

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

FIRST APPEAL NO.680 OF 2016

<u>APPELLANT:</u> Respt.3/on R.A.	Executive Engineer, Minor Irrigation Division, Washim.
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... Versus ...

<u>RESPONDENTS:</u> Claimant - 1	1. Vithal Narayan Deshmukh, Aged Major,
Claimant - 2	2. Sanjay Narayan Deshmukh, Aged Major,
Claimant - 3	3. Babanrao Narayan Deshmukh, Aged Major,
Claimant - 4	4. Kalinda Abasaheb Deshmukh, Aged Major,
Claimant - 5	5. Indu Rajendra Deshmukh, Aged Major,
Claimant - 6	6. Kisnabai Narayanrao Deshmukh, Aged Major
	Occ. Farmer, R/o Karda, Tq. Risod, Dist. Washim.
Respt-1/On R.A.	7. State of Maharashtra, Through Collector, Washim.
Respt-2/On R.A.	8. Through The Special Land Acquisition Officer, Washim.

Mrs. U.A. Patil, Advocate for the Appellant.
Shri V.K. Paliwal, Advocate for Respondent Nos.1 to 6.
Shri H.D. Dubey, A.G.P. for Respondent Nos.7 and 8.

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 Reference Court/Ad-hoc District Judge-1, Washim decided five references *vide* common order dated 31st July, 2013. The Reference Court has enhanced the compensation for land as well as for trees. The present appeal pertains to that part of the order by which the compensation was enhanced in L.A.C. No.21/2004. This appeal is preferred by the original non-applicant No.3.

03] So, the only limited issue involved in this appeal is whether Reference Court has committed wrong in enhancing the compensation.

04] Learned Advocate Mrs. U.A. Patil argued for the appellant, learned Advocate Shri V.K. Paliwal argued for respondent Nos.1 to 6 and learned A.G.P. Shri H.D. Dubey argued for respondent Nos.7 and 8.

05] The land belonging to respondent Nos.1 to 6 situated at Mauza Karda Tq. Risod, Dist. Washim was acquired for construction of minor irrigation project. After initial compliances, the award was declared on 14th November, 2001. Gat No.388 1H, 22R was acquired. Before the Reference Court, oral evidence was adduced on behalf of the claimants. Some witnesses on the point of sale transactions of the land situated at Mauza Karda were examined. So also, valuer of the land, valuer of the well and valuer of the trees were also examined. The respondents have not adduced any evidence.

06] With the assistance of learned Advocates, I have read the judgment of the Reference Court. I have read it on the background of the grounds taken in the appeal memo. It is pertinent to note that the Reference Court has fixed the enhanced rate of compensation at the rate of Rs.81,250/- per hectare for land covered under L.A.C. Nos.21/2004, 22/2004, 23/2004 and 27/2004. Whereas, in L.A.C. No.24/2004 rate fixed was Rs. 65,000/- per hectare.

07] It is submitted that out of these five orders, appeal was not preferred in three orders. Whereas, it was preferred only in L.A.C. No.21/2004 (present appeal). It is also told that First Appeal No.581/2017 arising out of the order passed in L.A.C. No.22/2004 was settled in Lok Adalat. So, this conduct of the appellant also needs to be considered.

08] The compensation of Rs.1,31,634/- was fixed for the trees. In para No.12 of the impugned order, the Reference Court has discussed the evidence on the point of compensation for trees. The entries in 7/12 extract for Gat No.388, the contents of joint measurement report and the evidence given by expert valuer – Sudhakar Mahajan were considered. In stead of the 7/12 extract and joint measurement report, the Reference Court have given weightage to the evidence of valuer – Sudhakar Mahajan. His evidence corroborated to the evidence of claimant - Vithal. I do not find any wrong committed by the Reference Court while arriving at the figure of Rs.1,31,634/-. I do not find any substance in the grievance made by the appellant in this behalf.

09] While arriving at the figure of Rs.81,250/-, the Reference Court has considered the evidence of the witnesses (who are conversant with the location mentioned of the land and sale instances of similarly situated lands), the rate fixed in L.A.C. No.26/2004 (No.14/47/1997-1998) of Village Karda only. In that case, rate of Rs.65,000/- per hectare was fixed for Jirayat land. It is not in dispute that the land under appeal is seasonally irrigated land (finding in para No.11).

10] So, I find the Reference Court was right in adding 25% to the rate of Jirayat land. It is on the basis of the judgment in case of State of Maharashtra & Ors. Vs. Punja Trambak Lahamage (deceased through L.Rs.)

reported in **2008(3) ALL MR 379**. So, I do not find any substance in the grievance made by the appellant so far as the enhanced rate for the land is concerned.

11] So, there is no merit in this appeal. Hence, the order:-

ORDER

1. The appeal is dismissed with costs.
2. The appellant is directed to deposit the amount of compensation as ordered by the Reference Court within a period of two months from today (if not already paid).
3. Respondent Nos.1 to 6 are at liberty to withdraw the amount of compensation and it be paid to them in equal shares (if they have not having any other arrangement about distribution).
4. They are at liberty to tell the same when they will file the application for withdrawal and it will be decided as per the merits.
5. The appeal is disposed of in above terms.

(S.M. Modak, J.)