

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

FIRST APPEAL NO. 976 OF 2007

APPELLANT:-

(ori Claimant)
(On R A)

Wasudeo s/o Baladeo Jemati
agead about 61 years Occu. Agricultrist
resident of Issapur, Tehsil Katol
District Nagpur.

... Versus ...

RESPONDENTS:-

(ori. Defts)
(On R A)

1. State of Maharashtra
through Collector, Nagpur
2. Special Land Acquisition Officer
Minor Irrigation Works Nagpur
3. Executive Engineer
Medium Project Division, Nagpur

Shri S.M. Thakre, Advocate for the Appellant.
Ms. Shamsi Haider, A.G.P. for Respondent Nos.1 and 2.
Shri M.A. Kadu, A.G.P. for Respondent No.3.

CORAM : S.M. MODAK, J.

DATE OF RESERVING THE JUDGMENT : 27/10/2020

DATE OF PRONOUNCING THE JUDGMENT: 06/11/2020

J U D G M E N T:-

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

02] The only issue involved in this appeal is whether the appellant/original claimant is entitled for enhancement of the rate for orange tree. When I have heard the arguments of learned Advocate Shri S.M. Thakre for the appellant, learned A.G.P. Ms. Shamsi Haider for respondent Nos.1 and 2 and learned Advocate Shri M.A. Kadu for respondent No.3, I find there is a dispute not only about rate per orange tree but there is also dispute about number of orange trees.

03] Though in the appeal, the appellant have asked for Rs.6,000/- per orange tree (for 199 trees), to cut short the issue, learned Advocate Shri S.M. Thakre relied upon a judgment delivered by this Court in First Appeal No.215/2013 on 25th July, 2019. This Court fixed rate of Rs.5,500/- per orange tree. Whereas, learned Advocate Shri M.A. Kadu has supported the impugned judgment and opposed the enhancement prayer for the reason that there is no concrete evidence about number of orange trees. According to him, the judgment delivered by this Court in First Appeal No.215/2013 cannot be considered as a precedent but it is restricted to the facts of that case. In order to buttress his submission on the point “when a judgment can be said to be precedent”, he relied upon a judgment given by the Division Bench of this Court in First Appeal No.225/2010 and other connected appeals on 30th September, 2020. Learned A.G.P. Ms. Shamsi Haider for respondent Nos.1 and 2 supported the Reference Court’s Judgment.

04] It is true that after this appeal was dismissed on 29th September, 2015 [for want of filing private paper book], the necessary record was destroyed as per the office procedure. Even record was sent back to the District Court, Nagpur. It could not be procured in spite of directions. Learned Advocate Shri S.M. Thakre relied upon certain documents, they are as follows:-

- a) The certified copy of memo of appeal.
- b) The judgment dated 26th April, 2007 delivered by Adhoc District Judge -3, Nagpur in L.A.C. No.89/2001.
- c) A plain copy of valuation report for fruit trees prepared by retired Professor of Horticulture.

05] The Land Acquisition Officer has granted compensation at the rate of Rs.2,192.59/- per orange tree. Whereas, the Reference Court has enhanced it to Rs.3,800/- per orange tree.

06] It is pertinent to note that the Reference Court has referred to the report of retired Professor of Horticulture in para No.2 of the judgment. On this background, it will be material to consider the rate fixed by this Court in two of the references made above.

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07] This Court has fixed the rate at the rate of Rs.5,500/- per orange

tree (it is on the basis of the judgment of the Reference Court in other proceedings) (para No.1). Whereas, the Division Bench of this Court has fixed different rates for orange trees belonging to different claimants. It ranges from Rs.3,500/- (para 22), Rs.8,281 (para 24), Rs.3,000/- for big orange trees and Rs.7,00/- for small orange tree (para 28).

08] I am inclined to give more weightage to the rate fixed by this Court in First Appeal No.215/2013. The said judgment was delivered in respect of the trees standing on Survey No.75 at Mauza Khairi (Navghare), Tehsil Katol, District Nagpur. The land in question is also situated in the same village. In both the matters, land was acquired for Chikhali Nala Project. So these are the basic common things. Whereas, in the judgment delivered by the Division Bench of this Court, the lands were situated at Mauza Issapur, Tehsil Katol, District Nagpur and they were acquired for Chikhali Nala Project. Both the villages are different.

NUMBER OF ORANGE TREES

09] I have perused the judgment of the Reference Court. The Reference Court has noted the variance in documents in respect of number of orange trees. As per Bhumapan Araj Pathrak, there were 45 big orange trees. The Joint measurement report also refers to same number of orange trees. Whereas, in Appendix-E maintained by the Land Acquisition Officer, there were 119 orange trees mentioned. Even the valuer has referred about

the same number. However, the reference Court has considered 119 orange trees. I am inclined to accept the number of orange trees as 119. So the appellant is entitled only for the enhanced amount after deducting the amount which was paid earlier.

CONCLUSION

10] So, I feel the appellant is entitled to get the compensation at the rate of Rs.5,500/- per orange tree. He is entitled to get the compensation for 119 orange trees. He is entitled to get all other statutory benefits except the interest. Learned Advocate Shri Thakare, on instructions, has agreed to waive the interest for the period of 1705 days condoned by this Court vide its order dated 06/11/2020 passed on Civil Application (CAO) No.591/2020. Hence, the orders:-

ORDER

1. The appeal is allowed.
2. The judgment dated 26th April, 2007 passed by the Adhoc District Judge-3, Nagpur is modified as follows:-
 - a) Respondent Nos.1 to 3 are directed to pay the compensation of Rs.5,500/- per orange tree for 119 orange trees along with solatium of 30% as ordered by reference Court (interest part for the delay condoned

period of 1705 days is waived by the appellant). The appellant is entitled to all other statutory benefits.

- b) The appellant is entitled to get compensation after deducting the compensation which was paid earlier.
- c) Respondent Nos.1 to 3 are directed to deposit the amount of enhanced compensation within a period of three months in this Court from today along with their calculation.

3. The appeal is disposed of. Parties to bear their own costs.

(S.M. Modak, J.)