

drp

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.9319 OF 2019**

The Executive Engineer,  
Maharashtra State Electricity Transmission  
Company Limited, EHV Projection Division,  
Aurangabad,  
District - Aurangabad

PETITIONER

VERSUS

Chainsing s/o Swarupchand Jonwal  
Age – 61 years, Occ – Agri  
R/o Dongargaon (Shiv)  
Taluka – Phulambri, District - Aurangabad

RESPONDENT

.....

Mr. Sanjay V. Mundhe, Advocate for the petitioner

Mrs. Jayashree Nawale h/f Mr. S. M. Nawale, Advocate for  
respondent

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 24<sup>th</sup> AUGUST, 2022**

**ORDER :**

1. This petition, filed under Article 226 and 227 of the Constitution of India, impugns the decision of the learned District Judge, Aurangabad in Civil M. A. No. 67 of 2013, thereby allowing the application filed by the respondent and directing the petitioner to pay compensation of Rs. 4,83,667/- with interest @ 6% p.a. from the date of the application till the date of realization of the amount.

2. In the year 2010, high tension electricity wire passed over the field of the respondent. *Panchanama* of the same was prepared and the respondent was paid compensation of Rs.97,682/- towards damage to mango trees plus, an amount of Rs. 7234/- was paid to the respondent towards damage to his cotton crop. Thus, total amount of Rs.1,04,219/- was paid to the respondent by the petitioner.

3. The respondent filed application Civil M.A. No. 67 of 2013 in the District Court for compensation of Rs.2,00,000/- towards acquisition of land and also claimed compensation of Rs.5,81,349/- towards damage to the mango trees and cotton crop.

4. The petitioner resisted the claim of the respondent, by filing written statement. The District Court, after recording evidence, by the impugned order, awarded compensation of Rs.4,83,667/- to the respondent. This order is impugned in the present writ petition.

5. Heard learned advocate for the petitioner and learned advocate for the respondent. Perused the documents placed on record.

6. Admittedly, land of the respondent is not acquired. The petitioner has only laid high tension wire over the field of the respondent. The petitioner, by conducting *Panchanama*, assessed the damage to the mango trees and cotton crop of the respondent and has paid an amount of Rs.1,04,219/- to the respondent, by cheque.

7. Thereafter the respondent filed proceedings in the District Court seeking enhancement of compensation, by placing reliance on the report of the government approved valuer (Exhibit-16). In support of his claim, he examined the government approved valuer at Exhibit-15, who has deposed that he has calculated the compensation of Rs.5,81,349/- of the mango trees, as per the Mirams Real Property Table Method. The District Court has held that testimony of the expert has not been shaken during the cross-examination and on the contrary, he has given specific reasons while calculating the compensation and, therefore, the respondent is held entitled for compensation of mango trees @ Rs.4,83,667/-.

8. The Trial Court has accepted the fact that the land of the respondent is not acquired. Only high voltage line i.e. hanging wire above the land of the respondent is laid. On that ground,

the Trial Court refused to grant compensation of Rs.2,00,000/- claimed by the respondent for acquisition of land.

9. Perusal of the record indicates that the report of the government approved valuer, which is relied on by the Trial Court while awarding compensation towards fruit bearing trees (Mango trees), mentions that in clause 8 of the valuation report, estimated valuation is given i.e. *"The total amount of payable value against the loss of the Fruit Trees is Rs.5,81,349=41"*. The Report of Valuation of Horticultural Plants in the Form O-2, under Rule 8-D, submitted by the valuer records that *"As per the request of the owner, I visited the orchard. Since I was told that the acquired fruit trees are still standing in his field and there is no record of growth & other information of those fruit, I went & personally examined the Mango plants on growth & yield related factors"*. The said valuation report is based on age of the plants, number of plants, rates of fruits, average yield per plant etc. The said report further contains a declaration that *"This valuation report is prepared and presented by me in the prescribed profarma Annexure-E and Form O-2. The facts and figures as revealed to me by the owner of the land"*.

10. It is clear from the above said valuation report that the estimated valuation of Rs.5,81,349/- is arrived at by the valuer

against the loss of the fruit trees. There is nothing on record to show that the respondent has lost any of his mango trees in the process of petitioner's laying high tension wire from his field.

11. The Report of Valuation of Horticultural Plants further indicates that the valuer was told that the fruit trees were acquired, which is factually incorrect. Admittedly, even as on today, the trees are very much standing in the field of the respondent.

12. The respondent, in his cross-examination, has given certain admissions. He has categorically admitted that tower of electricity is not erected in his land and its wires are hanging over his land. He has admitted that Taluka Agricultural Officer had come to his field to assess the damage to the crops and trees and he made a report (Exhibit-38) and obtained respondent's signature thereon. He received compensation of Rs.97,682/-. He also admitted that his land is not acquired by the petitioner, however, he stated that due to hanging wires over his land, the crops do not grow up. He denied the suggestion that due to wire hanging at reasonable height, there would not be damage to grow the crops. There is absolutely no evidence on record to show that the respondent has lost mango trees or yield of the mangoes due to the high voltage wire laid over his field.

The Mirams Table admittedly is relied on while calculating the compensation payable for acquisition of land and not in respect of the fruit bearing trees. In the present case neither land of the respondent is acquired nor his fruit bearing trees. Therefore, the compensation calculated by the valuer is unacceptable and could not have been relied on by the District Court while granting compensation to the respondent.

13. In the impugned order, the Trial Court has not assigned any reason as to why it has accepted the valuer's report that the damages quantified at Rs.5,81,349/- are required to be paid to the respondent. The Trial Court has accepted the valuation report by observing that the testimony of the expert has not shaken during his cross-examination. The Trial Court has ignored the fact that no evidence as to the exact damage caused to the fruit bearing trees of the respondent is brought on record during the trial. Since the high voltage wire is merely passing over the field of the respondent, that by itself is not sufficient to presume that damage is caused to the fruit bearing trees of the respondent.

14. In the light of the above facts, this Court is of the considered view that exorbitant amount is awarded by the trial court to the respondent for damage of mango trees. The said

quantification of the damage is not based on evidence brought on record or any other reasonable criteria and, therefore, the same cannot be sustained.

15. The fact remains that there was damage, may be to some extent, to the mango trees and cotton crop of the respondent for which the petitioner has quantified compensation @ Rs.1,04,219/-. The petitioner also has failed to bring on record sufficient evidence to justify the compensation awarded by them to the respondent is proper.

16. It is informed that the petitioner has deposited an amount of Rs.3,27,332/- in this Court by Demand Draft dated 3<sup>rd</sup> August, 2017.

17. In view of above discussion, this Court is of the view that interest of justice would be subserved by the following order:

#### ORDER

- a. The writ petition is partly allowed.
- b. Impugned order dated 14<sup>th</sup> February, 2019 passed by District Judge – 14 and Additional Sessions Judge, Aurangabad in Civil M. A. No. 67 of 2013 is modified to the effect that the petitioner shall pay additional

compensation of Rs.50,000/- to the respondent, over and above the compensation already paid.

- c. The respondent is entitled to withdraw the amount of Rs.50,000/- from the amount deposited by the respondent in this Court along with the accrued interest.
- d. The petitioner is entitled to withdraw the remaining amount, along with the accrued interest.
- e. In view of this order, the civil application No.2233 of 2020 filed by the respondent for withdrawal of the amount is also disposed of.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**