

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

FIRST APPEAL (FA) NO. 1313 OF 2018

Vidarbha Irrigation Development
Croporation through its Executive
Engineer, Minor Irrigation Dn., Washim,
Tq. and Distt. Washim.

... APPELLANT

VERSUS

1. Uttam Gambhira Rathod,
aged about 51 years, Occupation
Agriculturist, R/o Waigual, Tq.
Manora, Distt. Washim.

2. State of Maharashtra,
through Collector, Washim, Tq.
and Distt. Washim.

3. Special Land Acquisition Officer,
Waigual Dam Project, Washim,
Tq. and Distt. Washim.

... RESPONDENTS

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Smt. U.A. Patil, Advocate for the appellant.

Shri A.S. Mehadia, Advocate for respondent No.1.

Smt. S.V. Kolhe, Assistant Government Pleader for respondent Nos.2 and 3.

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CORAM : M.G. GIRATKAR, J.

DATED : 13TH AUGUST, 2019.

ORAL JUDGMENT :

The present appeal is against the judgment and award, dated
06th August, 2016 in LAC No. 09 of 2016 passed by the learned Civil Judge,

Senior Division, Link Court, Mangrulpir.

2. The land of respondent No.1 bearing Gat No. 192 admeasuring 06H 03R, out of which, 02H 86R was acquired for Waigual dam. The Land Acquisition Officer granted compensation at the rate of Rs.26,000/- per acre. The land owner/respondent No.1 has challenged the award before the reference Court in LAC No. 09 of 2016. The reference Court has granted compensation at the rate of Rs.60,000/- per acre. The appellant has challenged the compensation granted by the reference Court. Respondent No.1 has filed Cross Objection No. 37 of 2019 and claimed compensation for 300 orange trees at the rate of Rs.4,000/- per tree and enhancement of compensation of agricultural land at the rate of Rs.89,500/- per acre.

3. Heard Smt. U.A. Patil, learned Counsel appearing on behalf of the appellant, Shri A.S. Mehadia, learned Counsel appearing on behalf of respondent No.1 and Smt. S.V. Kolhe, learned Assistant Government Pleader appearing on behalf of respondent Nos.2 and 3.

4. This Court has decided First Appeal No. 1314 of 2018. Today also, this Court has decided First Appeal No. 1031 of 2014. In both the appeals, this Court has granted compensation at the rate of Rs.89,500/- per acre for the acquired land of village Waigual relying on the decision in first

Appeal No. 581 of 2007. In the said judgment, the compensation for orange trees was granted at the rate of Rs.4,000/- per orange tree.

5. There is no dispute about the judgment of this Court. Hence, the appeal filed by VIDC is liable to be dismissed. There is dispute in respect of existence of orange trees. Shri Mehadia, learned Counsel for respondent No.1 has pointed out the judgment in the case of *State of Maharashtra and others .v. Harichand Bhasu Rathod (First Appeal No. 581 of 2007 with Cross Objection No.1 of 2008, dated 23rd March, 2016)*. The cited judgment is in respect of the same project of Waigual dam. In respect of the dispute of land situated at village Waigual in the cited judgment, it is held that 7/12 extract shows the existence of orange trees. But, in the joint measurement report, the trees were not shown. It was also the contention of the VIDC that there was nothing on record to show about the existence of 1,056 orange trees. In the cited judgment, it shows that the claimant had examined himself and also examined one expert Sharad Umale and proved the valuation report (Exh.54). In the said judgment, the Court has granted compensation at the rate of Rs.89,500/- per acre and granted compensation at the rate of Rs.4,000/- per orange tree for 1056 trees.

6. Shri Mehadia, learned Counsel for respondent No.1 has pointed out the evidence of expert examined by the claimant before the reference

Court. His evidence shows that he had inspected the field and found the existence of orange trees. As per 7/12 extract (Exh.21), 300 orange trees are shown. In 7/12 extract, a well is also shown. That entry is continued in 7/12 extract from 1994-95 till 1999-2000. The material evidence of valuer Shri Vishnu Gangadhar Paradkar is not challenged by the side of acquiring body. On the other hand, suggestion was given to this witness which shows that there were newly planted trees. This itself shows the existence of the trees in the acquired land. 7/12 extract though prepared for fiscal purpose, the entries are having value in respect of situation of field. The entries are prepared by Talathi by visiting the concerned land. There is no material dispute about 7/12 extract. It shows the existence of 300 orange trees. The valuation report proved by the valuer (Exh.31) shows the existence of 300 orange trees. As per his evidence, valuation of per orange tree is Rs.3,350/-.

7. Shri Mehadia, learned Counsel for respondent No.1 has pointed out the judgment of this Court in First Appeal No. 1314 of 2018 and also other appeal. This Court has granted compensation at the rate of Rs.89,500/- per acre for agricultural land and Rs.4,000/- for per orange tree.

8. In that view of the matter, the judgment in LAC No. 09 of 2016 is hereby quashed and set aside. Appeal filed by the appellant/VIDC is dismissed. Cross Objection is partly allowed. The appellant/acquiring body

is directed to pay compensation at the rate of Rs.89,500/- per acre for acquired land and Rs.4,000/- per orange tree for 300 trees (Rs.4,000/- x 300 = Rs.12,00,000/-) along with statutory benefits.

CIVIL APPLICATION (CAF) NO. 2501 OF 2019.

Heard.

In view of the aforesaid order, respondent No.1 is entitled for amount of compensation deposited before this Court by the appellant. The applicant/respondent No.1 is permitted to withdraw the amount of Rs.12,48,426/- alongwith accrued interest, if any. The appellant/VIDC is directed to calculate the difference of amount and deposit the same before the reference Court along with statutory benefits/interest etc. withing a period of six months.

JUDGE

*rrg.