

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

C.A.F. No. 2662/2017 IN F.A. No. 338/2017

(V.I.D.C. THROUGH ITS EXE. ENGINEER, MINOR IRRIGATION DIVISION, DISTT. WASHIM -vs-
INDAL VISHNU CHAVAN AND OTHERS)

AND

C.A.F. No. 2663/2017 IN F.A. No. 339/2017

(V.I.D.C. THROUGH ITS EXE. ENGINEER, MINOR IRRIGATION DIVISION, DISTT. WASHIM -vs-
VISHNUDAS RAMSING CHAVAN AND OTHERS)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri J.B. Kasat, counsel for appellant.
Shri M.M. Agnihotri, counsel for respondent no.1.
Shri A.M. Kadukar, AGP for respondent no.2 and 3.

CORAM: S.B. SHUKRE, J.

DATE : AUGUST 21, 2017.

Heard Shri Agnihotri, learned counsel for respondent no.1/claimant, Shri Kasat, learned counsel for appellant and learned AGP for respondent nos.2 and 3.

Perused the impugned award, also the award passed by the Land Acquisition Officer.

It appears that one of the main grounds of this appeal is that the reference court committed a serious error in determining the number of trees, that were existing on the date of possession. The possession of the acquired land was taken on 16/11/1994, while

Section 4 of the Land Acquisition Act notification was issued on 26/06/1997. At the time of taking of the possession, it is not in dispute, there was also a joint measurement of the acquired land taken by the Authorities in the presence of the claimant. It is also not in dispute that after Section 4 of the L.A. Act notification was issued on 26/06/1997, the Deputy Director, Department of Horticulture, State of Maharashtra, visited the acquired land and submitted his report. The dispute between the parties began at this point of time. While the joint measurement report discloses the existence of abundant number of trees on the acquired land, report of the Deputy Director, Department of Horticulture, reveals sparse number of trees existing on the acquired land. The Land Acquisition Officer accepted that report of the Deputy Director, Department of Horticulture and maintained complete silence on the joint measurement report, which admittedly showed existence of abundant number of trees. It appears that no effort to resolve the anomaly between these two reports, was made by the Land Acquisition Officer, although, I find, *prima facie*, he was under an obligation to do so. After all, first duty to establish true and correct market value of the land, lies with the body acquiring land for public purpose.

In view of the above, I find that these applications can be conditionally allowed and those are allowed accordingly.

Respondent no.1/claimant is permitted to withdraw 50% of the amount deposited in this court against his furnishing usual undertaking and remaining 50% of the amount deposited in this court, against furnishing the solvent surety to the satisfaction of the learned Registrar, within eight weeks from the date of the order.

There is also a dispute between the parties as regards which figure represents the correct decretal amount, whether the figure quoted by the claimant or the figure adhered to by the appellant and in my view, the dispute can be resolved only after both these parties submit their claims in this regard. Till that happens, the appellant, who admits some shortfall in calculating the amount, is permitted to make up for the shortfall by depositing the amount of Rs.10,05,404/- in F.A. No. 338/2017 and Rs.31,52,096/- in F.A. No. 339/2017 in 10 weeks from the date of the order, and on such deposits being made, respondent no.1 shall be permitted to withdraw this amount as well in the same manner, that is 50% of the amount against usual undertaking and 50% of the amount against solvent surety, as already directed by this court.

Applications are disposed of.

JUDGE