

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

FIRST APPEAL NO. 64 OF 2017

APPELLANT:

(On R.A.)

(N.A.No.3)

Executive Engineer, Medium Project,
Laxmi Bhavan Square, Dharampeth,
Nagpur.

// VERSUS //

RESPONDENTS :

(On R.A.)

(Applicant)

1. Narhari S/o Daryaji Doble,
aged adult, Occu. Agriculturist,
R/o Kolhu, Tah. Katol,
District Nagpur **(Dead)**, through LR's

(Applicant No.1)

1a. Dayaram Narhari Doble, aged 48 years,
Occu. Agriculturist.

(Applicant No.2)

1b. Smt. Sakubai Wd/o Narhari Doble,
aged 65 years, Occu. Nil.

**(R-1(b) is deleted as per Court's order
dt. 22-12-16)**

(Applicant No.3)

1c. Kishore Narhari Doble, aged 33 years,
Occu. Agriculturist.

(Appellants No.4)

1d. Pinglabai W/o Yadavrao Mune,
aged adult, Occu. Housewife.

All R/o Karanja, Tah. Karanja, Dist.
Wardha.

(N.A.No.1)

2. State of Maharashtra,
Through Collector, Nagpur.

(N.A.No.2)

3. Special Land Acquisition Officer, Katol.

WITH

CROSS-OBJECTION (XOB) NO.02 OF 2022

Cross-Objectors :

(All On R.A.)

(Ori. Applicant)

1. Narhari S/o Daryaji Doble (Dead)
Through LR's

1a. Dayaram Narhai Doble,
Aged about 60 Years,
Occ : Agriculturist.

- 1b. Smt. Sakubai wd/o Narhari Doble (Deleted).
- 1c. Kishore Narhari Doble
Aged about 45 Years,
Occ : Agriculturist
- id. Pinglabai W/o Yadavrao Mune
Aged : Adult, Occ : Housewife

All R/o Karanja, Tq. Karanja
District : Wardha.

//VERSUS//

Respondents :

All on R.A.

(Ori.Non-Applicant)

- 1. The State of Maharashtra,
Through its Collector, Nagpur.
- 2. Special Land Acquisition Officer,
Katol.
- 3. The Executive Engineer,
Medium Project, Laxmi Bhavan Square,
Dharampeth, Nagpur.

Shri Anoopsingh Parihar, Advocate for appellant.

Shri C. R. Najbile, Advocate for respondent Nos.1(a), 1(c) & 1(d)/
Cross-Objectors.

Ms. Trupti Udeshi, A. G.P. for respondent-State.

CORAM: ABHAY AHUJA, J.

DATED : 20/10/2022.

ORAL JUDGMENT :

- 1. This is an appeal filed by the Acquiring Body viz. the Executive Engineer, Medium Project of the Vidarbha Irrigation Development Corporation challenging the Judgment and award dated 04/05/2013 passed by the Joint Civil Judge, Senior

Division, Nagpur in LAC No.140/2001 partly allowing the Reference of the claimants / respondents. Earlier, vide notification dated 29/07/1995 under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the said Act"), the appellant had for the purposes of the Kar River Project, compulsorily acquired the agricultural land of the respondents / claimants in Survey No.62 admeasuring 4.80 hectares out of which 3 hectares of land was claimed to be covered with fruit trees at Village Kolhu, Tahsil Katol, District Nagpur.

2. The Special Land Acquisition Officer had passed an award on 23/11/1998 fixing the market value at Rs.51,350/- per hectare and paid total compensation of Rs.2,02,290/- for 1.80 hectares of the acquired land and Rs.16,30,043/- for land having the fruit bearing trees. In all, Special Land Acquisition Officer had paid compensation of Rs.18,32,333/- to the claimants.

3. Being dissatisfied with the said award, the claimants preferred Reference under Section 18 of the said Act before the Civil Judge, Senior Division, Nagpur vide said LAC No.140/2001 claiming enhanced compensation of Rs.1,21,76,780/- for the acquired land along with fruit trees. The Reference Court partly

allowed the Reference vide the impugned Judgment and award dated 04/05/2013 granting compensation of Rs.28,05,967/- @ Rs.1,18,000/- per hectare by way of enhanced compensation for the acquired land along with fruit bearing trees.

4. Although the claimants did not then file any appeal against the Judgment and award of the Reference Court, the Acquiring Body being aggrieved by the alleged exorbitant enhancement has preferred this appeal on the grounds mentioned therein seeking to quash and set aside the Judgment and award dated 04/05/2013 submitting that the Reference Court ought to have upheld the compensation granted by the Special Land Acquisition Officer vide his award dated 23/11/1998 as adequate.

5. On 18/10/2022 when this matter was listed, Shri Parihar, learned counsel for the Acquiring Body, on instructions, stated that this appeal was covered by the decision of this Court dated 30/07/2019 in First Appeal No.1029/2014. He, however requested that the papers and proceedings in the matter be called for to verify the date of the Section 4(1) notification. The said order dated 18/10/2022 is usefully quoted as under :-

" Mr. Parihar, learned counsel for the acquiring body, on instructions, states that the appeal is covered by the decision of this Court dated 30.07.2019, in First Appeal No.1029/2014. He however, requests the Court to have the papers and proceedings of the said matter produced so that the date of Section 4(1) notification as well as the date of the award can be verified.

2. List the matter on 20.10.2022.

3. Registry is directed to produce the First Appeal No.1029/2014 and First Appeal (St) No.23906/2014."

6. Today, when the matter is called out, the papers and proceedings with respect to First Appeal No.1029/2014 have been produced before this Court. A perusal of the Judgment and award dated 13/02/2013 impugned in First Appeal No.1029/2014 clearly indicates that the date of the notification with respect to the said acquisition is 29/07/1995 which is the same as in the present appeal. The facts in Paragraph No.2 of the concerned award indicate that agricultural land bearing Survey No.53 of an area of 5.96 hectares situate at Kolhu, P.H.No.46, Tahsil Katol, District Nagpur was acquired for the purposes of Kar River Project by issuing preliminary notification under Section 4(1) of the said Act on 29/07/1995 by following the procedure as contemplated in the said Act.

7. Learned counsel for the Acquiring Body has relied upon the decision of this Court dated 30/07/2019 in First Appeal No.1029/2014, wherein this Court has relied upon the decision dated 25/04/2017 of this Court in First Appeal St.No.23906/2014 and held the said First Appeal No.1029/2014 to be devoid of merits and dismissed the same holding that lesser amount is granted to the respondents as compared to the rates granted by the Reference Court, as in First Appeal St. No.23906/2014. The relevant portion of the decision dated 30/07/2019 in First Appeal No.1029/2014 (CORAM : M. G. GIRATKAR, J.) is usefully quoted as under :

"Shri Najbile, learned Counsel for the respondent has pointed out the order dated 25th April, 2017 in First Appeal (Stamp) No. 23906 of 2014 passed by this Court. It was filed in respect of execution of land of mouza Kolhu.

The reference Court had granted compensation at the rate of Rs.5,500/- per orange tree; Rs.1900/- per jamberi tree; Rs.2,500/- per guava tree; Rs.15,650/- per mango tree; Rs.2,750/- per ber tree; and Rs.2,900/- per jambhul tree.

In the present appeal, the judgment of reference Court in LAC No. 138 of 2001 is under challenge. The land of respondent situated at village Kolhu was acquired for Kar river. From the perusal of operative order of reference Court, it appears that the less amount is granted to respondent as compared to the rates given by reference Court which are shown in FA (Stamp) No. 23906 of 2014. This Court has, without granting any leave to appeal and condoning the delay, dismissed the appeal.

In view of the order dated 25th April, 2017 in First Appeal (Stamp) No. 23906 of 2014, the instant appeal is devoid of merits and the same deserves to be dismissed.

In the result, appeal is dismissed with no order as to costs."

8. Coming to the decision of this Court dated 25/04/2017 in First Appeal St. No.23906/2014 (CORAM : N.W. SAMBRE, J.), this Court in the case of land in the same Village Kolhu, Survey No.62, Tahsil Katol, District Nagpur has upheld the decision of the Reference Court enhancing the compensation with respect to various trees on the basis of evidence of Expert Valuer Shri Dadan Borkar and observed that no case for interference was made out. The appeal of the Acquiring Body was accordingly dismissed by this Court. The relevant portion of the said decision usefully quoted as under :-

" Apart from above, it is required to be noted that claim is only in respect of land covered under fruit-bearing trees as could be noticed from para 2 of the operative order of the impugned judgment which reads thus :

(2) The Non-applicants do jointly or severally pay the applicants enhanced compensation for acquisition of of their acquired land bearing Survey No.53 (for an area measuring about 1 hectare covered under fruit-bearing trees out of total 5.96 hectares) situation at Mouza Kolhu, P.H. No.62, Tq. Katol, District Nagpur as under :

- (i) for 183 Orange trees @ Rs.5500/- per tree.
- (ii) for 2 Jamberi trees @ Rs.1900/- per tree.

- (iii) for 2 Guava trees @ Rs.2500/- per tree.
- (iv) for 3 Mango trees @ Rs.15650/- per tree.
- (v) for 9 Mango trees @ Rs.15300/- per tree.
- (vi) for 30 Ber trees @ Rs.2750/- per tree.
- (viii) for 3 Jambhul trees @ Rs.2900/- per tree.

The said enhanced compensation is based on evidence of expert - valuer Shri Dadan Borkar who was examined at Exhibit 16. The reference court has taken into account his education qualification, the field visit given by him, the assessment of the value of the trees including that of fruit-bearing and non fruit-bearing trees and thereafter deducted the amount from the amount as is sought based on said evidence of the expert. The learned reference Court has in detailed discussed the said evidence and has given findings. No case for interference is made out."

9. A perusal of the impugned decision in the present case as mentioned above, clearly indicates that the lands acquired in the case at hand also pertain to the village Kolhu, Tahsil Katol, District Nagpur pursuant to the same Section 4(1) notification dated 29/07/1995 for the same project viz. Kar River Project.

10. Considering that the acquisition pertains to the same village on the basis of the same Section 4(1) notification and for the same project and in view of the statement of the counsel for the Acquiring Body that the first appeal is covered by the decision of this Court in First Appeal No.1029/2014, this appeal also deserves to be dismissed and is hereby dismissed.

11. Shri Najbile, learned counsel for the claimants would submit that he has recently filed Cross-Objection to the first appeal, which on instructions, and in view of the dismissal of the first appeal, he does not press. The cross-objection is also accordingly dismissed.

12. The Respondent - Acquiring Body to act accordingly to disburse the amounts awarded by the Reference Court after due verification within a period of eight weeks.

[ABHAY AHUJA, J.]

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