

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.O. NO. 228/2019 IN X.OB. ST. NO. 1779/2019 IN FIRST APPEAL NO. 114/2011
 (THE STATE OF MAHARASHTRA & ANOTHER **VERSUS** PRABHAKAR WAMANRAO WAGH)

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

Court's or Judge's orders

Mrs. H.N. Prabhu, A.G.P. for the appellants.
 Shri C.R. Najbile, counsel for respondent/cross-objector.

CORAM : A.S. CHANDURKAR, J.

DATE : FEBRUARY 13, 2019.

Perused the contents of the civil application. The Cross-Objector is willing to waive interest on the amount of compensation if enhanced by this Court as a condition to be imposed if the delay is condoned.

The prayer for condonation of delay is opposed by Mrs. H.N. Prabhu, learned Assistant Government Pleader on the ground that the reasons assigned are not sufficient.

Subject to the Cross-Objector not being entitled for interest on the amount of compensation if enhanced for the period from 24.04.2011 to 24.01.2019, the delay stands condoned. Civil application is allowed and disposed of.

FIRST APPEAL NO.114/2011 WITH X.OB. ST. NO. 1779/2019.

The appeal as well as Cross-Objections are **ADMITTED** and with consent of learned counsel for the parties they are taken up for hearing.

Land admeasuring 1 Hectare from Survey No.2/2 of Mouza Isapur, Taluka Katol, District Nagpur was acquired for submergence of Chikhli Nala Project. In the award passed by the Land Acquisition Officer, compensation of Rs.10,63,484/-

was granted for the land as well as for the trees standing therein. The claimant filed reference under Section 18 of the Land Acquisition Act, 1894 (for short, 'the said Act') and the Reference Court granted compensation for 190 Sweet Lime trees at Rs.4,000/- per tree and Rs.150/- per tree for 130 Lemon trees. Being aggrieved by that adjudication, the Acquiring Body has filed this appeal. The Cross-Objector seeks enhancement in the amount of compensation for the Sweet Lime trees.

The following point arises for consideration:-

“Whether the award as passed by the Reference Court is liable to be interfered with?”

Mrs. H.N. Prabhu, learned Assistant Government Pleader for the appellants submitted that the value of trees were not required to be enhanced in view of the fact that the Land Acquisition Officer rightly granted the amounts for the land in question. There was no sufficient evidence warranting further compensation for the trees.

Shri C.R. Najbile, learned counsel for the claimant submitted that in the Cross-Objections enhancement only with regard to value of the Sweet Lime trees is being sought. He referred to the adjudication in Cross-Objections No.42 of 2011 dated 01.11.2018 and submitted that the amount granted for the Sweet Lime trees was Rs.5,000/- per tree and hence the amount as granted be enhanced to that extent. According to him, there was no compensation granted for the teak trees, Forest trees, Stonebandhi and Well.

Heard learned counsel for the parties and perused the records of the case.

The Reference Court has not granted any additional compensation for the acquired land. It has considered the report of the Valuer at Exhibit 18 and has adjudicated the compensation for the fruit bearing trees. There is no dispute with regard to the number of trees and the same can be seen from the joint measurement report. Since there is no mention about other trees except trees of Sweet Lime, Ramphal, Lemon, Jambhul, Sitaphal, Kawath, Bor, no enhancement has been granted to other trees on that count. In Cross-Objections No.42 of 2011 the amount granted for the Sweet Lime trees was enhanced from Rs.4,000/- per tree to Rs.5,000/- per tree. To that extent the Cross-Objections are liable to be accepted. The point as framed is answered by holding that except for modifying the rate for the Sweet Lime trees, no further modification in the judgment of the Reference Court is warranted.

Accordingly, the following order is passed:-

- I. The judgment of the Reference Court dated 30.11.2005 in L.A.C. No.252 of 2002 is partly modified. It is held that for 190 Sweet Lime trees, an amount of Rs.5,000/- per tree would be admissible.
- II. Rest of the award as passed by the Reference Court stands confirmed.
- III. In view of the order passed on C.A.O. No.228 of 2019, the Cross-Objector will not be entitled for interest on the compensation as enhanced for the period from 24.04.2011 to 24.01.2019.

The First Appeal as well as Cross-Objections are disposed of in aforesaid terms. No costs.

JUDGE