



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

FIRST APPEAL NO.1109 OF 2009

Vidarbha Irrigation Development
Corporation, Through Executive
Engineer, Medium Project Division,
Nagpur, Tal. And Dist. Nagpur. .. Appellant

..Versus..

- 1) Keshavdeo s/o Khemdeo Bhaiswar (dead)
Aged Major, Occ. Cultivator,
R/o. Khairi (Navghare), Mendki,
Tahsil Katol, Dist. Nagpur.

Respondent No.1 – Legal Heirs'

Amendment
as per Court
Order dated
03/12/2021.

- 1 (a) - Champabai wd/o Keshavdeo Bhaiswar,
Aged 77 years, Occ. Household,
R/o. at Isapur (Bu), Tah. Katol,
Dist. Nagpur.

- 1 (b) – Sunil Keshavdeo Bhaiswar,
Age 49 years, Occ. Cultivation,
R/o. at Isapur (Bu.) Tah. Katol,
Dist. Nagpur.

- 2) The State of Maharashtra,
Through the Collector,
Nagpur. .. Respondents

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Shri J.B. Kasat, Adv. a/w Shri Vinay Dahat, Advocate
for Appellant.

Shri G.I. Dipwani, Advocate for L.Rs. of Respondent
No.1.

Shri S.C. Joshi, AGP for Respondent No.2/State.

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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 14.11.2025.
PRONOUNCED ON : 12.12.2025.

JUDGMENT

1. Heard the learned counsel for the Appellant-VIDC and the Respondents.

2. By way of the present appeal, the challenge is to the judgment and order passed by the learned Ad-hoc District Judge-8, Nagpur in Land Acquisition Case No.187/2002 decided on 31.3.2008, whereby the learned District Judge has awarded the additional market price of Rs. 2,76,775/- towards 62 orange trees from the acquired land.

3. In the present appeal, the challenge to the judgment and order at the instance of the Appellant-VIDC is to the market value determined by the learned Reference Court towards trees. According to them, the reliance placed by the learned Reference Court to the evidence of the valuer is not pragmatic in the matter,

particularly in the light of Government Circular dated 27.12.1990.

4. It is the submission of the appellant that average capacity of fruit bearing trees should be as per prescribed average yield in terms of Government Circulation, dated 27.12.1990. However, in the present case, the fruit bearing of the trees which were determined by the valuer is recorded in excess than average yield prescribed in the Government Circulation dated 27.12.1990 and thereby wrongly granted enhanced compensation. On this count appellant challenged the judgment and order passed by the learned Reference Court.

5. To understand the controversy in the present matter, it will be relevant to consider the basic facts of the matter.

6. In the present case, admittedly on 22.01.1998, the State Government issued Notification under section 4(1) of the Land Acquisition Act for the Project of Chikhali Nala. For that purpose, the land of village

Mendki, Tahsil-Katol, District-Nagpur was acquired for the public purpose. The respondent, who was holding the land ad-measuring to the extend of 0.50 HR from field Survey No.77, P.H. No.4, Mouza Khairi Navghare, Tahsil Katol, District Nagpur, was acquired by the Appellant-VIDC and, thereby, awarded the compensation of Rs.23,225/- for total 62 orange trees.

7. The respondent, being dissatisfied with the compensation amount, filed the reference proceeding. According to them, LAO failed to pay adequate compensation towards land and other structure of the land so also it was the contention that though there were standing orange trees, same were not considered and no compensation has been awarded towards the same. Hence, they claimed enhancement of the compensation before the Reference Court.

8. Before the Reference Court, on behalf of the respondent, deceased Keshavdeo K. Bhaiswar entered into the witness box and demonstrated entitlement for enhancement in compensation. In support of his

submission, respondent also examined the expert in the subject of horticulture namely Sharad Bajirao Umale (Exh.31) and discharged their burden to demonstrate that they are entitled for the enhancement of compensation.

9. On behalf of the appellant, Special Land Acquisition Officer namely Sanjay Bhaiyyaji Daine was examined in the matter. He has reiterated the fact that the valuation done by his predecessor is correct and on the basis of record available before him, he has deposed before the Reference Court.

10. In the background of above oral as well as documentary evidence produced on record by the parties, learned Reference Court has decided the matter by the impugned judgment and order dated 31/03/2008 and granted enhancement towards fruit bearing trees and rest of the claim was rejected.

11. In the present appeal challenge to the award of Reference Court is only to the market value of fruit

bearing trees determined by the Reference Court, on the basis of the Circular issued by the Agriculture, Animal Husbandry, Dairy Business Development and Fisheries Business Department Fruit Production Class, dated 27.12.1990. Therefore, I have gone through the Circular. The perusal of this Circular, shows that the State Government had issued certain guidelines to the Land Acquisition Officer at the time of acquisition of land. It is stated in the Circular that while acquiring the land, the Land Acquisition Officer before determining the correct market value of the fruit bearing trees should confirm the valuation report from Horticulture Department and after receiving the said report determined the market value of the land. In the said Circular, average yield statement of fruit trees is given. As per circular, for the orange trees, if the age of the tree is between 5 to 8 years, it's average yield should be 150 to 300 fruits (15 to 30 kg) and if the tree is above 9 years, then it's average yield should be 400 to 900 fruits (40 to 90 kg).

12. In the light of this submission made by the appellant, it is clear that this exercise is required to be done by the Land Acquisition Officer while passing the final award. Therefore, I have gone through the record. The perusal of the record shows that in final award, it is recorded that on the basis of valuation report forwarded by Horticulture and Forest Department, the details of payment of compensation to the land owners is recorded in E- statement. As per E- statement respondent-claimant was paid Rs.23,225/- towards the compensation of the trees. However, there is no explanation nor any document enclosed along with the award showing that how this value has been determined by the Land Acquisition Officer.

13. If the circular is to be relied upon, then it was the duty of the appellant to establish before the Reference Court as to how they have determined the valuation of the trees 62 orange trees of Rs.23,225/-. The perusal of the evidence of the Special Land Acquisition Officer is totally silent on this issue nor by any

documentary evidence it has been disclosed as to how they reached to this conclusion. There is no whisper of any kind as to how that amount has been determined while preparing the final award.

14. Per contra, the appellant has examined the expert before the Reference Court. The evidence of expert is at Exh.31. This expert has specifically stated that he was working as a Professor to teach Horticulture subject which is relating to the fruit trees at Government College of Agricultural, Nagpur. He further stated that he had worked with Regional Fruit Research Station, Katol for about five years as an Expert Horticulturist. According to him, the Regional Fruit Research Station, Katol is the only Research Station of its kind in India where the research work on orange and citrus fruit is carried out. He has total experience of 35 years of valuing the fruit trees. He further stated that while doing the valuation, he has gone through the various Government Circular and Research issued by Government of Maharashtra for valuation of fruit trees for the purpose

of calculation. Hence, considering his experience of valuation, his evidence cannot be brushed aside in absence of any cogent or substantial reasons in the matter.

15. In respect of 62 orange trees which was admittedly standing in the field of the respondent, he stated that the fruits bearing of 150 kg as a minimum yield for each tree. He clarified that this 150 kg. is of two flushes i.e. 'Ambiya Bahar' and 'Mrug Bahar'. According to him, out of one flush, the agriculturist can certainly take the yield and, therefore, on the basis of this calculation, he has drawn the calculation that per tree was having an average yield of about 150 kg. Per year.

16. This witness further stated that in the year 1995-96 the average price of orange tree was about Rs.630/- per quintal. Therefore, as per his valuation report Exh.36 he has calculated that the value of each tree was Rs.9,214/- per tree.

17. In the cross-examination of this witness, the only thing which appellant has brought on record is that on the date of visit to the agricultural field, he was not registered with the Institution of Valuers (Exh.35) which is the institute who issued the certificate of fellow of the Institution of Valuers. The Certificate produced by valuer namely Sharad B. Umale is dated 26.6.1999. Appellant did not cross examined on the point of of yield of trees and not referred anywhere the circular to substantiate it's submission.

18. In the background of above said evidence, the learned Reference Court has evaluated the evidence and specifically held that by considering the fact that though valuer recorded the market value of the orange tree is Rs.9,214/- by recording reasons, learned Tribunal has considered the reduced rate Rs.5,000/- for orange trees. Hence, it is not the case that the Reference Court has blindly accepted the valuation report of the expert. The perusal of the impugned order further shows that the learned Reference Court has also considered the location

of the field and by relying upon the judgment delivered in L.A.C. No.167/2003 has determined the correct valuation of the orange trees.

19. In this regard, it will be relevant to consider the judgment delivered by the Coordinate Bench in the case of ***Narayan Yashwanta Kapse .vs. State of Maharashtra and others, reported in 2020 (5) Mh.L.J. 391***, wherein the Coordinate Bench observed in Para 11 and 13 as under :

11. It is discernible that the learned Reference Court adopted the superficial approach to discard the evidence of Valuer Dr. Patil. The findings are found rest on misconception of provision of Evidence Act. It would fallacious to appreciate that the evidence of expert Dr. Patil was not within the ambit of section 60 of the Evidence Act. It is to be borne in mind that the provision of section 60 of Evidence Act contemplates that if the oral evidence of witness refers to an opinion, it must be the evidence of the person, who holds that opinion on these grounds. The section 61 of the Evidence Act mandates that the contents of documents may be proved either by primary or by secondary evidence. The Law postulates that the contents of document must be proved either by production of the document which is called primary evidence or by copies or oral accounts of the contents, which would be considered as secondary evidence.

13. Be that as it may, the evidence of Horticulturist Dr. Patil is essential to be appreciated in this matter to determine the just and appropriate valuation of trees under acquisition. There was no any endeavour on the part of respondent-Government authority to produced and proved any other report of Government valuer from Horticultural Department to lend support to the valuation of the trees finanalized by the SLAO. Moreover, in view of

legal guidelines delineated by Honourable Apex Court in Chimanol Hargovinddas vs. Special Land Acquisition Officer, reported in AIR 1988 SC 1652, the valuation report of Dr. Patil is only available on record being document produced and proved in this case. Therefore, it is to be taken into consideration for assessment of value of trees of appellant under acquisition.

20. Considering this legal position, in my opinion, there is no legal impediment to appreciate the evidence of the valuer which is supported with valuation report along with its elite documents. The report further found that there is a reference of Government Circular which was relied by him while preparing the report. Hence, the report which was not disproved, by any concrete evidence or by leading evidence of any expert from state can't be discarded in the matter. Moreover as stated earlier, this valuer was a Professor and having a vast experience of valuation which is not disputed in the matter, hence there is no reason to disbelieve his report in the matter.

21. It is further pertinent to note that E-statement which is a part and parcel of the final award no where disclosed how the compensation towards the per tree was

determined towards orange and lemon trees. No person from Horticulture Department was examined by the State/Acquiring Body for ascertaining the value of each tree, particularly when it is not in dispute that 62 trees were in existence in the field of the respondent. Hence in absence of expert evidence from the side of the State, the court has to rely only on the evidence of the expert examined by the respondent.

22. It is also pertinent to note that the Coordinate Bench of this court, while determining the value of the orange tree arising out of the same land acquisition proceeding and of the same village, has determined the value of orange tree in between Rs.5,000/- to Rs.5.500/- per orange tree. For that purpose, it will be relevant to refer the judgment delivered by this court in **First Appeal No.1649/2008, decided on 30.10.2018, First Appeal No.453/2010 along with Cross-objection No.10/2011 decided on 23.9.2019 and First Appeal No.403/2009, decided on 5.3.2019.**

23. The respondent also brought to my notice the recent judgment of Hon'ble Supreme Court of India in Civil Appeal arising out of Special Leave Petition No.97/2021 (Saraswatabai Motiram Tayade and others .vs. VIDC & Anr.) decided on 18.8.2025, wherein the Hon'ble Supreme Court has held that the land owners, who are similarly situated, are entitled for the same compensation. It is held that once the acquiring body has accepted the judgment of Coordinate Bench, then there is no reason to take any other view in the matter.

24. Considering the consistent view of the Hon'ble Supreme Court of India that on the ground of parity, the land owners should be given the same compensation, I am of the considered opinion that the respondents are also entitled for the same. Market value determined by Reference Court is therefore found to be legal and valid in the matter.

25. In the light of above observation, in my opinion, there is no merit in the present appeal and accordingly

the present appeal is stands **dismissed**.

(Pravin S. Patil, J.)

Gulande