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

**FIRST APPEAL NO. 563 OF 2015**

1. The Collector,  
through Special Land Acquisition  
Officer (Z.P. Works), Nagpur.
2. Executive Engineer,  
Minor Irrigation Division No.2,  
(Z.P. Works), Nagpur. ..APPELLANTS

VERSUS

Champatrao s/o Parasram Dewase,  
(Dead, hence through L.Rs. On  
record)

1. Smt. Radhabai wd/o Champat  
Dewase, aged about 75 years,  
Occupation Household,
  2. Shri Gopal s/o Champat Dewase,  
Aged about 52 years, Occ: Agri.,
- Both R/o. Khapa, Tahsil Narkhed,  
District Nagpur. ..RESPONDENTS

**WITH**

**CIVIL APPLICATION NO. 1701 OF 2017  
IN  
FIRST APPEAL NO. 563 OF 2015**

1. The Collector,  
through Special Land Acquisition  
Officer (Z.P. Works), Nagpur.
2. Executive Engineer,  
Minor Irrigation Division No.2,  
(Z.P. Works), Nagpur. ..APPELLANTS

VERSUS

(2)

Champatrao s/o Parasram Dewase,  
(Dead, through its Legal Heirs.  
Both R/o. Khapa, Tahsil Narkhed,  
District Nagpur.

1. Smt. Radhabai wd/o Champat Dewase, aged about 80 years, Occupation Household,
2. Shri Gopal s/o Champat Dewase, Aged about 57 years, Occ: Agri.,...RESPONDENTS

Mr M.A. Kadu, A.G.P. for appellants;  
Smt. Rajkumari Rai, Advocate for respondents

**CORAM : N.W. SAMBRE, J.**

**DATE : 6th APRIL, 2017**

**ORAL ORDER :**

By consent, heard finally.

2. The land admeasuring 1 Hector 50 Are out of Survey No. 211/1 new Survey No. 194 situated at village Khapa (Ghudan) Tahsil Narkhed, District Nagpur, owned by the claimants, was acquired by the appellants for construction of water tank vide Land Acquisition Case No. 17/A-65/94-95. It is claimed that land acquired was having perennial source of irrigation.

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3. The Land Acquisition Officer awarded compensation of Rs.2,54,728/-. Since not satisfied, the claimants moved Reference under Section 18 of the Land Acquisition Act before learned Civil Judge, Senior Division, Nagpur through Collector, Nagpur vide L.A.C. No. 144 of 2006.

4. The Reference Court enhanced compensation to the extent of Rs.3,75,000/- towards cost of land, Rs.2,95,000/- towards compensation for 15 orange trees, Rs.14,000/- for two mango trees, Rs. 10,000/- for two Amla trees, Rs.1,75,000/- for teak trees and Rs.50,000/- towards cost of well. It was also directed for payment of compensation of Rs.50,000/- towards change of occupation and residence. In addition, the claimants are entitled for 30% solatium and interest @ 9% p.a. for the first year from the date of acquisition and @ 15% p.a. subsequent thereto till date of realization as ordered by the Reference Court.

5. While strenuously questioning the

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sustainability of the said order, Mr. Kadu, learned A.G.P. would urge that perusal of the order does not depict any consideration of evidence or reasonings in support of the conclusion drawn by learned Reference Court. According to him, exorbitant compensation is awarded by the Reference Court and as such, judgment and order is not sustainable. So as to substantiate his contention, he has taken me through body of the order whereby learned Reference Court has awarded enhanced compensation.

6. Per contra, Smt. Rai, learned Counsel for the respondents-land owners urged that the judgment though is not to the satisfaction of the Court, however, the evidence on record speaks of justification for enhanced compensation. Learned Counsel then would urge that the evidence as placed on record since was not converted by the appellants by adducing any additional evidence, the amount of compensation appears to be just and proper.

7. With the assistance, having scanned the

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record, it is required to be noted that while dealing with the factual matrix, there appears to be perennial source of irrigation i.e. existence of well in land Survey No. 194. In fact, it is mentioned that there are 59 orange trees, two mango trees, two Amla trees and well. The compensation is also awarded on the change of occupation and residence.

8. Whereas, while dealing with the claim, particularly in paragraph-6 of the order, the Court has relied upon valuation report prepared by PW-3 Dadan Borkar at Exhibit-18. The valuation report of Forest Department is also taken in to account, which is at Exhibit-19. The Court then proceeded to consider the entire land as irrigated one based on irrigation facility from well though Land Acquisition Officer has mentioned that part of land has to be termed to be dry crop land.

9. Without discussing the very validity and weightage of the Exhibits, valuation report at Exhibit-18, Exhibit-19 report from forest department and number of orange trees and its age

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and valuation as given in the report, learned Reference Court proceeded to award compensation.

10. In my opinion, upon perusal of the judgment impugned, it could be noticed that there is lack of application of mind qua evidence brought on record, absence of cogent reasons so as to justify the enhancement and mistake of calculating number of orange trees as to whether 59 or 15, in my opinion, call for interference.

11. The case for remand, as such, is made out. The judgment and order dated 3<sup>rd</sup> May, 2013 passed in L.A.C. No. 144 of 2006 is hereby quashed and set aside. The matter stood restored to the file of learned Civil Judge, Senior Division, Nagpur, who through himself or any other Civil Judge, Senior Division decide the same expeditiously, in any case, within a period of six months from the date of appearance of the parties. Mr. Kadu, learned A.G.P. and learned Counsel for the respondents-claimants undertakes that respective parties shall appear before the concerned Court on 28<sup>th</sup> April, 2017.

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12. The amount deposited in this Court, forthwith be transmitted to the Court of Civil Judge, Senior Division, Nagpur in the said Reference Proceedings and learned Civil Judge, Senior Division, Nagpur shall permit the present respondents-claimants to withdraw amount of Rs. 7,00,000/- (Rs. Seven lacs only) upon furnishing usual undertaking to the satisfaction of the said Court. Learned Reference Court will be at liberty to deal with balance amount after Reference is decided. First Appeal, as such, stands partly allowed.

13. In the light of final disposal of first appeal, civil application for withdrawal of the amount stands disposed of accordingly.

14. Record and Proceedings, if received in this Court, be sent forthwith to the concerned Court.

( N.W. SAMBRE, J.)