

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

CROSS OBJECTION NO.16 OF 2020
IN
FIRST APPEAL NO.552 OF 2019 [D]

CROSS-OBJECTOR: Rupesh Pandurang Khaparde,
on R.A. Age years, Occ- Agriculturist,
Ori claimant R/o- Darwha, Tq. Darwha,
Dist. - Yavatmal.

... Versus ...

- RESPONDENTS:** 1. The State of Maharashtra
Through Collector, Yavatmal,
Tq. and Dist.- Yavatmal.
2. Sub-Divisional officer/Land
Acquisition Officer, Darwha,
Tq. Darwha, Dist. Yavatmal.
3. The chief Executive Engineer
Lower Pus Project, Tq. Pusad,
Dist-Yavatmal.
4. Vidarbha Irrigation Development
Corporation through the Executive Engineer
lower Pus Project, Pusad, Tq. Pusad,
Dist. Yavatmal.

Shri A.B. Nakshane, Advocate for the Cross-objector.
Ms. T.H. Udeshi, AGP for Respondent Nos.1 and 2.
Shri Ramesh Raibhandare, Advocate for Respondent No.4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE OF JUDGMENT : 15th FEBRUARY, 2021

ORAL JUDGMENT:-

At the outset, learned Counsel for the Cross-objector seeks leave to amend the prayer Clause (b) by substituting the figure 'Rs.2,00,000/-' per hector to 'Rs.2,50,000/-'. Leave granted. Amendment be carried out forthwith.

02] The Respondent No.1, who is the original Claimant in the land reference case No.1804/2004, has filed cross-objections under Order 41, Rule 22 of C.P.C. to enhance the compensation to Rs.2,50,000/- per hectare for orchard land admeasuring 1.21 hectare and to enhance the compensation in respect of orange trees at the rate of Rs.5,000/- per tree.

03] The brief facts necessary to decide this cross-objection are as under:

The land admeasuring 1.21 hectare belonging to the Respondent No.1 from Gat No.3 of village Kumbharkinhhi, Tq. Darwha, District Yavatmal was acquired for construction of Kumbharkinhhi Dam. The notification under Section 4 was published on 29/07/1999. The Land Acquisition Officer passed an award dated 21/03/2002 and awarded compensation at the rate of Rs.38,000/- per hectare and Rs.435/- per orange tree. Being dissatisfied with the quantum of compensation, the Respondent No.1 filed an application under Section 18 of the Land Acquisition Act, 1894 and sought en-

hanced compensation at the rate of Rs.2,50,000/- per hectare and Rs.5,000/- per orange tree.

04] Upon considering the evidence adduced by the Respondent No.1 – original Claimant, the Reference Court partly allowed the reference and enhanced the compensation at the rate of Rs.1,50,000/- in respect of 0.87 HR. which has been classified as irrigated land, Rs.1,00,000/- in respect of 0.27 HR. classified as dry crop land and Rs.50,000/- in respect of 0.07 HR. which has been classified as Pot Kharaba Land. The Reference Court has also enhanced the compensation in respect of the orange trees to Rs.2,500/- per tree. Being aggrieved by this judgment, the Acquiring Body had filed an appeal under Section 54 of the Land Acquisition Act, which has been withdrawn *vide* order dated 24/05/2019.

05] The judgment and award has been challenged by the Claimant by filing cross-objection under Order 41, Rule 22 C.P.C. Learned Counsel for Respondent No.1/original Claimant has stated that the matter is fully covered by the judgment dated 11/03/2020 in First Appeal No.422/2019. Learned Counsel for the Appellant – Acquiring Body concedes that the said judgment pertains to the land under Gat No.13 situated in the same village. The said land was acquired for the same purpose by the same notification. It is stated that the subject land is also of similar nature.

06] Hence, the market rate of the acquired land can be determined

on the basis of the rate fixed in First Appeal No.422/2019. Hence, for the reasons stated in the said judgment, the compensation of the irrigated land admeasuring 0.87 HR. is enhanced to Rs.2,28,000/- per hectare, the compensation of dry crop land admeasuring 0.27 HR. is enhanced to Rs.1,14,000/- per hectare and the compensation of Pot Kharaba Land admeasuring 0.07 HR. is enhanced to Rs.57,000/- per hectare.

07] The evidence on record indicates that the Land Acquisition Officer has granted compensation at the rate of Rs.435/- in respect of orange trees. Learned Counsel for Respondent No.1 has restricted the claim only in respect of 200 trees. The evidence on record indicates that the said trees were six years of age and were fruit bearing trees. This Court, in First Appeal No.422/2019, has awarded compensation at the rate of Rs.3,500/- per orange tree. Considering the said fact and considering the age of the trees, yield and productive life span of the trees, in my considered view, the Respondent No.1 is also entitled for compensation of Rs.3,500/- per orange tree. Hence, the following order:

- i. The cross-objection is partly allowed.
- ii. The Appellant – Acquiring Body is directed to pay compensation to the Respondent No.1 – original Claimant (1) at the rate of Rs.2,28,000/- per hectare in respect of 0.87

hectare classified as irrigation land, (2) at the rate of Rs.1,14,000/- in respect of 0.27 hectare classified as dry crop land and (3) at the rate of Rs.50,000/- in respect of 0.07 hectare classified as Pot Kharaba Land.

iii. The Appellant – Acquiring Body is directed to pay compensation at the rate of Rs.3,500/- per orange tree in respect of 200 orange trees.

08] The Respondent No.1 – original Claimant shall be entitled for all statutory benefits. The Respondent No.1 shall pay the deficit court fee within one week.

09] The Appellant – Acquiring Body shall deposit the amount of compensation within six months.

10] The award stands modified accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)

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