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

FIRST APPEAL NO.127 OF 2012

General Manager,
Central Railway,
Through Dy.Chief Engineer,
Central Railway (Construction),
Ajni, Nagpur. **Appellant.**

:: V E R S U S ::

1. Shri Champat s/o Ganpat Warokar,
Aged about adult, occupation agriculturist.

Legal heirs of respondent No.1:

i) Dhanraj s/o Champat Warokar,
Aged about 50 years, occupation agriculturist.

ii) Ramdas s/o Champat Warokar,
Aged about 45 years, occupation service.

iii) Nilkanth s/o Champat Warokar,
Aged about 40 years, occupation agriculturist.

iv) Sunanda Surreshrao Korde,
Aged about 43 years, occupation household.

v) Kamal Sudhirrao Raut,
Aged about 35 years, occupation household.

vi) Lata Sunilrao Dhumatkar,
Aged about 33 years.

vii) Smt.Venubai wd/o Champatrao Warokar,
Aged about 70 years, occupation household.

All r/o Khairgaon, tahsil Narkhed,
District Nagpur.

2. Shri Motiram s/o Ganpat Warokar,
Aged about adult, occupation agriculturist.

3. Smt.Manjuli w/o Bhaurao Korde,
Aged about adult, occupation housewife.

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All r/o Khairgaon, taluka Narkhed,
District Nagpur.

Legal heirs of respondent No.3:

3(a) Suresh Bhaurao Korde, son.

Legal heirs of respondent No.3A:

3A-i) Lukesh Suresh Korde,
Aged adult, occupation student.

3A-ii) Nitin Suresh Korde,
Aged adult, occupation student.

3A-iii) Raveena Suresh Korde,
Aged adult, occupation student.

3A-iv) Sunanda Suresh Korde,
Aged adult, occupation household.

3(b) Ramesh Bhaurao Korde, son.

3(c) Subhash Bhaurao Korde, son.

3(d) Tarachand Bhaurao Korde, son.

3(e) Smt.Shakuntala Marotrao Tayar, daughter.

No.3(a) to 3(e) are
R/o Khairgaon, taluka Narkhed,
District Nagpur.

3(f) Sow Sunanda Koshore,
daughter of Manjuli Korde,
R/o Paradsinga, taluka Saoner, district Nagpur.

3(g) Sow.Indubai Uhasrao Kandalkar,
R/o Khairgaon, taluka Narkhed,
District Nagpur.

4. State of Maharashtra,
Through Collector, Nagpur.

5. Special Land Acquisition Officer,
(General), Collectorate Office,
Civil Lines, Nagpur.

..... **Respondents.**

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Mrs.N.G.Chaubey, Counsel for the Appellant.
Dr.(Mrs) R.S.Sirpurkar, Counsel for Legal Heirs of Respondent Nos.1, 2, and 3.
Shri M.A.Kadu, Assistant Government Pleader for respondent Nos.4 and 5.

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CORAM : **URMILA JOSHI-PHALKE, J.**
DATED : **14/03/2023**

ORAL JUDGMENT

1. By this appeal, the appellant - General Manager, Central Railway, Through Dy.Chief Engineer, Central Railway (Construction), Ajni, Nagpur challenges judgment and award dated 21.8.2009 passed by learned 2nd Joint Civil Judge Senior Division at Nagpur in Land Acquisition Case No.31/2004 whereby learned Judge below enhanced the amount of compensation for 306 orange trees and 3 mango trees in survey No.89 and 41 orange trees in survey No.91 at the rate of Rs.3000/- per tree along with statutory benefits with interest.

2. Heard learned counsel Mrs.N.G.Chaubey for the appellant, learned counsel Dr.(Mrs.) R.S.Sirpurkar for legal heirs of respondent Nos.1, 2, and 3, and learned Assistant Government Pleader Shri M.A.Kadu for respondent Nos.4 and 5.

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3. The appellant has challenged the judgment and award on the ground that learned Judge below has awarded the compensation at the enhanced rate without any evidence on record and, therefore, the said judgment and award is liable to be set aside.

4. Only question arises for determination is :

Whether the rate of Rs.3000/- per orange tree and Rs.3000/- per mango tree awarded by learned Judge below is justified as per the market rate at the time of issuance of notification under Section 4 of the Land Acquisition Act?

5. It is pertinent to note that learned Judge below has not enhanced the compensation amount for the acquired land and, therefore, only question to be considered here is with regard to the valuation of the orange trees and the mango trees.

6. It is not disputed that 306 orange trees and 3 mango trees were standing in survey No.89 and 41 orange trees were standing in survey No.91. It is not in dispute that the respondents were the owners of survey Nos.89 and 91 admeasuring 0.87HR situated in village Khairgaon, tahsil

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Narkhed, district Nagpur. The State Government has acquired the above surveys for the purpose of Narkhed Amravati Railway Line under Land Acquisition Case No.9/A-65/1994-1995 of mouza Khairgaon. The notification under Section 4 of the said Act was published on 30.3.1996. The award was passed on 22.4.1999. The Special Land Acquisition Officer has awarded total compensation of Rs.3,58,090/- for the land, fruit bearing trees, well, motor pump etc. to the claimants.

7. Being aggrieved and dissatisfied with the said compensation, the claimants have preferred the reference before the Reference Court and claimed the compensation towards the trees separately. The said reference was contested by the appellant by filing written statement. Learned Judge below framed necessary issues and recorded evidence as adduced by the respective parties.

8. In support of the claim, claimants examined AW-1 Motiram Ganpat Warokar who was applicant No.2 vide Exhibit-13 and AW2 Dadan Harbaji Borkar vide Exhibit-16. The respondent No.4 and 5 have examined Ashok N.Chaudhary, the Special Land Acquisition Officer vide Exhibit-30 and Pankaj

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Sadanand Chaubal who is also the Special Land Acquisition Officer vide Exhibit-32. However, both were remained absent for their further examination-in-chief and, therefore, the evidence of these two witnesses is not considered by the Reference Court.

9. As per the evidence adduced, the claimants are owner of survey Nos.89 and 91 admeasuring 0.87HR situated at village Khairgaon, tahsil Narkhed. The said lands were acquired for the construction of Narkhed Amravati Railway Line along with fruit bearing trees. As per the contention of the claimants, in survey No.89 there were 306 orange trees and 3 mango trees and in survey No.91 there were 41 orange trees. In support of their contentions, they filed on record 7/12 extract Exhibits-25 and 26 and joint measurement report. As per contention of the claimants, there was one well and an electric motor pump in the above said survey numbers. However, the Land Acquisition Officer had not considered the same.

10. The claimants have also adduced the evidence of expert namely Shri Dadan Borkar vide Exhibit-16. As per his

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evidence, he is working as the Expert Valuer. On 28.9.1996, he went to the suit land and found 144 orange trees aged about 12 years, 4 orange trees about 6 years, 36 orange trees aged about 4 years, and 4 mango trees aged about 30 years standing in the field. The joint measurement report also reveals in survey No.89 there were standing 144 big orange trees, 162 small orange trees and 4 mango trees and in survey No.91 there were standing 41 big orange trees and 7 small orange trees. There was one well along with an electric motor pump in survey No.89. Further evidence of the expert shows that life of orange trees is 25-30 trees and the productive life is 18-20 years. The average annual fruit production per tree per year is 1000–1200 fruits. Though the expert witness is cross-examined, nothing is brought on record in rebuttal.

11. At the outset, perusal of the joint measurement report shows that in survey No.89 there were 144 big orange trees, 162 small orange trees, 4 mango trees and in survey No.91 there were 41 big orange trees. The evidence of the expert further shows life of orange trees is 25-30 years and approximately 144 orange trees were aged about 12 years, 4

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orange trees were aged about 6 years, 36 orange trees were aged about 4 years, and 4 mango trees were aged about 30 years. The average annual fruit production per year per tree is 1000-1200 fruits. The total life of orange trees is 25-30 years. The orange trees bear two bahars that is mrug bahar and ambe bahar. Thus, as the valuation report Exhibit-17, he fixed the price at Rs.4,491/- per tree for 144 orange trees and Rs.15,969/- per mango tree for 4 mango trees. The Reference Court has fixed the price at the rate of Rs.3000/- per tree for orange trees and Rs.3000/- per tree for the mango trees. Though valuer Shri Borkar valued the trees at the rate of Rs.5,133/- per orange tree and Rs.15,969/- per mango tree, the learned Reference Court found Rs.3000/- per orange tree and Rs.3000/- per mango tree as just and reasonable rate. As learned Reference Court has not awarded the rate as valued by the expert, the contention for deduction at 10% towards natural calamity and Rs.79/- per tree towards costs of cultivation is not justified.

12. Considering the nature of evidence adduced by the claimants, which could not be rebutted by the State either by cross-examination or by cogent and convincing evidence, I am

of opinion that the learned Reference Court has correctly valued the trees on the basis of oral as well as the documentary evidence on record. Thus, the appeal filed by the appellant is groundless and no reason is pointed out to interfere in the judgment and award impugned of the Reference Court.

13. In the light of the above observations, the appeal is devoid of merits and it deserves to be dismissed and the same is accordingly **dismissed**. The appellant is directed to deposit the balance amount of 25% of the compensation amount along with accrued interest in this Court, within a period of six weeks from the date of the judgment. There shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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