

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

FIRST APPEAL NO.1303 OF 2017

The Dy. Chief Engineer (Nirman)
Central Railway, Ajni Nagpur.

..APPELLANT

Versus

1. Satyabhama wd/o Motiram Gharat,
Aged about 65 years, Occup. Housewife (dead)
- 1(a) Shakuntala Baburao Chouke,
R/o Bellona,
Taluka Narkhed, Dist. Nagpur.
- 1(b) Shobha Mahadeorao Gajbe,
R/o Laxman Apartment, Plot No.24,
Near Sai Mandir, Wardha Road, Nagpur.
- 1(c) Meena Krushnarao Chouke,
3/301, Khare Town, Dharampeth, Nagpur.
- 1(d) Anita Sadanand Dadmal
R/o Lakdipul, Ayachit Mandir,
Bus stand, Hattinala, Nagpur.
- 1(e) Prateebha Vasanrao Dhote,
R/o Movad, Tah. Narkhed, Dist. Nagpur.
2. Uttam Motiram Gharat,
Aged about 35 years,
Occup. Agriculturist.
R/o Ward No.16, Movad,
Taluka Narkhed, Dist.Nagpur.
3. Baban Motiram Gharat,
Aged 30 years,
Occup.Agriculturist.
R/o Ward No.5, Movad,
Taluka Narkhed, Dist.Nagpur.

4. State of Maharashtra,
Through the Collector, Nagpur.
5. Special Land Acquisition Officer
(General), Nagpur.

..RESPONDENTS

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Shri N.P Lambat, Advocate for the appellant.
None for respondent nos.1(a) to 1(d) and 2 and 3.
Shri A.M.Kadukar, AGP for respondent nos.4 and 5.

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CORAM : PUSHPA V. GANEDIWALA, J
DATED : AUGUST 11, 2021.

ORAL JUDGMENT :

1. The appellant - Acquiring Body i.e. Central Railway, Ajni, Nagpur, has challenged the judgment and award dated 12.12.2011 passed by the Joint Civil Judge, Senior Division, Nagpur in Land Acquisition Case No.114 of 2002, whereby the learned Judge enhanced the compensation for 56 big Orange trees at the rate of Rs.3500/- per tree alongwith statutory benefits and interest.

2. I have heard Shri N.P. Lambat, learned counsel

appearing for the appellant and Shri A.M.Kadukar, learned Additional Government Pleader appearing for respondent nos.4 and 5/State. None appeared for respondent nos.1(a) to 1(d) and respondent nos. 2 and 3.

3. A short question that arose for determination of this Court is whether rate of Rs.3500/- per Orange tree which was adjudicated by the learned Reference Court reflects the true market rate at the time of the issuance of Notification under Section 4 of the Land Acquisition Act.

4. First and foremost, it is worthwhile to mention here that the learned Reference Court did not consider the enhancement of compensation for the acquired land. Therefore, a question to be considered by this Court is with regard to valuation of the Orange trees only.

5. It is not disputed that 56 Orange fruit bearing trees were standing on the subject land i.e. Field bearing Survey no.1141, ad measuring 0.24 HR, PH.No.1, situated at mouza Mowad, Taluka Narkhed, District – Nagpur (hereinafter

referred to as “the suit property”) at the time of issuance of Notification under Section 4 of the Land Acquisition Act.

6. The claimants in their Reference proceedings claimed Rs.10,000/- per Orange tree towards compensation. The respondents/State denied the claim of the claimants by filing Written Statement (Exh.6).

7. The learned Reference Court framed necessary issues and recorded evidence as adduced by the respective parties.

8. In support of their claim, the claimant No.1 - Baban Motiram Gharat examined himself at Exh.11 and also Government Approved Valuer – Dadan Harbaji Borkar examined at Exh.17. While the respondents/State examined Land Acquisition Officer at Exh.131 and one Devendra Pandharinath Revatkar, Horticulture Inspector examined at Exh.32.

9. The following documents are filed on record by the claimants/respondents in support of their claim:

- (i) Copy of the award;
- (ii) Joint measurement report at Exh.15.
- (iii) Valuation Report of Fruit Trees at Exh.18;
- (iv) Retirement Certificate, degree and registration of Valuer at Exh. Nos.19 to 21.

10. On the contrary, the respondents/State have not produced any document on record.

11. The learned Reference Court, on the basis of oral and documentary evidence on record, partly allowed the claim of the respondents/claimants and granted compensation for 56 Orange trees @ Rs.3500/- per tree. The learned Reference Court held that considering the Joint Measurement Report at Exh.16 and the Valuation Report at Ex.18, compensation of 56 Orange trees @ Rs.3500/- per tree would be just and proper.

12. This judgment and order of the learned Reference Court is impugned in this appeal.

13. Shri N.P .Lambat, learned counsel appearing for the

appellant vehemently urged to set aside the rate @ 3500/- per Orange tree, as the rates have been fixed by the learned Reference Court without any evidence and sheer on the basis of guess work. The learned counsel took me through oral evidence of the witnesses and submitted that the learned Reference Court has not considered the age of trees, which has been mentioned in the Joint Measurement Report and Award. The learned counsel further submits that the learned Reference Court has failed to deduct 10% towards natural calamities and Rs.79/- per tree towards cultivation charges, as per the evidence of the Horticulture Inspector examined by the respondents/State. In conclusion, learned counsel Shri Lambat urged to set aside the impugned judgment and award being exorbitant in nature.

14. None appeared on behalf of the claimants despite due service.

15. I have considered the submissions as advanced on behalf of the appellant and also perused the record with the assistance of the learned counsel Shri Lambat.

16. At the outset, a perusal of Joint Measurement Report (Ex.15) would reflect presence of 60 big Orange trees on the subject land and in the copy of the award (Ex.15), the future age of the Orange trees is shown as 19 years. The witness of the claimants - Mr. Dadan Harbaji Borkar, who was examined at Exh.17 has deposed that he prepared his Valuation Report on the basis of information given in JMR and his personal visit to fruit garden on 1.9.1996. This witness further deposed that at the time of his visit, there were 56 Orange trees of age 8 years and general condition of the trees was good and healthy. Relying on the Handbook of Agriculture published by Indian Council of Agriculture Research Institute, New Delhi, the witness deposed that Orange trees start bearing fruits from fourth year. The total life of Orange tree is 25 to 30 years and productive life is 18 to 20 years. He further deposed that Orange trees bear two bahars in a year i.e. Mrig bahar and Ambia bahar. The annual average fruit production is 1000 to 1200 fruits and the weight of these fruits is 125 to 150 kg. per tree per year. He further deposed that he has taken price @ Rs.5.62 per kg. which was personally verified from the

office of the Special Land Acquisition Officer, Nagpur. He presumed net income of one Orange tree for one year at Rs.652.60 and for life period is Rs.5019.7825. Accordingly, he has given his report.

17. On the contrary, the Horticulture Inspector, who was examined by the respondent/State failed to give any report of his visit to the Orange Orchard of the claimants. A perusal of the evidence of this witness would reflect that he has given general statement with regard to age of trees, annual fruit production and future age of the trees. In the absence of any Valuation Report, his evidence cannot be considered vis-a-vis the evidence of Horticulture examined by the claimants, who is also a Government Approved Valuer. Further more, in the cross-examination of this witness, he has admitted the life of Orange tree is 30 years and four years onwards, there may be fruits to Orange tree. This part of his evidence is in consonance with the opinion expressed by the claimants' witness Shri Dadam Borkar.

18. It is worthwhile to note here that even though the

learned Valuer Shri Dadan Harbaji Borkar valued the trees @ Rs. 5019.7825 per tree, the learned Reference Court found Rs.3500/- per tree as just and reasonable rate considering other documents on record. As the learned Reference Court has not enhanced rate per Orange tree as valued by the expert witness of the claimants and, therefore, the contention for deduction @ 10% towards natural calamity and Rs. 79/- per tree towards costs of cultivation is not justified.

19. Considering the nature of evidence adduced by the claimants, which could not be rebutted by the respondents/State either through effective cross-examination or by bringing cogent and convincing evidence with regard to valuation of the trees on record and, therefore, in the considered opinion of this Court, the learned Reference Court has correctly valued trees on the basis of oral as well as documentary evidence on record and his guess work. The learned counsel for the appellant could not point out any convincing ground to interfere in the well-reasoned judgment of the Reference Court.

20. In the light of the above observations, the appeal is devoid of any merits and deserves to be dismissed and the same is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE

Ambulkar