

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

FIRST APPEAL NO. 1023 OF 2018

Executive Engineer,
Medium Project Division,
Irrigation Colony, Civil Lines,
Nagpur, District : Nagpur.

.... APPELLANT.

// VERSUS //

- 1) Deorao Mahadeo Yewle,
Aged adult, Occ.: Agriculturist,
- 2) Smt.Jijabai Wd/o.Jagannath Yewle,
Aged about 34 years, Occu.: Housewife,
- 3) Ku. Ujjawala D/o. Jagannath Yewle,
Aged about 28 years, Occu. : Nil,
- 4) Ku. Sheetal D/o. Jagannath Yewle,
Aged about 18 years, Occu. : Student,
- 5) Ku. Sapna D/o. Jagannath Yewle,
Aged about 28 years, Occu. : Student,

All R/o. Paradsinga, Tah. Narkhed,
District : Nagpur.
- 6) State of Maharashtra,
Through Collector, Nagpur,
Dist.Nagpur.
- 7) Special Land Acquisition Officer,
Medium Irrigation Works, K.N.P.
Nagpur.

.... RESPONDENTS.

Shri N.M.Gaidhane, Advocate for Appellant.
Shri C.R.Najbile, Advocate for the Respondent Nos. 1 to 5.
Ms A.R. Kulkarni, A.G.P. for Respondent Nos.6 & 7.

CORAM : Z.A.HAQ, J.
DATED : SEPTEMBER 05, 2018.

CIVIL APPLN.NO.194/2018.

Though the application is opposed by the advocate appearing for the claimants, accepting the statement made in paragraph No.2 of the application, delay of 1003 days in filing the appeal is condoned.

Civil Application is **allowed** accordingly. No costs.

FIRST APPEAL NO.1023/2018.

ORAL JUDGMENT :

1. Taken up for hearing on admission.
2. Heard.
3. The appellant/ acquiring body has challenged the award passed by the reference Court by which the amount of compensation receivable by the claimants is enhanced.
4. Pursuant to the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”) published on 6th October 1998, 01.03 hectare of land owned by the claimants came to

be acquired. According to the claimants, there were 140 orange trees and 9 kagdi lime trees in the acquired land. According to the advocate appearing for the appellant, the Land Acquisition Officer had determined compensation of Rs.93,428/- for the land as well as trees. Being dissatisfied with the amount of compensation determined by the Land Acquisition Officer, the claimant had requested for reference under Section 18 of the Act of 1894. The reference Court, by the impugned award has held that the claimants are entitled for compensation @ Rs.4,500/- per orange tree and @ Rs.2200/- per lime tree. The reference Court has not granted separate compensation for the acquired land.

Being aggrieved by the award passed by the reference Court enhancing the amount of compensation, the acquiring body has filed this appeal.

5. In paragraph No. 26 of the impugned award, reference of the earlier award passed in Land Acquisition Case No.147 of 2002 on 23rd November 2012 is found. Paragraph No. 25 of the impugned award shows that the reference Court has relied on the report and evidence of Shri Dadan Borkar, a Horticulture Expert, to determine the valuation of the trees.

The learned advocate for the claimant has pointed out the judgment given by this Court in First Appeal No.744 of 2016 on

26th September, 2016 in which it is recorded that Shri Dadan Borkar acquired degree of Master of Science in Horticulture on 30th March 1965 and has served as Associate Professor of Horticulture in Agricultural College, Nagpur affiliated to Dr. Punjabrao Deshmukh Agricultural University, Akola and has retired as Associate Professor on 30th June 1995. In my view, the reference Court has not committed any error in relying on the report and evidence of Shri Dadan Borkar which further finds support from the award passed in Land Acquisition Case No. 407 of 2002.

The learned advocate for the claimants has further submitted that the acquired land was in Tahsil : Narkhed which place is known for good quality oranges. The reference Court has recorded that the orange trees were aged about 9 years when the land came to be acquired.

6. Considering the facts on record, I am of the view that the reference Court has properly appreciated all the relevant material and it cannot be said that its conclusions suffer from any perversity. There is no reason to interfere with the impugned award. The appeal is **dismissed**.

7. By order dated 18th January 2018, while directing issuance of notice of the Civil Application No.194 of 2018 praying for condonation of delay, this Court stayed effect and operation of the impugned award, however, on condition that the appellant shall deposit amount as per the impugned award within eight weeks. The appellant has not deposited any

amount till today. As per the impugned award, the appellant has to pay interest @ 15% per annum after the period of one year from the date of the award.

It is noticed in almost every case that the officers of the appellant / corporation are not taking steps to deposit the amount immediately and the liability of the corporation to pay interest @ 15% per annum continues. It appears that the Corporation is required to pay a huge amount to the claimants towards interest @ 15% per annum only because of the lapse on the part of the officers. Of course there may be some difficulties for the Corporation to deposit the amount within time and sometimes there may be crunch of funds but then the officers are bound to bring this to the notice of the Court and seek extension of time.

In the present case, period of 8 weeks granted by this Court to deposit the amount ended on 15th March 2018. The amount is not deposited and the officers of the Corporation have not taken care to move application for extension of time. There is nothing on record to show that efforts were made by the concerned officers of the Corporation to deposit the amount within time as per the order dated 18th January 2018. There is nothing on record to show that the Corporation was facing shortage of funds because of which the amount could not be deposited. In these facts, it has to be presumed that the amount is not deposited only because of sheer negligence

of the officers of the Corporation. The effect of this negligence is that public exchequer is put to loss and the claimants are deprived of their legitimate claim.

Considering the facts, it is directed that the amount towards interest @ 15% per annum, for which the claimants are entitled for the period from 16th March, 2018 till the amount is deposited, shall be paid by the concerned officers who have been responsible to deal with the matter. The amount shall be deposited within two months.

The action taken report shall be filed, along with affidavit of the Executive Director of the appellant-Corporation, on record of this appeal till 05th November 2018.

The appellant/Corporation shall pay costs of Rs. Twenty Thousand to the claimants and produce receipt on record till 05th November 2018.

JUDGE

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