

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

FIRST APPEAL (FA) NO. 166/2021

THE EXECUTIVE ENGINEER, BEMBLA PROJECT DIVISION, YAVATMAL

..VS..

JANBA CHANDRAKANT KANDALKAR AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.B. Patil, Advocate for appellant

Shri C.R. Najbale h/f. Shri A.B. Nakshane, Advocate for respondent nos. 1A to 1H

Ms. T.H. Khan, AGP for respondent nos. 2 and 3

CORAM : NITIN W. SAMBRE, J.

DATED : 29/08/2022

This appeal is by the acquiring body questioning the judgment delivered under Section 18 of the Land Acquisition Act, 1894. The Reference Court (Civil Judge Senior Division, Yavatmal) by impugned judgment dated 16.05.2016 has directed payment of enhanced compensation not only for the land but also for the trees.

2. As far as the grant of enhanced compensation for the land is concerned, the Reference Court has relied on Exh. 35, the judgment delivered in Land Acquisition Case No. 585/2006.

3. Shri P.B. Patil, learned Counsel appearing for the appellant, in response to the Court, fairly conceded the position that First Appeal No. 399/2016 questioning the judgment Exh. 35 delivered in Land Acquisition Case No. 585/2006 is already dismissed and the award of enhanced compensation at the rate of Rs.3,20,000/- per hectare is confirmed by this Court.

4. In view of the above, the challenge to the grant of enhanced compensation for the land acquired is no more survives

as issue is rightly said to be covered by the judgment of this Court delivered in First Appeal No. 399/2016.

5. Contention of Shri P.B. Patil as regards grant of compensation for trees is concerned, the fact remains that for the land in question award was delivered on 23.04.2004 as against Section 4 Notification dated 11.05.2000. He would urge that the Court below committed an error in awarding excess compensation without there being any evidence for the fruit bearing and other trees. So as to substantiate his claim, he has invited my attention to the observations of the Reference Court in the matter of grant of enhanced compensation for the trees.

6. Shri C.R. Najbile holding for Shri A.B. Nakshane, learned Counsel appearing for the respondent nos. 1A to 1H would support the judgment impugned.

7. I have appreciated the rival claims.

8. It appears that respondent/claimant has examined himself at Exh. 31, One Balkrishna Patil at Exh. 38, Chandrashekhar Wankhade at Exh. 40 and Sharad Umale at Exh. 44.

9. There appears to be a Joint measurement Report which was relied on. The said Joint Measurement Report speaks about existence of other trees and as such, number of trees referred to in the judgment under challenge is very much established. 7/12 Extract (Exh. 25) in categorical terms speaks of existence of Teak trees, Mango trees and Ber trees. PW-2 has entered into witness box and has proved the Valuation Certificate (Exh. 39). There is another Valuation Certificate Exh. 45 for the trees placed on record which was duly proved by claimant's witness no. 4.

10. As such, from the oral and documentary evidence, the existence of the number of trees as per Exh. 28 i.e. Joint Measurement Report and 7/12 Extract was properly established.

11. It appears that for Mango trees the compensation calculated is at the rate of 4740/- per tree, for Ber trees at the rate of Rs.2200/- per tree and for Shivan tree (Tick) at the rate of Rs.250/-per tree. It appears that the enhancement of compensation for the trees is not only based on the record and Joint Measurement Report, but also on the basis of its yield and the income that would have been drawn in future.

12. The entire documentary and oral evidence is considered by the Reference Court in the matter of grant of enhanced compensation for the Mango and Ber trees which are fruit bearing trees so also for Teak trees.

13. That being so, judgment delivered by the Reference Court cannot be faulted with. As the first appeal lacks merit, the same stands dismissed. No costs.

(NITIN W. SAMBRE, J.)

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