

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

FIRST APPEAL NO.699 OF 2015
WITH
CROSS OBJECTION NO.52 OF 2016

Vidarbha Irrigation Development
Corporation,
Through its Executive Engineer,
Pench Canal Division, Nagpur

... Appellant

-vs-

1. Shivnarayan Gourishankar Tamhanpure
(Jaiswal) (DEAD) Through his legal heirs
- 1a. Nirmala wd/o Shivnarayan Jaiswal,
Aged about 65 years, R/o Nirmalshiv Niwas,
Ward No.3, New Town, Main Road, Butibori
Tah. and Dist. Nagpur (widow)
- 1b. Nitin s/o Shivnarayan Jaiswal,
Aged about 43 years, R/o Nirmalshiv Niwas,
Ward No.3, New Town, Main Road, Butibori
Tah. and Dist. Nagpur (son)
- 1c. Sachin s/o Shivnarayan Jaiswal,
Aged about 37 years, R/o Nirmalshiv Niwas,
Ward No.3, New Town, Main Road, Butibori
Tah. and Dist. Nagpur (son)
- 1d. Bipin s/o Shivnarayan Jaiswal,
Aged about 36 years, R/o Nirmalshiv Niwas,
Ward No.3, New Town, Main Road, Butibori
Tah. and Dist. Nagpur (son)
- 1e. Bharti w/o Dilip Jaiswal
Aged about 40 years, R/o Rimzim Niwas,
Plot No.1/7, Ujjal Nagar, Wardha Road,
Nagpur
- 1f. Sangeet w/o Rajesh Jaiswal,
Aged about 38 years, R/o Ramyan Restaurant,
Civil Line, Baitul, Dist. Baitul (M.P)

2. State of Maharashtra
 3. Collector, Nagpur
 4. Special Land Acquisition Officer,
Kanholi Nala Project, Nagpur
- ... Respondents

Shri Abhijit Parihar, Advocate for appellant/Acquiring Body.
Shri R. J. Shinde, Advocate for respondent Nos.1(a) to 1(f)/Cross objectors.
Shri M. A. Kadu, Assistant Government Pleader for respondent Nos.2 to 4.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.
DATE : December 14, 2020.

Common Judgment : (A. S. Chandurkar, J.)

This appeal under Section 54 of the Land Acquisition Act, 1894 (for short, the said Act) takes exception to the judgment of the reference Court dated 07/04/2014 in LAC No.133/2008. By the said judgment the reference Court was pleased to enhance the amount of compensation at the rate of Rs.3500/- per tree for 993 orange trees. It also granted compensation of Rs.30,000/- for the stone-wall. The acquiring body being aggrieved by this adjudication has challenged the same in First Appeal No.699/2015. The claimants not being satisfied with the amount of compensation have filed Cross-Objection No.52/2016.

2. Notification under Section 4 of the said Act was published on 27/04/1995 seeking to acquire land admeasuring 2H 14R from Survey No.264 and 1H 25R from Survey No.305 at village Ridhora, Tahsil and

District Nagpur. The acquisition was for the purposes of construction of Wadgaon dam. The Land Acquisition Officer passed his award on 30/04/1997. Compensation for the land was granted at Rs.44,000/- per hectare for the land from Survey No.264 and Rs.50,552/- per hectare from Survey No.305. As stated above the Reference Court enhanced the compensation only for the orange trees.

3. Heard Shri A. Parihar, learned counsel for the appellant and Shri R. J. Shinde, learned counsel for respondents/claimants. According to Shri Parihar, the amount of compensation enhanced by the Reference Court for the orange trees to Rs.3500/- per tree was not justified and was without sufficient evidence. The number of orange trees was lesser than 993 and hence the amount of compensation as granted was liable to be reduced. He sought to refer to the evidence on record to justify the aforesaid contention.

4. Shri R. J. Shinde, learned counsel for the claimants on the other hand submitted that the reference Court ought to have granted compensation at the rate of Rs.5000/- per orange tree. The 7/12 extracts indicated presence of 993 orange trees. According to him this Court in First Appeal No.676/2005 (*The State of Maharashtra, through the Collector, Nagpur and anr. vs. Mohandeo s/o Rathudeo Futaria and anr.*) decided on

15/01/2018 was pleased to maintain the judgment of the reference Court pertaining to acquisition from Mouza Isapur which is an adjoining village wherein amount of Rs.5000/- per tree was granted as compensation for the orange trees. He submits that the claimants are entitled for a similar rate for the orange trees.

5. The following point arises for determination :

“ Whether the judgment of the reference Court deserves to be modified ? ”

6. On perusal of the records of the case it is seen that the claimants led evidence before the reference Court and according to 7/12 extracts at Exhibits-21 and 22 there were total 993 orange trees in both the lands. These 7/12 extracts were taken into consideration by the reference Court while determining the number of trees. This finding with regard to number of trees being based on evidence is not required any interference.

As regards the rate of compensation for the orange trees is concerned it is seen that the Land Acquisition Officer had found an amount of Rs.5437/- per tree as just compensation in his award. The reference Court however has granted Rs.3500/- per tree. In First Appeal No.676/2005 arising out of acquisition from adjoining village Isapur this Court has granted an amount of Rs.5000/- per orange tree. We find that

this amount of compensation for the orange trees is reasonable considering the nature of crop in that part of the area. To that extent the judgment of the reference Court deserves modification. The point as framed is answered accordingly.

7. The judgment of the reference Court is partly modified. It is held that the claimants are entitled for compensation at the rate of Rs.5000/- per tree for 993 orange trees. Rest of the award stands confirmed. Cross-Objection No.52/2016 is partly allowed to that extent.

The claimants are at liberty to withdraw the balance amount of compensation deposited in this Court with accrued interest. The balance amount of compensation be deposited in the reference Court within period of four months from today.

First Appeal No.699/2015 stands dismissed.

No order as to costs.

JUDGE

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