



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

FIRST APPEAL NO. 942 OF 2017

The Deputy Engineer (Nirman)
Central Railway, Ajni, Nagpur.

.... **APPELLANT**

// VERSUS //

- 1) Shri Dhondba Laxman Kanhere (**Dead**)
through his legal representative :
- 1-i) Smt. Parvatibai Wd/o. Dhondopanth Kanhere,
aged about 75 years, Occ.-not known,
R/o. Khairgaon, Tahsil Narkhed,
District Nagpur.
- 2) Yadav S/o Dhondba Kanhere,
aged about 26 years, Occ.-Agriculturist,
R/o. Khairgaon, Tahsil Narkhed,
District Nagpur.
- 3) State of Maharashtra,
Through the Collector, Nagpur,
Tq. & Dist. Nagpur.
- 4) Special Land Acquisition Officer,
General, Nagpur.

.... **RESPONDENTS**

Ms. Neerja Chaubey, Advocate for Appellant.
Mr. C. R. Najbile, Advocate for Respondent Nos.1(i) and 2.
Mr. M. A. Kadu, Assistant Government Pleader for Respondent
Nos.3 and 4.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 04th SEPTEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred against the judgment and award passed by 2nd Joint Civil Judge, Senior Division, Nagpur dated 01.12.2009 in Land Acquisition Case No.117/2002 whereby learned Judge enhanced the amount of compensation for 206 big Orange trees @ Rs.3,000/- per tree and 100 small Orange trees @ Rs.800/- per tree along with statutory benefits with interest.

2. Heard learned Advocate Ms. Neerja Chaubey for the appellant, learned Advocate Mr. C. R. Najbile, for Respondent Nos.1(i) and 2 and learned Assistant Government Pleader Mr. M. A. Kadu for respondent Nos.3 and 4.

3. The agricultural field bearing Survey No. 72, admeasuring 0.70 HR., P. H. No.7, situated at Mouza Mowad, Taluka Narkhed, District Nagpur of the claimants was acquired by the appellant for the purpose of Narkhed-Amravati Railway line under Land Acquisition Case No.9/A-65/1994-95 of Mouza Mowad. The Notification under Section 4 of the Land Acquisition Act, 1894 (for short the, "LA Act") was published on 30.03.1996. The Award was passed on 22.04.1999. As per the Award, the Special Land Acquisition Officer has awarded the compensation @ Rs.80,000/- per

hectare for land and Rs.2,88,453/- for fruit bearing trees. Feeling aggrieved by inadequate compensation, a reference seeking enhancement of compensation was moved under Section 18 of the LA Act.

4. The present appellant vide Exhibit-6 resisted the claim and contended that compensation awarded is just, proper and in accordance with the prevailing market rates and prayed to dismiss the claim. The learned Reference Court framed necessary issues and recorded evidence as adduced by the respective parties.

5. To prove the claim, the claimants examined Shri Yadav S/o Dhondba Kanhere as AW-1 who was applicant No.2 vide Exhibit-11 and 13 and Shri Dadan Harbaji Borkar as AW-2 vide Exhibit-11A and 16, who was Expert Valuer. The non-applicants have examined Shri Pankaj Sadanand Chaubal, who is Special Land Acquisition Officer vide Exhibit-27, but he did not appear for further examination-in-chief therefore his evidence is not taken into consideration. The non-applicants also examined NAW-1 Smt. Asha Afzalkhan Pathan, who is the Special Land Acquisition Officer vide Exhibit-28.

6. As per the evidence adduced, the claimants are owner of Survey No. 72, admeasuring 0.72 HR., P. H. No.7, situated at Mouza Mowad, Taluka Narkhed, District Nagpur. The said land was acquired for the construction of Narkhed-Amravati Railway Line along with fruit bearing trees. As per the contention of the claimants, in Survey No. 72 there were 306 orange trees, one Well and electric motor-pump. In support of their contentions, they field on record Joint Measurement Report vide Exhibit-15. The claimants also adduced the evidence of expert namely Shri Dadan Harbaji Borkar AW-2 vide Exhibit-11A and 16. As per his evidence, he is working as the Expert Valuer. On 15.09.1996, he went to the suit land and found 109 Orange trees aged about 7 years, 67 Orange trees aged about 10 years, 14 Orange trees aged about 5 years, 28 Orange trees aged about 14 years and 97 Orange trees aged about 4 years. The Joint measurement report also reveals in Survey No.72 there were 306 Orange trees and there was one Well along with an electric motor pump. The evidence of the expert further shows that life of orange trees is 25-30 years 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.

7. The non-applicant adduced evidence of NAW-2 Smt. Asha Afzalkhan Pathat vide Exhibit 28, who deposed in a very casual manner and simply. She deposed that the demand of applicants is an exorbitant and the same is baseless.

8. Considering the nature of evidence adduced by the claimants, which could not be rebutted by the State by cross-examination or by cogent and convincing evidence, the learned Reference Court enhanced the amount of compensation for 206 big Orange trees @ Rs.3,000/- per tree and 100 small Orange trees @ Rs.800/- per tree along with statutory benefits with interest.

9. The learned Advocate Mr. C. R. Najbale for the claimants/respondent Nos.1(i) and 2 pointed out the Judgment passed by this Court in ***First Appeal No. 127/2012 (General Manager, Central Railway through Dy. Chief Engineer, Ajni, Nagpur Vs. Champat S/o Ganpat Warokar (Since dead) through LRs. and others)*** dated 14th March, 2023, wherein this Court after considering all aspects, dismissed the appeal filed by acquiring body. He, therefore, prayed to dismiss the present appeal on the basis of principle of parity.

10. The admitted facts are that the agricultural field bearing Survey No. 72, admeasuring 0.70 HR., P. H. No.7, situated at Mouza

Mowad, Taluka Narkhed, District Nagpur of the claimants was acquired by the appellant for the purpose of Narkhed-Amravati Railway line. Though it is contended that the award of compensation is at a higher rate, the learned Reference Court has correctly valued the trees on the basis of oral as well as the documentary evidence on record. No any perversity is noticed in the impugned judgment of the learned reference Court. However, after re-appreciation of entire evidence of the expert and others, this Court in the case of ***First Appeal No. 127/2012*** (cited supra), dismissed the appeal filed by acquiring body. The land of the claimants as well as the land in ***First Appeal No. 127/2012*** was acquired one and same award and same purpose. Considering this fact and law and applying the principle of parity, the appeal lacks merits therefore, the appeal deserves to be dismissed. Hence, the appeal stands **dismissed** with no order as to costs.

(SANJAY A. DESHMUKH, J.)

Kirtak