



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

FIRST APPEAL NO. 337 OF 2009

Vidarbha Irrigation Development
Corporation, through its
Executive Engineer,
Purna Medium Project,
Division Achalpur, Dist. Amravati.

.... **APPELLANT**

// VERSUS //

- 1) Vivekanand S/o Vishvanath Atkare,
Aged about 43 years,
- 2) Sau. Sudha W/o Vivekanand Atkare,
Aged about 38 years,
- 3) Devanand S/o Vishvanath Atkare,
Aged about 45 years,
- 4) Sau. Kiran W/o Devanand Atkare,
Aged about 40 years,
- 5) Premanand S/o Vishvanath Atkare,
Aged about 40 years,
- 6) Sau. Jyoti W/o Premanand Atkare,
Aged about 34 years,

All 1 to 6 R/o. Wadgaon Fattepur,
Tahsil – Achalpur,
District Amravati.

- 7) The State of Maharashtra,
Through the Collector, Amravati,
Tah. and Dist. Amravati.
- 8) The Special Land Acquisition Officer,
Minor Irrigation, Amravati.

.... **RESPONDENTS**

WITH

CROSS OBJECTION NO. 66 OF 2024**IN****FIRST APPEAL NO. 337 OF 2009**

Vidarbha Irrigation Development
Corporation, through its
Executive Engineer,
Purna Medium Project,
Division Achalpur, Dist. Amravati.

.... **APPELLANT**
(RESPONDENT)

// **VERSUS** //

- 1) Vivekanand Vishvanath Atkare,
Aged about : Adult,
- 2) Sau. Sudhatai Vivekanand Atkare,
Aged about : Adult,
- 3) Devanand Vishvanath Atkare,
Aged about : Adult,
- 4) Sau. Kiran Devanand Atkare,
Aged about : Adult,
- 5) Premanand Vishvanath Atkare,
Aged about : Adult,
- 6) Sau. Jyoti Premanand Atkare,
Aged about : Adult,

All 1 to 6 R/o. Wadgaon Fattepur,
Tahsil – Achalpur, District Amravati.

.... **CROSS-OBJECTORS**

- 7) The State of Maharashtra,
Through the Collector, Amravati,
Tah. and Dist. Amravati.
- 8) The Special Land Acquisition Officer,
Minor Irrigation, Amravati.

.... **RESPONDENTS.**

Mr. Amol B. Patil, Advocate with Mr. Raunak Kurani, Advocate for appellant VIDC.

Mrs. S. W. Deshpande, Advocate for Respondent Nos.1 to 6 in FA No.377/2009 and for Objectors in XOB No.66/2024.

Ms. R. V. Sharma, Assistant Government Pleader for Respondent Nos.7 & 8 in FA No.377/2009 & XOB No.66/2024.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 18th DECEMBER, 2024

ORAL JUDGMENT.

1. These appeals and cross-objection are preferred against the judgment and award passed by Civil Judge, Senior Division, Achalpur, District Amravati, dated 24.10.2008, in Land Acquisition Case No.5/2001, whereby the reference filed by original claimants/cross-objectors was partly allowed and the amount of compensation was enhanced.

THE CLAIM :

2. The agricultural lands of respondent Nos.1 to 6 bearing Block No.483 - admeasuring 0.60R., Block No.482 - admeasuring 0.25R., Block Nos.492 and 493 - admeasuring total 0.78R, Block No.19 - admeasuring 0.75R. and Block No.36 - admeasuring 0.20R + 0.92R. were acquired for Chandrabhaga river project. The total land of claimants of 3.61 HR. was acquired. In the acquired land

there were 190 Orange trees in Block No.492, 35 Orange trees in Block No.493 and 21 Orange trees in Block No.36. The amount of compensation was not properly calculated and granted by the Land Acquisition Officer to the claimants, therefore, the claimants filed a reference under Section 18 of the Land Acquisition Act, 1894 seeking enhancement of amount of compensation of the acquired land and the Orange trees in it.

THE DEFENCE:-

3. The acquiring body strongly opposed the application and submitted that award is correctly passed by the Land Acquisition Office. It is lastly prayed to reject the application.

4. The learned Reference Court awarded compensation to the acquired land Rs.4,77,000/-, for Orange trees of Rs.5,67,166/-, and Rs.1,00,000/- towards the loss caused for severance of Block No.36 by diminishing its value. Total amount of compensation was enhanced to Rs.11,00,000/- for the claimants.

5. Heard the learned Advocates for both sides.

6. The learned Advocate for the appellant pointed out the grounds of objections and contended that the amount of

compensation awarded by the learned Reference Court was granted without any cogent and acceptable reasons. The compensation for the Orange trees is also not considered properly. The Joint Measurement Report was not taken into consideration. However, it was filed for the first time in the appeal. He submitted that the learned Reference Court failed to appreciate the Valuer's Report in its proper perspective and granted an excessive amount of compensation. The Chart shows the Block numbers, their area and the number of orange trees, which are acquired and affected in the acquisition process. Total 246 Orange trees were affected. The appellant has challenged only about the price of the Orange trees. It is lastly prayed by the appellant to allow the appeal by setting aside the impugned Judgment and award and dismiss the cross objection.

7. The learned Advocate for respondent Nos.1 to 6/cross objectors/claimant strongly objected the appeal and pointed out the grounds of objections raised in the Cross-objection No.66/2024. She pointed out that the Valuer's report was not properly appreciated by the learned Reference Court, and it awarded meager amount of compensation Rs.5,67,166/-, for the Orange trees, which is neither legal nor correct and it is expected to award 60% amount out of the price suggested by the Valuer. His evidence was not shaken during the

cross examination. She further submitted that value of the said land is also not properly considered by the learned Reference Court. It is lastly prayed that the appeal be dismissed and cross-objection be allowed by setting aside the part of the impugned judgment of the Reference Court. It is also prayed that the reference be allowed as sought by granting an amount of compensation to the lands of the claimant as prayed in the cross objections.

8. Perused the impugned judgments in both appeals and relevant documents filed on record.

9. The following points emerged for consideration :

- (i) *Was the Valuer Report properly appreciated by the Reference Court with regard to the value of the Orange trees?*
- (ii) *Was the Reference Court's decision to grant compensation for the acquired land of the claimants illegal and incorrect?*
- (iii) *Is the impugned judgment and award require interference?*

10. On perusal of the evidence of the Valuer, it appears that he visited the property in question after the eight years. The learned Reference Court appreciated the evidence of sale-deeds in para 12, particularly the sale transactions at Exhibit Nos.64, 65, 66, 67, 69

and 70. The learned Reference Court further observed in the same para, that the learned Advocate for the claimants relied on the precedential law of ***Jai Ram Sing Vs. Union of India & Ors.***, reported in ***AIR 1989 Delhi 310*** and held that the said authority was not filed on record. The law laid down in the said authority suggests that for determining the market value, the transactions of the adjoining villages can also be a good guide, when the sale instances from the village itself are not available. There were no sale instances from the village of the claimants/cross objectors. The sale instances were from the villages within the distance of 1 to 10 km. These are relevant.

i) In case of ***Land Acquisition Officer Revenue Divisional Officer, Chittor ..vs.. L. Kamalamma (Smt) Dead by LRs and others***, reported in **(1998) 2 SCC 385**, it is held as under:

“When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason.”

11. Considering the prices stated in the sale instances Exhibit Nos.64, 65, 66, 67, 69 and 70 shows that the rates of those land per

acre are relevant and it can be basis for enhancing compensation to the claimants considering evidence and facts of the case, amount of compensation granted by the learned Reference Court, which is neither legal nor correct. It ignored the ratio of precedential law of **Jai Ram Singh** cited (Supra). Therefore, the findings of the learned Reference Court deserves interference regarding price of the acquired land. In view of the law laid down in the precedential law of **Land Acquisition Officer** cited (Supra) and after considering matter before this Court as well as the facts and circumstances of the case, an amount of Rs.2,40,000/- per hectare would be reasonable and proper amount to be awarded to all the claimants lands.

12. In respect of 246 Orange trees, there is valuers report and as per directions of this Court, the Joint Measurement Report is filed in that appeal. It shows that, out of which, 21 Orange trees were sapling, those were not fully grown trees. The learned Advocate for the appellant submitted that the higher price was awarded for those 21 sapling of Orange trees of Rs.3599/- per tree. The learned Advocate for the cross-objectors/claimants submitted that after seven to eight years, those saplings had developed into full grownup trees. She therefore, submits that price of the said 21 trees is correctly determined by the reference Court.

13. As far as remaining 225 Orange trees are concerned, considering the ages of these trees and evidence on record i.e. Valuer Report and Joint Measurement Report, the amount of Rs.6,000/- for fully grown up Orange tree would be reasonable amount of compensation suiting to the facts of the case. Except for the 21 sapling of Orange, for which an amount of Rs.3599/- per orange tree was not properly determined by the learned reference Court.

14. The learned Advocate for the cross-objectors pointed out that there is one Moha and one Timber tree, situated on the acquired land. However, no amount of compensation was awarded for those trees. Considering the ages of those Moha and Timber trees, Rs.5,000/- per tree would be proper amount of compensation. Thus, the claimants/cross objectors are entitled for enhanced amount of compensation for acquired 221 Orange trees, 1 Moha tree and 1 Timber tree, as discussed above.

15. The learned Reference Court failed to consider the valuers Report in its proper perspective. The Joint Measurement Report was produced before this Court, only after the directions given by this Court. Therefore, considering the Valuer's Report, Joint Measurement Report and the ages of the trees as well as the evidence

of sale instances, the appeal deserves to be dismissed. However, the cross objection deserves to be partly allowed as discussed above.

16. The argument of learned Advocate Mr. A.B. Patil, for the appellant – acquiring body is not acceptable in this regard. Therefore, point Nos.1 to 3 are answered accordingly. Hence, the following order :

- (i) The First Appeal No.337/2009 is **dismissed** and the Cross-objection No.66/2024 is **partly allowed**.
- (ii) The impugned judgment and award passed by the Reference Court is partly set aside and modified as under:
- (iii) The Cross-objectors/claimants are entitled to an amount of **Rs.2,40,000/-** per hectare for the acquired land admesuring 3.61 HR., **Rs.6,000/-** per Orange tree of total 225 fully grownup Orange trees and **Rs.5,000/- each** to one Moha tree and one Timber tree along with statutory benefits.
- (iv) It is clarified that the Cross-objectors/claimants are not entitled statutory interest for the delayed period of 4994 days, caused for filing the application for restoration of the cross-objection, which was condoned by this Court by order dated 12.09.2024.
- (v) The appellant – acquiring body is directed to calculate the amount of compensation as held above rates of lands

are orange trees and deposit the same in this Court within a period of four months.

17. Pending applications, if any, are disposed of.

(SANJAY A. DESHMUKH, J.)

Kirtak