



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

FIRST APPEAL NO.117 OF 2010

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

..Versus..

- 1) Smt. Mainabai wd/o Mohandeo
Bhaiswar, Aged about 70 years,
- 2) Daryao s/o Mohandeo Bhaiswar,
Aged about 55 years,

Both R/o. Mendki, Tahsil-Katol,
District-Nagpur.
- 3) Champhibai Tulsidas Mahant,
Aged 58 years,
Occupation-Househld.
R/o. Bothia, Tahsil Pandhurna,
District-Chhindwara.
- 4) ~~Smt. Shobhabai wd/o Fuldas Mahant,~~
~~Aged about 53 years,~~
~~Occupation-Household, R/o. Mendki,~~
~~Tahsil-Katol, Distret Nagpur.~~

Amendment carried out as L.R's. of
R. No.4 brought on record as per ct's
order dt.3/2/10.

- a) Pradip s/o Fuldas Mahant,
Aged Adult, C/o. Ramchandra Jadhav,
Plot No.78, Yogendra Nagar (Near Anant
Nagar), (Behind Blue Diamod School),
Beyond Takli Police Line, Nagpur-13.
- b) Sau. Sunita w/o Deepakrao Mahant,
Aged Adult, R/o. C/o. Shri Gawande,
Plot No.52, Saket Nagar, Near Suhanjali
Convent, Opp. Tukaram Sabagruha, Ring
Road, Nagpur.
- c) Sau. Sangita w/o Anupdas Mahant,
At Post Anjangaon (Bothlia),
Tal. Saunsar, District-Chhindwara
(Madhya Pradesh).
- d) Sau. Sandhya w/o Diliprao Mahant,
R/o. C/o. Shri Gulabrao Kale,
Opp. Zilla Parishad Girl's School,
Katol, Tal. Katol, District-Nagpur.
- 5) 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 P.J. Mehta, Advocate for Respondent Nos.1 to 4.
Shri S.C. Joshi, AGP for Respondent No.5/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.186/2002 decided on 31.3.2008, whereby the learned District Judge has awarded the additional market price of Rs.5,20,840/- towards 108 orange trees and one lemon tree for 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 Resolution dated 27.12.1990.

4. It is the submission of the appellant that in any case the fruit bearing of trees should be around the fruit bearing stated in Government circular dated 27.12.1990. But here in the present case, the fruit bearing of the trees which were determined by the valuer are in excess of average yield prescribed in the Government Resolution dated 27.12.1990. Hence, on this count 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 6.1.1998, the State Government issued Notification 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 1.04 HR from field Survey No.236/1, was acquired by the Appellant-VIDC and thereby awarded the compensation of Rs.1,87,104/-.

7. The respondent, being dissatisfied with the compensation amount, filed the reference proceeding. According to the Respondent no adequate compensation is paid towards the land and other structure, including well, mud bunds, water pump, pipeline etc. No compensation towards orange trees. According to them they are entitle additional compensation of Rs. 18,78,886/- for 1.04 HR and separate compensation towards acquisition of orange and lemon tree. Hence, they claimed enhancement of the compensation before the Reference Court.

8. Before the Reference Court, on behalf of the respondent, the Power of Attorney Holder namely Daryao Mohandeo Bhaiswar entered into the witness box and demonstrated that how Respondent/Landowner is entitled for the enhancement of compensation. In support of submission, appellant also examined the expert in the subject of horticulture namely Sharad Bajirao Umale and placed on record the correct market value of trees for which they are entitled. As such on the

basis of oral as well as documentary evidence produced on record, to claim enhancement in 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 said oral evidence as well as documentary evidence produced on record by the parties, learned Reference Court has decided the Reference by the impugned judgment and order.

11. As earlier stated, the challenge in the present appeal is only to the market value and capacity of fruit bearing tree determined by the Reference Court, the appellant herein has heavily relied upon the Circular issued by the Agriculture, Animal Husbandry, Dairy Business Development and Fisheries Business Department Fruit Production Class, dated 27.12.1990. I

have gone through the Circular. The perusal of the 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 while determining the correct market value of the fruit bearing trees, should sent the details of the Trees to the Horticulture Department and after receipts of the said report from the department, determined the market value of the land. In the said Circular, average yield of fruit bearing 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 considered 150 to 300 fruits (15 to 30 kg.) and if the tree is above 9 years, then it's capacity of fruit bearing should be considered 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 delivering the final award. Therefore, I have gone through the record.

The perusal of the record shows that in final award, it is stated that on the basis of valuation report of Horticulture and Forest Department, in E-statement the details of payment of compensation paid to the land owners are recorded. The respondent-claimant was accordingly paid Rs.23,660/- 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, nor the report of Horticulture and Forest department was found enclosed with award.

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 at the rate of Rs.23,660/-, but the perusal of the evidence of the Special Land Acquisition Officer, no where disclosed the justification as to how he reached to this conclusion. Rather there is not even whisper nor any averment 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.39. 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 Agriculture, 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 Resolutions 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 108 orange trees which was admittedly standing in the field of the respondent, he stated that trees were found 6 years (Orange Tree) and 9 years (Lemon Tree) 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 those two flush, the agriculturist can certainly take the yield from one flush and, therefore, on the basis of this calculation, he has drawn the calculation that per tree was having a 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.42 he has calculated that the value of each tree was Rs.9,214/- per tree and separate valuation for lemon tree.

17. In the cross-examination of this witness, it is brought on record that on the date of visit to the agricultural field he was not possessing certificate of

fellow of the Institution of Valuation registered with the Institute of Valuation (Exh.41) in the name of valuer namely Sharad B. Umale the same has been received to him on 26.6.1999. Except this, nothing was brought on record to disbelieve the evidence of this expert witness. No cross examination was conducted on the point of yield of orange or lemon tree.

18. In the background of above said evidence, it is pertinent to note that the learned Reference Court has evaluated the evidence and specifically hold that by considering the fact that the valuer though recorded the market value of the orange tree as Rs.9,214/- which was at higher rate, the learned Tribunal has considered the same as Rs.5,000/- per orange tree. Hence, it is not the case that the Reference Court has blindly accepted the valuation done by 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 Chimanolal 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. Hence, 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 and its elite documents. The said report further found that there is a reference of Government Resolution which was relied by him while preparing the report. Hence, the report which is not controverted in the matter, except on the ground that valuer was not the authorized valuer i.e. not having certificate of valuer there is no other contrary evidence brought on record, but as I 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 entire report in the matter, only on the ground that on the date of visit he was not possessing certificate, but received later on, therefore valuation done earlier by him is incorrect.

21. It is further pertinent to note that E-statement which is a part and parcel of the final award and prepared on the basis of report of Horticulture and Forest department no where disclosed as to how the compensation towards the per tree was determined for awarding compensation towards the orange and lemon trees. No person from Horticulture Department was examined by the State/Acquiring Body for ascertaining the fact that valuation of each tree was done by applying any method for 108 orange trees and one lemon tree of the field of the respondent. In absence of any expert evidence from the side of the State, the court will have to rely only on the evidence of the expert examined by the respondent. The Court is not expert to determined the correct valuation of trees. Only on the basis of assistance of Expert, appropriate conclusion can be drawn by the Court.

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 hold 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. Hence, 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.

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

(Pravin S. Patil, J.)