IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 20 OF 2012

KASHINATH DUDHAJI GAIKWAD)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA AND ANOTHER)...RESPONDENTS

Mr.Sagar Joshi, Advocate for the Appellant.
Mr.A.R.Patil, AGP for the State-Respondent.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 18th APRIL 2026
PRONOUNCED ON : 7th SEPTEMBER 2026

JUDGMENT :

1. This is an appeal filed by the Appellant for enhancement of compensation for the acquired land and cattle shed, being aggrieved by the judgment and award dated 9th September 2010 passed in Land Acquisition Reference No.9 of 2001 partly allowing the reference and directing the Respondents to pay additional compensation for his house on the acquired land.

2. Mr. Joshi, learned Counsel appearing for the Appellant has submitted that the Appellant was the owner of the land bearing Survey No.71, Hissa No.2 (B), situate at Village Lonad, Taluka: Bhiwandi, Dist. Thane. The said land was acquired by the Respondents vide

Notification issued under Section 4 of the Land Acquisition Act, 1894, (the "Act") on 12th February 1981 and Notification issued under Section 6 on 10th December 1983. Ultimately, the Award was made on 23rd September 1986 and the possession of the land was taken by Acquiring Body on 19th January 2000.

3. The Appellant received the amount of compensation in view of acquisition of the aforesaid land. However, the said amount was not sufficient. The Appellant therefore made an Application under Section 18 of the Act, being Land Acquisition Reference No. 9 of 2001 before the Special Land Acquisition Officer, Thane, by way of a reference seeking enhancement of compensation for the acquisition of the land. In the said reference, the Appellant stated that the Appellant through his Advocate submitted a representation/letter dated 29th October 1999 and thereafter on 22nd September 2000 for issuing the amount of compensation which letter was answered by the Respondents on 10th January 2021 and an amount of Rs. 96,957/- was given to the Appellant by cheque. Thereafter, the Respondents/acquiring body also paid an amount of Rs. 1,40,537/-. The Appellant, therefore, prayed for enhancement on the ground that the valuation report which was submitted by the Appellant was not taken into consideration. The said valuation report of Shri Vaidya was produced on record by the

Appellant below Exhibit 27. After filing the application for reference, the Applicant/Appellant realized that the amount of compensation towards loss of milk business remained to be claimed in the application for reference, and therefore, an application was made by the Appellant below Exhibit 15 seeking compensation towards loss of milk business. In the said application below Exhibit 15 the Applicant/Appellant had stated that while making an application for reference under Section 18 of the Act, the compensation towards loss of milk business remained to be claimed and it being a *bonafide* mistake, by way of an application for amendment, the Applicant/Appellant was praying for compensation towards loss of milk business. In the said application for amendment below Exhibit 15, the Applicant/Appellant stated that the Applicant/Appellant was carrying on a milk business in a stable which was abutting his residence and for the purpose of carrying on such milk business, the Applicant/Appellant purchased buffaloes. The Appellant was having 10 she buffaloes. The Appellant gave in tabular form the amount which the Applicant/Appellant used to receive by selling the milk for the period from August, 1986 to March, 1989 totalling 32 months and for these 32 months, the Applicant/Appellant totally computed the compensation at the rate, more particularly mentioned in the application for amendment.

4. The table given by the Appellant is as under:

Sr. No.	Month	Average income	Annual benefit
1.	August 1986 to December 1986 5 months	Rs. 2583/-	Rs. 12,913/-
2.	02.01.1987 to 31.12.1987 12 months	Rs. 2889/-	Rs. 34,607/-
3.	03.01.1988 to 31.12.1988 12 months	Rs. 3606/-	Rs. 43,280/-
4.	04.01.1989 to March 1989 3 months	Rs. 3228/-	Rs. 9,684/-
	Total 32 months	Rs. 2140/-	Rs. 1,00,484/-

5. The Appellant thus computed 150 months from 1989 to September 2001 i.e. the period between the milk business he had to stop in view of the acquisition of his land and the period of making reference. Thus, the Appellant computed at Rs.4,71,000/- and 30% for solatium which comes to Rs.1,41,300/- with 9% interest on it, which totals to Rs.6,54,690/-.

6. The Appellant to substantiate his case of loss of milk business produced on record the account book for the aforesaid period in which there are entries of persons to whom the Appellant used to sell milk. In the said account book, the rate of milk is also mentioned to the left side and to the right side the description given is for expenses which the Appellant was required to purchase the fodder etc. There is entry in the

account book showing that the Appellant purchased two she buffaloes which entry can be found in the month of October, 1986. The account book also shows the salary given to labourers and medicines required to be purchased for the purpose of she buffaloes.

7. The Appellant led his oral evidence in which the Appellant specifically stated about the loss of milk business. To the said application below Exhibit 15, the Respondents filed their say below Exhibit 17 and prayed for rejection of the said application. In the said application below Exhibit 17, the Respondents stated that in the Land Acquisition Reference No. 9 of 2001, there was no whisper regarding milk business, and therefore, the Appellant could not have added by way of an amendment such enhanced compensation. After considering the application and the reply of the Respondents-Acquiring body, the learned District Judge, Thane, passed an order on 7th July 2004, thereby allowing the said application below Exhibit 15. In the order below Exhibit 15 dated 7th July 2004, particularly paragraph no.4, the learned District Judge recorded that on 19th January 2000 and on 7th August 2001, the applications were submitted to the Land Acquisition Officer regarding the loss of milk business and compensation was prayed for. Therefore, the learned District Judge was of the view that in the interest of justice, the permission could have been granted and the

learned District Judge, therefore, allowed the said application. The learned District Judge also recorded the finding that by permitting such amendment, the nature of claim compensation would not get changed.

8. The Appellant was cross examined by the Respondents. However, in the said cross examination, the case of the Appellant for enhanced compensation for loss of milk business was not at all negated by the Respondents. On behalf of the Respondents, Special Land Acquisition Officer was examined. However, in her cross examination she admitted that she had no personal knowledge about the valuation of the acquired land. Thus, there was no serious challenge to the prayer of the Appellant for enhanced compensation towards his house and milk business.

9. The learned District Judge, Thane, who heard the said reference application of the Appellant was pleased to finally decide the same by the Judgment and Order dated 9th September 2010 by which Judgment and Order, the learned District Judge allowed the reference partly and granted additional compensation for the house of the Appellant on the acquired land. However, the prayer of the Appellant for enhanced compensation for loss of milk business was not granted. The learned District Judge assigned the reasons for the same particularly in paragraphs 14 and 15 of the Judgment and Order dated 9th September

2010. In paragraph 14, the learned District Judge considered the Architect Report of Mr. Vaidya which was submitted by the Appellant. The learned District Judge recorded that in the Architect Report of Mr. Vaidya it was recorded that there was a shelter for animals for cultivation and there was no case of the Appellant that he was using she buffaloes for the purpose of cultivation. In my view, the said finding of the learned District Judge was absurd because the she buffaloes were never actually used for the purpose of cultivation like plying the soil, however, cow dung was being used to increase the fertility while yielding crops. The learned District Judge ought to have considered that the sketch which was drawn by the Valuer Mr. Vaidya specifically showed that there was a shed for cattle. It also gives a specific measurement. Therefore, it was not the case that without there being any structure of a stable the Appellant stated that he was carrying on milk business. Under the head *'building'* the Architect and Valuer Mr. Vaidya specifically gave the measurement thickness and nature of construction of the residence as well as the stable which was being used for the purpose of animal shed.

10. In paragraph 15 of the impugned Judgment, the learned District Judge recorded that after publication of the Notice under Section 4 and 6 of the Act, the Appellant had not produced before the Acquiring body

anything to show that he was carrying the milk business in the acquired land. In my view, the learned District Judge failed to consider that in the order passed by his predecessor below Exhibit 15 dated 7th July 2004, particularly in paragraph 4, recorded that the applications were made before the Land Acquisition Officer on 19th January 2000 and 7th August 2001 in respect of compensation regarding stable and house and that the said applications were made to the Special Land Acquisition Officer. Apart from it, the Appellant also made an application before the Land Acquisition Officer on 7th October 1991, wherein, the Appellant clearly stated that his house and stable had been acquired by the Respondents. The said application /representation was made to the Special Land Acquisition Officer and a copy was forwarded to the BMC Water Department. The Appellant also submitted an application before the Assistant Engineer of Bhiwandi where in paragraph 3 the Appellant stated that it was not possible for the Appellant to make alternate arrangement for the stable, and therefore, the Appellant had to stop his milk business. In the said oral evidence, the Appellant mentioned that the Appellant issued notice and reminders on 28th March 1989, 7th December 1991, 19th January 2002 and 29th October 1999 and inspite of being given an assurance to pay compensation, the said compensation was not paid.

11. The learned District Judge in paragraph 15 further recorded that it was only by way of an amendment, that the Appellant was claiming the compensation for loss of milk business and there was no cogent evidence which was to be accepted to substantiate his case of loss of income for milk business. In my view, the evidence produced by the Appellant was completely brushed aside by the learned District Judge by such hyper technical approach. Admittedly, the order below Exhibit 15 by which the Appellant's reference was amended, was not challenged by the Respondents. Apart from it, there was no cross examination of the Appellant on the point of loss of milk business. Thus, the evidence of the Appellant remained unchallenged. The learned District Judge, therefore, ought to have awarded the compensation towards loss of milk business.

12. Mr. Patil, learned Counsel appearing for the Respondents has submitted that the present Appeal is a case of no evidence as the Appellant has produced no evidence on record linking the accounts maintained by the Appellant to his milk business. Mr. Patil further submits that there is also no evidence or explanation on record to show how the loss of business was due to the acquisition.

13. The issue regarding the enhanced compensation by way of a reference and amendment in the reference seeking enhanced

compensation was under consideration of the Hon'ble Supreme Court in the case of ***Ambya Kalya Mhatre vs. State of Maharashtra***[1]. The Hon'ble Supreme Court in paragraph 20 of the said Judgment recorded that the assumption made by the Hon'ble 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 said Act, and therefore, the quantum of 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 land and 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. Further, in paragraph 21, the Hon'ble Supreme Court recorded that 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

1 2011 (9) SCC 325

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 a civil Court with reference to any one or more of the four types of objections permissible under Section 18 of the said 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 objections to the amount of compensation and seeks a 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.

14. The Hon'ble Supreme Court further in paragraph 26 recorded that when a reference is received, the Court causes notice to be issued specifying the date of hearing for determining the objection of the land owner/person aggrieved under Section 20 of the said 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 Collector's statement under Section 19 of the said Act, as the pleadings. The landowner 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. The landowner 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 reference had been sought with reference to objection to amount of compensation, the land owner cannot after period of limitation, seek amendment to change the claim as objection to the measurement or objection to the apportionment.

15. In the present case, admittedly, the Appellant has not changed the nature of his objection. The objection of the Appellant is for enhancement of compensation. The Appellant is not at all changing the nature of objection either to the measurement or to the apportionment of the compensation. The Hon'ble Supreme Court has in paragraph 27 recorded that the land owner, particularly a rural agriculturist, when he loses his 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 a 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 a 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.

16. Although Mr. Patil has sought to make out his case submitting that the Appellant has not produced any evidence on record however the Appellant has produced on record the account book to substantiate his case of loss of milk business, which this Court has perused and which record the linking of the accounts maintained by the Appellant to his milk business as the names of the customers along with the quantity supplied during various periods is mentioned therein.

17. The learned District Judge ought to have appreciated that under Section 3(a) of the Act, land includes the benefits to arise out of the

land. There was a stable in which the Appellant was carrying out milk business which he had to stop on account of acquisition of land. The said definition of Section 3(a) of the Land Acquisition Act, also can be found in Section 3(p) of new Land Acquisition Act, which also states that land includes benefits that arise out of land. The definition of land under the Land Acquisition Act is wider than that of definition of immovable property under the Transfer of Property Act, 1882. The learned District Judge after taking into consideration the material, particularly oral and documentary evidence on record, ought to have granted enhanced compensation for the loss of milk business. However, by not granting the enhanced compensation towards loss of milk business, the Appellant had suffered financial loss.

18. Ergo, the compensation awarded for the acquisition of the said land viz. and bearing Survey No.71, Hissa No.2 (B), situate at Village Lonad, Taluka: Bhiwandi, Dist. Thane, be enhanced to include the compensation towards loss of milk business.

19. In the view of the above, the impugned judgment and award dated 9th September 2010 passed in Land Acquisition Reference No. 9 of 2001 is hereby modified and the Respondents are directed to compensate towards loss of the milk business of the Appellant as per the calculation submitted by the Appellant in his application for

amendment below Exhibit 15 and as reproduced in paragraphs 4 and 5 hereinabove, in addition to interest and statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act.

20. The exercise of determining the enhanced amount of compensation payable as per the modified award shall be carried out by the Reference Court within a period of three months from the date on which the writ of this judgment is received by the Reference Court. The compensation amount shall be deposited by the State Government within a period of three months from the date on which the enhanced compensation amount is determined by the Reference Court, less the amount already received, subject to verification.

21. The appeal stands allowed in the above terms. No costs.

(ABHAY AHUJA, J.)