs. 96,813/-

Per Hectare

5.

Bagayat

?I

Rs. 1,36,221/-

Per Hectare

6.

Bagayat

-II

Rs. 1,38,221/-

Per Hectare

7.

Bagayat

-III

Rs. 1,40,221/-

Per Hectare

8.

Bagayat

-IV

Rs. 1,42,221/-

Per Hectare

MARKET VALUE OF TREES IN GROUP-II

22. The market value of the land in the second group of the First Appeals has been determined on the basis of the market value of the land having orchards (fruit bearing trees). Therefore, no separate compensation can be granted on account of loss of fruit bearing trees in the light of the decision of the Apex Court in *Ambya Kalya Mhatre (supra)*.

23. Even in this case, the Claimants have examined the witness Uttamrao Patil (PW-2) from the Agro Horticulture Department. In this case, the awards u/s 11 are made on 27th April, 1994. He has visited the acquired lands in March, 1992 and March, 1993. The possession was taken only after the awards. Therefore, for the reasons given in the first group, even in this group, the said evidence will have to be kept out of consideration.

VALUATION OF POT KHARABA LANDS IN BOTH GROUPS:

24. There is one more aspect regarding valuation of the pot kharaba lands. In the first group, in the impugned judgment, the learned Trial Judge has observed that the Claimants have neither pleaded nor proved that the rate of Rs. 200/- Per Hectare for Pot kharaba land is inadequate. Perusal of the memorandum of Appeal in First Appeal No. 699 of 2002 shows that there is no specific challenge to the said finding. In any event, in the Reference itself, there is no challenge to the fixation of the market value as regards the Pot kharaba land. In the second

group, the perusal of the impugned judgment shows that there is a specific challenge in the References. In Paragraph 26 of the common judgment, it is pointed out that there was a challenge to the quantum of compensation fixed as regards the Pot kharaba land. The learned Judge came to the conclusion that the market value of the Pot kharaba land will be 50% of the market value of Jirayat land. Accordingly, 50% of the market value has been awarded by the learned Judge only in respect of Pot kharaba lands.

25. As regards the method of taking market value of Pot kharaba land equivalent to 50% of Jirayat land, the Division Bench of this Court in the case of Special Land Acquisition Officer (III), Jalgaon and Another v. Bhagwat Vithal Sonwane [2009 (4) Mh.L.J. 308] has quoted with the approval the earlier decision of this Court in the case of State of Maharashtra Vs Pralhad Bajrang Magar (supra) and has held that the market value of the Pot kharaba land was equivalent to the 50% of the market value of Jirayat lands. Therefore, no interference is called as regards the market value fixed in respect of Pot kharaba lands in the second group.

FINAL CONCLUSION:

26. Thus, the net result of the aforesaid discussion is that the market value of the lands in both the groups will have to be reduced to the extent set out in the earlier part of the judgment. However, the impugned judgments and awards will have to be corrected by granting benefit u/s 28 of the said Act on all the three components. Even in cases where the Claimants have not preferred the Appeals, the benefit of full statutory benefit u/s 28 of the said Act will have to be granted inasmuch as the said benefit was denied on the basis of the decision of the Apex Court, in the case of Prem Nath Kapur (supra) which is no longer a good law. The interest u/s 28 of the said Act has to be granted on all the three components of Section 23 of the said Act. The benefit of Section 28 of the said Act is available as a matter of right whether a Claim in that behalf is made or not. Therefore, even in cases where the Claimants have not preferred Appeals or cross-objection, the benefit of Section 28 of the said Act will have to be granted by exercising power under Rule 31 of Order XLI of the Code of Civil Procedure, 1908. As regards the benefit of interest u/s 28, even the Court fees will not be payable. Hence, we pass the following order:

(a) The total market value of the lands notified by a Notification u/s 4(1) of the Land Acquisition Act, 1894 published in Government Gazette on 4th January, 1990 shall be as under:

1.

Jirayat

?I

Rs.83,435/-

Per Hectare

2.

Jirayat

?II

Rs.85,435/-

Per Hectare

3.

Jirayat

?III

Rs.87,435/-

Per Hectare

4.

Jirayat

-IV

Rs.89,435/-

Per Hectare

5.

Bagayat

?I

Rs.1,25,153/-

Per Hectare

6.

Bagayat

-II

Rs.1,27,153/-

Per Hectare

7.

Bagayat

-III

Rs.1,29,153/-

Per Hectare

8.

Bagayat

-IV

Rs.1,31,153/-

Per Hectare

(b) The total market value of the lands notified by a Notification u/s 4(1) of the Land Acquisition Act, 1894 published in Government Gazette on 7th March, 1991 shall be as under:

1.

Jirayat

?I

Rs. 90,813/-

Per Hectare

2.

Jirayat

?II

Rs. 92,813/-

Per Hectare

3.

Jirayat

?III

Rs. 94,813/-

Per Hectare

4.

Jirayat

-IV

Rs. 96,813/-

Per Hectare

5.

Bagayat

?I

Rs. 1,36,221/-

Per Hectare

6.

Bagayat

-II

Rs. 1,38,221/-

Per Hectare

7.

Bagayat

-III

Rs. 1,40,221/-

Per Hectare

8

Bagayat

-IV

Rs. 1,42,221/-

Per Hectare

(c) The market value of Pot kharaba lands is confirmed;

(d) The Claimants will be entitled to statutory benefits u/s 23(1-A), 23(2) and 28 of the said Act. Interest u/s 28 shall be payable on entire excess compensation consisting of components of market value of the land, interest u/s 23(1-A) and solatium u/s 23(2) of the said Act;

(e) The rest of the impugned Judgments and Awards are confirmed;

(f) The Appeals preferred by the claimants as well as by the State of Maharashtra are partly allowed on above terms;

(g) We make it clear that the statutory benefits u/s 28 of the Land Acquisition Act, 1894 shall be available even to those Claimants who have not preferred Appeals or Cross-objections;

(h) There will be no orders as to costs in the Appeals in this Court.

(i) The Trial Court shall determine the compensation amount payable in terms of

the modified Awards within a period of four months from the date on which writ of this Judgment is received. The parties shall be heard by the learned Judge before determination of amount.

(j) Civil Applications in the aforesaid First Appeals do not survive and the same are disposed of 9:10 AM 8/18/2012.