

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

FIRST APPEAL NO.771 OF 2016

APPELLANTS:

On R.A. Ori. Claimant

1. Indubai w/o Sheshrao Dudhe,
Age 78 yrs, Occ.- Agriculturist,
2. Rajendra Sheshrao Dudhe
Age 42 yrs, Occ-Service,
3. Jitendra Sheshrao Dudhe,
Age 57 years, Occ-Business,

All R/o Digros, Tq.- Digros, Distt.- Yavatmal
4. Sau Sunita @ Vanita Ashokrao Datir,
Age-47 yrs, Occ-House hold,
R/o Akola, Tq. - Akola
5. Anuradha Sureshrao Tayde,
Age-44 yrs, Occ- House hold,
R/o Digros, Tq. Digros, Distt. - Yavatmal
6. Surekha Vijay Umarkar
Age-40 yrs Occ- House hold,

R/o Kumbharkinh, Tq-Darwha,
Dist. Yavatmal.
7. Sau. Ujawala Wandeorao Borkar,
Age-47 yrs. R/o – Nanded.

... Versus ...

RESPONDENTS:

On R.A. Ori. Respondents

1. Vidarbha Irrigation Development Corporation through the Executive Engineer Lower Pus Project, Pusad, Tq. Pusad, Dist. Yavatmal.

2. Sub-Divisional Officer/Land Acquisition Officer, Darwha, Tq. Darwha, Dist. Yavatmal.
3. The Executive Engineer, Lower Pus Project, Tq. Pusad, Dist-Yavatmal.
4. The State of Maharashtra, through Collector, Yavatmal, Tq. and Dist. Yavatmal.

Shri A.B. Nakshane, Advocate for the Appellants.
Shri Anoop Parihar, Advocate for Respondent Nos.1 and 3.
Shri M.A. Kadu, AGP for Respondent Nos.2 and 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE OF JUDGMENT : 2nd MARCH, 2021

ORAL JUDGMENT:-

The Appellants herein have challenged the judgment and award dated 08/12/2015 passed by the Reference Court in L.A.C. No.1788/2004. By the impugned judgment, the Reference Court has enhanced the compensation from Rs.40,000/- per hectare to Rs.1,50,000/- per hectare in respect of the land admeasuring 1.22 hectares from Survey No.16/2B of Village Kumbharkinhi. The Reference Court has also enhanced the compensation in respect of the orange trees and sweet lime trees from Rs.1,152/- and Rs.1,095/- to Rs.2,500/- per orange tree and sweet lime tree.

2. The subject land and the trees were acquired for construction of Kumbharkinhi Dam. Notification under Section 4 was published on

29/07/1999 and award under Section 11 was passed on 21/03/2002. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the Appellants sought reference under Section 18 of the Land Acquisition Act, 1894.

3. Upon considering the evidence on record, the Reference Court has enhanced the compensation as stated above. Being aggrieved by the said judgment and award, the Appellants have filed this appeal under Section 54 of the Land Acquisition Act, 1894.

4. Learned Counsel for the Appellants states that the land under Survey No.13 from same village was also acquired for the same purpose under the same notification. He states that the land owners in respect of the said land had also sought reference under Section 18 of the Land Acquisition Act and being dissatisfied with the judgment of the Reference Court, filed an appeal before this Court being First Appeal Nos.422/2019 and 1734/2019.

5. By judgment dated 11/03/2020, this Court has dismissed the appeal filed by the Acquiring Body and has partly allowed the First Appeal No.422/2019 filed by the land owners of Survey No.13 and has thereby awarded compensation at the rate Rs.2,28,000/- per hectare in respect of irrigated land and has also enhanced compensation in respect of orange trees to Rs.3,500/- per tree.

6. Learned counsel for the acquiring body submits that First Appeal (St) No. 3107/2017 filed by the acquiring body challenging the judgment of the Reference Court, has been dismissed as withdrawn vide order dated 30.04.2019. Learned Counsel for the Acquiring Body concedes that the judgment in First Appeal No. 422/2019 has not been challenged and the same has attained finality. He further concedes that the nature of the said land is similar to the nature of the subject land and hence, the market rate of the acquired land, which is the subject-matter of the present appeal, can be decided on the basis of the said judgment. Both these properties were acquired by the same notification and for the same purpose. The nature of the land is noted to be same. Hence, for the reasons recorded in the said judgment, the rate of the acquired land is fixed at Rs.2,28,000/- per hectare.

7. The Appellants have claimed that there were total 250 orange trees in the acquired land. The Land Acquisition Officer had awarded compensation at the rate of Rs.1,152/- per tree in respect of 213 trees and Rs.68 per tree in respect of 30 orange trees. Learned Counsel for the Appellants submits that he is restricting his claim only in respect of 213 orange trees and in respect of 114 sweet lime trees.

8. The Land Acquisition Officer had valued the orange tree at the rate of Rs.1,152/- and sweet lime tree at the rate of Rs.1,059/- per tree. The

rate has been enhanced by the Reference Court to Rs.2,500/- per tree. In First Appeal No.422/2019, this Court has enhanced the rate of the orange trees to Rs.3,500/- per tree. Learned Counsel for the Appellants as well as the Acquiring Body state that 213 orange and sweet lime trees were fruit bearing trees and were of the same age and had same yielding capacity as the trees in First Appeal No.422/2019. Considering the age, yield and productive life span of the trees, the rate of the orange trees and sweet lime trees is enhanced to Rs.3,500/- per tree.

9. Under the circumstances, the appeal is partly allowed. The rate of the acquired land admeasuring 1.22 HR. is fixed at Rs.2,28,000/- per hectare. The Appellants shall be entitled for all statutory benefits.

10. The rate in respect of 213 orange trees and 114 sweet lime trees is also enhanced to Rs.3500/- per tree. The Respondent Nos.1 and 3/Acquiring Body shall deposit the enhanced compensation within a period of twelve weeks.

11. The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)