

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

FIRST APPEAL NO.1397 OF 2008

Appellants : **1] State of Maharashtra,**
(Ori. Non-Applicants through the Collector, Nagpur.
on R.A.)
2] The Special Land Acquisition Officer,
Kanholi Nala Project, Nagpur,
Tah. & Distt. Nagpur.

-- Versus --

Respondent : **Shri Prashant s/o Shriram Tijare,**
(Ori. Applicant on R.A.) Aged about 35 years, Occ: Agriculturist,
R/o Paradsinga, Tah. Narkhed, District Nagpur.

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Shri M.A. Kadu, A.G.P. for the Appellants.
Shri R.O. Najbile, Advocate for the Respondent.

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CORAM : **SMT. ANUJA PRABHUDESSAI, J.**
DATE : **16nd FEBRUARY, 2021.**

ORAL JUDGMENT :-

This appeal is filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short) challenging the judgment and award, dated 16/02/2006 passed in LAC No.56/2004. By the impugned judgment, the Reference Court had partly allowed the reference under Section 18 filed by the respondent and awarded compensation at the rate of Rs.4,000/- per tree in respect of 133 orange trees.

02] The brief facts leading to this appeal are as under :

The land of the respondent, admeasuring 0.56 hectare from Survey No.54 of Village Khapri (Kene) was acquired for the construction of main canal of Jam River. The possession of the land was taken in the year 1995. Notification under Section 4 was published on 25/06/1998 and award was declared on 30/09/2000. The Land Acquisition Officer awarded compensation at the rate of Rs.31,000/- in respect of the land and Rs.940/- per tree in respect of 48 orange trees. Being dissatisfied with the quantum of compensation, the respondent sought reference under Section 18 of the Act.

03] The Reference Court, upon considering the oral as well as documentary evidence on record, rejected the claim for enhanced compensation in respect of the acquired land. The Reference Court recorded a finding that there were 133 orange trees in the acquired land and awarded compensation at the rate of Rs.4000/- per tree in respect of 133 orange trees. This part of the order is under challenge in this appeal filed under Section 54 of the Act.

04] Shri M.A. Kadu, learned Assistant Government Pleader states that the Land Acquisition Officer had awarded compensation only in respect of 48 trees. He submits that there is no evidence to prove that

there were 133 trees in the acquired land. He, therefore, claims that the Reference Court was not justified in awarding compensation in respect of 133 trees.

05] *Per contra*, Shri R.O. Najbile, learned Counsel for the respondent states that the panchnama, measurement report as well as the evidence of the expert witness proves that there were 133 trees in the acquired land. He submits that the impugned judgment and award is based on the evidence on record and does not warrant any interference.

06] I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. The dispute is only as regards the number of orange trees in the acquired land. It may be mentioned that the Joint Measurement Report as well as the Panchnama, which was drawn at the time of taking of possession, indicates that there were 133 trees in the acquired land, which were about 10 years of age. The Land Acquisition Officer has taken note of the fact but has awarded compensation only in respect of 48 trees without assigning reasons for not awarding compensation in respect of the other trees.

07] Be that as it may, the evidence of PW-2 Shri Dadan Borkar, the Approved Valuer, examined by the respondent indicates that he

had visited the acquired land in the year 1995. His evidence also indicates that there were 133 orange trees, which were about 7 years of age. He has stated that the general condition of the trees was good and that the trees were healthy. He has further deposed that the orange trees start yielding after about 4 to 5 years and that the full crop is taken from seventh years onward. He has stated that productive lifespan of the orange trees is about 18 to 20 years. The evidence of PW-2 as regards the number of trees, age of trees and its yielding capacity has virtually gone unchallenged and I have no reason to disbelieve the same. Considering the above facts and circumstances, in my considered view, the Reference Court was justified in holding that there were 133 fruit bearing trees in the acquired land.

08] The Reference Court has valued the trees at the rate of Rs.4,000/- per tree on the basis of the report of the expert witness. The appellants have not elucidated any evidence to impeach the credibility of the expert witness or to discard the valuation report. It has been brought to my notice that by judgment dated 11/10/2018 in First Appeal No.1636/2008 with Cross Objection No.4/2010, this Court, in the matter arising from the same notification and on similar fact has assessed the compensation at the rate of Rs.4,000/- per orange tree. In the light of the above, there are no reasons to interfere with the

valuation of the trees or the compensation awarded by the Reference Court. The appeal has no merits and is, accordingly, dismissed.

**sandesh*

(SMT. ANUJA PRABHUDESSAI, J.)