

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

FIRST APPEAL NO.794/2016
WITH
FIRST APPEAL NO.1046 OF 2017

FIRST APPEAL NO.794 OF 2016

APPELLANT:

(On R.A.)
Ori. Claimant

Rajendra S/o Sheshrao Dudhe,
Age 48 years, Occ. Agriculturist,
R/o. Kumbharkinhni, Tq. Darwha,
Dist. Yavatmal.

... Versus ...

RESPONDENTS: 1.
(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 appellant.
Shri R. C. Raibhandre, Advocate for respondent Nos. 1 & 3.
Ms. T. Udeshi, AGP for respondent Nos. 2 and 4

WITH

FIRST APPEAL NO.1046 OF 2017

- APPELLANTS:**
- | | |
|----------------------|---|
| (On RA)
(NA No.3) | 1. Executive Engineer, Lower Pus Project,
Tah, Pusad, Dist. Yavatmal. |
| (NA NO. 4) | 2. Vidarba Irrigation Development Corporation,
through its Executive Engineer, Lower Pus Project,
Tah. Pusad, Dist. Yavatmal. |

... Versus ...

- RESPONDENTS:**
- | | |
|---------------------------|--|
| (On Ori. RA)
Applicant | 1. Rajendra Sheshrao Dudhe,
Aged 37 years, Occ. Service and Cultivation,
R/o. Digras, Tah. Digras, Dist. Yavatmal. |
| (NA No.1) | 2. State of Maharashtra,
through Collector, Yavatmal, |
| (NA No.2) | 3. The Sub-Divisional Officer & Spl. Land
Acquisition Officer, Darwha, Tq. Darwaha,
Dist. Yavatmal. |

Shri Anoop Parihar, Advocate for appellant.
Shri A. B. Nakshane, Advocate for respondent No. 1.
Ms. T. Udeshi, AGP for respondent Nos. 2 and 3.

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

ORAL JUDGMENT:-

First appeal No. 1046/2017 not on board. Taken on board.

2. These appeals assail the judgment and award dated 10.12.2015

in LAC No. 1992/2004. By the impugned judgment, this Court has enhanced compensation from Rs. 40,000/- per hectare to Rs. 1,50,000/- in respect of land admeasuring 1.21 HR from survey No. 16/2A of village Kumbharkinhi. The Reference Court has also enhanced compensation in respect of 209 orange trees @ Rs 2500/- per tree and 112 sweet lime trees @ Rs. 2,500/- per tree. The claimant in the land reference as well as acquiring body have challenged this award in this appeal filed under Section 54 of the Land Acquisition Act.

3. 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.

4. 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.

5. Learned Counsel for the Appellants states that the land under Survey No.13 from same village was also acquired for the same purpose un-

der 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.

6. 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.

7. In the instant case, the Appellants have claimed that total 250 orange trees were in the acquired land. The Land Acquisition Officer had awarded compensation at the rate of Rs.1007/- per tree in respect of 203 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 209 orange trees and in respect of 112 sweet lime trees. The Land Acquisition Officer valued the orange tree at the rate of Rs.1007/- and sweet lime tree at the rate of Rs.1095/- per tree, which 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.

8. Learned counsel for the appellant states that the Reference Court has recorded categorical finding that the orange trees were four years of old whereas the trees which were the subject matter of First Appeal No. 422/2019 are 9 to 10 years old. He therefore, contends that said trees cannot be valued at Rs. 3500/- per tree. He further submits that considering that the orange trees in the subject land were only of four years old, the claimant is not entitled for compensation at the same rate awarded in the First Appeal No. 422/2019.

9. It is further to be noted that valuer who had inspected land and prepared a valuation report has deposed that orange trees were of 6 years old. The report states that the condition of orange trees was good. The height of trees ranged from 10 to 12 feet. The spread of trees was 5 to 8 feet on each side. The circumference of trunk of tree was between 16" to 20". On this basis he assessed the age trees as 6 years. There is no specific denial of this statement. Moreover, nothing has been brought on record to doubt the expertise of this witness. Hence, there is no reason to disbelieve the report and or to discard the evidence of the expert witness. Considering the fact that the orange trees in the subject land were of 6 years age, whereas the trees in the First Appeal No. 422/2019 were 9 to 10 years old, it would not be appropriate to value at the same rate. Hence, 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.3,000/- per tree. 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 Respondent Nos.1 and 3/Acquiring Body shall deposit the enhanced compensation within a period of twelve weeks.

11. First Appeal No. 794/2016 is allowed and First Appeal No. 1046/2017 stands dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

Gohane