

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

FIRST APPEAL NO.102/1997

Narayandas S/o Harnath Biyani,
aged about 84 Yrs., Occu. Cultivator,
R/o Morshi, Taluka Morshi,
Distt. Amravati.

Radheshyam S/o Narayandas Biyani,
aged 49 Yrs., Occu. Cultivator,
R/o Morshi, Taluka Morshi,
Distt. Amravati.

..Appellant.

..Vs..

State of Maharashtra,
through Collector, Amravati,
Distt. Amravati.

..Respondent.

Shri M.D. Lakhey, Advocate for the appellant.
Shri M.A. Kadu, A.G.P. for the respondent.

CORAM : Z.A. HAQ, J.
DATE : 4.5.2018.

CIVIL APPLICATION (CAO) NO.465/2018 IN M.C.A. STAMP NO.851/2018

1. Accepting the explanation given in the application, delay of 1138 days in filing the application for restoration of appeal is condoned. The civil application is **allowed**. No costs.

M.C.A. STAMP NO.851/2018

2. Accepting the explanation given in the application, order passed on

30th October, 2014 dismissing the appeal is recalled. First appeal is restored.

The civil application is **allowed**. No costs.

FIRST APPEAL NO.102/1997

3. As the appeal is of 1997, it is taken up for hearing.

4. Heard Shri M.D. Lakhey, Advocate for the appellant and Shri M.A. Kadu, A.G.P. for the respondent.

5. Pursuant to the notification issued under Section 4 of the Land Acquisition Act, 1894 on 22nd September 1978, 1.69 hector (irrigated land) out of Survey No.19 and 3.44 hector (dry-crop land) out of Survey No.21 owned by the appellant came to be acquired. The Land Acquisition Officer determined the compensation for the land at the rate of Rs.6,500/- per hector for irrigated land and at the rate of Rs.1,500/- per hector for dry-crop land. The claimant had claimed that there were 450 orange trees in the acquired land, however, the Land Acquisition Officer found that there were only 334 orange trees out of which 257 orange trees were 7 year old and 77 orange trees were 5 year old. For 257 orange trees, the Land Acquisition Officer granted compensation at the rate of Rs.505.20 paise per tree and for 77 orange trees (5 year old), the Land Acquisition Officer granted compensation at the rate of Rs.94.95 paise per tree. Being dissatisfied by the award passed by the

Land Acquisition Officer, the claimant had requested for reference under Section 18 of the Act of 1894. By the impugned award, the reference Court enhanced the amount of compensation for irrigated land, granting it at the rate of Rs.22,500/- per hector and for dry-crop land at the rate of Rs.11,250/- per hector. The reference Court has not adverted to the claim of the claimants for enhancement of compensation in respect of orange trees. Being dissatisfied with the award passed by the reference Court, the claimant has filed this appeal.

6. The appellant / claimant contends that he is entitled for compensation of Rs.25,000/- per hector for irrigated land and Rs.12,500/- per hector for dry-crop land and Rs.1,516/- per orange tree for 450 orange trees.

7. With the assistance of the learned Advocate for the appellant and the learned A.G.P., I have gone through the impugned award. I find that the reference Court has properly appreciated the evidence on record and has rightly determined the amount of compensation for irrigated land at Rs.22,500/- per hector and for dry-crop land at Rs.11,250/- per hector. The appellant has not been able to point out any illegality or irregularity in appreciation of evidence by the reference Court. The appellant has not been able to show that the claim for enhanced amount of compensation as made in this appeal is justified.

8. As far as the claim for orange trees at the rate of Rs.1,516/- per orange tree is concerned, again the appellant has not been able to establish it on record. Similarly, the appellant has not been able to show that 450 orange trees existed in the acquired land on the date of taking over of possession by the Land Acquisition Officer

9. However, I find that the Land Acquisition Officer and the reference Court committed an error by restricting the compensation for 77 orange trees (5 year old) at Rs.94.95 paise per tree. The reference Court has granted compensation for 257 orange trees (7 year old) at the rate of Rs.505.20 paise per tree. In my view, same yardstick should have been applied for determining the compensation for 77 orange trees (5 year old). There is no justification for granting such meager amount of compensation for 77 orange trees (5 year old).

10. In view of the above, the following order is passed:

It is held that the appellant / claimant is entitled for compensation for 77 orange trees (5 year old) at the rate of Rs.505/- per tree. After deducting the amount of Rs.94.95 paise per tree as granted by the reference Court, the respondent shall be entitled for enhanced amount of compensation alongwith statutory benefits.

It is clarified that the appellant will not be entitled for interest on

the amount of enhanced compensation for the period from 30th October, 2014 (on which date the appeal was dismissed in default) till 4th May, 2018 (on which date the appeal is restored).

The rest of the claim of the appellant / claimant is dismissed. The appeal is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.