

Ambya Kalya Mhatra(D) By Lrs.& Ors vs State Of Maharashtra on 12 September, 2011

Equivalent citations: 2011 AIR SCW 5749, 2012 (1) AIR JHAR R 755, 2012 (1) AIR BOM R 157, (2012) 1 MAH LJ 9, (2012) 1 MPLJ 19, 2011 (9) SCC 325, (2012) 2 ANDHLD 37, (2011) 6 ALLMR 974 (SC), (2011) 4 RECCIVR 767, (2011) 10 SCALE 296, (2012) 1 ALL WC 123, (2012) 3 CIVLJ 328, (2011) 2 CLR 787 (SC), 2011 (4) KLT SN 1 (SC), (2011) 6 BOM CR 645

Author: R.V.Raveendran

Bench: Gyan Sudha Misra, H. L. Gokhale, R. V. Raveendran

1

Rep

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO...7784..... OF 2011

[Arising out of SLP [C] No.20741 of 2009]

Shri Ambya Kalya Mhatre (d)

Through legal heirs & Ors.

... Appellants

Vs.

The State of Maharashtra

... Respondent

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

2. Lands belonging to Ambya Kalya Mhatre ('A.K.Mhatre' for short, now represented by his LRs.) situated at Dapoli village, Panvel taluk, Raigad district, bearing Sy. Nos.89/1, 85/1, 27/1, 41/1B, 41/1A, 152/3, 155/7, 18/7, 89/3, 23/2 and 99/1 in all measuring 1.73.6 Hectares (17360 sq.m.) with a large number of fruit bearing trees and a well therein, were acquired for New Bombay project in pursuance of preliminary notification dated 3.2.1970 (read with corrigendum dated 5.9.1970) and final notification dated 29.7.1979.

3. The special Land Acquisition Officer (for short 'the Collector') awarded the following compensation by award dated 4.7.1986:

S.No.	Description	Market Solatium	Additional amount	Total value (30%) @ 12% per annum
-------	-------------	-----------------	-------------------	-----------------------------------

1.	Land	` 24,898.32	` 7469.49	` 49,049.69	` 81,417.50
----	------	-------------	-----------	-------------	-------------

2.	Trees	` 83,629.00	` 25,088.70	` 1,65,586.40	` 2,74,303.10
----	-------	-------------	-------------	---------------	---------------

3.	Well	` 500.00	` 150.00	` 990.00	` 1,640.00
----	------	----------	----------	----------	------------

Possession of the land was taken on 9.9.1986. Not being satisfied with the compensation awarded, A.K.Mhatre made an application dated 10.11.1986 under section 18 of the Land Acquisition Act, 1894 ('Act' for short) to the Special Land Acquisition Officer (also referred as 'Collector' or 'LAO') seeking a reference to a District Court for enhancement of compensation by ` 90,273/- in regard to the acquired lands and paid a court fee of ` 1610/- in regard to the increase demanded.

In pursuance of the said request, a reference was made to the Civil Court by the LAO on 25.11.1986. During the pendency of the reference before the reference court, A.K. Mhatre died and his legal representatives came on record on 30.9.1988.

4. The appellants made an application on 13.9.1990 before the Reference Court seeking following amendments to the application for reference :

(i) As against the compensation of ` 24,898.32 for the entire land (at the rate ` 6500, ` 7000 and ` 7500 per acre for different kinds of land) awarded by the LAO, and the compensation claimed at the rate of ` 50,000/- per acre in regard to some of the lands, in the application seeking reference, the appellants sought compensation of ` 3,47,200/- for the acquired lands measuring 17360 sq.m. (at the rate of Rs.20 per

sq.m.) that is an increase of ` 3,22,302/-.

(ii) As against the compensation of ` 83,629/- awarded for the trees, the appellants sought ` 10,48,400/-, that is an increase of ` 9,64,771/-. (The appellant had not sought any increase in regard to trees in the application for reference).

(iii) As against the compensation of ` 500/- awarded for the well, the appellants sought ` 50,000/-, that is an increase of ` 49,500/- (Note: The appellant had not sought any increase in regard to the well in the application seeking reference).

The appellants thus sought in all ` 43,83,959/- towards additional compensation with solatium and additional amount. The appellants also paid the additional court fee for the increase in the claim. The reason given in the application for amendment seeking increase was that A.K. Mhatre was not then in a position to pay the court fee on a higher claim, and had therefore restricted the claim for a lesser amount in the application for reference.

5. The said application for amendment was allowed by the Reference Court on 19.9.1990 and the claims in the reference application were modified as per the amendment application. After evidence, the Reference Court by award dated 2.5.1991, determined the compensation as ` 1,21,520/- (at ` 7/- per sq.m.) for the land, ` 4,46,600/- for the trees and ` 2,000/- for the well, with statutory benefits.

This works out to an increase of ` 96,631/- for the land, ` 3,62,971/- for the trees and ` 1500/- for the well. Both sides were aggrieved by the judgment and award of the Reference Court. The appellants filed Ap. No.104/1992 seeking further increase and the LAO filed FA No.226/1994 challenging the increase. The appeals came up for hearing on different dates before the High Court of Bombay.

6. The appeal filed by the appellants came up for hearing first. On 4.3.2003, the said appeal was allowed in part and the compensation in regard to the land was increased to ` 10 per sq. m., by following its earlier decision in State of Maharashtra vs. Tulsiram Krishna Mungaj (FA No.462 of 1990 decided on 18.7.2001). The claim for increase in regard to the trees and well was rejected.

7. Subsequently the State's appeal came up for hearing before another Bench of the High Court and was allowed by the impugned judgment dated 11.11.2008.

The High Court held that the claim of appellants for enhanced compensation in regard to the trees and well, made by amending the application for reference under section 18 of the Act was barred by limitation prescribed under section 18 of the Act, as A.K.Mhatre had sought in the application for reference, only increase in regard to the land and not in regard to the trees and well. The High Court also held that once compensation was awarded for the land, no separate compensation could be awarded for the trees. However, the High Court did not disturb the compensation that had been awarded by the LAO for the trees and the well, apparently in view of section 25 of the Act which provides that the amount awarded by the Collector as compensation cannot be reduced by the reference court. The High Court therefore set aside the award of additional compensation of

`3,62,971/- towards the trees and ` 1500/- towards the well awarded by the Reference Court. The said judgment is challenged in this appeal by special leave.

8. On the contentions raised, the following questions arise for our consideration:

(i) Whether in a reference made to the Reference Court under section 18 of the Act, the land owner is barred from amending the amount claimed in the reference application and seeking higher compensation; and even if he could seek amendment, whether such application should be made within the period of limitation mentioned in section 18 of the Act?

(ii) Where the landowner has sought increase in compensation for only the land, in the application under section 18 of the Act, whether he can seek increase in compensation for the trees or structures also, before the Reference Court?

(iii) Where compensation is awarded for the land, whether no compensation can be awarded for trees or well separately?

Re : Questions (i) and (ii)

9. The High Court held that the amendment was barred by limitation on the following reasoning :

"The Award of the Collector was made on 4th July, 1986. The possession of the acquired lands was taken on 9th September, 1986 and the payment of compensation was made on 29th September, 1986. The reference came to be filed within the prescribed period of limitation. However, about four years thereafter, i.e. on 19th September, 1990 the reference was amended for enhancing the claim of compensation for trees and well situate on the land. If the date of amendment of the reference i.e. 19th September, 1990 is to be taken into consideration, the claim for further enhancement made by way of amendment is clearly barred by limitation. Even the respondents do not dispute that if the date of amendment of reference is to be taken into consideration, the claim for enhanced compensation in respect of the trees and well would be barred by limitation. x x x Ordinarily, amendment of pleadings relates back to the date of filing of the proceedings. However, the proposition cannot be extended to the question of limitation, because despite grant of leave to amend proceedings, the court is duty bound to consider whether the claim is within the prescribed period of limitation, just as the original claim. Therefore, we find no substance in the submission that the appellant ought to have challenged the order of amendment of the reference to enable it to contend that the claim for enhanced compensation is barred by limitation. Since the amendment of the reference for claiming enhanced compensation for the trees and the well situate on the land does not relate back to the date of filing of the reference, for the purpose of limitation, it must be held that the claim made on 19th September, 1990 is barred by limitation provided under Section 18 of the Land Acquisition Act."

10. During the pendency of the special leave petition, the issue whether the reference court can permit a claimant to amend his claim so as to increase the compensation claimed, came up for consideration before a Full Court of the Bombay High Court in *State of Maharashtra v. Sitaram Narayan Patil* [2010 (2) Mh.L.J. 387]. The Full Court overruled the impugned judgment dated 11.11.2008 (which is reported in *State of Maharashtra vs. Ambya Kalya Mhatre- 2009 (1) Mh.LJ 781*) and held that a claimant whose land is acquired, can be allowed to amend his claim application so as to enhance the compensation claimed in an application for reference under section 18 of the Act and that the "amendment to increase the compensation claimed in the application for reference under section 18 of the Act can be allowed before the Reference Court as well as at the stage of an Appeal in the High Court arising out of the decision of the Reference Court." The Full Court further held that while granting an amendment so as to enhance the claim for compensation, the general principles for considering an application for amendment made under Order 6 Rule 17 of the Code of Civil Procedure, 1908 would be applicable. The Full Bench arrived at the said findings on the following reasoning :

"Section 18 can be invoked by any person interested who has not accepted the award. He may by written application to the Collector require that the matter be referred by Collector for determination of the Court and his objections are of the nature specified in section 18(1). Sub-section 2 of section 18 states that the application which is to be made in writing shall state the grounds on which the objections to the Award is raised. On receipt of this application, under section 19, while making a reference, the Collector shall state for the opinion of the Court in writing under his hand, the particulars of the case, Sub-clause (d) of section 19(1) states that if the objection be to the amount of compensation, the grounds on which the amount of compensation is determined. Thus, the Collector in his statement to the Court gives an opinion in writing under his hand about the grounds on which the amount of compensation was determined by him..... Under the scheme of section 18 of the Act, the reference is required to be filed within a period of limitation. The period of limitation depending upon the facts of a given case would be six weeks to six months. Six months being outer limit, in either of the events, when the applicant was present before the Collector at the time when the award was made or when he was served with notice under sub- section (2) of section 12 of the Act. It is now fairly a settled law that this specific period of limitation is mandatory and is not flexible. As stated above, in order to refer the matter before the Collector for determination to the Court, the claimant is required to raise objections regarding the amount of compensation. He is not under an obligation to specify the amount of compensation. Once his objection as to the amount of compensation is filed within a prescribed period under sub- section (2) of section 18 of the said Act, before the Collector, then the Collector is duty bound to refer the matter to the Court along with his statement as contemplated under section 19 of the said Act. The claimant thereafter, cannot introduce any other objections as contemplated under section 18 of the Act either before the Court or in an appeal under section 54 of the said Act. However, the claimant once take objection to amount of compensation within a prescribed period is at liberty to claim enhancement in the compensation, thereafter."

(emphasis supplied) The learned counsel for the respondent contended that the impugned judgment dated 11.11.2008 of the High Court lays down the correct legal position and that the reasoning in the full bench in Sitaram Narayan Patil is not sound.

11. Section 18 of the Land Acquisition Act, 1894 (as amended in Maharashtra) relating to reference to court is extracted below :

"18. Reference to Court.--(1) Any person interested who has not accepted the award (or the amendment thereof) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award (or the amendment) is taken:

Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award (or the amendment), within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award (or the amendment), whichever period shall first expire. (3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a court sub-ordinate to the High Court, within the meaning of section 115 of the Code of Civil Procedure, 1908."

An analysis of section 18 of the Act would show that any person interested who does not accept the award can, by written application to the Land Acquisition Collector, require the matter to be referred for determination of the court in regard to any one of the following matters :

(a) Objection to the measurement of the land;

(b) Objection to the amount of compensation;

(c) Objection as to the persons to whom the compensation is payable; or

(d) Objection to the apportionment of the compensation among the

persons interested.

12. The Land Acquisition Collector is not a court. When he determines the compensation, he does not adjudicate, but merely makes an offer for the acquired land, on behalf of the government. If the land owner considers the amount offered by the Land Acquisition Collector to be inadequate and makes a request within the prescribed period, for reference to the civil court under section 18 of the Act, the Land Acquisition Collector is bound to refer the matter to the Civil Court for determination of the compensation. He has no choice of refusing to make a reference, when the request is in time. Neither the act of making an award offering compensation nor the act of referring the matter to a civil court for determination of compensation at the request of the land owner are judicial functions, but are administrative functions. The legal position of an award by the Land Acquisition Officer vis-à-vis the proceedings in a reference to the civil court under section 18 of the Act is explained thus by this Court in *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona* - 1988 (3) SCC 751 :-

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

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

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court. (3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it."

Sub-section (3) of section 18 of the Act (added in Maharashtra) providing that the Land Acquisition Collector shall be deemed to be a court sub-ordinate to the High Court, is therefore only for the limited purpose of enabling a revision under section 115 of the Code to be filed against the order of the Collector under section 18 of the Act, and not for any other purpose.

13. The assumption made by the High Court that when a reference is sought objecting to the amount of compensation, the claim for increase will have to be frozen with reference to the amount claimed in the application under section 18 of the Act and therefore the quantum of the claim cannot subsequently be revised or increased is misconceived. Similarly, the assumption that if the claim for increase in an application for reference (relating to an acquisition involving a property consisting of

land, building and trees), was only in regard to the compensation for the land, the land owner cannot thereafter make a grievance seeking increase in regard to the building or trees in the pleadings before the Reference Court and that in such a case, the Reference Court gets the jurisdiction to determine only the market value in regard to the land and not in regard to the building and trees, is also not correct. Section 18 does not require a land owner objecting to the amount of compensation, to make a claim for any specific amount as compensation, nor does it require him to state whether the increase in compensation is sought only in regard to the land, or land and building, or land, building and trees. A land owner can seek reference to civil court, with reference to any one or more of the four types of objections permissible under section 18 of the Act, with reference to the award. His objection can either be in regard to the measurement of the acquired land or in regard to the compensation offered by the Collector or in regard to persons to whom it is shown as payable or the apportionment of compensation among several claimants. Once the land owner states that he has objection to the amount of compensation, and seeks reference to the civil court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation, with reference to the principles in section 23 of the Act. As the Act does not require the person aggrieved/landowner to specify the amount of compensation sought, when objecting to the amount of compensation and seeking a reference, mentioning of the amount of compensation sought is optional. As there is no obligation to specify the amount in the application for reference, it can be specified in the claim statement filed before the Reference Court. The period of limitation in section 18 of the Act has nothing to do with specifying the amount of compensation claimed.

It therefore follows that if the reference is in regard to objection to the amount of compensation, the Reference Court can permit any application for amendment of the claim relating to compensation.

14. The High Court has lost sight of the scheme of the Act. When a land is acquired, the Land Acquisition Officer makes an offer on behalf of the state government, in regard to the compensation. The offer made by the Land Acquisition Officer is not an adjudication of the market value or the compensation payable to the land owner. When such offer is made, the land owner has the choice of either accepting the compensation in full and final satisfaction or to seek a reference to the civil court for determination of the amount of compensation.

Where the land owner does not seek a reference within the time specified in section 18 of the Act, he is deemed to have accepted the award and the award of the Land Acquisition Officer attains finality under section 12 of the Act. Section 18 of the Act enables the land owner or person interested to make a written application to the Collector requiring his objection to the award, to be referred for determination by the court. In the application, he has to state whether his objection is in regard to measurement, quantum of compensation, persons entitled to compensation, or apportionment. He is also required to state the grounds on which the objection to the award, is taken. But the section does not require the land owner while seeking a reference, to specify the quantum of compensation demanded by him. Section 18 merely requires a land owner who has an objection to the amount of compensation awarded by the Land Acquisition Officer to require the matter to be referred to reference court for determination of compensation by specifying the grounds of objections to the

award.

15. Section 19 of the Act provides that on receipt of the application seeking reference made in accordance with section 18 of the Act, the Collector is required to make the reference by forwarding the application for reference (or a copy thereof) with his statement setting out the grounds on which the amount of compensation was determined by him. Section 19 is extracted below :

"19. Collector's statement to the Court.--(1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand, --

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc) the amount paid or deposited under sub-section (3A) or section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement, shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively."

(emphasis supplied) When the reference is received, the court causes notice specifying the date of hearing for determining the objection of the land owner/person aggrieved (section 20 of the Act). The Reference Court has to call upon the claimants to file their statement of claim and call upon the Collector to file his objections to the claim statement and then proceed with the matter. Where the application under section 18 contains the necessary particulars, the Reference Court may treat the application for reference under section 18 and the Collector's statement under section 19 of the Act as the pleadings. The land owner is entitled to specify the amounts claimed by him as compensation and the heads of compensation for the first time in such claim statement before the Reference Court. He can also file an application amending the claim. What is not permitted after the expiry of the period of limitation specified in section 18 of the Act, is changing the nature of objections from one category to another. If the reference had been sought with reference to objection to amount of compensation, the land owner cannot after the period of limitation, seek amendment to change the claim as objection to measurement or objection to apportionment.

16. A land owner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under section 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the

actual market value. Many a time there may not be comparable sales, and even the courts face difficulty in assessing the compensation. There is no reason why a land owner who has lost his land, should not get the real market value of the land and should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of objection to the award. Under the scheme of the Act, it is for the court to determine the market value. The compensation depends upon the market value established by evidence and does not depend upon what the land owner thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the land owner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that can not be held against him to award an amount which is lesser than the market value. When the Act does not require the land owner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the land owner should get the actual market value. We fail to see why the land owner should get an amount less than the market value, as compensation.

Consequently, it follows that if the land owner seeks amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorant land owner who has lost his land, would be wholly unjust.

17. The Collector making the offer of compensation on behalf of the state is expected to be fair and reasonable. He is required to offer compensation based on the market value. Unfortunately Collectors invariably offer an amount far less than the real market value, by erring on the safer side, thereby driving the land owner first to seek a reference and prove the market value before the reference court and then approach the High Court and many a time this Court, if he does not get adequate compensation. In most land acquisitions, the land acquired is the only source of his livelihood of the land owner. If the compensation as offered by the Collector is very low, he cannot buy any alternative land. By the time he fights and gets the full market value, most of the amount would have been spent in litigation and living expenses and the price of lands would have appreciated enormously, making it impossible to buy an alternative land. As a result, the land owner seldom has a chance of acquiring a similar land or an equal area of similar land. It would be adding insult to injury, if the land owner should be tied down to a lesser value claimed by him in the reference application, even though he was not required by law to mention the amount of compensation when seeking reference. The Act contemplates the land owner getting the market value as compensation and no technicalities should come in the way of the land owner getting such market value as compensation.

18. It is relevant to notice the definition of land in section 3(a) of the Act. It provides that the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Therefore when the Act refers to acquisition of 'land', the reference is not only to land but also to land, building, trees and anything attached to the earth. In the absence of any restriction in section 18 of the Act, and the respective roles assigned

by the Act to the Land Acquisition Collector and the Reference Court in the context of making a reference and determining the compensation, we are of the view that once the reference is made in regard to amount of compensation, the Reference Court will have complete jurisdiction to decide the compensation for the land, buildings and trees and other appurtenances. The Reference Court will also have the power to entertain any application for increasing the compensation under whatever head. The fact that the landowner had sought increase only in regard to the land in the application for reference, will not come in the way of the landowner seeking increase even in regard to trees or structures, before the Reference Court.

19. We are conscious of the fact that the State of Maharashtra has a special provision in the Bombay Court Fees Act, 1959 (Entry 15 in Schedule I) which requires every claimant who makes an application to the Collector for a reference to court under section 18 of the Act to pay one half the ad valorem fee on the difference between the amount awarded by the Collector and the amount claimed by the claimant. Thus the application under section 18 objecting to the compensation by implication is required to disclose the amount of compensation sought and pay court fee on the increase sought. But this is only a requirement in regard to the Court Fees Act. This only means that if the claim is amended later, additional court fee may have to be paid. This requirement under the Court Fees Act cannot be read as a requirement under the Land Acquisition Act. So long as Land Acquisition Act is not amended to require the person aggrieved to specify the amount of compensation claimed by him in the reference application, the bar of limitation will not apply even if the amount is specified in the application for reference and subsequently a higher amount is sought by way of amendment.

20. We therefore hold that the time limit under section 18 of the Act is only for seeking the reference by raising the objection to the amount of compensation or any of the other three objections. The land owner or persons aggrieved will have to give only the nature of objection to the award, that is whether it is with reference to measurement or compensation or person to whom it is payable or apportionment, and briefly mention the grounds in support of it. Though the land owner can give the details of his claim and quantum, he is not bound to do so. When the reference is made, he can give the particulars of the claim for compensation or additional particulars or even increase the claim.

Re : Question (iii)

21. The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in *State of Haryana vs. Gurcharan Singh* - 1995 Supp (2) SCC 637 :

"It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit- bearing trees. In

other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees. The definition of land includes the benefits which accrue from the land as defined in section 3(a) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given."

22. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land.

A suggestion to the State Government

23. In all other States, ad valorem court-fee is payable only when an appeal is filed against the award of the Reference Court, seeking higher compensation and not in regard to applications for reference under section 18 of LA Act. Only in Maharashtra and Gujarat, the land losers are required to pay half of the ad valorem court-fee while seeking reference to the civil court. Most of the land-losers are agriculturists. For many of them, the only source of livelihood is taken away by acquisition of their lands. Though, the Collector is expected to award compensation based on the market value, quite often, it is seen that in actual practice, the compensation offered by the Collector is far less than the actual market value, thereby forcing the land-losers to seek references to civil court. In such cases, the amount awarded by the Collector being comparatively small, the requirement to pay ad-valorem court-fee on the application for reference causes irreparable hardship, forcing the land loser to seek a lesser increase than what is warranted. The State Government may therefore consider giving appropriate relief to the land losers by providing for a nominal fixed court-fee, on the application for reference, instead of ad valorem court fee.

24. We therefore allow this appeal, set aside the judgment dated 11.11.2008 of the High Court, and remand the matter to the High Court for consideration of the appeal on merits. As the matter relates to a 1970 acquisition and the appeal was of the year 1994, we request the High Court to dispose of the appeal expeditiously.

.....J.

(R. V. Raveendran)

.....J.

(H. L. Gokhale)

New Delhi;

.....J.

September 12, 2011

(Gyan Sudha Misra)