

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Application (F) No.1754 of 2015
in

First Appeal No. 430 of 2013

Vidarbha Irrigation Development Corporation, through its Executive
Engineer, Bembala Project Division, Yeotmal

-Vrs.-

Kantilal Samirmal Kotecha and 2 others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. G.B. Kasat, learned counsel for appellant.
Mr. Parchure, learned counsel for respondent no.1/applicant.
Mr. Rao, AGP for State.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 1st SEPTEMBER, 2015

Heard. Perused the impugned award. Though total land acquired is 6 H 72 R, in reference proceedings on the basis of comparable sale enhanced compensation has been awarded for 1 H 82 R land while for remaining 4 H 90 R land though the sale instances have not been given weightage, considering the number of ber trees and custard apple trees as given by the government valuer, the reference court has awarded enhanced compensation.

According to Advocate Parchure the rate granted by Land Acquisition Officer for land was 0.82 rupees per square feet while enhanced compensation for 1 H 82 R land was Rs.2.50 per square feet. He submits that as no comparable

sales in vicinity or then proximate in time with Section 4 notification were available, 1994 sale instance has been pressed into service. He also states that notification under Section 4 in present matter was published in the year 2003.

He further states that after considering entire material, enhancement has been awarded and hence the land owners are entitled to withdraw the said amount.

Advocate Kasat appearing for appellant states that enhancement granted per ber tree is more than 10 times than the compensation awarded by Land Acquisition Officer while for custard appeal tree it is more than five times. He submits that reference court itself has found sale instance of 1994 totally irrelevant and inspite of it has awarded enhanced compensation.

After hearing respective counsel we find that the respondent land owner had relied upon two sale instances to justify the demand of enhanced compensation i.e. Exh. 19 and Exh.20. These sale deeds have been registered in 1994. Reference court did find that the sale instances are not comparable. However, taking clue from it, it has proceeded to award compensation for a piece of land admeasuring 1 H 82 R.

The Government Valuer has given his valuation of ber trees as also custard apple trees. Land owner examined expert by name Subhash Tayade as PW-2 and in paragraph 26 the reference court has observed that without seeing necessary documents and only on the basis of imagination, Subhash Tayade prepared valuation report. It then proceeded to rely on

a circular issued by Horticulture Department dated 27th December, 1990 and on that basis has worked out the rate.

The enhanced compensation of 860 ber trees is Rs.27,17,600 while for 500 custard apple trees it is Rs.10,00,000/-. Thus, total amount of Rs.37,17,600/-has been awarded towards cost of trees.

Adding to this amount other statutory charges, the appellant has deposited compensation amount of Rs.1,18,31,266/- with the Registry of this court in June, 2015.

Taking overall view of the matter we find that the respondent land owner can be permitted to withdraw the amount of Rs.50,00,000/- out of this amount on giving an undertaking that in case the appeal is allowed and any amount becomes refundable, the same shall be refunded within six weeks with such interest as this court in that event directs. In addition to this undertaking a surety for said amount shall also be furnished by respondent no.1 landowner.

Rest of the amount be invested in any nationalized bank initially for a period of three years.

Civil application is accordingly partly allowed and disposed of.

F.A. NO. 430/2013 AND F.A. No.154/2012.

Printing of paper book is dispensed with. Private paper book be supplied within three months with necessary decree form.

JUDGE

JUDGE