



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

FIRST APPEAL NO.1095 OF 2009

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

..Versus..

- 1) Smt. Ashabai wd/o Umrao Bhaiswar,
Aged Major.
- 2) Yogesh s/o Umrao Bhaiswar,
Major.
- 3) Chandrashekhar s/o Umrao Bhaiswar
Aged Major,
R/o. Mendhki, Tahsil-Katol,
District-Nagpur.
- 4) The State of Maharashtra,
Through the Collector,
Nagpur.
- 5) Anita w/o Raju Bhajan,
Aged Adult, Occupation-Nil,
R/o. Mendki, Tq. Katol,
Dist. Nagpur.
- 6) Manisha w/o Dipak Dhapake,
Aged about 39 years,
Occupation-Nil,
R/o. Khapa (Ghollar), Tq. Katol,
Dist. Nagpur. .. Respondents

Amendment
carried out as
per court order
Dt. 16/6/2023

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

Shri G.I. Dipwani, Advocate for Respondent Nos.1 to 3 and 5.

Shri S.C. Joshi, AGP for Respondent No.4/State.

Shri P.K. Raulkar, Advocate for Respondent No.6.

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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-6, Nagpur in Land Acquisition Case No.189/2002 decided on 30.04.2008, whereby the learned District Judge has awarded the additional market price of Rs.2,20,784/- towards 69 orange trees 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 on 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 average fruit bearing capacity of trees should be around the average yield prescribed by the Government Circular dated 27.12.1990, but here in the present case, the fruit bearing of the trees determined by the valuer is in excess than average yield prescribed in the Government Circular dated 27.12.1990. Hence, on this count, there have challenge the judgment and order passed by the learned Reference Court dated 30.04.2008.

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 L.A Act, the land of village Mendki, Tahsil-Katol, District-Nagpur was acquired for the public purpose for Project of Chikhali Nala. The respondent, who was holding the land ad-measuring 1.30 HR from field Survey No.76/1, P.H No. 4 was acquired by the Appellant-VIDC and thereby awarded the compensation of Rs.1,24,216/- for fruit bearing trees and Rs. 37,023/- was paid for acquired land respectively.

7. The respondent, being dissatisfied with the compensation amount, filed the reference proceeding before the learned Ad-hoc District Judge-6, Nagpur. It is their main contention that though there were standing orange trees, same were not considered and no adequate compensation has been awarded towards the Trees. 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 Yogesh

Umrao Bhaiswar entered into the witness box and demonstrated by way of oral evidence his entitlement for the enhance compensation. In support of submission, appellant also examined the expert in the subject of horticulture namely Sharad Bajirao Umale and discharge the initial burden as to how 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 said oral evidence as well as documentary evidence produced on record by the parties, the learned Reference Court has decided the matter by the impugned judgment and order dated 30.04.2008. Learned Reference Court enhanced the compensation only towards 69 orange trees and rest of claim was rejected.

11. In the present appeal challenge is to the market value and capacity of fruit bearing tree determined by the Reference Court on the basis of Government Circular issued by the Agriculture, Animal Husbandry, Dairy Business Development and Fisheries Business Department Fruit Production Class, dated 27.12.1990.

12. I have gone through the Government Circular. The perusal of this Government 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 said Circular that while acquiring the land, the Land Acquisition Officer has to determine the correct market value of the fruit bearing trees and he should consult the Horticulture Department and after receiving their consent or report determined the market value of the land. In the said Government Circular, average yield of fruit trees is given. As per Government Circular, for the orange trees, if the age of the tree is between 5 to 8 years, average yield is 150 to 300 fruits (15 to 30 kg.) and if the tree is above 9 years, then yield

is between 400 to 900 fruits (40 to 90 kg).

13. 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 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, in E-statement the details of payment of compensation to the land owners is recorded. The respondent-claimant was accordingly paid Rs.1,24,216/- towards the compensation of the trees. But 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.

14. 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.1,24,216, 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 as to how that amount has been determined while preparing the final award.

15. 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.

16. In respect of 69 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 took the yield and, therefore, on the basis of this calculation, he has drawn the calculation that per tree was having a yield of about 150 kg. Per year.

17. 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 at the rate of Rs.9,214/- per tree.

18. 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 Institute of Valuers (Exh.41), the certificate of fellow of the Institution of Valuers in the name of valuer namely Sharad B. Umale is dated 26.6.1999 is subsequent to date of his visit to field. No cross-examination has been conducted on the yield of Trees determined by valuer. No suggestion has been given about the Government Circular dated 27.12.1990. Hence there is no reason to disbelieve the evidence of this expert witness.

19. In the background of above said evidence of the parties, the learned Reference Court has evaluated the evidence and by considering the fact that the valuer though recorded the market value of the orange tree is Rs.9,214/- learned Reference Court has considered it only Rs.5,000/-. Hence, it is not the case that the Reference Court has blindly accepted the valuation report of expert. The perusal of the impugned order shows that

the learned Reference Court has applied its mind and considered other factors including 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.

20. 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.

21. Hence, considering this legal position, in my opinion, there is no illegality committed by the Refernce Court to appreciate the evidence of the valuer which is supported with valuation report and its elite documents.

22. The valuer 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 substantially disproved in the matter, and the respondent substantially proved the fact that this valuer was a Professor and having a vast experience of valuation which is not disputed in the matter, there is no reason to disbelieve his report in the matter.

23. It is further pertinent to note that E-statement is the only document on record relied by Appellant to

determined the market value of Trees. But perusal of same no where shows the basis on which the value of trees was determined by state. No report of Horticulture dept is enclosed with Award. No person from Horticulture Department was examined by the State/Acquiring Body for ascertaining the value of each tree. Hence there is no option to this Court than to rely the evidence of the expert examined by the respondent.

24. 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.**

25. 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.

26. 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. Hence in my opinion the market value determined by the Reference Court towards trees is just and proper in the matter.

27. In the light of above observation, I find no merit in the present appeal and accordingly the present appeal stands **dismissed**.

(Pravin S. Patil, J.)