

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2969 OF 2019**

Hindustan Petroleum Corporation Limited ...Petitioner.

V/s

State of Maharashtra and Ors. ...Respondents.

Mr. Javed Hussein a/w Mr. Sakib Ghufraan i/b Hussein & Co. for the
Petitioner.

Mrs. V.S. Nimbalkar, AGP for Respondent Nos. 1 and 8.

Mr. Dhananjayrao D. Rananaware for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: March 11, 2021

P.C.:-

1] Grant of enhanced compensation by the learned District Judge-1, Vaduj in exercise of powers under sub-section (5) of Section 10 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (hereinafter referred to for the sake of brevity as “the Act”) is a subject matter of challenge in the present Petition.

2] Petitioner a Corporation within the meaning of Section 2(b)(i) of the Act is carrying on business of petroleum as reflected under the

provisions of the Act. The competent authority as defined under sub-clause (a) of Section 2, in exercise of powers under Section 10, on 11/9/2006 in the matter of determination of compensation for fruit bearing trees, damage caused to the land in relation to execution of work of laying petroleum pipeline and vide order dated 23/3/2006 in exercise of powers under Section 10 sub-section (4) has awarded compensation of ₹ 2,06,484/-.

3] Respondents/land owners feeling aggrieved preferred Application (Appeal) No.233 of 2006 by which compensation came to be enhanced to ₹ 6,34,883/- by the learned District Judge. As far as already paid compensation of ₹ 1,19,320/- is concerned, same was directed to be adjusted from the final award of enhanced compensation. As such this Petition.

4] Heard respective Counsels at length.

5] Contention of the Petitioner is, enhanced compensation granted by the District Judge is without looking into oral and documentary evidence and prevailing market rate of the agriculture produce. The learned Counsel would urge that the awards passed by the competent

authority are as per rules and valuation carried out based on the appreciation of evidence and that being so, according to him, order impugned is liable to be set aside. Further contention is, evidence of expert witness ought not to have been accepted by the Court below, particularly when in cross-examination the said witness did not withstand to what has been stated in examination-in-chief. As such, he has prayed for quashing of enhanced compensation.

6] Per contra, learned Counsel for land owners while taking me through orders passed by the competent authority and evidence, would urge that order of enhanced compensation is very much justified.

7] Considered rival submissions.

8] It is required to be noted that under the provisions of Section 10 sub-section (6), the decision given by the learned District Judge which is impugned herein is final and that being so, writ petition is maintainable. After declaration of acquisition of right of user under Section 10, Section 9 puts an embargo on the right of the Respondents on use of the land. After the above notification the land which is used

for laying petroleum pipeline cannot be used for construction of building or any other structure; construct or excavate any tank, well, reservoir or dam; or plant any tree, on that land. As such, it can be inferred that land which is used by the Petitioner for laying down pipeline has very restricted use.

9] While determining compensation under Section 10, learned District Judge or competent authority is required to have regard to the damage or loss sustained by the persons interested, like Respondents in this case, by reason of removal of trees or standing crops while giving effect to the provisions of Sections 4, 7, and 8 of the Act, temporary severance of the land under which pipeline has been laid and injury and damage to any other property including immovable.

10] In support of the plea for enhanced compensation, Respondent has examined his son viz Vilas Vishnu Shinde in whose examination-in-chief, a detailed description of the property was brought on record, including that of standing crops, number of trees, its age, nature of damage suffered and monetary loss. Paragraphs 4, 8 of the said deposition are worth referring to.

11] In the lengthy cross-examination of the said witness, the Petitioner was unable to demolish his case for entitlement of enhanced compensation. The expert witness retired Government Agricultural Officer viz. Shankar Mane has deposed as regards the loss suffered. The said expert witness was also subjected to detailed cross-examination. He has deposed about average life of drum-stick trees and other issues in cross-examination. He has proved the panchanama drawn by him during his visit to the spot i.e. land on 8/7/2012. He has deposed about damage caused to the trees and financial loss suffered.

12] After analysis of the aforesaid evidence, the learned District Judge has awarded enhanced compensation as under:-

Compensation determined	Amount
1] Towards land	₹ 9,835/-
2] Towards jawar crop	₹ 5,800/-
3] Towards non-fruit bearing trees (Suru, Nilgiri, Babhul and Tembhurni)	₹ 2,100/-
4] Towards two Guaua Trees	₹ 4,830/-
5] Towards twenty-six Mango Trees	₹ 5,85,000/-
6] Towards four Awala Trees	₹ 31,200/-
7] Towards one Coconut Tree	₹ 145/-
8] Towards three Jamun Trees	₹ 525/-
9] Towards two Almond Trees	₹ 278/-

13] As far as award of compensation under each head as referred to above is concerned, learned District Judge has considered overall oral and documentary evidence brought on record and by a reasoned order awarded enhanced compensation.

14] The learned District Judge while granting enhancement has appreciated evidence brought before him by the claimant and expert witness. Fact remains that the competent authority granted compensation towards damages to fruit bearing, non-fruit bearing trees and crops, which justifies the claim of Respondent/land owner that there exists such trees and crops. The appellate Court had regard to the same and had revalued the damages suffered and enhanced the compensation based on relevant material. It is to be noted that the land that has been utilized by the Petitioner cannot be put to use by the Respondent/land owner for the purposes as are enumerated under Section 9 of the Act. As such to some extent there is permanent loss of use of the land. This Court in extraordinary jurisdiction has to see whether appellate court was within its jurisdiction to grant enhancement and from the judgment and material on record, the Court below was justified in granting such enhancement.

15] As far as grant of enhanced compensation is concerned, in extra ordinary jurisdiction of this Court under Article 227, this court need not to re-appreciate the entire evidence but is only required to restrict itself to find out whether court below in exercise of powers under Section 10 has committed any error of law has taken any perverse view in awarding enhanced compensation. As observed hereinabove, I have perused the award given by the competent authority, evidence of the witness of the claimant/land owner and expert witness. The learned District Judge while enhancing compensation has given sufficient convincing reasons and thereby granted enhancement.

16] Considering the scope of jurisdiction under Article 227, I hardly see any illegality which warrants interference in the order impugned passed by the learned District Judge under Section 10 of the Act. That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)